



6 July 2016

PRESS SUMMARY

Campbell (Appellant) v Gordon (Respondent) (Scotland) [2016] UKSC 38
On appeal from [2015] CSIH 11

JUSTICES: Lady Hale (Deputy President), Lord Mance, Lord Reed, Lord Carnwath, Lord Toulson.

BACKGROUND TO THE APPEAL

The Appellant, Mr Campbell, was employed as an apprentice joiner by a company whose sole director was Mr Gordon, the Respondent. The Respondent was responsible for the day-to-day operation of the company. The Appellant suffered an injury whilst working with an electric saw on 28 June 2006. The company's employers' liability policy excluded claims arising from the use of "woodworking machinery" powered by electricity, and thus excluded any claim arising out of the Appellant's accident. The company's failure to have in place appropriate assurance was a breach of its obligations under section 1(1) of the Employers' Liability (Compulsory Insurance) Act 1969 ("the 1969 Act"). The company went into liquidation in 2009.

The issue for the court is whether the Respondent's failure, as director of the company, to provide adequate insurance, makes him liable personally in damages to the Appellant. The Appellant's claim was upheld by the Lord Ordinary but dismissed by a majority of the Inner House.

JUDGMENT

The Supreme Court dismisses Mr Campbell's appeal by a majority of three to two. Lord Carnwath gives the majority judgment, with which Lord Mance and Lord Reed agree. Lord Toulson gives a dissenting judgment, with which Lady Hale agrees in a separate dissent.

REASONS FOR THE JUDGMENT

Lord Carnwath holds that there is no authority for the proposition that a person can be made indirectly liable for breach of an obligation imposed by statute on someone else, and that it is only possible to pierce the corporate veil to impose liability on a director or other individual through whom the company acts, if it is expressly or impliedly justified by the statute [13]. In section 5 of the 1969 Act, Parliament has imposed a specific and closely defined *criminal penalty* on a director bearing responsibility for a failure to insure, which is linked to the criminal liability of the company [14]. Lord Carnwath finds that in determining statutory liability, the court must pay due respect to the language and structure of the statute, rather than to preconceptions as to what its objectives could or should have been [18]. He rejects the argument that the imposition of criminal liability is sufficient to render the director civilly liable, finding that other statutory provisions imposing criminal liability on directors for offences by their companies have not been treated as giving rise to civil liability [21-2]. He finds that the language in section 5 of the 1969 Act was deliberately chosen and is specifically directed at criminal liability, and accordingly it is difficult to infer an intention to impose a more general liability [23].

Lord Toulson would have allowed the appeal, finding that the effect in substance of section 5 of the 1969 Act is to place a legal obligation on a director or other officer of a company not to cause or permit the company to be without the required insurance, on pain of a criminal penalty. He considers that the imposition of criminal responsibility for a specified act (or omission) carries with it a legal obligation not to act (or omit to act) in such a way [26]. Lord Toulson prefers a functional approach to interpreting the legislation which looks to the objective of the statute, which is employee protection [30]. However, even on a formalist approach, the director is in law guilty as a principal of failing to insure [31]. Since the Victorian age, the courts have held that breaches of legislation for the protection of employees are actionable at common law by the employee suffering the breach [32]. If the legislation is silent on whether there should be civil liability, the judges' role is to fill the gaps [34]. Where legislation is passed to protect employees, a breach will ordinarily give rise to a cause of action, absent a clear statutory intention to the contrary [41].

Lady Hale agrees with Lord Toulson and would have allowed the appeal. Lady Hale considers it absolutely clear that in enacting the 1969 Act, Parliament *did* intend that failure to insure should give rise not only to criminal liability but also to civil liability towards an employee who had been injured by his employer's breach of duty and who, because of the failure to insure, would not otherwise receive the compensation for his injuries to which he was entitled [43]. She stresses that, contrary to the view expressed by the Inner House, the law has not been changed by recent House of Lords and Supreme Court decisions.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html