The managing director of a franchisor company incorporated with limited liability has been held personally liable for making negligent misstatements to a prospective franchisee in *Williams v Natural Life Health Foods Ltd* [1997] BCC 605. In this note, I shall explain the facts of the case and summarise the law. I shall then analyse the implications of the decision to the franchise community.

**THE FACTS**

In October 1987, the plaintiffs, David Williams and Christine Reid, opened a health food shop in Rugby. They traded under franchise from Natural Life Health Foods Ltd (Natural Life). They had decided to go ahead because of a franchised health food business in Salisbury but this was his own shop and it did not belong to Natural Life. When the financial projections were given to the plaintiffs, Natural Life had no other franchisees with any relevant experience to provide a basis for the projections.

The total damages awarded to the plaintiffs were £149,854.15 which included interest of £65,213.15.

**THE APPEAL**

Natural Life had persuaded the plaintiffs to enter into, first, the franchise agreement with Natural Life and, secondly, a lease for a health food shop in Rugby relying on financial projections produced by Natural Life. The question for the Court of Appeal was whether Richard Mistlin was personally liable for those negligent misstatements.

The relevant law falls into two categories: negligent misstatements and the personal liability of a company director. There is little to say about the issue of negligent misstatements so far as the company director is concerned. Natural Life was held to be in breach of its duty of care to the plaintiffs under the principles laid down in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 and *Esso Petroleum Co Ltd v Mardon* (1976) 1 QB 801. *Hedley Byrne* applies to negligent statements of facts. *Esso Petroleum Co Ltd v Mardon* further extends the doctrine to negligent forecasts.

On the issue of personal liability of directors, a number of authorities were considered. Giving the first of the three appeal judgments, Hirst LJ noted that a company director is not usually liable for negligent misstatements made by his company. *Wah Tat Bank v Chan Cheng Kum* [1975] AC 507) and could only be fixed with personal liability if he assumed personal responsibility for negligent misstatements made on behalf of a company: *Performing Rights’ Society v Gryn Theatrical Syndicate Ltd* (1924) 1 KB 1. Hirst LJ emphasised that, particularly in the case of a one-man company, the court must take care to avoid nullifying the protection a company director would otherwise have resulting from the incorporation as a company *Salomon v A Saloman & Co Ltd* [1897] AC 22. But, it was held, if some special circumstances can be established, a plaintiff can, even in the case of a one-man company, pierce the veil of incorporation and establish personal liability on the part of a director: *Fantline Shipping Corp v Admon* [1975] QB 180.

**SPECIAL CIRCUMSTANCES**

It is a question of fact and degree whether special circumstances for this purpose can be established in any case. In this case, the court decided that the sales projections were based on the personal abilities of Richard Mistlin and not on his experience as managing director of Natural Life, the franchisor company. In other words, Natural Life was selling the experience and expertise obtained by Richard Mistlin in his own Salisbury business. Giving the leading judgment, Hirst LJ stated:

"From what then was this knowledge and experience derived? Not, be it emphasised, from any company activity, since none of the other franchised shops had accumulated any experience, but rather from Mr Mistlin’s personal experience in the Salisbury shop ("the..."
A common phenomenon in the modern offshore trust world is the so-called blind trust. Typically, a nominal trust fund – say £10 – is declared by a professional offshore trustee to be held on the terms of a lengthy and sophisticated trust deed. In substance, this amounts to discretionary trusts of income and capital, during the longest period allowed by the governing law, for the benefit of a defined class of objects. Again typically this class at the outset contains only one or two members. They will be charities of worldwide reputation, such as the International Red Cross.

The trust deed also confers power on the trustee to add further persons to the class. Some time after the original declaration of trust, the settlor decants substantial wealth into the hands of the trustee, on the same trusts. But, because the original deed is a unilateral declaration of trust by the trustee, the settlor and the settlor’s legal identity of this real settlor nowhere appears. Later still, the trustee – at the ‘suggestion’ of the settlor – appoints persons, who just happen to be his or her relatives or even himself or herself, into the class of objects, and then – surprise, surprise – the trustee appoints significant wealth out of the trust fund to them.

Such trusts have been known in the offshore world for years (see eg Re Gea Settlement, 17 March 1992, Royal Court of Jersey). Those who promote such trusts say they are cheap to set up, flexible, and may prevent intended beneficiaries having too many rights until appointed into the class (compare West v Lazard Brothers & Co (Jersey) Limited 1987–88 JLR N-22). All true. They are also a godsend to the shifty, the secretive and the downright fraudulent. And in any event the bit about charity is almost certainly a sham. In bad cases the whole thing will be.