

Can directors be personally liable for the legal costs of a company?

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A company is a separate legal entity to its directors and as a general rule, only the company itself is liable in respect of its obligations to third parties. However, there are exceptions (see earlier briefings [here](#) and [here](#)), for example, in the case of fraud.

In two recent judgments, the High Court has considered the liability of company directors for legal costs related to proceedings commenced against a corporate entity.

Pena-Herrera v Green Label Short Lets Ltd & Anor [2024] IEHC 425

The plaintiff obtained judgment in the District Court against a corporate entity (**Green Label**) in the sum of €16,633,

following a determination by the Residential Tenancies Board (**RTB**) that she had been unlawfully evicted from her rental property after having made a complaint in respect of health and safety issues.

Payment of the judgment was not forthcoming, and the plaintiff successfully brought an application to examine under oath the sole director and controlling party of Green Label (**Director**) on the financial position of the company. Before the examination could take place, the judgment was discharged. The plaintiff then brought an application to have the Director made personally liable for her costs.

The High Court looked at the factors which a trial judge is to consider when asked to join a non-party to proceedings in order to make them liable for costs, as set out previously by the Supreme Court in *Moorview Developments Limited & Ors v*





First Active plc & Ors [2011] 3 IR615.

- **The extent to which the company could meet any costs award** – the court was satisfied that the funding for contesting the examination application was external to the company and that Green Label would be unable to meet a costs order.
- **Benefit to the non-party** - the court found that the Director was the only person who would have benefited if the application had been successfully resisted as he would not be personally examined on the assets and liabilities of the company.
- **Role of the non-party in the litigation** – As the sole director and guiding hand behind the company, the court found that the Director was the initiator and moving party of the decision to contest the application. He was the 'real party' to the litigation and it was he who ensured that the company obtained the funds to pay the applicant the full amount of the judgment.
- **Whether the proceedings were pursued reasonably** - the court considered the conduct of Green Label, through its controlling Director, in terms of its unlawful eviction of the plaintiff, which effectively made her homeless and the fact there was no defence to the allegations made by the applicant. The court noted that the costs of resisting the examination application could have been used to pay, in full or in part, the District Court judgment.
- **While not determinative, was there bad faith, impropriety or fraud** – the court held that the Director had acted in bad faith and with impropriety from start to finish in the conduct of the proceedings. In addition to the unlawful eviction, false information was provided in a statutory declaration.
- **Notice to the non-party on the intention to apply for a non-party costs order** – notice of the application was not

given by the applicant to the Director but the court did not believe that this should be a decisive consideration.

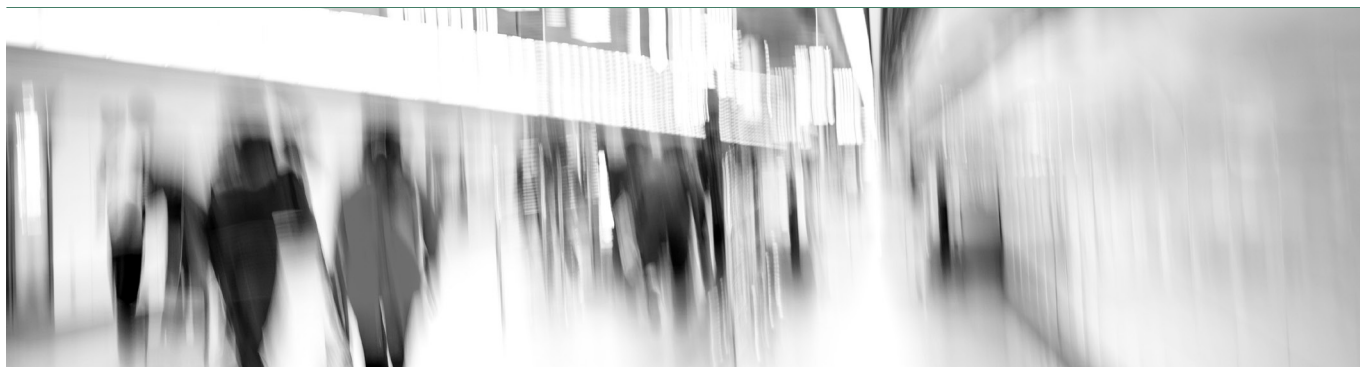
The court was satisfied that making the Director personally liable for costs would be a just result, given his unacceptable and unlawful behaviour, with the court noting that if he were not made personally liable, it was reasonable to conclude that the company would not discharge the costs and the plaintiff would be left with a costs liability that would likely exhaust the entirety of the judgment sum. However, the court emphasised the exceptional nature of this case, including the ruthless and unprincipled actions of the Director in respect of the underlying eviction and also, the attempt by the company, on his direction, to disobey the District Court order.

O'Connor & anor v Lackabeg Ltd & ors [2024] IEHC 503

The plaintiffs in this action successfully took defamation proceedings against the corporate defendant. The plaintiffs then applied to the Circuit Court for an order that the directors of the defendant company (**Directors**) attend for oral examination and provide discovery in aid of execution in respect of the two judgments that had been obtained. The Directors were not a party to the underlying defamation actions but were named as respondents to these motions. The Circuit Court refused the relief sought but the plaintiffs successfully appealed this decision to the High Court.

The court expressly differentiated this case from the *Pena - Herrera* judgment, discussed above, which concerned a non-party being made liable for the costs of the corporate litigant. Here the Directors had been joined as respondents in respect of the motions, which were addressed to them personally, albeit the underlying defamation proceedings were issued against the corporate entity only.

The motions were opposed by the Directors on the basis that the reliefs sought by the plaintiffs were impermissible in



the Circuit Court. This was not accepted by the High Court and it held that in the interests of justice the plaintiffs should be entitled to recover the costs of the motion and appeal as against the Directors personally as it was them, and not the company, who caused costs to be incurred by the plaintiff.

Conclusion

These cases illustrate that the courts will seek to act in the interests of justice when considering whether directors should be made liable for costs. In particular, in *Pena – Herrera*, the court was keen to avoid a “free rider” situation whereby if the application was successfully defended by the company, it would get its costs but if the application was granted, the company would be unable to pay those costs.

However, it must be noted that both judgments involved applications brought by plaintiffs post judgment to assist in satisfying awards obtained against corporate entities. Further, in *Pena-Herrera*, the court emphasised the exceptional nature of the case, while, in *O’Connor*, the court stressed that the Directors were personally named as respondents to the motion and this was not a case where the officers of a company were being made liable for costs incurred by a corporate litigant.

As such, directors will only face personal liability for legal costs in exceptional fact specific cases and the separate legal personality of a company remains a fundamental principle of Irish company law.

litigation, have cast a question mark over the viability of nonprofit organisations funding the type of representative actions envisaged by the Act.

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