Subsidiary Quiz



Is a Corporation Liable for the Payroll Debts of Its Subsidiary?

SITUATION

ParentCo, a non-profit, hires a consultant named Tess Toob to sell medical products in Saskatchewan. About a year later, Tess begins selling the same products in other provinces through SubCo, ParentCo's for-profit subsidiary. Tess refuses to sign SubCo's employment agreement because it's too restrictive. Tess's supervisor oversees sales for both companies and never says a word about the unsigned agreement. Meanwhile, Penny Wise , who serves as CFO for both companies, prepares an overall compensation plan, which includes projections for her sales inside and outside Saskatchewan. When Tess's commission becomes due, SubCo refuses to pay, arguing that Tess never signed an employment agreement with the company. Tess sues ParentCo for payment.

QUESTION

Is ParentCo liable for the commission SubCo owes Tess?

A. No because ParentCo and SubCo are separate and distinct entities and each is solely responsible for its own payroll liabilities.

B. Yes because as the parent of SubCo, ParentCo is automatically liable for SubCo's liabilities.

C. Yes because ParentCo and SubCo's shared management makes both companies jointly and severally liable for the other's payroll liabilities.

D. No, because Tess performed work for ParentCo and SubCo in different provinces.

C. ParentCo would likely be jointly and severally liable for SubCo's payroll liabilities because the financial activities and management of the 2 companies is so closely intertwined.

EXPLANATION

This scenario, which comes from an actual case in Saskatchewan, illustrates how related companies may be liable for the payroll debts of each other. The Director of Labour Standards ruled that the subsidiary and parent had joint and several liability for the consultant's wages. In other words, the consultant could recover all or part

of the debt from either company. An appeals court upheld the ruling. Holding the parent company jointly and severally liable for the subsidiary's debt to the consultant was appropriate, the court reasoned, because under Saskatchewan law, the parent company exercised control and direction over the consultant while he did work on behalf of the subsidiary [*Group Medical Services v. Director, Labour Standards Branch (Government of Saskatchewan)*].

Even though the case is from Saskatchewan, the same payroll liability principles apply in all other parts of Canada. The moral: Multiple entities may be responsible for the payroll liabilities of a related company depending on how closely their financial operations are integrated with and how much control they exercise over the company that incurs the debt.

WHY WRONG ANSWERS ARE WRONG

A is wrong, even though it's true that in general, corporations are solely responsible for their own debts and not those of their subsidiaries. But the parent and the subsidiary in this case were practically the same entity: they used the same supervisors to oversee sales; the same CFO also prepared the compensation plans for both companies. This integration of management and financial operations is tight enough to make ParentCo jointly and severally liable for SubCo's payroll obligations.

B is wrong because in most cases, parent corporations are not responsible for the debts of their subsidiaries. As long as they're run as truly separate companies, each will be solely liable for its own debts.

D is wrong because territorial borders don't matter when it comes to a corporation's liability to pay its workers. Since ParentCo and SubCo were operating as the same entity, each was responsible for the other's payroll regardless of where the services were performed.