

NEW CASE IMPOSES PERSONAL LIABILITY ON CORPORATE OFFICERS

By Patrick Casey

Pinnacle

July 23, 2010

The California Appellate Court recently decided a case in which it imposed personal liability on the officers of a corporation for violation of a state law. The Appellate Court applied a federal law principle known as the responsible corporate officer doctrine to impose liability on the corporate officers. While this doctrine is typically used to impose liability on officers of a corporation for criminal actions taken by the corporation, this case used the doctrine to impose civil liability on officers for the corporation's failure to comply with California law.

The facts involve a corporation that owned and operated a gasoline station in the City of Galt, California. The members of the Roscoe family were the sole owners of the corporation. An underground storage tank on the property leaked 3,000 gallons of gasoline into the ground. An employee promptly notified the Sacramento County Environmental Management Department about the leak. The Sacramento County Department then sent a variety of notices to the corporation that it was required to clean up the leak. However, the corporation never did anything to clean up the leak. This went on for a period of 8 years without any clean up ever occurring.

The Sacramento County District Attorney then sued both the corporation and the Roscoes personally for violating California Health and Safety Code provisions regulating underground storage tanks, which required the following: (i) submitting mandatory work plans for the clean up; (ii) taking action to abate or correct any unauthorized fuel release; and (iii) submitting mandatory quarterly reports. The case went to trial and the trial court ruled that both the corporation and the Roscoes were jointly and severally liable for all clean up costs and \$2,493,250 in penalties. The corporation and the Roscoes appealed the decision.

The Appellate Court reviewed the facts and determined that the trial court properly imposed liability on both the corporation and personally on the Roscoes. The Appellate Court first determined that the Health and Safety Code did impose liability on the operator of any underground storage tank for violating any regulations adopted by the State Water Resources Control Board. The Appellate Court confirmed the trial court's determination that the respective provisions of the Code had been violated. The Appellate Court also determined that the statute did not expressly exempt or prohibit imposing personal liability on the officers of the corporation.

The Appellate Court then reviewed the three part test of the responsible corporate officer doctrine, which requires: (i) the individual must be in a position of responsibility which allows

the person to influence corporate policies or activities; (ii) there must be a nexus between the individual's position and the violation in question such that the individual could have influenced the corporate actions which constituted the violations; and (iii) the individual's actions or inactions facilitated the violations. The Appellate Court determined that these three requirements were satisfied because (i) the Roscoe family held all the director and officer positions in the corporation and controlled the corporation; (ii) there was no dispute that the Roscoes did receive the notices and understood them, but that they simply did not take any actions to comply with the law; and (iii) the Roscoes' failure to act was in direct violation of the law. Therefore, the Appellate Court upheld the trial court's imposition of liability on both the corporation and the Roscoes.

The Appellate Court cited various cases applying the responsible corporate officer doctrine, which really involves a public policy decision by the courts and the legislature to hold officers personally liable if they fail to follow federal or state laws designed to protect the public welfare. This doctrine was originally used to hold the president of a corporation personally liable for his corporation shipping adulterated or misbranded drugs. The doctrine was subsequently used to hold the president of a corporation liable for storing and shipping food that had become contaminated by rodents. Both of these cases involved violations of federal laws.

In this case, the Appellate Court determined that the respective portions of the Health and Safety Code addressing underground storage tanks were enacted to protect the public at large since they imposed strict liability on the owner of any storage tank that leaked gasoline. Since there was a statute that clearly imposed liability on the owner and the statute did not exempt or exclude a corporate officer from personal liability, the Appellate Court upheld the personal liability based upon the prosecution proving that the three elements of the responsible corporate officer doctrine were satisfied.

This case serves as a cautionary note that the limited liability protection provided by a corporation or a limited liability company is not absolute. The law does not provide liability protection to any director, officer or employee that conducts any criminal activity. In this case, the court determined that the corporate liability shield did not protect the directors or officers for violations of California statutory law that impose strict liability on the corporation. No one knows if or how this case may be interpreted with respect to violations of other California laws. However, this case illustrates the importance of promptly dealing with any notices of violations that a corporation may receive from any federal, state or county agency or governmental authority.

This column is the work product of Lombardo & Gilles, LLP, which has offices in Hollister and Salinas. Patrick Casey is an attorney with Lombardo & Gilles, LLP. You may contact the author at (888) 757-2444 or patrick@lomgil.com. Mail your questions to Patrick Casey, It's the Law, c/o The Pinnacle, 380 San Benito St., Hollister, CA 95023.