

## Directors Who Do Nothing are Liable for Loss

Directors who do nothing to prevent the occurrence of a fraud, even one from which they do not benefit, are in breach of their duties to the company even if they believe that the fraud would still have taken place had they tried to prevent it.

In a recent case, a company sought recompense from two of its directors following a substantial fraud: they argued that although they were aware of the fraud, they were not liable for it because it was committed by a third director, their brother, and benefited them only to a very limited extent. They argued that their liability was limited to the benefit they had obtained as a result of their brother's fraud. The two directors were, it seems, dominated by the fraudulent director and unwilling to challenge him, in spite of his having past convictions for fraud.

The third director used a variety of subterfuges to misappropriate more than £60 million from the company. The other (non-family) members of the board were unaware of the fraud. His siblings argued that they could not have prevented the fraud, which their brother would have committed anyway. They played no active part in the fraud, but merely failed to prevent it or to bring it to the attention of the other directors or the auditors of the company.

The Court of Appeal was not at all impressed with this line of argument. A director's duties were held to be 'inescapable personal responsibilities'.

"The message for company directors of all sorts (non-executive as well as executive) is that you will be in the firing line if there are breaches of the law of which you are aware and you fail to act in the appropriate way to prevent them and to bring them to the attention of the appropriate officers and/or authorities. If you are a director or trustee and are concerned about things that are going on in your organisation, contact us for advice."

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