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1.1.1 Potential Liability of Directors for Conversion Claims

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A recent decision of the New South Wales Supreme Court has shed light on when directors may be liable for a company's acts of conversion.

Conversion is the intentional dealing with goods in a manner seriously inconsistent with the possession or right to immediate possession of another person. Conversion may be established where, for example, goods are loaned or hired by one party to another, and not returned at the end of that period, or where goods are stolen.

In *Coastal Recycled Cooking Oils v. Innovative Business Action* [2007] NSWSC 831, Acting Judge Rein of the NSW Supreme Court found the sole director and shareholder of a company liable for the conversion of its company.

The plaintiff (Coastal) carried on the business of recycling used cooking oil which it collected from restaurants etc, and filtered, cleaned and onsold as diesel fuel. The defendant (IBAS) collected Coastal's oil on its behalf. The Supreme Court found that IBAS, by two of its employees, took oil from drums and tanks of Coastal and converted that oil for its own use.

The sole director and majority shareholder of IBAS was also found personally liable. The Court indicated a director would be liable for a tort such as conversion, "where he or she directed or procured" the conversion, regardless of the director's state of mind. Evidence was given that the director knew what was going on and had knowledge of many of the customers.

Making a claim against a director personally may be beneficial where the conversion is by a small company, or with few assets, and the plaintiff is concerned that the company will not

meet an order against it. This is particularly where the director may have significant assets to meet a claim, or a fear of bankruptcy on any unsatisfied claim.

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