



Transactions by “Empty” Special Purpose Vehicles and Directors’ Liability



The Netherlands, April 2017

Speed Read

In general, directors' liability is limited to cases where a managing director can be made a sufficiently serious personal reprimand. Recent case law shows that directors' liability can also occur in transactions where "empty" special purpose vehicles ("SPVs") are used.

Hanzevast Beleggingen / G4 (HR March 24, 2017, ECLI:NL:HR 2017:484)

In this case Hanzevast Beleggingen ("Hanzevast") incorporated an SPV called Hanzevast III ("HZ") to purchase commercial real estate in a project developed by G4.

HZ was an empty company – it did not own any assets. The incorporator Hanzevast acted as the managing director of HZ.

HZ and G4 entered into a purchase agreement whereby HZ would

acquire commercial real estate from G4. After long negotiations HZ decided to cancel the purchase agreement with G4 before the transfer of the commercial property occurred. G4 rejected the cancellation and filed a claim for damages against HZ as well as its managing director Hanzevast. The reason why G4 held the managing director Hanzevast liable was obvious: contrary to HZ, Hanzevast did own numerous assets and would provide recourse in case G4's claims would be awarded by the court.

The Court of Appeal ruled that under the purchase agreement G4 could rely on Hanzevast to provide sufficient financial means to HZ, so it could pay the purchase price at the transfer of the commercial property. Hanzevast, as managing director of HZ, effected or allowed that HZ could not meet these financial obligations towards G4, while it also knew or reasonably should have understood that HZ would not provide any recourse for

the claim of G4. For that reason, Hanzevast was (seriously and personally) culpable and therefore considered liable towards G4.

Conclusion

The case of Hanzevast and G4 shows that managing directors of SPVs that are created solely for a specific contemplated transaction and that do not have any assets need to be cautious when entering into agreements on behalf of the SPV, in order to avoid directors' liability.



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