When Can a Director Be Personally Liable for the Company's Debt?

A recent Thai Supreme Court decision on bad faith, corporate control and the limits of the corporate shield

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In corporate disputes, it is not unusual to see a director named as a second defendant alongside the company. There is an obvious practical reason for this: once an individual faces potential personal exposure, the dispute becomes more immediate and the commercial and settlement pressure may increase.

But there has always been legal difficulty with that approach.

The classic defence is straightforward: **the company is a separate legal entity**. Running a company is not the same as owning it, and neither position, by itself, makes an individual responsible for the company's debts.

Recent Supreme Court Judgment No. 3413/2569 (2026) makes that discussion considerably more interesting. The Court held a **sole director** jointly liable with his company for damages arising from a contract to which only the company was a party.

The real question is not simply why the company was liable, but **why the Court was prepared to go one step further and impose liability on the director personally**.

> The answer, in our view, lies principally in **bad faith**.

Importantly, the bad faith did not arise merely because the individual was the sole director or because he controlled the company. It arose from the underlying conduct: in this case, substantial departures from the agreed construction drawings and specifications without the required approval, in circumstances where the changes reduced labour and material costs.

WC&P reviewed the full judgment alongside the company's shareholder and financial records. Taken together, they provide a closer picture of both the reasoning and its limits.

What happened?

The claimant, a manufacturing company, engaged a contractor to construct a warehouse and carry out additional works. The second defendant was the contractor's sole director and sole authorised signatory.

After eight instalments had been delivered and paid for, the claimant discovered significant departures from the agreed design. Piles had been cut, foundations moved, and floor slabs and reinforcement altered, affecting the building's structural integrity and load-bearing capacity.

The claimant terminated the contract and sued both the company and its director.

The Court of First Instance dismissed the claim. The Court of Appeal Region 1 held the contractor liable but dismissed the claim against the director.

The Supreme Court went further.

It upheld the finding of breach because the changes had not received the claimant's written approval. It also rejected the argument that the claimant should bear part of the loss. The claimant was entitled to expect honest performance from a professional contractor, rather than substantial departures from the agreed design to reduce labour and material costs.

That finding is important because it sets the foundation for the director's personal liability.

> The bad faith at the heart of the case was the unauthorised departure from the agreed drawings and specifications for commercial advantage.

The next question was whether the person controlling that conduct could still rely on the company as a shield.

Why did the corporate shield not protect the director?

Ordinarily, a Thai limited company is a juristic person separate from those who own or manage it. Directors acting within their authority bind the company, not themselves.

In this case, however, the Supreme Court looked beyond the director's formal position.

It emphasised that he was the sole director and sole authorised signatory. The Court considered that he shared the company's interests and exercised control as though he owned the business. It further reasoned that the company was put forward as the contracting party while the director stood to enjoy the profits, leaving losses and liabilities with the company.

The Court regarded the overall conduct as unfair to the claimant and as an exercise of rights in bad faith. The director could therefore not rely on Section 1167 of the Civil and Commercial Code merely by saying that he had acted on behalf of the company.

Both the company and the director were held jointly liable.

In practical terms, the result resembles piercing the corporate veil: the company did not protect the individual behind it.

The legal route, however, was more specific. The Court did not disregard the company's separate legal personality altogether. Rather, **having found bad faith, it refused to allow the director to rely on the agency relationship as a shield against personal liability**.

That distinction matters.

Bad faith—not sole directorship—is the real issue

The judgment should not be read as meaning that being a sole director is itself dangerous.

Sole directorship tells us who controls the company. It does not necessarily tell us who owns it, who receives the economic benefit or whether that person has acted in bad faith. Management control and economic ownership are not the same thing.

This matters because the Court referred to the director as sharing the company's interests and benefiting from the upside of the business.

The list of shareholders we found adds useful context. Those records reveal an important piece of context that does not appear in the judgment: the director held virtually all of the company's shares throughout the relevant period. In 2017, he held 299,998 out of 300,000 shares, and by 2026, he held 499,999 out of 500,000 shares. In practical terms, this was overwhelmingly an owner-managed company. That additional context matters. Sole directorship alone does not necessarily establish ownership or personal economic benefit, but WC&P's review shows that, in this particular case, the director was not merely managing the company; he was also effectively its ultimate shareholder.

This makes the Supreme Court's reasoning on control, benefit and personal liability considerably easier to understand, although the judgment itself did not rely on that shareholder record.

More importantly, **majority ownership was not itself the bad faith, nor was sole directorship**. The bad faith arose from the underlying contractual conduct. Control and ownership helped explain why the Court was prepared to look beyond the company and impose personal liability on the individual behind it.

What about the company's financial position?

The judgment also referred to the possibility that the company might not have sufficient assets to satisfy the claim. It did not, however, find that the company was insolvent.

The later financial records reviewed by WC&P show positive shareholders' equity, with net assets exceeding the amount awarded.

Those records do not establish the company's liquidity at the relevant time, nor do they form part of the Court's stated reasoning. But they do suggest that this should not simply be understood as a case where the Court looked behind the company because it had no money.

The focus was broader:

The bad-faith conduct, the director's control and the attempt to leave the consequences of that conduct with the corporate entity.

Should directors now expect to be sued personally more often?

Probably, yes.

In commercial litigation, joining the director alongside the company has long been used to increase litigation and settlement pressure. Judgment No. 3413/2569 gives claimants an additional reason to examine whether the director should be joined, particularly where the director controlled the company and was personally involved in the conduct complained of.

But directors should not panic.

The judgment does **not** say that every sole director becomes a guarantor of the company's obligations. Nor does it say that every controlling shareholder becomes personally liable whenever the company breaches a contract.

The critical feature remains **bad faith.**

If a company simply fails commercially, makes a genuine mistake or breaches a contract without bad-faith conduct attributable to the director, this judgment should not automatically convert corporate liability into personal liability.

The position is very different where a director personally controls or participates in conduct designed to depart from the bargain, obtain an improper commercial advantage and then rely on the company to carry the resulting liability.

For Claimants:
The judgment makes it more worthwhile to investigate ownership, control, personal involvement and, most importantly, **the conduct said to constitute bad faith.**

For Directors:
The lesson is simpler: **do not assume that the company will automatically insulate you where you personally direct or participate in bad-faith conduct**.

Bad faith still has to be proved

There is an important counterweight for directors. Section 6 of the Civil and Commercial Code presumes that every person acts in good faith. Bad faith therefore cannot simply be inferred from a breach of contract, sole directorship or majority ownership. A claimant must produce evidence sufficient to displace that presumption.

That is where experienced litigation advocacy becomes critical. In practice, the evidence is rarely contained in a single document. Revised drawings, bills of quantities, approval records, correspondence, meeting minutes, payment documents and witness testimony may each tell only part of the story. The task is to connect those facts into a coherent case theory: **who made the decision, what that person knew, why the change was made and who benefited.**

Cross-examination can be decisive. Careful questioning tests whether the explanation offered at trial is consistent with the contemporaneous documents and can expose the difference between an ordinary commercial mistake and deliberate conduct amounting to bad faith.

This is where WC&P's litigation experience is particularly relevant.

Establishing or defending an allegation of bad faith requires more than identifying the legal principle. It requires early evidence mapping, careful witness preparation and disciplined cross-examination capable of linking the director personally to the conduct in issue. The objective is not simply to show that the company breached its contract, but to prove - or resist the allegation - that the director's own conduct crossed the line into bad faith.

Why does this matter for corporate and shareholder disputes?

Although Judgment No. 3413/2569 arose from a construction contract, its reasoning is also relevant to corporate and shareholder disputes.

Those cases frequently involve allegations that a controlling individual has used the company for personal benefit, shifted risks onto the company or other shareholders, or relied on the corporate structure to avoid responsibility.

The judgment does not create a shortcut to personal liability. But it highlights three questions that should be kept separate:

- **Who controls the company?**
- **Who benefits economically?**
- **And what exactly was the bad-faith conduct?**

Control may explain who was able to cause the company to act. Ownership may explain who ultimately benefited. But neither, by itself, establishes bad faith.

> The analysis must ultimately return to **what the individual actually caused the company to do**.

The line to remember:

Judgment No. 3413/2569 makes it more attractive for claimants to consider suing the director alongside the company—but it does not make personal liability automatic.

The corporate veil remains an important protection for legitimate business activity.

What this judgment demonstrates is that, where a director personally controls or participates in bad-faith conduct, the Court may be unwilling to allow the company to become the shield behind which that conduct is placed. But bad faith must still be established on the evidence.

> **Control may identify the person behind the company.**
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> **Bad faith must still be proved - and in contested cases, how the evidence is developed and tested can determine whether the corporate shield holds.**

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