

Auditor Owes No Duty of Care for Director's Losses

When you don't believe what your auditor tells you, things can get difficult, especially when you are the guarantor of loans to your company.

In a recent case, the sole director of a small company had guaranteed a bank loan to the company, as is commonplace. The director was also the main shareholder of the company. When the audited accounts were made available to him, he claimed that he did not believe them. He also claimed, however, that he had relied on the accounts when he agreed to guarantee the loan from the bank.

It subsequently transpired that the accounts, which were unqualified, had grossly overstated the profits of the company and included as assets investments of nil or minimal value. The company failed and the director/shareholder brought an action against the auditors claiming that their negligence contributed to his loss under the guarantee.

The court considered that the director must have known that the company was trading at a loss and should not have relied on the accounts. In any event, the company's auditors did not participate in the negotiation of the bank loan and owed no duty of care as a result to the director.

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