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NO PLACE TO HIDE: COURT OF APPEAL FOR ONTARIO ENDORSES BROAD APPROACH TO PIERCING THE CORPORATE VEIL IN CIRCUMSTANCES OF FRAUD

by [Corey Groper](#)

In [*BH Frontier Solutions Inc. v. 11054660 Canada Inc. \(Canadian Choice Supply\)*](#), the Court of Appeal for Ontario clarified when courts will disregard the separate legal personality of a corporate entity that is being used as a shield for conduct akin to fraud. In doing so, the Court endorsed a broad approach to piercing the corporate veil, confirming that the question of whether a corporate entity is being used as a shield for fraudulent or improper conduct should be given an expansive and contextual interpretation.

Background

On September 29, 2020, BH Frontier Solutions (“BH”) entered into an agreement with Shijazhuang Hongray Group (“Hongray”), a Chinese manufacturer of disposable protective gloves, and Canadian Choice Supply (“CCS”), a Canadian company which presented itself as an authorized distributor of Hongray products in Canada, for the purchase of medical grade examination gloves (the “Agreement”).¹ The Agreement was negotiated and signed on behalf of BH by its principal, Ran David Tao (“Tao”). It was negotiated and signed on behalf of CCS by its principals, Kambiz Salami (“Salami”) and Rongze Chai (“Chai”). It was signed on behalf of Hongray by an individual named Jiang Xiaoxain (“Xiaoxain”).²

Pursuant to the Agreement, BH would provide a 50% deposit to CCS upon signing and the remaining 50% balance following a successful inspection of the gloves before the shipment date. As the distributor, CCS was required to wire the payment to Hongray. It was also responsible for delivering the gloves to BH.³

In October 2020, BH wired \$1,325,546.25 USD (the “Purchase Price”) to CCS, as directed by Chai. Of that amount, several orders were never delivered to BH and no

¹ *BH Frontier Solutions Inc. v. 11054660 Canada Inc. (Canadian Choice Supply)*, 2024 ONCA 932 (“COA Decision”), [para. 1](#).

² COA Decision, [para. 2](#).

³ COA Decision, [para. 3](#).

refund was provided (the “Missing Orders”). The Missing Orders represented a total of \$504,980.00 of the Purchase Price.⁴

The evidence adduced at trial showed that Salami and Chai transferred BH’s payments to six different individuals in China whom they did not know, supposedly at Jiang’s direction.⁵

BH argued that the Agreement was fraudulent to the extent of the undelivered goods, and that CCS, along with Salami and Chai, were the agents of the fraud. In response, Salami and Chai claimed that although they sent BH’s payment to China at the direction of Jiang, they, themselves, were the victim of Jiang’s fraud.⁶

The Trial Judge’s Decision

During the course of the trial, it became clear that “the transaction at issue was composed of two separate and distinct frauds: (i) a fraudulent misappropriation that took place in China; and (ii) a fraudulent misrepresentation that took place in Canada”. According to the trial judge, while “it is likely, but not certain...that [Salami and Chai] participated in the former”, it is “clear beyond any doubt” that they “perpetrated the latter and that [BH] suffered significant loss as a result”.⁷

The trial judge found that Salami and Chai perpetrated a fraudulent scheme by falsely representing to Tao that CCS had a “factory direct” relationship with Hongray, which they described as “a world leading manufacturer of medical gloves”. This direct relationship with “no middle-men” was also featured prominently on CCS’ marketing pamphlets. It was Tao’s evidence that this direct relationship was very important to him and BH, so much so that he asked Salami and Chai to confirm it five times throughout their negotiations. The record also revealed that Tao was concerned about the authenticity of the medical gloves and sought to ensure that the funds he paid to CCS would be sent directly to Hongray. Tao was reassured of this by a clause in the Agreement which stated that CCS would send BH’s payments directly to Hongray.⁸

After payment was made by BH in accordance with the Agreement, Salami and Chai presented Tao with a receipt showing that the funds had been forwarded to Hongray. At trial, neither Salami nor Chai denied that the receipt was forged. Instead, they both blamed Jiang, who allegedly provided them with the false receipt. According to the trial judge, “whether or not [Salami and Chai] knew that the receipt for payment was fraudulent, they certainly knew that they had not transmitted [BH’s] funds directly to Hongray as provided in Clause 5 and as assured to [Tao]”. The record showed very

⁴ COA Decision, [para. 4](#).

⁵ COA Decision, [para. 5](#).

⁶ COA Decision, [para. 6](#).

⁷ *BH Frontier v. Canadian Choice Supply*, 2022 ONSC 2293 (“Trial Decision”), [para. 10](#).

⁸ COA Decision, [para. 8](#).

clearly that BH's funds were never sent to Hongray and likely never made their way to Hongray.⁹

In the end, the trial judge concluded that Salami and Chai's representation that they had a "factory direct" business relationship with Hongray was knowingly false. In reality, Salami and Chai dealt only with Jiang and "did not know who she was nor did they do any investigation of her or the credibility of her supposed association with Hongray". In doing so, they intentionally misled Tao and induced BH into entering the Agreement.¹⁰

The trial judge also analyzed the misappropriation of the funds in China, concluding that the evidentiary record did not reveal what happened to the funds once they were distributed to the unknown individuals by CCS. According to the trial judge, whether Jiang misappropriated the funds on her own, or with the assistance of Salami and Chai, was "difficult to say".¹¹ Regardless, while the evidence fell "slightly short of definitively establishing [Salami and Chai] as full, intentional participants in the China-based fraud and misappropriation of funds", it fully supported a finding that Salami and Chai "perpetrated a Canada-based fraudulent misrepresentation" by hiding behind their company and using deceit to manipulate BH into entering into an Agreement that ultimately caused it financial loss.¹²

The Corporate Veil is Pierced

In determining whether Salami and Chai should be held personally liable by virtue of their intentional misrepresentations which defrauded BH into entering the Agreement, the trial judge considered [642947 Ontario Ltd. v. Fleischer \(2001\), 56 OR \(3d\) 417](#), where Laskin J.A. stated that that "typically, the corporate veil is pierced when the company is incorporated for an illegal, fraudulent or improper purpose...But it can also be pierced if when incorporated 'those in control expressly direct a wrongful thing to be done". According to the trial judge, both conditions were met on the facts of this case, as CCS was completely dominated by Salami and Chai and they had engaged in conduct akin to fraud.¹³

The Court of Appeal's Decision

Salami and Chai raised two principle grounds of appeal. First, they held that the trial judge applied the wrong test for piercing the corporate veil. Second, they claimed that the trial

⁹ Trial Decision, [paras. 17-18](#).

¹⁰ Trial Decision, [paras. 25-26](#).

¹¹ Trial Decision, [para. 30](#).

¹² Trial Decision, [para. 37](#).

¹³ Trial Decision, [paras. 28-29](#).

judge erred by "artificially splitting" the fraud between Canada and China, essentially creating a novel theory of liability not contemplated by the parties.¹⁴

Fraudulent Misrepresentation Constitutes Conduct Akin to Fraud for the Purposes of Piercing the Corporate Veil

Salami and Chai argued that the trial judge erred in conflating fraudulent misrepresentation with "fraudulent or improper conduct" for the purposes of piercing the corporate veil.¹⁵ This submission was rejected by the Court of Appeal, which held that while the legal test for fraud and fraudulent misrepresentation may differ, there is no basis on which fraudulent misrepresentation would not be considered "conduct akin to fraud" for the purposes of the veil piercing exercise. In this regard, the Court of Appeal endorsed a broad approach to the corporate veil analysis which, it noted, "should not be given a narrow interpretation".¹⁶

The decision confirms that piercing the corporate veil is an equitable doctrine which allows courts to disregard the corporate form whenever necessary to prevent injustice. Significantly, the Court of Appeal's reasoning suggests that a plaintiff need not prove that the corporate entity was created with fraud or injustice in mind to successfully pierce the veil; it merely needs to prove that the corporate entity was used as a shield for "fraudulent or improper conduct".

No Error in Splitting the Fraud

Salami and Chai also argued that the trial judge erred in "splitting" his analysis of the allegations of fraud between the Canada-based fraud and the China-based fraud, contending that this approach was not advanced by the parties.¹⁷ This ground of appeal was also rejected by the Court, which held that "it was open to the trial judge to consider the conduct in Canada and the conduct in China as two distinct aspects of the allegations in the pleadings".¹⁸ Approaching the allegations this way, even if it differed from the manner in which they were presented in the pleadings, allowed the trial judge to assess the appellants' argument that they themselves may have been the victims of fraud in China, while nonetheless concluding that they were liable for engaging in fraudulent misrepresentation in Canada.¹⁹ By dissecting the plaintiff's allegations, the trial judge was able to undertake a broad and holistic analysis, ensuring that the dearth of evidence respecting one aspect of the fraud did not implicate his findings with respect to the other.

¹⁴ COA Decision, [para. 16](#).

¹⁵ COA Decision, [para. 18](#).

¹⁶ COA Decision, [para. 23](#).

¹⁷ COA Decision, [paras. 27-28](#).

¹⁸ COA Decision, [para. 30](#).

¹⁹ COA Decision, [para. 31](#).

Key Takeaways

- Fraudulent misrepresentation constitutes “fraudulent or improper conduct” for the purposes of piercing the corporate veil.
- The piercing the corporate veil doctrine should not be narrowly construed - “conduct akin to fraud” should be afforded a broad and expansive interpretation.
- Veil piercing is a fact-driven exercise. At its core, alter ego liability is founded on considerations of fairness and equity.
- At a minimum, a party seeking to pierce the corporate veil must establish that the individual dominated the corporate entity in such a way as to perpetrate an injustice against the plaintiff.
- Courts may split or bifurcate allegations of fraud when the evidentiary record supports findings on some aspects of the claim, but not others.