IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Hill v. Bridgemohan, 2008 NSSC 219

Date: 20080708
Docket: S.H. No. 137726
Registry: Halifax

Between:

Stephen Hill

Plaintiffs

and

Bryan Bridgemohan

Defendants

Judge: The Honourable Justice Duncan R. Beveridge

Heard: June 4, 5, 6, 10 and 11, 2008, in Halifax, Nova Scotia

Counsel: Roderick Rogers, for Mr. Hill
Bryan Bridgemohan, self represented.

By the Court:

INTRODUCTION

[1] The plaintiff is Stephen Hill. Mr. Hill was the sole shareholder and director of Independent Financial Corporation Limited ("IFC"). IFC ran a restaurant called the Apple Barrel from April 1993 to January 1997. The restaurant closed when the landlord distrained for rental arrears. Bankruptcy followed. At the time of closure, the general manager of the Apple Barrel was the defendant Bryan Bridgemohan. Within days the restaurant re-opened. The new owner was a numbered company, 3004927 Nova Scotia Limited. Bryan Bridgemohan was the sole shareholder, officer and director of this numbered company. Mr. Bridgemohan ran the Apple Barrel with relative success until September 2007.

[2] Hill advances two basic claims. He alleges that Bridgemohan and the landlord conspired to trigger the bankruptcy of IFC. Hill also alleges that Bridgemohan was a key employee and he breached the fiduciary duties he owed to IFC and to Hill as its sole shareholder.

[3] The claim by Mr. Hill is legally and factually without merit. The action is dismissed for the reasons that follow.

FACTS

[4] There are some significant factual disputes. However, the essential background is relatively uncontentious.

[5] Mr. Hill received an undergraduate degree in political science from the University of Western Ontario in 1984. He then obtained a further undergraduate degree at Western in business administration (HBA). He started work with London Life. He also operated three restaurants with four partners. He says his partners bought him out.

[6] He came to Halifax in the fall of 1991 to commence the MBA program at Dalhousie. Needing income, he worked as a waiter. In partnership with others, he then opened and ran LeMaison Gallant, a restaurant on Birmingham Street. In the spring of 1992 he withdrew from the MBA program. His interest in the LeMaison Gallant was bought out by the other partners.

[7] Hill noticed vacant space in the Prince George Hotel premises on Grafton Street. He thought it would be a good location for a 24-hour restaurant. He met with the manager of the Prince George Hotel, Nick Carson. Hill's proposal was eventually accepted and a lease was entered into between Centennial Hotel Management Limited and Independent Financial Corporation for a 10 year term with rent escalating to a high base rent of $3,500.00 per month commencing January 1, 1998. IFC would also be responsible for utilities, common area expenses and percentage rent, based on gross sales achieved by the restaurant in each month.

[8] Within a few months of opening the Apple Barrel Mr. Hill and his family moved to British Columbia. Hill felt he had hired a good management team. It was composed of a kitchen manager, floor manager, bookkeeper and a general manager. Despite living in British Columbia, he remained involved in the running of the restaurant. He would be on the phone with the restaurant staff two to three times a day.

[9] Hill related that in December 1993 the general manager stopped depositing funds into the bank account. Nick Carson called Hill on January 2, 1994 advising him that the restaurant had closed. An allegation was made that the general manager had absconded with assets and/or cash causing a loss of upwards of $120,000.00. Hill and his family moved back to Halifax to get the restaurant back up and running. At some point in 1994 he assumed the position of general manager. He pursued expansion plans by opening a second restaurant "Apple Barrel II" in Dartmouth.

[10] Hill returned to British Columbia. IFC struggled financially. It was politely put by Mr. Hill that the "Dartmouth restaurant never met expectations". Whatever success the Halifax restaurant might have been able to achieve was drained by losses from the Dartmouth one.

[11] It was evident by the fall of 1994 that IFC could not meet its current obligations. Hill sought the assistance of Mark Rosen, then Vice President of Coopers & Lybrand Ltd. Apparently as a result of IFC's failure to maintain government remittances, its bank accounts were seized. On November 23, 1994 IFC filed a notice of intention to file a Proposal pursuant to the *Bankruptcy and Insolvency Act*. A Proposal was duly filed on December 21, 1994 along with

supporting documentation. This documentation disclosed indebtedness to unsecured creditors in the amount of $178,720.00. Included in this amount were debts owed to the Provincial Department of Finance for collected, but unremitted PST of $72,000.00 and GST of $27,949.00 to Revenue Canada. Preferred creditors were owed $61,426.00. This was made up of $50,000.00 due to Revenue Canada for unremitted source deductions and the balance of $11,426.00 to its landlord, the Prince George Hotel.

[12] The Proposal called for payment in full of the Revenue Canada obligation for source deductions of $50,000.00 no later than six months following court ratification of the Proposal. The remaining preferred creditor, the landlord, was to be paid without penalty or interest in priority to all of the unsecured creditors out of future cash flows. Unsecured creditors would receive 40 cents on the dollar. Again payments to unsecured creditors would be out of future cash flow generated by IFC. The total payment to the unsecured creditors would be $75,000.00.

[13] The Proposal called for all monies payable by IFC under the Proposal to be paid to the Trustee for distribution. The final payment was to be made to the unsecured creditors no later than 18 months following court ratification.

[14] IFC's Proposal was accepted by the majority of creditors and an order duly issued by the Supreme Court of Nova Scotia, in bankruptcy on February 23, 1995. As will be described later, IFC defaulted on the Proposal.

[15] Bryan Bridgemohan became an employee of IFC in early 1994. His first job was as a part-time cook. Mr. Bridgemohan graduated from high school in 1987. He returned for a year to upgrade his academic standing. He attended St. Mary's in the Bachelor of Arts program for one year. He then worked in the life insurance field. Feeling at a disadvantage due to his lack of computer skills, he decided to enroll in CompuCollege. He took a nine month course, achieving a certificate in computer applications and business administration.

[16] On completion of the course in September 1994, Mr. Hill hired Bridgemohan as a full-time cook. By December 1994 he was promoted to kitchen manager. He was required to order food, hire and fire kitchen staff, develop menu items, specials, establish cleaning schedules and maintain food costs. Peter Leppard was general manager. Brian Stott was the bookkeeper or financial manager. Gordon Kerr was the floor manager.

[17] In May 1996 Brian Stott left to take full-time employment elsewhere. According to the defendant's discovery evidence, tendered by the plaintiff, Aubrey Strictland was the general manager.

[18] When Mr. Stott left, he suggested to Hill that Bryan Bridgemohan assume the duties of bookkeeper or financial manager. Stott offered to train both Aubrey Strictland and Bryan Bridgemohan in the functions he had performed in order to ensure that IFC would enjoy continued good record keeping. The training was to include how to complete month end statements and reconcile the bank accounts.

[19] Given the passage of time, none of the parties were especially crisp in their recollection of who held what position when. Based on the evidence tendered by the plaintiff and the defendant, I find that Aubrey Strictland acted as general manger until August 1996. Mr. Hill then hired David Thompson as the general manager who remained until December 1996. At that point Bryan Bridgemohan assumed the official title as general manager. In the months from June to December 1996 Bridgemohan was the financial manager/bookkeeper.

[20] There is no doubt that IFC defaulted in its Proposal. The required payments were not made by August 23, 1996. The parties are in dispute as to the information that was provided to Mr. Hill and the motivations and actions of Bridgemohan and representatives of the landlord.

[21] Hill testified that following the Proposal in bankruptcy, the business was essentially on a cash basis. There were no lines of credit. Suppliers delivered on a C.O.D. basis. Employees were paid cash.

[22] Mr. Hill acknowledged that Brian Stott held an MBA and had held senior positions before coming to the Apple Barrel. He agreed that Stott was a very experienced, competent and capable accountant.

[23] He further acknowledged that he would be on the phone with Mr. Stott, sometimes on a daily basis to discuss the weekly cash flow statement. This would include a determination of cash available and the debts and liabilities that had to be paid. This would be covered in great detail. The discussion would include sales and cash flow everyday.

[24] After Brian Stott left, Bridgemohan became Mr. Hill's point man in the restaurant. Discussion of sales and cash flow requirements were then held with Mr. Bridgemohan. Hill says that if the restaurant needed cash he would provide it by way of a credit card charge on either his or his wife's Visa or Mastercard. After a successful weekend funds would then be withdrawn and placed in Mr. Hill's account to pay off the credit card charge. No evidence was provided to the Court as to how these credit card charges were accounted for when made or when repaid. Mr. Hill also received a salary of $600.00 per week. Sometimes cash flow prevented him from receiving the full $600.00 and he would only receive $300.00 per week.

[25] Every month Hill would want an income statement. Bridgemohan prepared one, as he had been trained to do, by Mr. Stott. It was then faxed to Mr. Hill.

[26] By December 1996 Bridgemohan was in the process of looking for another job. He knew he wanted out of the Apple Barrel. He had always wanted his own business. In pursuit of that goal he had approached Black Business Initiative (BBI) with a proposal about a coffee shop/book store.

[27] At some point, early on in his employment with IFC there were a series of meetings with the management group to consider purchasing the restaurant from IFC. No concrete plans were ever formulated. Mr. Bridgemohan testified that Mr. Hill always wanted to sell the restaurant.

[28] Sometime in late fall 1996 Mr. Hill advertised the restaurant for sale. It appears the advertisement generated little interest.

[29] On or about December 11, 1996 Mr. Bridgemohan testified he got a call from David Boyd. Mr. Boyd was employed by Coopers & Lybrand Ltd. and was involved in the administration of the Proposal. According to Mr. Bridgemohan, Boyd told him that the terms of the Proposal were not being met and if that continued they would close the restaurant by the end of January 1997. Mr. Bridgemohan asked Boyd what he should do. Bridgemohan was told to make sure he spoke with Mr. Hill. Mr. Bridgemohan said that he immediately picked up the phone and called Mr. Hill and relayed to him what Mr. Boyd had told him.

[30] Bridgemohan said he then reflected on the information from Mr. Boyd. He spoke again with David Boyd and advised him that if and when the restaurant

closed he would be interested in taking it over. Bridgemohan recalled meeting with David Boyd and Mark Rosen who encouraged him in pursuing this opportunity. At some point Mr. Rosen told him the first thing he would have to do is to be able to get the spot and to do so he needed to talk to Nick Carson. Mr. Bridgemohan met with Nick Carson and was encouraged by his response. Carson cautioned him that any proposal Bridgemohan might put forward should deal with the issue of the restaurant's rental arrears.

[31] Bridgemohan contacted BBI. They gave him a draft business plan. They suggested that he contact the Apple Barrel's suppliers to ensure that they would deal with him. Mr. Bridgemohan put together a proposal dated January 16, 1997, to BBI to obtain financing. The proposal included letters from Apple Barrel's major suppliers. The proposal also included previous financial statements, financial projections and a printout of PST payments and status.

[32] Bridgemohan anticipated that Coopers & Lybrand would trigger the bankruptcy at the end of January 1997. He understood at one point that when the bankruptcy was triggered he would then run the restaurant on a management agreement with Coopers & Lybrand and then buy the operation from the Trustee.

[33] When Mr. Bridgemohan met with representatives of the landlord they rejected his initial proposal which provided for partial payment of back rent. Only some of the outstanding rent originally due from IFC's Proposal of December 21, 1994 ($11,400.00) had been paid. In addition rental arrears had accumulated. Exclusive of percentage rent, it was some $25,000.00. The landlord wanted a deposit of $10,000.00 and rent of $10,000.00 for 12 months, thereafter reducing to $6,700.00 per month. Eventually Bridgemohan agreed.

[34] A distraint for rent was executed on January 29, 1997. An offer by the landlord to lease the premises to Mr. Bridgemohan's newly incorporated numbered company had already been prepared. It was dated January 28, 1997. It is unclear the exact date that Mr. Bridgemohan signed the offer to lease. The offer was stated to be open for acceptance until January 29 at 10:00 a.m. In any event, a lease was entered into between Centennial Hotels Limited, as agent for the Prince George Hotel and Bridgemohan's numbered company (with Bridgemohan and Gordon Kerr guarantors) on the terms requested by the landlord. The lease included most of the restaurant equipment, which was owned by the landlord.

[35] On January 30, 1997 the Trustee applied to the Court for an order annulling the Proposal. The order was granted on February 3, 1997, thereby re-vesting the property of IFC in the Trustee. The assets of IFC were sold by the Trustee through a tendering process. Ultimately the landlord was the successful bidder. Included in the assets was the right to use the business name "The Apple Barrel". The liquor licence was eventually transferred to the new corporate owner/operator of the Apple Barrel.

CLAIMS BY HILL

[36] The claims advanced by Mr. Hill in his pleadings, pre-trial submissions and final submissions can be summarized as follows:

> Although Bridgemohan was not an officer or director of IFC he held a sufficiently senior position in the company that put him in a position of being a fiduciary;
>
> That Bridgemohan not only owed fiduciary duties to IFC but also to Hill as the company's sole shareholder;
>
> That Bridgemohan misled him with respect to the status of rent payments to the landlord. Had Hill known that there was outstanding rental arrears he would have provided further financing to keep the landlord happy. Hill says he knew the landlord was a key creditor and had the immediate capacity to shut the business down by way of distraint. Not only could he provide further financing from the use of his credit cards, he would have directed cash flow be diverted from other creditors, in particular PST obligations in favour of rent to the landlord;
>
> Hill further claims that the landlord and Bridgemohan conspired to trigger a bankruptcy by IFC thereby creating a lucrative business opportunity for Bridgemohan and an opportunity for the landlord, not only to be paid back rent, but enter into a more lucrative lease with Bridgemohan than had been in existence;
>
> Hill argues that he should be awarded damages based on his loss of weekly payments he had been receiving from IFC, his loss of investment and his exposure to liability for unpaid source deductions. He does not propose a

> precise number but requests damages in the area of $120,000.00 which would represent either his loss of his weekly payments for a reasonable period of time or by way of disgorgement of profit that Bridgemohan made following his breach of fiduciary duty.

DECISION

[37] It is obvious that this matter has taken, by any measure or standard, an unusually long period of time to come to trial. When the matter was first set down for trial on January 8, 2007 the plaintiff indicated he expected to call approximately six witnesses, tender 500 documents and his case would take approximately six days to present. As it turned out the plaintiff was the sole witness. As part of his case only 24 exhibits were tendered.

[38] Given the passage of time it is quite understandable that recollections with respect to details, unaided by documents, would suffer. For this reason, the documentary evidence filed by both parties was particularly important in trying to sort out the events of some 11 years ago.

[39] Bryan Bridgemohan impressed me as a witness. I found him to be genuinely attempting to recall the events and his thought processes during the relevant times. He was candid in his evidence, both in direct and in cross-examination. He was thoroughly cross-examined by Mr. Rogers, counsel for the plaintiff. Not only was I impressed by him as a witness, his evidence was corroborated in a number of key respects by that of Nick Carson, then and now the manager of the Prince George Hotel, and by the evidence of Mark Rosen. Mr. Rosen is obviously an independent witness. I accept the evidence of Mr. Carson and of Mr. Rosen. I also accept the evidence of Mr. Bridgemohan.

[40] I found the evidence of Mr. Hill to be entirely self-serving. He painted a picture that was contrary to all probabilities. Not only was his evidence on some key issues contradicted directly by Mr. Bridgemohan but also contradicted by Messrs Carson and Rosen, as well as documentary evidence tendered by the parties. Where Mr. Hill's evidence is contradicted by the evidence of the other witnesses, I reject his evidence.

[41] One of the key issues is Mr. Hill's professed ignorance that there were substantial rental arrears. He tried to paint the picture that rental arrears were only

for pre-Proposal rent, as this made a difference, and for percentage rent which the landlord was not pressing for payment.

[42] Mr. Carson testified to a number of background facts. First of all IFC's initial $10,000.00 cheque bounced. He asserted that Hill made promises he would not keep. This evidence is not particularly relevant to any of the issues that I need decide. Mr. Carson did testify to there being an $8,000.00 account receivable as of December 1993. He acknowledged that he did ask for percentage rent, but did not really push for payment. He was more concerned about getting paid for base rent. He said that he would send invoices and wrote to Mr. Hill seeking percentage rent, but the invoices were not even booked into the system.

[43] Mr. Carson described his account receivable for rent climbing throughout 1993 and '94 and at the time of the Proposal being approximately $12,000.00. He said that 1995 was a particularly good year for the hospitality industry in Halifax and the outstanding account receivable had dropped by March 1995 to $8,500.00. However it started climbing back up.

[44] Mr. Carson wrote to Mark Rosen on January 12, 1996 enclosing invoices for percentage rent for the years 1994 and 1995. He wrote that in addition to those outstanding balances for mortgage rent the landlord also had an unpaid receivable balance of close to $18,000.00. It is obvious Mr. Hill was aware of this. He wrote to Mr. Carson on January 22, 1996 acknowledging that he received a copy of Carson's letter to Mark Rosen of January 12, 1996. Hill proposed starting percentage rent payments as of April 1996. He recognized this would cause the rental arrears to increase by an additional $4,500.00. He proposed making a $500.00 weekly payment commencing June 1, 1996 to go towards rental arrears. By September 1, 1996 the weekly arrears payment would increase to $1,000.00 per week until all arrears were paid. He also confirmed that they would continue filing monthly financial statements with Coopers & Lybrand.

[45] Mr. Hill wrote to Mr. Carson on June 7, 1996 requesting, due to poor sales, a reduction of the promised percentage rent arrears payment from $500.00 per week to $250.00 per week. He reconfirmed the commitment to pay $1,000.00 on rental arrears commencing September 1, 1996.

[46] Mr. Carson wrote to Stephen Hill on August 9, 1996, at the Apple Barrel address on Grafton Street, advising that the total indebtedness for the Apple Barrel

was at $19,847.33. Mr. Carson demanded immediate settlement of at least a portion of this account. He asked for a realistic plan for the handling of the balance. He noted that the most recent rent cheque, which was applied to June's rent did not include payment for the operating/utility expenses which had not been paid in over three months.

[47] Mr. Bridgemohan wrote to Mr. Carson on August 21, 1996 indicating that the utility expenses for May and June 1996 were paid. He acknowledged that the rent and utility expenses for July and August are still outstanding. He hoped this would be cleared up in the next few weeks with revenue coming from business hopefully to be generated by Metro Centre events in September.

[48] Mr. Carson acknowledged that in the fall of 1996 and in January 1997 he had no personal contact with Stephen Hill. He dealt with Mr. Bridgemohan and Mark Rosen. The plaintiff tendered Exhibit #34, a document prepared by counsel for Centennial just prior or during discoveries in 1998 setting out the rental payments received by the landlord from August 1996 to January 1997. They were as follows:

August 1996	(7)	$3,916.20
	(21)	$1,500.00
	(27)	$291.56
September 1996	(12)	$2,171.02
	(23)	$3,745.00
October 1996	(17)	$1,500.00
November 1996	(6)	$2,221.22
December 1996		0
January 1997	(2)	$2,500.00
	Deposit	$3,000.00

[49] Mr. Carson noted that the payments went toward arrears. For example the payment received on October 17, 1996 of $1,500.00 went toward rent in September. The account receivable for rent by December 1996 or January 1997 was approximately $35,000.00. The amount shown on the distraint for rent was $25,000.00. This was the total account receivable for post Proposal rental arrears.

[50] As noted earlier Mr. Rosen testified. At the time of these events he was Vice-President of Coopers & Lybrand Ltd. Relevant records with respect to these

events are still in existence, but are in the possession of Price Coopers Waterhouse. He did not have an opportunity to review these records before testifying. Nonetheless his recollection on a number of key issues, including the sequence of events, was clear. I accept his evidence.

[51] With respect to how IFC was doing in meeting its Proposal, he said it was not doing well. He said most, if not all of the Revenue Canada source deductions of approximately $50,000.00 had been paid. However, there was a cash flow issue with the company not maintaining currency with the landlord. In addition post Proposal creditors were not being satisfied. He was contacted by Nick Carson, on behalf of the landlord. He described ongoing discussions about rising debt post Proposal for PST and with Revenue Canada.

[52] Mr. Rosen testified that he spoke with Stephen Hill on occasion to advise him of these issues. Coopers & Lybrand received monthly income statements in order for them to determine profitability. He said that in 1996 it was quite clear that IFC was in default in its Proposal. He testified that in August/September he spoke with Hill on numerous occasions to try to get the Proposal back on stream.

[53] He described the advice from Hill was that he was going to try to sell the business. This was in late fall or early December. He said Coopers Lybrand set a "drop dead date" of January 1997. Hill was to make a last attempt to sell. If he could not sell, that would be the date bankruptcy would be triggered. Rosen said that in further discussions with him, Hill said there was nothing much he could do. The landlord then distrained.

[54] Mr. Rosen's evidence was unshaken in cross-examination. No attempt was made to recall rebuttal. Mr. Rosen did acknowledge that even if there is a default in a proposal there are options open. First of all the debtor can propose a formal amendment to the proposal. If that occurs, it must go to all the creditors for approval. In addition the inspectors usually have the power to extend the time for payments contemplated by a proposal. Paragraph 13 of the Proposal (Exhibit #2) confirm the inspectors had the power to do so.

[55] Mr. Rosen acknowledged that IFC was trying to make arrangements as of December 1996. However he was advised there was no way IFC could meet the terms of the Proposal. No questions were asked clarifying who provided this advice to Mr. Rosen.

[56] In addition to the discussions earlier described by Mr. Rosen with Mr. Hill, Rosen also testified on cross-examination that he personally wrote to Mr. Hill in January 1997. He was unshaken in his evidence that a drop dead date was definitely provided to Mr. Hill. Since he had not checked his DayTimer he would be unable to provide an exact date, but he believes this was communicated to Mr. Hill in December or early January 1997. He testified further that Hill stopped exploring resolution in December or the early part of January - definitely by that time.

[57] Mr. Hill tried to suggest that the monthly income statements that are included in Exhibit #7 for June, July, August, September, November and December were false and misleading. He says that he relied on these income statements which show rental expense of various amounts. The most common amount being $3,916.20. Mr. Hill tried to suggest that these income statements could only be interpreted by him as showing that these rental payments were in fact made to the landlord.

[58] Hill says that if only he had known that the rent was not being paid he would have advanced funds by utilizing his and or his wife's credit cards. He tried to paint the picture the restaurant was doing well and that it was viable on a go forward basis.

[59] Other claims advanced by Mr. Hill included the notion that Mr. Bridgemohan made a substantial payment of $7,000.00 on outstanding PST obligation to the Province on December 23, 1996 in order to ensure that there would be no hitch in the transfer of the liquor license. He further says that Bridgemohan failed to pay Centre Corp a vital $400.00 payment in January 1997. Failure to make that payment triggered a consent judgment in the amount of $82,000.00 against IFC.

[60] I have already commented on my conclusions as to Mr. Hill's credibility. First of all his claim that he was misled by the income statements, believing that the rental payments had been made in full to the landlord makes no sense. First of all Mr. Hill obtained an Honours Degree in Business Administration at the University of Western Ontario. Secondly, he is an experienced businessman. He had been involved in operating no less than four restaurants prior to the Apple

Barrel. He was then intimately involved in the operation of the Apple Barrel in Halifax and the second one in Dartmouth.

[61] It boggles the imagination that Mr. Hill did not understand the difference between a monthly income statement that recognizes revenues/expenses earned and incurred for a defined period of time as opposed to a cash accounting approach. Mr. Hill acknowledged speaking frequently, not just with Brian Stott about cash flow issues on a daily or weekly basis, but also with Bryan Bridgemohan. Furthermore Mr. Hill's grasp of the cash flow issues is belied by the documents included in Exhibit #6. Exhibit #6 contain some, but not all of the credit card transactions for his Visa and Mastercard and line of credit at Canada Trust. There is no need to analyse these statements in detail. They demonstrate large transactions with account balances being paid off only to have further charges in favour of the Apple Barrel later the same day. In a one year period from January 1996 to January 1997 he incurred approximately $38,000.00 in mercantile transactions in favour of the restaurant. He managed to do this without incurring even $1.00 in interest.

[62] Mr. Hill had to be aware of the dire financial straits that IFC was in, including the pressure being exerted by the landlord to have rent paid. Mr. Hill's evidence about attending the restaurant in the fall of 1996 was vague. However, the credit card records set out in Exhibit #6 demonstrate that he was present in Halifax in mid-October. The only rental payment made in October 1996 was one on October 17 in the amount of $1,500.00. I accept Mr. Bridgemohan's evidence that he acted entirely on Mr. Hill's instructions as to who and how much was to be paid.

[63] I also note that Mr. Hill tendered Exhibit #15 which was his proposal, prepared and signed by him for the sale of the Apple Barrel restaurant. The sale proposal is undated. It appears to have been prepared in the December/January time frame since it refers to there being an outstanding payment to Centre Corp of $400.00 per month for approximately eight months. Exhibit #13 demonstrates that Mr. Hill personally negotiated with lawyers for Centre Corp to arrive at a settlement requiring 10 cheques, to be paid by IFC to Centre Corp commencing December, 1996.

[64] The sale proposal by Mr. Hill recognizes that the ongoing payments, to be made out of current cash flow were to Coopers & Lybrand $2,000.00 per month for

"approximately 32 months". It also recognizes a required payment, also out of current cash flow to the Prince George Hotel $2,000.00 per month for "approximately eight months". Other indebtedness demonstrates arrears of GST of approximately $40,000.00.

[65] I further find Mr. Hill's complaint that Brian Bridgemohan deliberately failed to pay Centre Corp. $400.00 in January 1997 to be entirely without merit. Hill theorized that Bryan Bridgemohan knew this would trigger an $82,000.00 consent judgement if the terms of payment to Centre Corp of $400.00 per month were breached. Exhibit #13 set out the terms of the settlement. These documents demonstrate that Mr. Hill personally negotiated with counsel for Centre Corp. A letter dated November 28, 1996 directed to Mr. Hill at his British Columbia address, plainly required Hill to forward 10 post-dated cheques required by the settlement agreement. Hill did not even suggest that he had delegated this task to Bridgemohan. I reject his evidence that he directed Mr. Bridgemohan to make a payment in January to Centre Corp.

BREACH OF FIDUCIARY DUTY

[66] The traditional view is that directors owe a fiduciary obligation to the corporate entity they serve, but not to the company's shareholders *(Gowers Principles of Modern Company Law* (6th ed.) 1997 p.599). In *Malcolm v. Transtec Holdings Limited* (2001), 150 B.C.A.C. 20, [2001] B.C.J. No. 413 McEachern C.J.B.C., writing for the Court expressed this principle as follows:

> 17 But the law seems clear that, except in exceptional cases, the fiduciary duty of a director is to the company and not to shareholders.
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> 18 In this respect appellants' counsel refers to *McClurg v. Canada*, [1990] 3 S.C.R. 1020 where Dickson C.J., writing for the Court at p. 1040, quoted with approval a passage from a treatise written by Professor Bruce Welling, Corporate Law in Canada - The Governing Principles (Toronto: Butterworths, 1984) at p. 614:
>
> > The directors' general managerial power is a fiduciary one, owed to the corporation. It must always be exercised in what the directors' from time to time think is likely to serve the best interests of the corporation... (Emphasis added)

> 19 In *Pelling et al. v. Pelling et al*. (1981), 130 D.L.R. (3d) 761 (B.C.S.C.) Berger J. at p. 762 said this:
>
> > Dealing first with the claim at common law: there is no fiduciary obligation as between shareholders, and no general fiduciary obligation owed by a director to shareholders. A director's duty is to the company; he has no fiduciary obligation to the shareholders. There are some exceptions to this rule (Gower, Principles of Modern Company Law, 4th ed. (1979), p. 573) but the plaintiff has been unable to persuade me that the case at bar falls within any of them. The common law has not thus far provided a remedy in a case such as this.

[67] This traditional approach is based on the decision in *Percival v. Wright,* [1901] 2 Ch.421 where directors purchased shares from their members without revealing that negotiations were in progress for a sale.

[68] In Ellis, *Fiduciary Duties in Canada* (Looseleaf ed.) comments that *Percival v. Wright* may not be the last word on this subject. For example, in *Goldex Mines Limited v. Revill* (1974), 7 O.R. (2d) 216 (C.A.) the Court was prepared to acknowledge that injured shareholders may be able to sustain a cause of action against directors or majority shareholders on the basis that they owe a duty to provide information to all shareholders that is fairly presented, reasonably accurate and not misleading.

[69] However, more recently in *Brant Investments Limited v. Keeprite Inc.* (1991), 45 O.A.C. 320, [1991] O.J. No. 683 the Ontario Court of Appeal reaffirmed the validity of the principle in *Percival v. Wright* that directors do not usually owe a fiduciary duty to shareholders.

[70] The possibility of a claim by a shareholder for breach of fiduciary duty by a director to the shareholder can at least survive an application to strike out a statement of claim by a defendant[1].

[71] Mr. Bridgemohan was neither an officer nor a director of IFC. Nonetheless the plaintiff asserts that as general manager he held a sufficiently senior management position or was a key employee and hence a fiduciary.

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[1] *Vladi Private Islands Ltd. v. Hasse* (1990), 96 N.S.R. (2d) 323, [1990] N.S.J. No. 104 (C.A.); see also *Hardman Group Ltd. v. Alexander* (2003), 212 N.S.R. (2d) 304, [2003] N.S.J. No. 92 (N.S.S.C.)

[72] In Ellis, (supra) the author discusses the various tests that can influence the issue of whether or not any given employee may be affixed with the additional obligations imposed on a fiduciary. He writes at pp. 16-2-16-2.1:

> The agreement between master and servant is not conventionally seen as fiduciary in nature. Rather, it is premised upon a contractual relationship based on wages in return for services rendered. While the law has not been hesitant to recognize a duty of good faith and loyalty on the part of an employee toward the employer, it has been hesitant to equate that duty, as in a fiduciary situation, to one that is essentially trustee in nature. However, it may be fairly said that that reticence is evaporating in the modern commercial context.
>
> ...
>
> Despite the conventional absence of a fiduciary responsibility on the part of an employee in a master-servant relationship, a fiduciary relationship has been found to exist with respect to both active and departing employees, where the requisite deposing of "trust and confidence" is extant. Generally, the law has developed a test for the imposing of a fiduciary quality into an employment relationship based primarily upon the employee's degree of responsibility in the enterprise. Thus, a "mere" employee will rarely be subject to the duty of utmost good faith; an upper-level executive will rarely escape it.

[73] Ellis goes on to conduct an extensive review of the case law where the courts have considered the issue as to whether or not a departing employee was a fiduciary. He refers to the confusion created by various tests of fiduciary status such as "top management", "senior manager", "key personnel", "vulnerability of the enterprise" and "size of the operation". The author suggests that the reasonable expectations test related by LaForest J. in *Hodgkinson* v. *Simms*, [1994] 3 S.C.R. 377 as a way of resolving the confusion.[2]

[74] Despite the grand title of general manager bestowed on Mr. Bridgemohan and his admitted authority to hire and fire staff at the restaurant, I am hesitant to conclude that he was affixed with a fiduciary obligation to his employer. It is Mr. Bridgemohan's function rather than his title that is important. Mr. Bridgemohan's duties were far more of an administrative, albeit important nature than one where

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[2] In *Atlantic Business Interiors Ltd. v. Hipson* (2005), 230 N.S.R. (2d) 76, [2005] N.S.J. No. 33 (C.A.) the parties to the proceedings conceded that the reasonable expectations test should govern the issue as to whether or not a departing salesman was under a fiduciary duty not to solicit customers from his former employer.

he had the requisite degree of trust, confidence and autonomy that normally attend an employee-employer relationship where a fiduciary obligation is imposed.

[75] The burden was on Mr. Hill to establish that Bridgemohan owed a fiduciary duty to his employer, or to Mr. Hill personally. I do not find that the factual circumstances justify imposing such a duty on Mr. Bridgemohan.

[76] Even assuming I was prepared to conclude that Bryan Bridgemohan held such a management position or was a key employee, to impose upon him the strictures of being a fiduciary, his duty as such was owed to his employer, IFC. The plaintiff cited no authority for the proposition that an employee of a corporation owed any duty, fiduciary or otherwise, to a shareholder of the corporation. Professor Welling in *Corporate Law in Canada: The Governing Principles*, 3rd ed. (London, Ont.: Scribblers, 2006) is emphatic in his rejection of such a proposition. He writes at p.377:

> A fiduciary caught by the rule is accountable to the person to whom the duty was owed. It is absolutely clear in Canadian law that the person to whom corporate managers owe their duty is the corporation: not the shareholders, not the creditors, not the general public, but the corporate entity itself. There is no authority contrary to this well-entrenched principle...[3]

[77] The plaintiff recognized that the rule of *Foss v. Harbottle* (1843), 2 Hare 461, 67 E.R. 189 permits only the company, not individual shareholders to sue for wrongs done to the company. The plaintiff candidly provided a number of leading authorities on this issue. While these authorities concede that a shareholder may still sustain an action, it must be for a wrong done to him or her as an individual, not as a shareholder.

[78] *Hercules Management Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 illustrates. Shareholders brought an action against the auditors for losses they said they incurred by their reliance on audit reports. The auditors could reasonably foresee that shareholders would rely on its reports. The shareholder's claim was dismissed on a motion for summary judgement. The dismissal was upheld by the Manitoba Court of Appeal and by the Supreme Court of Canada. LaForest J. delivered the judgement for the Court. He wrote at para.59:

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[3] See also *Lerch v. Cableshare Inc.* (1996), 32 O.R. (3d) 233, [1996] O.J. No. 4677

> 59 The rule in *Foss v. Harbottle* provides that individual shareholders have no cause of action in law for any wrongs done to the corporation and that if an action is to be brought in respect of such losses, it must be brought either by the corporation itself (through management) or by way of a derivative action. The legal rationale behind the rule was eloquently set out by the English Court of Appeal in *Prudential Assurance Co. v. Newman Industries Ltd*. (No. 2), [1982] 1 All E.R. 354, at p. 367, as follows:
>
> The rule [in *Foss v. Harbottle*] is the consequence of the fact that a corporation is a separate legal entity. Other consequences are limited liability and limited rights. The company is liable for its contracts and torts; the shareholder has no such liability. The company acquires causes of action for breaches of contract and for torts which damage the company. No cause of action vests in the shareholder. When the shareholder acquires a share he accepts the fact that the value of his investment follows the fortunes of the company and that he can only exercise his influence over the fortunes of the company by the exercise of his voting rights in general meeting. The law confers on him the right to ensure that the company observes the limitations of its memorandum of association and the right to ensure that other shareholders observe the rule, imposed on them by the articles of association. If it is right that the law has conferred or should in certain restricted circumstances confer further rights on a shareholder the scope and consequences of such further rights require careful consideration.
>
> To these lucid comments, I would respectfully add that the rule is also sound from a policy perspective, inasmuch as it avoids the procedural hassle of a multiplicity of actions.

[79] The plaintiff relies on the assertion that he has a separate and distinct claim for a wrong done to him as a shareholder *qua* individual. On this issue LaForest J. wrote:

> 62 One final point should be made here. Referring to the case of *Goldex Mines Ltd. v. Revill* (1974), 7 O.R. (2d) 216 (C.A.), the appellants submit that where a shareholder has been directly and individually harmed, that shareholder may have a personal cause of action even though the corporation may also have a separate and distinct cause of action. Nothing in the foregoing paragraphs should be understood to detract from this principle. In finding that claims in respect of losses stemming from an alleged inability to oversee or supervise management are really derivative and not personal in nature, I have found only that shareholders cannot raise individual claims in respect of a wrong done <u>to the corporation</u>. Indeed, this is the limit of the rule in *Foss v. Harbottle*. Where, however, a separate and distinct claim (say, in tort) can be raised with respect to a wrong

> done to a shareholder *qua* individual, a personal action may well lie, assuming that all the requisite elements of a cause of action can be made out.

[80] With limited exceptions damages suffered by a corporation can only be claimed by the corporation itself. If a corporation fails to act a derivative action can be brought in the name of or on behalf of a corporation to assert or defend the rights to which the corporation is entitled. IFC is incorporated pursuant to the *Ontario Business Corporations Act*. Hill does not claim that he is bringing an action on behalf of IFC pursuant to the relevant provisions of the Ontario statute.

[81] The conclusion is irresistible that Hill's claim against Bridgemohan is a derivative one and hence caught by the rule in *Foss v. Harbottle*. The law with respect to this issue was summarized by McGuinness in *The Law and Practice of Canadian Business Corporations* (Toronto: Butterworths, 1999) as follows:

> §9.172 It is implicit in the separate personality of the corporation that it is the appropriate party (and the only appropriate party) to bring action for wrongs done to it. The shareholders' rights are derivative and — except through the corporation — the shareholders have no direct, or even indirect, relation with a person who commits a wrong against the corporation's rights Where there are several shareholders in a corporation, each of them will suffer a proportionate share of the damage relative to the number of his or her shares, and each will be made whole if the corporation obtains restitution or compensation from the wrongdoer. Accordingly, as a general rule, it is a sound policy to require a single action to be brought by the corporation rather than to permit separate suits by each shareholder. In logic the result is justified because the only right of the shareholders that has been infringed is a right derived through the corporation. As the shareholder-owners of the corporation have elected to conduct their business in a corporate form, they too (like the outside world) are bound to recognize its independent existence. A derivative claim does not become personal to a shareholder merely by alleging that the shareholder is the victim of a conspiracy, or that the motive behind the wrong to the corporation was malice toward the shareholder personally.

[82] In order to avoid the rule in *Foss v. Harbottle* the plaintiff asserts that his claim is not simply diminution in the value of his shares, but loss of his $600.00 stipend per week, the loss of the investment in the company, exposure to liability for unremitted statutory obligations and lastly, for the tort of conspiracy. Quite apart from the lack of evidence, and hence necessary factual support for the allegation of conspiracy, all of these claims depend on damage suffered by IFC.

[83] For example in *Rogers v. Bank of Montreal* (1985), 64 B.C.L.R. 63, affirmed (1986), 9 B.C.L.R. 190 (B.C.C.A.) shareholders brought a personal action for damages alleging conspiracy by the defendants to injure the company and the plaintiffs personally by demanding immediate repayment of a $10 million loan. The plaintiffs argued that their personal action could be supported on the basis that although damage was done to the corporation, the aim of the defendants was to injure their business interests and to remove them from their position of control over the corporation. The damage claimed was not just the loss of substantial share value and dividends, but the loss of the plaintiffs' position as controlling shareholders, and their salaries and positions as employees. These arguments were rejected. The Court held that the rule in *Foss v. Harbottle* cannot be circumvented by allegations of conspiracy and the plaintiffs were prevented from recovering any losses suffered by them in their capacities as directors or shareholders. There being no evidence of a predominant purpose to injure the plaintiffs, the personal action could not stand. The application to strike the statement of claim as disclosing no reasonable cause of action was allowed.

[84] This principle was more recently considered by the Ontario Court of Appeal in *Meditrust Healthcare Inc. v. Shoppers Drug Mart* (2002), 165 O.A.C. 147. The plaintiff/appellant was a corporation that owned some or all of the shares of subsidiaries which carried on a national mail order pharmacy business. The plaintiff alleged that the defendants conspired to destroy its business and brought an action for damages resulting from losses suffered. The defendants' motion for summary judgment dismissing this part of the action was allowed. The plaintiff appealed. Laskin J.A., delivered the unanimous decision for the Court. He wrote as follows:

> 18 In the present case, one of the components of a cause of action for each of the torts alleged by Meditrust is proof of damages suffered. The tort of conspiracy - the main tort relied on by Meditrust - is typical. In *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd et al.*, [1983] 1 S.C.R. 452; 47 N.R. 191; 145 D.L.R. (3d) 385 at 398-99, the Supreme Court of Canada affirmed that tort law recognizes a claim of conspiracy where either the predominant purpose of the defendant's conduct is to injure the plaintiff or where the defendant's conduct is directed towards the plaintiff, is unlawful and the defendant should know that the plaintiff is, thus, likely to be injured. But, in either case, "there must be actual damages suffered by the plaintiff." Therefore, Meditrust cannot maintain its action simply by showing that the respondents'

> predominant purpose was to harm it or by showing that the respondents engaged in unlawful conduct directed toward it. Meditrust also has to put forward some evidence that, because of the respondents' conduct, it suffered damages; damages that are not derivative of the damage suffered by the subsidiaries.
>
> (See also *Robak Industries Ltd. v. Gardner* (2007), 65 B.C.L.R. (4th) 62, 2007 BCCA 61.)

[85] The fact that the corporation is bankrupt does not alter the result. In *Gibson v. The Manitoba Development Corp.* (1982), 18 Man.R. (2d) 362, [1982] M.J. No. 23 (C.A.) the plaintiffs were owners and directors of a company. They alleged that the defendant unilaterally and unlawfully cancelled a contract which caused their corporation to become bankrupt. They sought to amend their claim to bring the action in the name of and on behalf of the bankrupt company. The court upheld the refusal to permit such an amendment, holding that the assets of the bankrupt vested in the trustee and bankruptcy and only the trustee could pursue an action on behalf of the bankrupt corporation.

[86] The rule in *Foss v. Harbottle* was also applied in *Binder v. Royal Bank of Canada et al.* (2003), 216 N.S.R. (2d) 363 (N.S.S.C.) Moir, J. struck a statement of claim by a shareholder as disclosing no reasonable cause of action where the corporate entity had become insolvent. He wrote at para.35:

> [35] On behalf of the plaintiff, it is submitted that Gorbin Enterprises is long since becoming insolvent and has "ceased to exist". In my opinion, the rule in *Foss v. Harbottle* knows no exception of that kind. Further, there was no suggestion of the corporation having been irredeemably struck and New Brunswick followed the Dickerson model for its *Business Corporations Act*, S.N.B., c. C-13 including the provisions for derivative actions, s.164. *Charter* corporations were continued under the new statute by s.192. It is also argued that Rule 5.05 assists the plaintiff. That rule allows that causes of action survive certain events. It does not provide for the transfer of a corporate cause to a shareholder. These kinds of arguments run counter to the rationale for *Foss v. Harbottle*. Mr. Binder is not responsible for any liabilities of Gorbin Enterprises and he does not acquire its causes of action by virtue simply of being a limited liability shareholder.
>
> Affirmed (2005), 234 N.S.R. (2d) 109 (C.A.).

[87] The damages claimed by the plaintiff Hill are indistinguishable from those claimed by the plaintiffs in *Edwards v. Fisher* (2007), 84 Alta. L.R. (4th) 128, [2007] A.J. No. 121. The plaintiffs were George and June Edwards. They were shareholders of Hunter Financial Group Ltd. Mr. Edwards was also the president and director of the company. The company went into receivership and the plaintiffs sued a number of corporate entities and individuals alleging a conspiracy between or among them to cause the plaintiffs' injury and loss.

[88] The statement of claim was amended to allege that two or more of the defendants wrongfully conspired together with the predominant purpose to injure the Edwards in their business and as shareholders. The pleadings also alleged that George Edwards personally suffered losses as a result of the conspiracy in that he was an employee of Hunter Financial Group Ltd. and lost his employment and benefits. Furthermore, he alleged a personal independent loss since he was a guarantor to creditors of Hunter Group and some of those guarantees were called by its creditors, and that he was personally liable to Revenue Canada as a director of the Hunter Group for unremitted payroll taxes.

[89] Master J.B. Hanebury heard an application by the defendants to strike the statement of claim as disclosing no cause of action. After thoroughly canvassing the relevant case law, he summarized the principles as follows (para.58):

> 1. The damages suffered by a corporation can be claimed by the corporation itself, and if a corporation fails to act, a derivative action can be commenced by the shareholders pursuant to the Business Corporations Act. Shareholders cannot raise individual claims in respect of a wrong done to the corporation.
>
> 2. This principle, the rule found in *Foss v. Harbottle*, applies to claims in tort, including claims alleging a conspiracy.
>
> 3. When a separate and distinct claim can be made with respect to a wrong done to a shareholder qua individual, a personal action may lie, assuming all the requisite elements of a cause of action can be made out.
>
> 4. Tort law recognizes a claim of conspiracy when the predominant purpose of the defendant's conduct is to injure the plaintiff, or when the defendant's conduct is directed toward the plaintiff, it is unlawful, and the defendant should know that the plaintiff is therefore likely to be injured. In either case there must be actual damages suffered directly by the plaintiff, other

> than consequential damages, damages suffered as a consequence of those suffered by the corporation.
>
> 5. For a shareholder to make a personal claim alleging conspiracy, that does not violate the rule in *Foss v. Harbottle*, two criteria must be met. First, there must be a claim that the predominant purpose of the defendant's conduct was to injure the individual plaintiff or the conduct was unlawful, directed toward the plaintiff and the defendant knew or should have known that the plaintiff was therefore likely to be injured. Second, the damages must be suffered directly by the plaintiff. They must be independent damages, as distinguished from the indirect damages suffered as a consequence of damage to the company. Only when these two criteria are met can a personal claim in tort alleging conspiracy, rather than a corporate or derivative action, be maintained.

[90] All of the claims by the Edwards were struck except the one that alleged a claim by George Edwards, for loss of livelihood based on damage to his reputation. With respect to the other losses Master Hanebury wrote:

> 65 The amended statement of claim alleges that George Edwards and June Edwards personally suffered losses as a result of the conspiracy among the defendants as they were employees of HFG and lost their employment and benefits. A similar claim was made in Rogers for a loss of employment and was denied. The loss and damages are consequential to those that flow from the damage done to the company; they are not independent losses of the Edwards.
>
> 66 A claim is made by George and June Edwards that they suffered loss and damages as they were guarantors to the creditors of HFG and some of those guarantees were called upon by the creditors. Again, this loss flows from the loss to the company resulting from the alleged tortious acts of the defendants and is not a loss directly to the Edwards.
>
> 67 George and June Edwards claim loss and damages as unpaid creditors of HFG. Again, this loss flows from the loss to the company that resulted from the alleged tortious acts of the defendants and is not a loss directly to the Edwards.
>
> ...
>
> 71 George Edwards claims damages on the basis that he was personally liable to Canada Revenue as a director of HFG for unremitted payroll taxes. This claim for damages flows from the loss to the company as it was unable to pay its payroll tax bill. It is not an independent loss of George Edwards.

[91] I find that all of the losses claimed by Hill are derivative or as a consequence of the damage allegedly suffered by IFC.

CONSPIRACY

[92] Quite apart from the legal impediments that stand in the way of Hill, his allegation that Bridgemohan committed the tort of conspiracy is factually devoid of merit.

[93] The Supreme Court of Canada in *Canada Cement LaFarge Ltd. v. British Columbia Aggregate Ltd.*, [1983] 1 S.C.R. 452 set out the general requirements for the tort of conspiracy to be (at p.471):

> (1) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
>
> (2) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

[94] The theory of the plaintiff was that the predominant purpose of Bridgemohan and Centennial was to cause injury to Hill by forcing his company into bankruptcy. It was suggested that a common design could be inferred because Centennial did not require IFC to pay back rent until Bridgemohan came to them and began working out a way to force IFC into bankruptcy.

[95] The burden was on Hill to establish by direct or circumstantial evidence, at least on a balance of probabilities, the existence of the agreement alleged.

[96] There is no direct evidence of any such agreement. Neither Bridgemohan nor Centennial pursued a course of conduct to cause injury to Hill by forcing IFC into bankruptcy. The bankruptcy of IFC, failing some miracle, was inevitable. Bridgemohan did nothing to further or cause IFC's bankruptcy. There was no common design or agreement to work out a way to force IFC into bankruptcy, nor to injure Mr. Hill.

THE CORPORAL VEIL

[97] During final submissions the plaintiff contended that the Court had the discretion to pierce the corporate veil - to look behind the corporation and to assess entitlement to an appropriate remedy for Hill.

[98] This issue is not mentioned in Hill's pleadings nor are there any submissions in his pre-trial brief. No authorities were provided. I find the argument to be without merit.

[99] There is no corporate veil to pierce. The plaintiff requests that I simply ignore the existence of IFC and pretend that the Appel Barrel restaurant was owned and run, not by IFC, but by Stephen Hill.

[100] Professor Welling in *Corporate Law in Canada: The Governing Principles*, 3rd ed. contends that the courts, in light of the clear wording of Canadian statutes should acknowledge that they have no inherent power to pretend that a corporation does not exist (See p. 116-121) McGuinness in *The Law and Practice of Canadian Business Corporations* writes that the courts are generally unwilling to pierce the corporate veil and will normally only do so when required by statute or where extraordinary circumstances exist. (§1.145-1.147)

[101] A somewhat similar argument was raised by the plaintiff in *Meditrust* (*supra*). Laskin J.A. wrote:

> [31] In rare cases, a court may disregard separate corporate entities for the benefit of innocent third parties. The court may "pierce the corporate veil" when the corporate structure has been used by the corporation's principals as a sham or to perpetrate a fraud. See, for example, *642947 Ontario Ltd. v. Fleischer* (2001), 152 O.A.C. 313; 56 O.R. (3d) 417, 209 D.L.R. (4th) 182 (C.A.). But here, Meditrust must be held to the corporate structure that it created. It created a structure in which it operated the business through subsidiaries. It must take not only the benefits of that structure, but also the burdens. The motions judge, thus, properly characterized Meditrust's attempted disregard of this structure as an attempt "to pierce its own corporate veil". Like her, I see no merit in Meditrust's single economic entity argument.

[102] Hill chose the benefits of conducting business through a corporate entity, IFC. He enjoyed the benefits of that structure. He must also bear the corresponding burdens.

CONCLUSION

[103] For all of the above reasons the action by Hill is dismissed with costs to the defendant. If the parties are unable to agree on quantum they are invited to make the necessary arrangements for a hearing on this issue.

_____

Beveridge J.