COURT OF APPEAL FOR ONTARIO

CITATION: CHU de Québec-Université Laval v. Tree of Knowledge International Corp., 2026 ONCA 209
DATE: 20260324
DOCKET: COA-24-CV-1322

Gillese, Favreau and Rahman JJ.A.

BETWEEN

CHU de Québec-Université Laval

Plaintiff (Respondent)

and

Tree of Knowledge International Corp., Tree of Knowledge Inc., Michael Caridi*, Blu Stella Consulting Group Inc., and Fabio Gesufatto

Defendants (Appellant*)

Cameron Rempel and Caroline Harrell, for the appellant

John Pirie, Ahmed Shafey and Bryan Hsu, for the respondent

Heard: September 25, 2025

On appeal from the judgment of Justice Herman J. Wilton-Siegel of the Superior Court of Justice, dated July 9, 2024, with reasons reported at 2024 ONSC 3541.

Favreau J.A.:

A. INTRODUCTION

[1] At the beginning of the COVID-19 pandemic, the respondent, CHU de Québec-Université Laval (“CHU”), needed large quantities of N95 masks certified

by the National Institute for Occupational Safety and Health ("NIOSH"). In late March 2020, CHU entered into an agreement with Tree of Knowledge Inc. ("TOKI"), which agreed to supply 3 million NIOSH certified N95 masks for over US$11 million, by the end of day on March 28, 2020. As a condition of the sale, before receiving any masks, on March 27, 2020, CHU paid TOKI in full. At the time, the appellant, Michael Caridi, was an officer and the sole director of TOKI. He negotiated the agreement with CHU on behalf of TOKI. TOKI never delivered any NIOSH certified N95 masks. In April, TOKI delivered a small quantity of KN95 masks, which were not fit for medical use. Ultimately, TOKI only returned a small portion of the money CHU had paid at the time the agreement was made. CHU commenced an action against TOKI, Mr. Caridi and others for the return of the funds it had paid TOKI.

[2] The trial judge found Mr. Caridi personally liable for civil fraud and ordered him to pay CHU US$11,193,522.50 less some amounts CHU was able to recover from other parties. The trial judge found that Mr. Caridi was reckless in representing to CHU that he could deliver the masks, at a time when he had no confirmation that he would be able to source any NIOSH certified N95 masks. He further found that Mr. Caridi should be personally liable for the civil fraud because his conduct was "tortious in itself" and because his conduct exhibited a "separate identity or interest" from that of TOKI.

[3] Mr. Caridi submits that the trial judge erred by applying too low a threshold to find recklessness. He further submits that the trial judge applied the wrong test in determining that he should be found personally liable. He suggests that the courts should apply a stringent test before finding personal liability against an officer or director of a corporation in cases involving pure economic loss.[1]

[4] I would dismiss the appeal. Looking at the trial judge's reasons as a whole, the threshold he applied in finding that Mr. Caridi's conduct was reckless was consistent with the legal requirement for recklessness and was fully supported by his factual findings. In addition, it is well established that personal liability against a corporate officer or director is appropriate in cases of fraudulent conduct. While the trial judge's reasoning on the issue of personal liability was sparse, his determination that Mr. Caridi should be held personally liable was fully supported by the finding that his conduct was fraudulent.

B. BACKGROUND

[5] The trial judge's reasons provide a detailed review of the underlying events. I only summarize the facts necessary to give context to the issues on appeal.

[6] The events leading to the litigation occurred over a few weeks. At trial, there were many disputed facts regarding what occurred during the relevant period. My

[1] Mr. Caridi also seeks leave to appeal the costs order "if necessary". This was not pursued as a separate ground of appeal.

review of the relevant events is based on factual findings made by the trial judge. Mr. Caridi does not challenge those findings on appeal.

[7] Before setting out the chronology of events, it is helpful to identify the parties and people who played a key role in the events leading up to the litigation. It is also helpful to address the difference between NIOSH certified N95 masks and KN95 masks.

1. The parties and key people

[8] CHU is the largest hospital network in Quebec. It includes hospitals in eastern Quebec and New Brunswick.

[9] Sigma Santé is a non-profit organization representing health establishments in the region of Montreal and Laval, Quebec. During the COVID-19 pandemic, Sigma Santé managed the procurement and supply of goods and services for CHU and other health agencies in Quebec. As part of its mandate, Sigma Santé oversaw the sourcing of personal protective equipment ("PPE"), including respirator masks. At the relevant time, Elie Boustani was a supply and logistics advisor at Sigma Santé. He was the primary person who communicated with Mr. Caridi on behalf of CHU. Pierre Julien was the general manager of Sigma Santé during this period.

[10] Tree of Knowledge International Corp. ("TOK Corp.") is a Canadian corporation. Prior to the pandemic, TOK Corp. was in the business of pain management services and cannabis products. TOK Corp. is a publicly traded corporation. Tree of Knowledge Inc. ("TOKI") was incorporated in Nevada, in the United States. It is a wholly owned subsidiary of TOK Corp.

[11] In March of 2020, Mr. Caridi was a director and the chief executive officer of TOK Corp. and a director and the president of TOKI.[2] At the relevant time, Mr. Caridi lived in Greenwich, Connecticut, in the United States, at the same address registered as TOKI's head office.

[12] In February 2020, at the beginning of the pandemic, TOKI, through Mr. Caridi, decided to start marketing PPE, including respirator masks. Initially, Mr. Caridi did not inform TOK Corp. of this endeavor. He later did and it was agreed that he would share the profits personally with TOKI on a 50/50 basis.

[13] Mr. Caridi retained Blu Stella Consulting Group ("Blu Stella"), an Ontario corporation, to market PPE on TOKI's behalf. Fabio Gesufatto is a director and chief executive officer of Blu Stella who had primary contact with Mr. Caridi.

[14] Mr. Caridi's former business associate, Conrad Roncati, introduced him to Anthony Lee, who would eventually source the masks. Mr. Roncati is the owner of

[2] Mr. Caridi's positions with TOK Corp. and TOKI ended in 2021.

Athletix LLC (“Athletix”). Mr. Roncati and Mr. Lee had a pre-existing business relationship. Mr. Roncati described Mr. Lee as a prominent business executive and real estate developer with business and government contacts in China.

2. N95 and KN95 masks

[15] N95 masks are specialized respirator masks. They are designed for a tight facial fit and to be highly efficient in filtering out airborne particles.

[16] NIOSH is a branch of the United States Centre for Disease Control. NIOSH examines, tests and certifies various medical supplies, including N95 masks. To be certified by NIOSH, N95 masks must meet specified standards that provide strong respiratory protection, including filtering out 95% of airborne particles.

[17] KN95 masks are regulated by the Chinese government. KN95 masks are also designed to filter out 95% of airborne particles. KN95 masks meet different standards and are subject to different testing than NIOSH certified N95 masks.

[18] Some NIOSH certified N95 masks are produced in China. However, to be recognized as NIOSH certified N95 masks, they must bear the NIOSH certification markings. As the trial judge stated, “[if] a mask is labelled N95 but is not NIOSH certified, it may not provide the expected level of respiratory protection.”

3. CHU's attempts to source N95 masks and the agreement with TOKI

[19] In March of 2020, near the beginning of the pandemic, CHU's supply of N95 masks was running low and it needed to source masks on an urgent basis. CHU specifically required NIOSH certified N95 masks.

[20] In March of 2020, Mr. Boustani, of Sigma Santé, contacted Mr. Gesufatto, of Blu Stella, to ask for assistance in sourcing PPE for CHU. Over the next few days, Mr. Boustani and Mr. Gesufatto exchanged a number of emails, which included written information from Mr. Gesufatto about NIOSH certified N95 masks and KN95 masks.

[21] By late March of 2020, the Province of Quebec faced an imminent shortage of NIOSH certified N95 masks. On March 26, 2020, Mr. Boustani contacted Mr. Gesufatto by email because of Mr. Gesufatto's previous communications indicating that he would be able to source NIOSH certified N95 masks. Mr. Gesufatto and Mr. Boustani then spoke by phone, at which time Mr. Boustani asked about purchasing three million masks. Mr. Gesufatto advised him that Mr. Caridi and his company, "Tree of Knowledge", would be able to assist.

[22] Shortly after, on March 26, 2020, Mr. Boustani, Mr. Gesufatto and Mr. Caridi participated in a conference call. During the call, Mr. Caridi advised that he could supply the masks quickly. He stated that CHU would have to issue a purchase order that day and that it would have to make full payment the following day. If

these conditions were met, Mr. Caridi advised that he could deliver the masks by March 28, 2020.

[23] Following this call, Mr. Boustani conducted what the trial judge described as "a very cursory due diligence regarding [Mr.] Caridi and 'Tree of Knowledge'":

> Based on information that TOK Corp. was a publicly listed Canadian company of which [Mr.] Caridi was the chairman and which appeared to do business at the address supplied by [Mr.] Caridi, [Mr.] Boustani was content to contract with TOKI on [Mr.] Caridi's terms. Accordingly, he confirmed to [Mr.] Caridi that there was an interest in pursuing the transaction and that he would have CHU issue a purchase order.

[24] Subsequently, still on March 26, 2020, Mr. Gesufatto sent Mr. Boustani an email confirming the purchase. The "description" line referred to "FDA/CE/ISO/NIOSH Certified N95 Respirator Mask" and confirmed that "3 million masks will be shipped out tomorrow morning to be delivered by Saturday, March 28, 2020 by end of day". TOKI also issued an invoice that referred to 3 million "FDA/CE/ISO/NIOSH Certified N95 Respirator Mask[s]" and confirmed shipping on March 28.

[25] Before the end of the day on March 26, 2020, CHU generated two purchase orders addressed to TOKI. They described the product to be sold as an "N95 DTC3X[3] high-capacity filtration face mask (MSSS reserve) USD NIOSH-certified".

[26] The trial judge found that Mr. Gesufatto's confirmation email, the TOKI invoice and CHU's two purchase orders constituted the contract between CHU and TOKI for the purchase of 3 million NIOSH certified N95 masks at a total price of US$11,160,000, plus shipping costs estimated at US$750,000 and taxes.

[27] On March 27, 2020, in accordance with the terms of the agreement, CHU transferred US$13,693,522.50 to a bank account at Chase Bank in the United States, which was the bank specified on the TOKI invoice.[4]

4. TOKI fails to deliver any NIOSH certified N95 masks

[28] On the evening of March 27, 2020, Mr. Caridi advised Mr. Boustani that he had received confirmation that between 500,000 and 1 million masks would be leaving China on an Air China flight on March 29, and that the balance of the masks would arrive shortly.

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[3] The trial judge noted in his reasons that everyone agreed that the reference to "DTC3X" in the purchase orders was an error on CHU's part, but that nothing turned on this error. Specifically, there was no evidence that Mr. Caridi was misled by this error.

[4] The evidence at trial was that the Chase Bank put a hold on the funds until the following Monday, March 30, 2020. The trial judge found that there was no explanation for the hold and that it was not put in place at CHU's request. He further found that the hold had no impact on TOKI's ability to source or deliver the NIOSH certified N95 masks.

[29] TOKI did not deliver any masks to CHU on March 28, 2020 as required by the terms of their agreement.

[30] In the following days, there were ongoing requests from Mr. Boustani for reassurance that the masks would be delivered and that they would be NIOSH certified N95 masks. Mr. Caridi provided reassurances, although it was not clear that Mr. Caridi initially understood the difference between NIOSH certified N95 masks and KN95 masks.

[31] Ultimately, no masks were delivered until April 9, 2020. On that day, 2,000 masks were delivered to CHU, and an additional 154,000 masks were delivered on April 13, 2020. The labeling on the masks identified the model as “KN95 (Non medical use)”. The packaging identified the manufacturer as “DongGuan MiaoMiaoLove Daily Necessities Co., Ltd.” On April 14, 2020, Mr. Caridi also advised that further masks would be delivered later that day.

[32] Subsequently, on April 14, 2020, before TOKI delivered any further masks to CHU, the Assistant Deputy Minister of Health for Quebec, Marc-Nicolas Kobrynsky, wrote to Mr. Caridi and instructed him not to deliver any more masks. In his email, Mr. Kobrynsky stated that CHU had purchased N95 masks, and that Mr. Caridi delivered KN95 masks. He said that, despite Mr. Caridi’s suggestion that KN95 masks could offer the same level of protection,

this is not what CHU had ordered. He further stated that the masks would be tested "to see if something could be salvaged out of this whole mess." CHU did have the masks tested and they were found to be worthless.

[33] In the following two weeks, CHU demanded the return of the money it had advanced for the purchase of the masks. In that time period, there was a freeze on TOKI's bank account. Ultimately, on April 29, 2020, TOKI and CHU reached an agreement that was meant to resolve the issues between the parties. The agreement included a term that TOKI would transfer US$1 million to CHU that day or the next day, as soon as TOKI's bank allowed the transfer. TOKI would thereafter pay a minimum of US$1 million every 10 days starting on May 4, 2020, "to be applied against the outstanding amount owing to CHU." The agreement also included a term that Mr. Caridi would try to sell the KN95 masks delivered to CHU, and the proceeds would be applied against the amount TOKI owed CHU.

[34] TOKI made one payment of US$1 million on May 5, 2020, and two payments of US$500,000 on May 14 and 15, 2020, for a total of US$2 million. TOKI paid no further amounts to CHU and did not sell the KN95 masks it had delivered to CHU.

[35] When it became evident that TOKI would not deliver NIOSH certified N95 masks or return the money CHU had paid, CHU brought an action against several defendants, including TOK Corp., TOKI and Mr. Caridi.

5. No masks were secured at the time the agreement was made

[36] In his reasons, the trial judge reviewed the evidence available regarding the dealings and communications between Mr. Caridi, Mr. Roncati and Mr. Lee prior to the contract formation and in the period immediately after the contract was made. He noted that the evidence available regarding these interactions was incomplete and that, notably, Mr. Lee was not called as a witness at trial.

[37] Nevertheless, based on the limited evidence available, the trial judge found that Mr. Roncati introduced Mr. Caridi to Mr. Lee around March 21, 2020. At that time, they had general discussions about Mr. Lee being able to source PPE, including masks, from China.

[38] Based on the evidence available, the trial judge determined that, at the time TOKI agreed to supply 3 million NIOSH certified N95 masks to CHU, Mr. Caridi had not sourced any masks. In addition, when Mr. Caridi told Mr. Boustafi on March 27, 2020 that a shipment of masks would be leaving China on March 29, Mr. Caridi did not have an agreement with Mr. Roncati or Mr. Lee or anyone else for the purchase and sale of any masks, let alone NIOSH certified N95 masks.

[39] It was not until March 29, 2020 that Mr. Caridi, Mr. Lee and Mr. Roncati entered into any kind of agreement. Based on what the trial judge was able to piece together, it appears that, on that date, they made an arrangement whereby TOKI

would have a contract with Mr. Roncati's company, Athletix, and in turn, Athletix was to source the masks from Mr. Lee or his company.[5] This was reflected in a written agreement between Athletix and TOKI dated March 28, 2020. The agreement was for the purchase and sale by TOKI from Athletix of 3 million "N95 face masks". The agreement contemplated an initial shipment of 100,000 masks on March 30, 2020. The agreement stated that it was "subject to worldwide COVID-19 pandemic and international rules, restrictions and regulations" and that "[a]dditional deliveries are planned every day or so to follow subject to air freight capacity and availability."

[40] The trial judge relied on an undated invoice from Athletix to TOKI for the shipment of 500,000 masks on March 30, 2020, as evidence of the fact that Mr. Lee did not think he could arrange for more than 500,000 masks at that time. He further noted that this was never communicated to CHU.

[41] Based on the evidence available regarding Mr. Lee's commitments, the trial judge concluded:

> In summary, therefore, the evidence indicates that [Mr.] Lee committed to arranging for shipping of 100,000 masks on or about March 29, 2020 and a further 500,000 masks shortly thereafter against payment for all of the 600,000 masks on March 30, 2020. The arrangements

[5] The trial judge did not determine whether Athletix was a seller, a principal in a pass-through transaction or an escrow agent. The trial judge found that nothing turned on this.

> for future deliveries of the remaining 2,400,000 masks are not in evidence.

[42] The trial judge further concluded that, based on the available evidence, Mr. Caridi was aware, either from the Athletix agreement or earlier discussions, that the masks to be delivered by Mr. Lee would not be the NIOSH certified N95 masks that CHU had ordered. While packaged as N95 masks, the masks did not have any other indicia of NIOSH certification and were described in the descriptions/specifications as “kn95” masks.

6. Receivership

[43] After CHU started its action, it successfully applied to the Superior Court to appoint an investigative receiver and for a Mareva injunction against Mr. Caridi, TOKI and TOK Corp.

[44] As part of its mandate, the receiver traced the monies CHU paid to TOKI on March 27, 2020. The receiver determined that only $5,000 remained in TOKI’s bank account by November 30, 2020. In his reasons, the trial judge described the receiver’s conclusions regarding the disbursement of CHU’s funds. Some of the funds were used for what the trial judge described as purposes “related to the CHU transaction”. But it was evident that none of CHU’s funds were used to benefit CHU:

> Of the $11.2 million net receipts relating to the CHU transaction, the Receiver identified disbursements totaling $8.3 million that appear to be directly related to the CHU transaction, of which $1,105,072 was paid to [Mr.] Caridi and $41,691 was paid to [Mr. Caridi's son]. The disbursements also included payments to Athletix ($3,375,020), Shenzhen Qiyuie Trading Co. Ltd ($2,259,000), Blue Stella ($815,251, of which $744,001 related to the CHU transaction), Easton Equities ($784,000), which is understood to be owned by [Mr.] Lee, and Ya Zhou ($400,000), which the Receiver believes is also related to the CHU transaction. Essentially, the difference between the $11.2 million net receipts and the identified disbursements of $8.3 million, or approximately $2.9 million, represents monies that were disbursed out of the CHU payment monies for purposes unrelated to the CHU transaction. Of this amount, the Receiver has identified three payments totaling $1.475 million which appear to relate to transactions for the purchase and sale of PPE to third parties.[6]

[45] The trial judge further stated that TOKI used US$6,818,020 of the moneys in its account, including funds it had received from CHU, to buy approximately 2.5 million masks which ultimately had no value.

7. The trial judge's decision

[46] By the time of the trial, CHU had reached a settlement agreement with all defendants, except for Mr. Caridi.[7]

[6] All amounts are in US dollars.

[7] CHU entered into a Pierringer Agreement with some of the defendants, including TOKI. As part of the settlement, TOKI consented to a judgment for the full amount of the claim. TOKI remained a party at the time of the trial, but chose not to participate.

[47] Mr. Caridi represented himself at trial.

[48] At trial, CHU asserted the following causes of action against Mr. Caridi: (a) civil fraud or deceit; (b) oppression; and (c) unjust enrichment or constructive trust.

[49] The trial judge noted that, throughout the litigation, Mr. Caridi took the position that, before the contract was formed, he advised Mr. Boustani that the masks he could deliver were KN95 masks that were compliant with NIOSH standards, but not NIOSH certified N95 masks. However, on the last day of the evidentiary portion of the trial, Mr. Caridi changed his position and for the first time claimed that he ordered NIOSH certified N95 masks from Mr. Lee, but that Mr. Lee "let him down."

[50] In his analysis, the trial judge first addressed whether CHU had made out a claim of civil fraud or deceit[8] against TOKI. In that context, relying on *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21, the trial judge listed the elements of a claim for civil fraud as: (a) a false representation made by the defendant; (b) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (c) the false representation caused the plaintiff to act;

[8] The trial judge used the terms civil fraud and deceit interchangeably in his reasons. These intentional torts are often referred to interchangeably and it was not an error for him to do so: *Paulus v. Fleury*, 2018 ONCA 1072, 144 O.R. (3d) 791, at para. 8, leave to appeal refused, [2019] S.C.C.A. No. 57. However, to avoid any confusion, in the balance of these reasons, I refer to the tortious conduct in this case as civil fraud.

and (d) the plaintiff's actions resulted in a loss. The trial judge considered each element and found that TOKI was liable for civil fraud based on Mr. Caridi's conduct.

[51] First, the trial judge found that Mr. Caridi made the following misrepresentations:

(a) In the conference call with Mr. Gesufatto and Mr. Boustani on March 26, 2020, Mr. Caridi misrepresented that he had the ability to supply 3 million NIOSH certified N95 masks to CHU.

(b) Through the invoice delivered to CHU on March 26, 2020, Mr. Caridi impliedly represented that he would deliver 3 million NIOSH certified N95 masks if CHU paid the full purchase price by the morning of March 27, 2020.

(c) On March 28, 2020, in a telephone discussion with Mr. Julien and Mr. Boustani, Mr. Caridi misrepresented that he was "'100%' certain" that the masks to be delivered would be NIOSH certified N95 masks.

(d) On March 29, 2020, after Mr. Caridi sent Mr. Boustani an email that included a Chinese export declaration form that referred to KN95 respirator masks, Mr. Caridi told Mr. Gesufatto and Mr. Boustani in a

telephone conversation that the masks were NIOSH certified N95 masks but were described as KN95 masks to clear Chinese customs.

[52] Second, the trial judge found that Mr. Caridi acted recklessly. In reaching this conclusion, the trial judge accepted that Mr. Caridi was "sincere" in his reliance on Mr. Lee and in not intending to lie to CHU, but that he was nevertheless reckless:

> [Mr.] Caridi argues that his behaviour does not constitute recklessness because he acted in good faith in reliance on [Mr.] Lee. [Mr.] Caridi also says that he did not intend to lie to CHU. I have some sympathy for [Mr.] Caridi as I believe he is sincere. However, these statements do not fully capture his actions or the legal consequences of those actions. Given the particular circumstances of this case, I conclude that, in representing, and in causing TOKI to represent, that TOKI was able to deliver NIOSH certified N95 masks, [Mr.] Caridi acted recklessly, as that term is understood in the context of a claim in tort for deceit or civil fraud. [Emphasis added.]

[53] The trial judge described Mr. Caridi's recklessness in representing that he could deliver NIOSH certified N95 masks to CHU as follows:

> [W]hile it is literally correct that [Mr.] Caridi relied on [Mr.] Lee to deliver NIOSH certified N95 masks, he is not credible insofar as he suggests that his reliance was so absolute that he did not have any concern that [Mr.] Lee might not be able to deliver masks that satisfied CHU's specifications. I am satisfied that [Mr.] Caridi understood that this risk existed from the time of his first telephone call with [Mr.] Boustani and [Mr.] Gesufatto on

March 26, 2020 and increased throughout the period to March 30, 2020.

Accordingly, if [Mr.] Caridi had been asked between March 26, 2020 and March 30, 2020 whether he honestly believed that TOKI would deliver NIOSH certified N95 masks, he would have had to say that there was a risk that they would deliver KN95 masks that were not NIOSH certified even if they were said to be NIOSH compliant. As discussed above, there is no evidence that [Mr.] Lee ever confirmed that he would specifically deliver NIOSH certified N95 masks, only that he would deliver masks that met [Mr.] Caridi's specifications. As addressed above, [Mr.] Roncati and [Mr.] Lee proceeded on the basis that the transaction with [Mr.] Caridi would involve masks that the Chinese manufacturer described as KN95 masks and that were alleged to conform to NIOSH standards but were not NIOSH certified N95 masks.

Therefore, on March 26, 2020, given the absence of an agreement with [Mr.] Lee/[Mr.] Roncati that specified NIOSH certified N95 masks, there was reason to doubt, even if an agreement were reached, that the masks would meet CHU's specifications. [Mr.] Caridi could not say that he knew whether or not [Mr.] Lee's supplier(s) or manufacturer(s) would deliver NIOSH certified N95 masks. The best that he could say was that he hoped that [Mr.] Lee understood his requirements and would deliver masks that satisfied CHU's precise specifications.

Further, by March 29, 2020, given the continued absence of any confirmation from [Mr.] Lee, the content of the Athletix Agreement, and the statement of KN95 masks in the Chinese export declaration form, among other things, there was a stronger basis for doubt to the point that it was probable that the masks to be delivered would not be NIOSH certified N95 masks but rather KN95 masks that [Mr.] Lee or his supplier(s) or manufacturer(s) alleged complied with NIOSH standards. Accordingly, by

> that date, if [Mr.] Caridi had been asked the same question, he would have had to respond that he did not honestly know whether or not TOKI would deliver masks that were specifically NIOSH certified N95 masks, rather than KN95 masks that were alleged to be manufactured to NIOSH standards.
>
> However, notwithstanding such uncertainty regarding the likelihood of delivery of NIOSH certified N95 masks, [Mr.] Caridi was prepared to make, and cause TOKI to make, the representation that TOKI would deliver NIOSH certified N95 masks on March 26, 2020 and to repeat the representations to [Mr.] Julien and [Mr.] Boustani on March 28, 2020 and to [Mr.] Boustani on March 29, 2020. Part of the reason that he felt able to do so may have been [Mr.] Caridi's belief that he was entitled to the protection of the corporate shield. In part, this also reflected the fact that [Mr.] Caridi's overriding priority was to deliver the masks that [Mr.] Lee was arranging as quickly as possible. He had neither the time nor the inclination to assess the negative information that he was receiving in this period that suggested or indicated that such masks were not NIOSH certified N95 masks. However, I am satisfied that the most important explanation is that, at the end of the day, [Mr.] Caridi believed that even if [Mr.] Lee's supplier(s) or manufacturer(s) were unable to deliver NIOSH certified N95 masks, they would be able to deliver respiratory masks that would be sufficient to satisfy CHU in the circumstances that CHU found itself.

[54] Third, the trial judge was satisfied that Mr. Caridi's first two false representations induced CHU to enter into the agreement with TOKI and pay the full amount of the purchase price. Mr. Caridi's latter two misrepresentations induced CHU to not terminate the agreement.

[55] Finally, the trial judge was satisfied that CHU suffered a loss in reliance on Mr. Caridi's misrepresentations. The trial judge found that CHU's loss was equal to the purchase price less certain amounts, including the US$2 million TOKI had paid to CHU after the failed agreement between the parties in April and May 2020.

[56] Having found that TOKI was liable for civil fraud, the trial judge next considered Mr. Caridi's personal liability.

[57] He found that this was not an appropriate case for piercing the corporate veil because there was no evidence that TOKI was a sham corporation incorporated for an "illegal, fraudulent or improper purpose." There was also no evidence that Mr. Caridi incorporated or used TOKI for the purpose of committing fraud against CHU.

[58] The trial judge found that Mr. Caridi should nevertheless be personally liable as an officer and director of TOKI for two reasons. First, Mr. Caridi's conduct was "tortious in itself". Second, his conduct exhibited a separate identity or interest from that of TOKI because, given that Mr. Caridi was to share the profits from the agreement on a 50/50 basis with CHU, he was acting both in his personal capacity and as an officer and director of TOKI when he made the false representations to CHU.

[59] Based on these findings, the trial judge determined that Mr. Caridi was personally liable to pay CHU US$11,193,522.50 less the amounts paid by other parties to the action and in a related action.

[60] The trial judge went on to consider and reject CHU's claims for oppression and unjust enrichment against Mr. Caridi. The trial judge also rejected CHU's claim for a constructive trust or a tracing order.

[61] Finally, the trial judge granted an order that the judgment against Mr. Caridi falls within s. 178(1)(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), on the basis that it is a debt resulting from "fraudulent misrepresentation". In making this order, the trial judge stated that the case law does not distinguish between recklessness and other actions exhibiting "the moral turpitude associated with the actions addressed by sections 178(1)(d) and (e)" of the *BIA*.

[62] In separate reasons, the trial judge ordered Mr. Caridi to personally pay costs to CHU in the amount of $1,212,000.

C. ANALYSIS

[63] Mr. Caridi alleges that the trial judge made the following errors:

(a) He relied on an erroneously low threshold for finding recklessness;

(b) He erred in finding that Mr. Caridi could be personally liable because his conduct was tortious in itself; and

(c) He erred in finding that Mr. Caridi could be personally liable because his conduct exhibited a separate identity or interest.

[64] I do not agree that the trial judge made these alleged errors and I would dismiss the appeal.

[65] With respect to the first alleged error, reading the trial judge's reasons as a whole, it is evident that the trial judge did not apply an improperly low threshold in determining that Mr. Caridi's conduct was reckless. Moreover, based on the trial judge's findings of fact, there is no doubt that Mr. Caridi acted recklessly in representing that he could secure 3 million NIOSH certified N95 masks for CHU when the contract was formed and in the following days, while requiring full payment for the masks.

[66] With respect to the second and third errors, Mr. Caridi urges the court to clarify the law regarding the circumstances when the court will impose personal liability on an officer or director of a corporation for tortious conduct. He submits that the law should not extend to personal liability for torts resulting in pure economic loss. However, the law needs no clarification. It is clear that the court can impose personal liability on an officer or director of a corporation for fraudulent conduct. In this case, given Mr. Caridi's fraudulent misrepresentations, the trial judge did not err in finding Mr. Caridi personally liable.

[67] I will start by addressing the issue of recklessness and next address together the two issues related to Mr. Caridi's personal liability.

[68] Before dealing with these issues, it is helpful to address the standard of review. Mr. Caridi submits that the trial judge applied the wrong legal standard to the issue of recklessness and incorrect tests to the issue of Mr. Caridi's personal liability. The articulation of a legal test or the question of what legal test applies in a particular case is a question of law to be reviewed on a correctness standard: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 36. However, absent an extricable question of law, the application of a legal test is a question of mixed fact and law reviewable on a palpable and overriding error standard: *Housen*, at para. 36.

1. Did the trial judge err in applying too low a threshold for recklessness?

[69] Mr. Caridi submits that the trial judge erred in finding him liable for civil fraud based on recklessness.

[70] As reviewed by the trial judge, and as set out in *Bruno Appliance*, at para. 21, the elements of a claim for civil fraud are as follows:

(a) A false representation made by the defendant;

(b) Some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);

(c) The false representation caused the plaintiff to act; and

(d) The plaintiff's actions resulted in a loss.[9]

[71] Mr. Caridi focuses on the trial judge's analysis of the knowledge element, and specifically whether he applied too low a threshold for finding that the representations made by Mr. Caridi were reckless. In making this argument, Mr. Caridi relies on a passage in the trial judge's reasons that refers to "carelessness" as meeting the "recklessness" threshold. Specifically, Mr. Caridi impugns the following passage in the trial judge's reasons:

> I have therefore proceeded on the basis that "carelessness" can extend to being indifferent as to whether the representation upon which a claim is based was true or false at the time the representation was made and, in that regard, includes foreseeing the possibility that the representation may be false and consciously taking the risk.

[72] In support of his argument that the trial judge improperly relied on "carelessness" as the threshold for "recklessness", Mr. Caridi relies on the following part of the trial judge's analysis:

> [Mr.] Caridi consciously disregarded the possibility that the representations that he made, and that he caused

[9] In *Midland Resources Holding Limited v. Shtaif*, 2017 ONCA 320, 135 O.R. (3d) 481, at para. 162, leave to appeal refused, [2017] S.C.C.A. No. 246, and in *Paulus*, at para. 9, this court described the test for fraudulent misrepresentation as including a requirement that the defendant intended that the plaintiff act in reliance on the representation. Nothing turns on this additional requirement in this case given that the focus of the appeal is on the knowledge requirement.

> TOKI to make, were false. [Mr.] Caridi was indifferent to the reality that he had no basis for an honest belief that the representations were true, and therefore was indifferent as to whether the representations were true or false when they were made. Put another way, [Mr.] Caridi had enough knowledge to foresee a real possibility that the masks that [Mr.] Lee or his supplier(s) or manufacturer(s) delivered would not be NIOSH certified N95 masks and he consciously took that risk in making, or causing TOKI to make, the representations. As discussed above, such actions constitute "carelessness" and were therefore "reckless" for the purposes of CHU's claim for deceit or civil fraud. [Emphasis added.]

[73] I see no error in the trial judge's articulation of the test for a finding of recklessness, and I see no error in the trial judge's conclusion that Mr. Caridi's conduct was reckless for the purpose of finding civil fraud in this case.

[74] Mr. Caridi focuses on an isolated passage in the trial judge's reasons, outside its full context. I note that, in the sentence prior to the first passage cited above, the trial judge stated that he adopted the principles from decisions dealing with recklessness he had just reviewed. Indeed, in the several paragraphs preceding the passage impugned by Mr. Caridi, the trial judge dealt at some length with cases that address the meaning of recklessness in the context of a claim for civil fraud. He observed that the courts refer to "careless" conduct when addressing recklessness, but that "careless" has a specific meaning in that context.

[75] As the trial judge noted, in *Bruno Appliance*, at para. 18, the Supreme Court referred to *Derry v. Peek* (1889), 14 App. Cas. 337 (H.L.), at p. 374, where the

House of Lords stated that the knowledge requirement includes not only a false representation made knowingly or without a belief in its truth but also a false representation made "recklessly, careless whether it be true or false" (emphasis added).

[76] The trial judge went on to explain that the court can find recklessness if the person who made the false statement did not have an honest belief that the statement was true, in the sense that they were indifferent or did not care whether the statement was true: *Derry*, at p. 361; *Parna v. G. & S. Properties Ltd.*, [1971] S.C.R. 306, at pp. 316-17; and *Hearn v. McLeod Estate*, 2019 ONCA 682, 439 D.L.R. (4th) 217, at para. 49. Based on *Derry*, at p. 376, the trial judge further accepted that recklessness can be made out where a person makes a false statement and closes their eyes to the facts or purposefully abstains from inquiring about the facts. This statement of the law is accurate and entirely consistent with Canadian cases in which courts have accepted that recklessness can be made out by showing that a person made a representation with disregard or a lack of care for whether it was true or false and without taking any steps to ascertain its accuracy: *Precision Drilling Canada Limited Partnership v. Yangarra Resources Ltd*, 2017 ABCA 378, 60 Alta. L.R. (6th) 57, at paras. 34-35; *Noble v. Fuller*, 1985 CarswellBC 4167 (S.C.), at para. 20.

[77] The trial judge was careful to distinguish between the type of carelessness that amounts to recklessness in the context of a claim for fraud and the type of carelessness that supports a claim for negligence. He explained that carelessness does not amount to recklessness and is not sufficient to meet the knowledge requirement for fraud where a person has an honest but mistaken belief in the truth of the statement:

> As noted above, "carelessness" has been held to constitute "recklessness". In this regard, it is important to note that "careless" can mean indifference to the truth of a statement or it can mean failing to take care. This distinction was identified by Lord Herschell in *Derry v. Peek*, at p. 361: "To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true".

[78] Accordingly, the trial judge made no error in articulating the test for the knowledge element of civil fraud. His description of the requirement for recklessness was entirely consistent with existing authorities. I see no error in this part of the trial judge's analysis. He was clearly applying the appropriate threshold for recklessness in impugning Mr. Caridi's conduct toward CHU.

[79] More importantly, whether one uses the term "recklessness" or "carelessness" as that term is used in civil fraud cases, the trial judge's evidentiary findings fully support his conclusion that Mr. Caridi's conduct was reckless.

Notably, on March 26, 2020, when the agreement between CHU and TOKI was made, Mr. Caridi represented that he could obtain 3 million NIOSH certified N95 masks at a point when Mr. Lee had provided no information or assurances that he could deliver any masks, let alone 3 million NIOSH certified N95 masks. Mr. Caridi nevertheless represented that, if CHU paid the full contract price, he could deliver the masks. Over the next few days, Mr. Caridi persistently represented to CHU that he could obtain at least some NIOSH certified N95 masks when he never received any assurances or information from Mr. Lee or anyone else that he could obtain and deliver any NIOSH certified N95 masks. He had no subjective belief in these representations, nor any factual basis for them. The trial judge found that Mr. Caridi did not intend to take CHU's money and vanish – but he did intend to induce CHU to pay TOKI, regardless of whether TOKI could deliver the masks or not. There is no question that this conduct met the threshold for recklessness in the context of a claim for civil fraud.

[80] I note that, while the trial judge did not focus on Mr. Caridi's use of CHU's money in his analysis, it is hard to ignore that Mr. Caridi's representations to CHU were made in a context where CHU paid the full contract price in advance of receiving any masks, and where most of the funds were never returned to CHU. Instead, Mr. Caridi paid himself a substantial amount of money, and he gave substantial sums to third parties unrelated to CHU's transaction. The trial judge

generously found that Mr. Caridi may have been “sincere” in his intention to source 3 million NIOSH certified N95 masks, but reckless in his representations to CHU. The requirement for an upfront payment, in circumstances when Mr. Caridi had not sourced any masks and had no reliable information that he could source the masks CHU ordered, resulting in almost all of CHU’s money being disbursed without any of the masks ordered being delivered, could easily have led to harsher conclusions regarding Mr. Caridi’s conduct than those reached by the trial judge.

[81] Accordingly, I see no error in the trial judge’s conclusion that the representations made by Mr. Caridi were reckless and that the knowledge element for CHU’s civil fraud claim was made out.

2. Did the trial judge err in finding Mr. Caridi personally liable for civil fraud?

[82] As reviewed above, while the trial judge found that this was not an appropriate case for piercing the corporate veil, he found Mr. Caridi personally liable for CHU’s loss because his conduct was “tortious in itself” and because he exhibited a “separate identity or interest” from that of TOKI. Mr. Caridi submits that the trial judge erred in law in making these findings. He submits that the trial judge erred because the personal liability of directors for conduct that is “tortious in itself”, is not meant to extend to claims for economic loss. He also argues that the profit-sharing agreement between Mr. Caridi and TOKI cannot form the basis for a

finding that his conduct exhibited a separate identity or interest. Mr. Caridi further urges the court to clarify the circumstances under which officers and directors of corporations can be personally liable for the tortious conduct of a corporation, arguing that the law in this area is unclear.

[83] I would dismiss this ground of appeal. Mr. Caridi is not facing liability merely because of his status as an officer and director of TOKI; instead, while he was a director, Mr. Caridi made fraudulent misrepresentations to CHU. The law is clear that fraud is a basis to hold officers and directors personally liable for their conduct, even where the conduct is in the course of their duties and arguably in the interests of the corporation. In the circumstances, it is not necessary to assess whether there is any uncertainty in the law and, if so, to provide further guidance about when officers and directors of a corporation can be personally liable for tortious conduct leading to pure economic loss. Nor is it necessary to provide further guidance on the circumstances in which the conduct of an officer or director of a corporation can be characterized as exhibiting a separate identity or interest.

[84] I start with a review of the trial judge's reasons for finding Mr. Caridi personally liable, followed by a discussion of the law in this area and my conclusion that the trial judge did not err in finding that Mr. Caridi should be held personally liable for CHU's losses.

a. Trial judge's finding of personal liability

[85] In this case, the trial judge found that Mr. Caridi should be held personally liable because his conduct was tortious in itself and because it exhibited a separate identity or interest from that of TOKI. His complete reasoning on both issues was set out in two paragraphs.

[86] First, the trial judge reasoned that he was not precluded from finding that Mr. Caridi's conduct was tortious in itself, despite the fact that CHU suffered an economic loss rather than a physical injury:

> First, [Mr.] Caridi caused TOKI to make the fraudulent misrepresentation that induced CHU to enter into the Contract. While most of the decisions addressing the personal liability of directors involve either the tort of inducing a breach of contract or tortious conduct causing physical injury, property damage or a nuisance, the case law does not preclude the extension of the principle to torts causing economic loss such as the tort of deceit or fraudulent misrepresentation in a contractual context.

[87] Second, the trial judge found that Mr. Caridi's conduct exhibited a separate identity or interest because of the agreement that Mr. Caridi would share the profits 50/50 with TOKI:

> Second, and more importantly, the facts of this case fall squarely within the circumstances in which the conduct of the directing mind of a corporation exhibits a separate identity or interest from that of the corporation. In this case, [Mr.] Caridi acknowledged that, to the extent any profits were realized, they were to be divided, between

> himself personally and TOKI on a 50:50 basis. In these circumstances, [Mr.] Caridi was acting in a personal capacity, as well as in his capacity as the sole director and an officer of TOKI, when the fraudulent misrepresentations were made to CHU that induced it to enter into the Contract, to make full payment of the purchase price, and to refrain from terminating the Contract and taking action to recover monies paid to TOKI prior to March 30, 2020.

[88] Mr. Caridi submits that the trial judge's reasoning on the issue of his personal liability is conclusory and insufficiently explains his conclusion that Mr. Caridi should be personally liable for conduct tortious in itself or conduct exhibiting a separate identity or interest. He further argues that he should not be found personally liable, in part, because CHU suffered an economic loss rather than a physical injury and because, following the trial judge's logic, any profit-sharing agreement could amount to a finding of a separate identity or interest. Mr. Caridi also argues that the law in this area lacks clarity, and that the court should take the opportunity to offer guidance for future cases.

[89] I agree with Mr. Caridi that the trial judge's reasoning on the issue of personal liability is sparse. His reasons fail to explain what conduct that is "tortious in itself" means and how Mr. Caridi's conduct is tortious in itself. His explanation regarding a separate identity or interest also fails to explain how what amounts to a profit-sharing agreement forms the basis for personal liability. More importantly, the trial judge fails to identify the obvious and straightforward path to Mr. Caridi's

personal liability in this case, namely the fraudulent nature of his conduct. As I explain below, it was not necessary for the trial judge to assess whether Mr. Caridi's conduct was tortious in itself or whether it exhibited a separate identity or interest. The fraudulent nature of the conduct was sufficient to ground a finding of personal liability.

b. Basis for personal liability of officers and directors of a corporation

[90] There are at least two different avenues for holding officers and directors personally liable for the tortious conduct of a corporation. First, in specified circumstances, the court can pierce the corporate veil to find an officer or director, who is found to be a directing mind, liable for acts attributed to the corporation. In this case, as reviewed above, the trial judge concluded that the test for piercing the corporate veil was not met. Second, in some circumstances, the court can find the officers or directors of a corporation personally liable for tortious acts that might otherwise be attributed to the corporation, even when piercing the corporate veil is not available. Personal tort liability is the focus of this ground of appeal.

[91] There are three earlier decisions from this court that are typically referred to as authorities for the circumstances under which officers or directors of a corporation can be held personally liable for the tortious conduct of the corporation: *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.); *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d)

97 (C.A.); and *ADGA Systems International Ltd. v. Valcom Ltd.* (1999), 43 O.R. (3d) 101 (C.A.), leave to appeal refused, [1999] S.C.C.A. No. 124. In all three cases, the court discussed the circumstances under which an officer or director could be held liable for the apparent tortious conduct of the corporation.

[92] In *ScotiaMcLeod*, at pp. 490-91, the court described the categories of cases where officers and directors may be found personally liable as follows:

> The decided cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are fact-specific. In the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers, they are also rare. Those cases in which the corporate veil has been pierced usually involve transactions where the use of the corporate structure was a sham from the outset or was an afterthought to a deal which had gone sour. There is also a considerable body of case-law wherein injured parties to actions for breach of contract have attempted to extend liability to the principals of the company by pleading that the principals were privy to the tort of inducing breach of contract between the company and the plaintiff: see *Ontario Store Fixtures Inc. v. Mmmuffins Inc.* (1989), 70 O.R. (2d) 42 (H.C.J.), and the cases referred to therein. Additionally there have been attempts by injured parties to attach liability to the principals of failed businesses through insolvency litigation. In every case, however, the facts giving rise to personal liability were specifically pleaded. Absent allegations which fit within the categories described above, officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the

> company so as to make the act or conduct complained of their own. [Emphasis added.]

[93] In *Normart*, at p. 102, the court picked up the last sentence from this quote from *ScotiaMcLeod*, and stated that:

> It is well established that the directing minds of corporations cannot be held civilly liable for the actions of the corporations they control and direct unless there is some conduct on the part of those directing minds that is either tortious in itself or exhibits a separate identity or interest from that of the corporations such as to make the acts or conduct complained of those of the directing minds" [Emphasis added.]

[94] In *ADGA Systems*, the court undertook a detailed analysis of the circumstances under which officers or directors may be held personally liable. The court stated that the authorities clearly confirm that "employees, officers and directors will be held personally liable for tortious conduct causing physical injury, property damage, or a nuisance even when their actions are pursuant to their duties to the corporation": *ADGA Systems*, at para. 26. The court went on to consider the circumstances in which officers or directors may be liable for "economic recovery", ultimately quoting the passages above from *ScotiaMcLeod* and *Normart*, to the effect that officers and directors can be personally liable for conduct that is either tortious in itself or exhibits a separate identity or interest from that of the corporation.

[95] Together, *ScotiaMcLeod*, *Normart*, and *ADGA Systems* affirm that an officer or director's actions within their scope of responsibility are generally attributed to the corporation, and the corporation is liable for the consequences. However, an officer or director may face personal liability – either alone or jointly with the corporation – in some circumstances, including: (i) where the director's conduct is independently tortious or "tortious in itself"; or (ii) where the director acts pursuant to a "separate identity or interest".

[96] The cases are not clear regarding whether intentional torts, including fraud, are a separate category from conduct that is tortious in itself or conduct that exhibits a separate identity or interest, or whether it fits into one or both of these categories. In my view, fraudulent conduct is consistent with both categories. The fraudulent conduct of an officer or director who ostensibly acts in a corporation's name may be tortious in itself. Similarly, an officer or director who engages in fraudulent conduct, ostensibly on the corporation's behalf, but for his or her own benefit, exhibits a separate identity or interest.

[97] However, I see no benefit to requiring that, in any given case, the court fit the fraudulent conduct into one of these categories. Fraud by an officer or director, who purports to act on behalf of a corporation, should lead to personal liability regardless of whether the conduct is characterized as tortious in itself or as exhibiting a separate identity or interest. This is certainly consistent with the

passage from *ScotiaMcLeod*, at p. 491 cited above to the effect that "[i]n the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers", cases where an officer or director of a corporation will be held personally liable are rare.

[98] It is also consistent with other cases where courts have found fraud by a director or officer can lead to personal liability without the need to determine whether the conduct was tortious in itself or exhibited a separate identity or interest. In effect, courts in Canada have recognized fraud as a basis for imposing personal liability on individual actors within a corporation: see e.g., *XY, LLC v. Zhu*, 2013 BCCA 352, 366 D.L.R. (4th) 443, at paras. 74, 80; *Driving Force Inc v. I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25, 37 Alta. L.R. (7th) 218, at para. 66. Other jurisdictions have followed this approach as well: see e.g., *Contex Drouzhba Ltd. v. Wiseman*, [2007] EWCA Civ 1201. Direct participation in fraud is therefore a standalone basis for directors' and officers' personal liability.

[99] In effect, where a director or officer personally engages in fraud, even on behalf of the corporation, the director – to use the language of *ScotiaMcLeod* – makes the fraud their own.

c. Analysis on the issue of Mr. Caridi's personal liability

[100] In the context of his appeal, Mr. Caridi relies on decisions from the Court of King's Bench of Alberta to suggest that the law on personal liability for officers and directors is unclear and that it requires clarification. For example, in *Axiom Foreign Exchange International v. Rudiger Marketing Ltd.*, 2024 ABKB 224, 68 Alta L.R. (7th) 46, at para. 67, Feasby J. stated that "Canadian law concerning the liability of corporate agents in tort has been a mess for at least a quarter century." Feasby J. goes on, at para. 68, to state that the confusion arises from what he perceives as discrepancies between this court's decision in *ScotiaMcLeod* and in *AGDA Systems*:

> The problem is rooted in two arguably contradictory decisions of the Ontario Court of Appeal from the 1990s: *ScotiaMcLeod Inc v Peoples Jewellers Ltd*, 1995 CanLII 1301 (ON CA) ["*ScotiaMcLeod*"]and *ADGA Systems International Ltd v Valcom Ltd*,1999 CanLII 1527 (ON CA) ["*ADGA*"]. *ScotiaMcLeod* is widely viewed to stand for the proposition that directors and officers will only be personally liable if they are not acting in the best interests of the corporation. *ADGA* is typically understood to stand for the proposition that directors and officers of a corporation are always liable for their own torts, even when acting in the best interests of the corporation. Most subsequent cases concerning corporate agents' liability in tort choose to follow either *ScotiaMcLeod* or *ADGA* or their respective progeny.

[101] Mr. Caridi urges this court to clarify the law. He suggests that the court could adopt the approach of the Court of Appeal for Alberta in *Hall v. Stewart*, 2019

ABCA 98, 82 Alta. L.R. (6th) 233, at para. 18, which sets out a list of factors that the courts have adopted in assessing whether personal liability should be imposed on officers and directors of a corporation. Notably, these factors include "[t]he nature of the tort, and particularly whether it was an intentional tort".

[102] In this case, Mr. Caridi is not facing liability for fraud merely because of his status as a director. Instead, while he was a director, Mr. Caridi made fraudulent misrepresentations to CHU on TOKI's behalf. Mr. Caridi himself made the misrepresentations, and Mr. Caridi himself was reckless as to their truth. In these circumstances, where case law has consistently recognized directors' liability for intentional torts, including civil fraud, and where Mr. Caridi's own conduct satisfies all the elements of the tort of civil fraud, the trial judge committed no error in concluding that Mr. Caridi should be held personally liable.

[103] In the circumstances, I agree with CHU that this case does not require the court to clarify the scope of personal liability for officers and directors of corporations more generally, specifically with respect to the scope of conduct "tortious in itself" or the scope of conduct that exhibits a "separate identity or interest". It is also not necessary to address the issue of whether there is any inconsistency between this court's decisions in *ScotiaMcLoed* and *AGDA Systems*. There is no ambiguity or uncertainty in the law that applies in the circumstances of this case. There may be other cases where there is uncertainty

regarding whether the tortious conduct of an officer or director of a corporation should lead to personal liability. At that point, it may be necessary to clarify or develop the law. However, the common law is meant to develop incrementally in response to new and evolving circumstances: *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205, 145 O.R. (3d) 494, at para. 20. Mr. Caridi's fraudulent conduct does not require this court to resolve any unsettled issues.

[104] Mr. Caridi committed civil fraud, and he should therefore be held personally liable for CHU's losses.

D. DISPOSITION

[105] I would dismiss the appeal, including the costs appeal, and order costs to the respondent in the agreed-on sum of $20,000, all inclusive.

Released: March 24, 2026 "E.E.G."

"L. Favreau J.A."
"I agree. E.E. Gillese J.A."
"I agree. M. Rahman J.A."