When Should Executives Be Responsible for Corporate Acts?: A Comment on *Loeppky et al v Taylor McCaffrey LLP*

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A recent Manitoba case has forced the Court of Queen's Bench to tackle the thorny issue of director liability for corporate acts. The case of *Loeppky et al. v Taylor McCaffrey LLP et al.*[1] has already been the subject of a blog,[2] with respect to the some of the main issues in the case. The current contribution, on the other hand, deals with what is one of the subsidiary issues in the case, namely, the bases upon which corporate directors and officers might be held liable for what would otherwise be corporate acts. After all, many corporate executives are legitimately concerned about avoiding personal liability. This case provides further illustration of the fact-dependent nature of finding personal liability of executives for corporate acts.

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1 2021 MBQB 208 [Loeppky], per Justice Lanchbery.

2 Xiyuan Feng, "Responsibilities and Rights Pursuant to Pledge Agreements" (21 December, 2021), online (blog): Marcel A. Desautels Centre for Private Enterprise and the Law <https://www.desautelscentre.ca/2021/12/21/responsibilities-and-rights-pursuant-to-pledge-agreements>.

I. THE FACTS

Loeppky and his wife were the driving forces behind Coren Holdings Ltd. ("Coren").[3] In the transaction at the centre of this case, in 2006, the Loeppkys sold the shares of Coren, and those in a second business owed by Coren[4] (Niverville Swine Breeders,[5] or NSB). The purchaser was The Puratone Corporation, (Puratone). In addition to suing two different sets of lawyers[6], and certain other third parties,[7] Loeppky also sued two members (Johnson and Hildebrand) of the executive team of Puratone.[8]

Here are the salient facts in relation to the personal liability issue Loeppky and his wife were approached to sell their indirect interest in NSB. The purchaser was Puratone. Even though shares of Coren were sold, Puratone was really buying NSB, 50 per cent of whose shares were held by Coren. In return for the sale of the shares, the Loeppkys were to receive periodic payments.[9]

Because of prior relationships with both parties, a partner at Taylor McCaffrey LLP recommended independent legal advice for the Loeppkys, as vendors.[10] The Duboff law firm provided advice to the Loeppkys on this sale.[11] The Duboff firm recommended stronger security be taken to protect the Loeppkys, but at the time firm became involved – Loeppky had been negotiating up to this point – there was little opportunity for alteration.[12] This was rebuffed by Puratone, saying that any further demands in this

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3 Loeppky, supra note 1, at para. 43.

4 See *Loeppky*, *ibid*, at para. 54.

5 Interestingly, though the Court specifically refers to NSB being incorporated, the Court does not provide the cautionary suffix that would ordinarily apply. For a discussion of the importance of the cautionary suffix, see *Wolfe v Moir* (1969), 69 WWR (NS) 70 (Alta. S.C.), *per* Justice Sinclair.

6 Claims were made against individual lawyers, the professional corporations through which they practice law, and two different law firms. See *Loeppky*, *supra* note 1, at paras. 8-14.

7 An accountant and his firm were included as third parties in the litigation. See *Loeppky*, *ibid*, at paras. 17-19.

8 See *Loeppky*, *ibid*, at paras. 15-16.

9 See *Loeppky*, *ibid*, at para. 59.

10 See *Loeppky*, *ibid*, at para. 57.

11 See *Loeppky*, *ibid*, at para. 58.

12 See *Loeppky*, *ibid*, at para. 88.

regard would "kill the deal".[13] The Court found that, despite the Loeppkys' desire to be fully secured, the Loeppkys decided to go ahead.[14]

The Court described the economic situation that afflicted the hog industry (the relevant industry in the case) after the transaction was completed as a "perfect storm",[15] and not in a good way. Naturally, the perfect storm caused financial problems and as a result, Puratone was unable to make payment in full.[16] This was a default,[17] but the main security was all the shares of NSB[18] (the ones sold by the vendor and the remainder, which were already held by the purchaser prior to the transaction at issue[19]). The problem was that the underlying assets of NSB were not part of the security. Only the shares of Coren and NSB were security for the sale price owed to the Loeppkys,[20] though the transaction did contain a provision that it would be an event of default under the agreement if the debt-to-equity ratio of NSB was greater than 2.5:1. This means that Puratone could use the assets of NSB as a guarantee to borrow from other parties. This is what Puratone did. Following the transaction with the Loeppkys, the assets of NSB were used as security for a loan to Puratone from the Manitoba Agricultural Services Corporation (MASC).[21] Due to the poor economic conditions, the security in the shares was insufficient to protect the money owed to the Loeppkys.

Essentially, Loeppky sued the majority of parties related to the transaction. Hildebrand and Johnson were executives who, at various times, held different roles with Puratone, the purchaser, including with its Executive Management Committee.[22] The Court found that there was no

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13 See *Loeppky*, *ibid*, at paras. 91.

14 See *Loeppky*, *ibid*. It is notable that though both husband and wife were both shareholders of Coren and plaintiffs in the action, Mrs. Loeppky deferred to her husband in the relevant activities. See *Loeppky*, para. 85.

15 See *Loeppky*, *ibid*, at paras. 147 and 152.

16 See *Loeppky*, *ibid*, at para. 81.

17 See *Loeppky*, *ibid*, at para. 60.

18 See *Loeppky*, *ibid*.

19 Coren held 50 per cent of the shares of NSB; Puratone held the remaining 50 per cent. See *Loeppky*, *ibid*, at paras. 62 and 64.

20 See *Loeppky*, *supra* note 1, at para. 60.

21 See *Loeppky*, *ibid*, at para. 69.

22 See *Loeppky*, *ibid*, at para. 15.

reason to hold the executives liable. Loeppky's claim was that the decision of the executives to enter into the MASC loans (and, according to Loeppky, thereby breach to the covenant with respect to the debt-to-equity ratio of NSB) was fraudulent, and in collusion with the lawyers representing the purchaser (Taylor McCaffrey LLP), presumably to cause the security to be less worthwhile than it otherwise would be. Loeppky's claim against the executives is thus fraud, based on the alleged negative impact of the MASC loans (which were guaranteed by NSB and its assets) on the likelihood that Loeppkys would receive the moneys owed to them under the transaction.

II. THE HOLDINGS OF THE COURT OF QUEEN'S BENCH

For the purposes of discussing personal liability, the Court touches on three matters: first, the court finds that there was no civil fraud committed by the executives.[23] Second, though a duty of care[24] can be owed by directors of the corporation to creditors of the corporation,[25] the duty was not breached here because the business judgment rule would protect a reasonable decision.[26] Third, given that there was no separation of the

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23 See *Loeppky*, *ibid*, at para. 141.

24 See the *Canada Business Corporations Act*, RSC 1985, C-44, para. 122(1)(b) and the Manitoba *Corporations Act*, CCSM, c. C225, para. 117(1)(b). NSB was incorporated under the laws of Manitoba. See *Loeppky*, *ibid*, at para. 29. Puratone was incorporated under federal law. See *Loeppky*, *ibid*, at para. 21.

25 See *Peoples Department Stores Inc. v Wise*, [2004] 3 SCR 461, *per* Justices Major and DesChamps, writing joint reasons, for the Court [*Wise*].

26 See *Loeppky*, *ibid*, at para. 127. The Court views the evidence of the financial crisis (referred to elsewhere in the judgment as the "perfect storm" in the hog industry) as justifying the potential application of the business judgment rule, and that the decisions of the executives were entitled to a high degree of deference (see para. 127). The biggest factor in this portion of the judgment was that the action alleged to have been problematic by Loeppky (that is, the non-disclosure of the guarantee based on the assets of NSB) was not the cause of Loeppky's loss (see *Loeppky*, paras. 128-141). Thus, consistent with *Wise*, *supra* note 25 (at para. 66), in essence, it appears that the Court was holding, first, there was no failure to disclose because the guarantee was properly disclosed as a note to the balance sheet (para. 134), and there were other discussions with Loeppky on this point (*Loeppky*, para. 137). Second, it also appears that the judge attributes the loss to the "perfect storm" in the hog industry (*Loeppky*, para. 322). The Court relies (*Loeppky*, para. 321) on para. 117(1)(b) of the *Corporations Act*, *supra* note 24 to ground this conclusion. However, one could also ground a similar analysis in the common law of negligence (subject to the business judgment rule). In fact, the Supreme

identity of interest between Puratone and its executives on the facts here, it would inappropriate to hold the executive personally liable for what were otherwise properly construed as corporate acts of Puratone.[27]

In my view, on all three issues, the Court was correct. To begin with the third of these, in my view, there are three separate Canadian tests with respect to how the courts will resolve issues where the directors of a company will be held personally liable for what would otherwise be corporate acts. The first of these tests was identified by the Court in *Loeppky*, that is, the test set out by the Ontario Court of Appeal in *ScotiaMcLeod Inc. v Peoples Jewellers Ltd.*[28], where the Court held as follows: [29]

> The decided cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are fact-specific. In the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers, they are also rare. Those cases in which the corporate veil has been pierced usually involve transactions where the use of the corporate structure was a sham from the outset or was an afterthought to a deal which had gone sour. ... Absent allegations which fit within the categories described above, officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own.

I agree with the Court that the facts presented in *Loeppky* were not sufficient to meet this test. First, the Court found as a fact that neither executive was in a position to benefit personally from the MASC loans.[30] There were no facts presented to show that the executives were behaving in any way to separate their interests from those of the corporation that they were representing (in this case, Puratone). The Court found that the loans were undertaken for the benefit of Puratone.[31] Therefore, there was still an

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Court of Canada, in *Wise* (at para. 64), intimates that the rules for the duty of care can be explained as negligence subject to the important element of avoiding hindsight bias by virtue of the business judgment rule. Therefore, it should make little difference whether the matter is raised under the statute or the common law.

27 See *Loeppky*, ibid, at para. 327.

28 (1995), 26 O.R. (3d) 481 (C.A.), *per* Justice Finlayson, writing for the Court.

29 *Ibid*, at 490-491.

30 See *Loeppky*, supra note 1, at para. 332.

31 *Ibid*, at para. 323.

"identity of interest" (in Justice Finlayson's words) between Puratone, on the one hand, and Hildebrand and Johnson, on the other).

III. OTHER CASES ON EXECUTIVE LIABILITY FOR CORPORATE ACTS

There are other cases as well, though not mentioned by the Court in *Loeppky*.[32] In *Mentmore Mentmore Manufacturing Co. v National Merchandise Manufacturing Co.*[33] the Federal Court of Appeal held as follows:[34]

> What is involved here is a very difficult question of policy. On the one hand, there is the principle that an incorporated company is separate and distinct in law from its shareholders, directors and officers, and it is in the interests of the commercial purposes served by the incorporated enterprise that they should as a general rule enjoy the benefit of the limited liability afforded by incorporation. On the other hand, there is the principle that everyone should answer for his tortious acts. The balancing of these two considerations in the field of patent infringement is particularly difficult.

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32 These cases are included here because they demonstrate first, the highly fact-specific nature of these cases, but also that there are different ways of expressing similar ideas with respect to when the court will be comfortable all the individuals liable for what would otherwise be acts of a corporation,

The *Mentmore* case could have been dealt with prior to the discussion of *ScotiaMcLeod*, *supra* note 28. I did not do this for two reasons. First, the test in *ScotiaMcLeod* is specifically mentioned by the Court in *Loeppky*. Given that this is a case comment, it seems logical to start with the test outlined by the Court in the case itself. Second, the *ScotiaMcLeod* case provides the highest level of protection for executives against claims made for personal liability. The *Mentmore* case provides similar but not identical protection, but is a significant level of protection for executives against personal liability when the allegations are made in tort. The *ADGA* case (also discussed further below, though not discussed in the *Loeppky* case) provides the easiest road for a plaintiff who seeks to hold a senior corporate officer liable in tort for actions allegedly undertaken to benefit the corporation. Thus, there is a logical flow with respect to these cases in the manner in which they are presented here.

33 (1978), 89 D.L.R. (3d) 195, 22 N.R. 161 (Fed. C.A.), *per* Justice LeDain, as he then was, for the Court.

34 *Ibid.*, at 202.

When Justice LeDain refers to "a very difficult question of policy" at the opening of the excerpt above, he is recognizing that while it is easy to recognize the conflicting policy issues (separate legal personality of the corporate entity, as against the general desire to hold individuals responsible for the choices that have led to tortious conduct, alluded to earlier), the resolution of the conflict on a particular set of facts can be highly contentious.

Justice LeDain continues:[35]

> But in my opinion there must be circumstances from which it is reasonable to conclude that the purpose of the director or officer was not the direction of the manufacturing and selling activity of the company in the ordinary course of his relationship to it but the deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it. The precise formulation of the appropriate test is obviously a difficult one. Room must be left for a broad appreciation of the circumstances of each case to determine whether as a matter of policy they call for personal liability. Opinions might differ as to the appropriateness of the precise language of the learned trial judge in formulating the test which he adopted~'deliberately or recklessly embarked on a scheme, using the company as a vehicle, to secure profit or custom which rightfully belonged to the plaintiffs'~ but I am unable to conclude that in its essential emphasis it was wrong.

The Court of Appeal here is trying to draw a single, clear distinction, even if there are multiple factors to be considered in resolving the issue. If a director or other executive is doing what one would ordinarily expect a director or other executive to do in the context of their relationship to the corporation, then generally, this should not result in personal liability for the director or other executive, because the act was taken on behalf of the corporation. If, on the other hand, the director's action was deliberately courting tortious liability, knowing that this was the likely result, such behavior by a director or other executives should not be encouraged by the avoidance of liability.[36] Exactly how the line between these two extremes is

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35 *Ibid.*, at 203-204.

36 The case has been cited repeatedly, but most commonly in the context of patent infringement, which is the direct context in which this case arose. See, e.g., *Immigration Consultants of Canada Regulatory Council v College of Immigration and Citizenship Consultants Corp.*, 2021 FC 1434; *Fibremann Inc v Rocky Mountain Spring (Icewater 02) Inc*, 2005 FC 977 at para 32; *Krav Maga Enterprises, LLC v Edge Combat Fitness Inc,* 2006 FC 112 at para 26.

to be drawn in different fact-scenarios is, as Justice LeDain himself admits, a difficult exercise that brings together a number of policy concerns to be balanced.

Although the Court in *Loeppky* does not mention it, the third case on the issue of personal liability of directors to which I wish to draw attention here is *ADGA Systems International Ltd. v Valcom Ltd. et al.*[37] This case finds that the senior employees and director of the corporation crossed the line and made them liable for corporate acts A director and two employees of the defendant were alleged to have gotten the fiduciary-bound employees of the plaintiff to break their oath of loyalty to the plaintiff and come work for the defendant if the defendant got a contract with the federal government.[38] The contract with the federal government was ultimately secured because the employees signed on.[39] The plaintiff sued the defendant's employees and director for inducing the breach of fiduciary duty.[40] In this case, the Court of Appeal held that executives are responsible for their own torts,[41] subject only to the *Said v Butt* defence.[42]

This defence can be explained as follows: a director, officer or other servant, who is acting *bona fide* and within the scope of his or her authority, causes the corporation of which the person is a director or officer to breach a contract between the corporation and a third person,[43] in these circumstances, the director or officer is not liable to the third party for

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37 (1999), 43 O.R. (3d) 101 (C.A.) [*ADGA*], *per* Justice Carthy, writing for the Court; application for leave to appeal to the Supreme Court of Canada was dismissed with costs April 6, 2000 (McLachlin C.J., Iacobucci and Major JJ.). S.C.C. File No. 27184. S.C.C. Bulletin, 2000, p. 608.

38 *Ibid*, at 103.

39 *Ibid*.

40 *Ibid*. To be clear, the claim in *ADGA* was inducement of a breach of fiduciary duty, but the claim in *Loeppky* was inducement of a breach of contract. In both cases however, the allegation of inducement was brought against executives of a corporation, and in both cases, the same defence was considered.

41 *Ibid*, at 107.

42 [1920] 3 K.B. 497 (K.B.D.), *per* Justice McCardie.

43 Though *Said v Butt* is a case out of England, the case has repeatedly been cited in Canada. See, e.g. *Stokes v St. Clair College*, 2010 ONSC 2133, at paras. 5, 7 and 12; *565486 Ontario Inc. v Tristone Properties Inc.*, 2001 CanLII 27976 (ON SC), at para. 8; *FNF Enterprises Inc. v Wag and Train Inc.*, 2022 ONSC 2813, at para. 13. I refer to the English precedent because the Court of Appeal in *Valcom* referred to the English case, rather than Canadian cases that have cited it.

inducing a breach of contract by the corporation.[44] In *Loeppky*,[45] though there was a claim against Hildebrand and Jonson of inducing a party to breach a contract,[46] and though there was no mention of *Said v Butt*,[47] the Court listed the elements of the tort, found them to be absent, and then wrote as follows: "Even if all the previous elements were stated in the affirmative Johnson's and Hildebrand's actions were not for personal gain, but to keep Puratone as a viable commercial entity. For these reasons, the claim of inducement to breach a contract fails."[48] In other words, without referencing *Said v Butt*, the Court in *Loeppky* seemed to accept its principles because the reference to keeping Puratone viable shows that the executives were acting *bona fide* within the scope of their authority.[49] Thus, the Court finds that there was no inducement.[50]

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44 *Ibid*, at 506.

45 *Supra* note 1.

46 *Ibid*, at paras. 340-341.

47 *Supra* note 42.

48 See *Loeppky*, *supra* note 1, at paras. 341-342.

49 One of the anonymous peer reviewers of this article pointed out that there are many similarities between the cases covered here and some of the points raised by the Supreme Court of Canada's judgment in *Wise*, *supra* note 25. I agree with this assessment, and so did the Court in *Loeppky*, *ibid*. On this point, see *Loeppky*, at paras. 117 and 330.

50 The goal of this comment is not to delve deeply into the law of inducement. That might be the subject of a later comment. Frankly, to walk through the nine points mentioned by the judge with respect to this tort would make this comment much longer. I prefer to keep this contribution within manageable bounds. However, for the sake of completeness, I admit that I do not agree with the judge's analysis. He points out: "1) There was not a valid and subsisting contract between Loeppky and Johnson/Hildebrand as a third party or in fact any third party at all as the contract in question was between Puratone and Loeppky; 2) A non-existing contract therefore is incapable of being breached; 3) The non-existing contract incapable of being breached therefore lacks causation; 4) Johnson and Hildebrand could not be aware of the non-existing contract with Loeppky;" To me, the judge has misinterpreted the term "third party" in this instance. A third party for the purposes of the tort of inducement of breach of contract is any party who is not directly privy to the contract. Thus, on the facts of *Loeeppky*, the contract is between Loeppky and his wife, on the one hand, and Puratone, on the other. The executives, Johnson and Hilebrand were strangers to this contract. As executives of Puratone, they were in a position to cause Puratone to breach this contract. If they did so, there was no "non- existent contract" of which these executives were unaware. Rather, they were perfectly aware of the contractual relationship that existed between their company (Puratone), on the one hand, and the

What is notable about the *ADGA* case is that the *Said v Butt* defence has no application on its facts, because the employees of the defendant did not cause the corporation to break its contract with anyone, but instead, the employees of Valcom (the defendant) caused the employees of a competitor (the plaintiff) to break their fiduciary obligations to the plaintiff.

Such an approach is, in my view, consistent with the line drawn in *Mentmore*.[51] Directors and other employees are expected to do what is in the best interests of the corporation, but deliberately and knowingly committing a tort is outside of the ordinary course of the fiduciary's relationship to the corporation. The employees in *ADGA* were not acting in the ordinary course of their relationship to Valcom. Put another way, if your business model is based on getting a majority (44 of 45) of a competitor's employees to break their oath to their own employer, this should not be countenanced by the law. Fiduciary duty does not allow an executive to do that which he or she knows to be unacceptable and is contrary to law, and yet to then be protected from the legal consequence of the illegal action undertaken. The actions of the defendants in *ADGA* were on the unacceptable side of the line, even if they were protecting the interests of their employer (that is, the defendant Valcom).

In *Loeppky*,[52] on the other hand, there was no attempt by the executives to commit fraud.[53] There was no attempt to speak a deliberate falsehood, without belief in its truth, or recklessly, about the financial condition of NSB.[54] Loeppky argued that the guarantee provided by NSB put NSB in

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Loeppkys, on the other.

While I disagree with some of the judge's analysis, I agree with the disposal of the case, both generally, and on this particular point. Given the limited scope of this article, it is neither necessary nor helpful to conduct a full analysis of the nine points referred to by the judge. My purpose is to lay out the different tests that are available when dealing with potential tortious liability of directors and executives of corporations for acts done by those individuals on behalf of the corporation on whose behalf they purport to act. The details of the tort of inducement of breach of contract is a tangential point to my analysis.

51 *Supra* note 33.

52 *Supra* note 1.

53 *Ibid*, at para. 346.

54 See *Derry v Peek* (1889), LR 14 App Cas 337, *per* Lord Herschell; see also *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 18, *per* Justice Karakatsanis, writing for the Court.

contravention of one of in the transaction between Puratone and Loeppky.[55] This was not in any way fraudulent[56] nor meant to do damage to creditors. According to the Court, conjecture that fraud may have occurred is insufficient.[57] Hildebrand and Johnson were fiduciaries of Puratone,[58] Puratone was the purchaser under the transaction at issue.[59] Johnson was representing the party (the purchaser) that was opposed in interest to Loeppky (the vendor).[60] In my view, under these circumstances, Loeppky's expectation that Hildebrand and Johnson would protect his interests by virtue of a fiduciary duty owed to Loeppky was not reasonable, and could not be found valid. The judge came to the same conclusion and dismissed the claim.[61] The rationale is as follows: when a person (in this case, Hildebrand or Johnson) owes a fiduciary duty to one party (Puratone), it would be unusual for the court to find an implied fiduciary duty to a party that is adverse in interest (Loeppky) to Puratone, the expectation is therefore unreasonable.

The financial statements of NSB (to which Loeppky had access[62]), among other documents,[63] clearly showed, at times, that the agreement had been breached, including covenant with respect to the debt-to-equity ratio.[64] Moreover, the executives had belatedly reported[65] the guarantees provided by NSB as a note to the financial statements (as opposed to showing this as a liability of NSB).[66] The accounting evidence indicated that a note to the financial statements was the appropriate way to report the guarantees provided by NSB to MASC on loans to Puratone.[67] Even so, the Court

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55 See *Loeppky*, *supra* note 1, at para. 71.

56 *Ibid*, at para. 346

57 *Ibid*, at para. 319.

58 *Ibid*, at para. 332.

59 *Ibid*, at para. 109.

60 *Ibid.*

61 *Ibid*, at paras. 338-339.

62 *Ibid*, at para. 222.

63 *Ibid*, at para. 336.

64 *Ibid*, at paras. 224-226.

65 *Ibid*, at para. 315.

66 *Ibid*, at para. 312.

67 *Ibid.*

found that Loeppky was informed of the MASC loans.[68] The MASC loan transaction was meant to allow Puratone to survive.[69] That is the job of a fiduciary, such as a director or other executive.[70] Because Loeppky knew of several events of default, but chose not to serve notice of default, as required under the transaction[71] before realizing on the security, which he also did not do,[72] in my view, the decision of the court is easily understood.

The Court finds that the business judgment rule is properly invoked here.[73] This, by definition, means that the decision at issue was reasonable at the time that it was made.[74] When a decision made by a fiduciary is reasonable in the circumstances, it is, and should be, exceptionally difficult to hold the fiduciary liable for corporate acts.

IV. SUMMARY

There are times when allowing executives to hide behind the corporate veil goes too far. Trying to figure out how to draw that particular line can be a very difficult thing to do. As evidenced by this case, as well as the other cases discussed in this comment, courts will find ways to define that line in a manner that will invariably depend on the unique facts of each case.

In the end, the takeaways are the following. First, fraud, though easily alleged, is difficult to prove. It should generally be alleged with specificity.[75] Second, to hold executives liable for torts that are corporate acts is subject to tests drawn from a number of different cases. Third, while each of these cases frames the test somewhat differently than the others, absent actions that suggest an executive stepping outside of the legitimate

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68 *Ibid*, at para. 301.

69 See *Loeppky*, *ibid.*, at paras. 150 and 329. Ultimately, Puratone would enter protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36. See *Loeppky*, *ibid.*, at para. 208. It was ultimately sold to Maple Leaf Foods Ltd. See *Loeppky*, *ibid.*, at para. 16.

70 See *Wise*, *supra* note 25, at para. 32.

71 See *Loeppky*, *supra* note 1, at para. 228.

72 See *Loeppky*, *ibid.*, at para. 298.

73 See *Loeppky*, *ibid.*, at para. 127.

74 See *Wise*, *supra* note 25, at paras. 65-67.

75 See *Loeppky*, *supra* note 1, at para. 272.

boundaries of his or her role, liability should be exceptionally rare. Fourth, as a general rule, directors and other executives (and, for that matter, professional advisers, too[76]) are not to be guarantors of the obligations of the corporation that they represent.[77] Fifth, where decisions are both (i) driven by the needs of the corporation (not to enrich the executive personally), and (ii) reasonable in the circumstances, they will rarely trigger personal liability of corporate executives. Sixth, where the executive knowingly breaches the law to achieve a commercial advantage (such as fraud), this is more likely to fall on the unacceptable and unreasonable side of the ledger, and if so, would most likely lead to liability for the executives who made the relevant decision or decisions.

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76 See *Loeppky*, *ibid.*, at para. 215.

77 See *Loeppky*, *ibid.*, at paras. 328-332.