

February 18, 2015

Oppression Remedy Shuts Down Shell Game

In case you were thinking of playing a shell game with your group of companies to avoid paying a judgment, the Ontario Superior Court has just poured cold water on your aspirations. And you, personally, could be liable.

In *T.Films S.A. v. Cinemavault Releasing International Inc.*, 2014 ONSC 6608, the Applicants sought to enforce an arbitration award obtained against Cinemavault Releasing International ("CRI"). The Applicants also sought an Order granting an oppression remedy against Cinemavault.com and Cinemavault International – both run by a sole director, Nicolas Stiliadis – and Stiliadis himself.

After becoming aware of T.Films' claims leading to the arbitration, Stiliadis ceased operating CRI and began transferring the assets of CRI to Cinemavault.com and Cinemavault International. No consideration was paid to CRI for these assets. Ultimately, CRI had no assets with which to pay the arbitration award. Indeed, CRI went from sales of \$2.4 million in 2011 to zero in 2012. In 2008, four years after the contract signed between T.Film and CRI that gave rise to the arbitration, Stiliadis caused CRI to pay to him a dividend of \$3 million. This put CRI in the position of being unable to meet ongoing liabilities.

In imposing judgment on not only his companies but on Stiliadis personally, the Court noted that the oppression remedy under section 248 of the Ontario *Business Corporations Act* provides a vehicle to hold corporate directors personally liable for their conduct. These cases will typically involve closely held companies where "the director whose conduct is attacked is the controlling owner of the corporation and its directing mind and where the conduct in question has redounded directly to the benefit of that person".

As Justice Penny put it, Stiliadis was not entitled to "treat his corporations' contractual and financial obligations like an elaborate shell game where, unless the pea happens to sit under the shell selected by a creditor, Mr. Stiliadis and his companies are judgment proof".