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Piercing the Corporate Veil – the Supreme Court Rules Again

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In *Prest v. Petrodel Resources Ltd*¹ the Supreme Court confirmed that the separate legal personality of a company cannot be disregarded unless the company is being abused for a purpose that is in some relevant respect improper. Specifically, the Court concluded that the separate legal personality of a company should only be disregarded where “*a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.*”

Background

This decision arose out of proceedings for ancillary relief under the Matrimonial Causes Act 1973 (the **1973 Act**), brought by Mrs. Prest following her divorce from Mr. Prest. The dispute concerned the position of a number of companies (the **Companies**) belonging to a group found to be wholly owned and controlled by Mr. Prest. The Companies were joined as additional respondents to Mrs. Prest’s application for ancillary relief.

One of the Companies, Petrodel Resources Limited (**Petrodel**), was the legal owner of the matrimonial home and of five other residential properties. Another of the Companies, Vermont Petroleum Ltd (**Vermont**), was the legal owner of two additional properties (collectively, the **Properties**).

Under section 24(1)(a) of the 1973 Act, a court has the power to order that “a party to the marriage shall transfer to the other party... such property as may be so specified, being property to which the first mentioned party is entitled, either in possession or reversion”. The court at first instance had to consider whether it had the power to order the transfer of the Properties to Mrs. Prest, given that the Properties legally belonged not to Mr. Prest but to the Companies.

In the High Court:

At first instance, the court found that the matrimonial home was held for Mr. Prest beneficially. The court ordered Mr. Prest to convey the matrimonial home to Mrs. Prest and to make a lump sum payment to her. The court ordered Mr. Prest to procure the transfer of the Properties in partial satisfaction of the lump sum order, and directed Petrodel and Vermont to execute the documents necessary to give effect to these transfers.

The court found no general principle of law which entitled it in this case to reach Petrodel and Vermont's assets by piercing the corporate veil; the separate legal personality of each of the Companies could not be disregarded unless they were being abused for a purpose that was in some relevant respect improper. The court found no relevant impropriety.

However, the court found that it had a special and wider jurisdiction to pierce the corporate veil in applications for ancillary relief under the 1973 Act.

Petrodel and Vermont appealed against the orders made against them.

In the Court of Appeal:

The Court of Appeal held that the Companies' assets ought not to be available for distribution under the 1973 Act unless (i) the corporate personalities of the Companies were being abused for a purpose which was in some relevant respect improper; or (ii) it could be shown that an asset legally owned by one of the Companies was held in trust for Mr. Prest.

The Court of Appeal concluded that the High Court had rejected both of these possibilities and therefore ought not to have ordered the transfer of the Properties in satisfaction of Mr. Prest's judgment debt.

Mrs. Prest appealed to the Supreme Court.

In the Supreme Court:

The Supreme Court considered each of the three bases upon which Mrs. Prest might obtain an Order against Petrodel and Vermont for the transfer of the Properties. The Supreme Court held that:

- i. There had been no relevant impropriety and therefore the court was not entitled to pierce the corporate veil under the general law.
- ii. The court could not possibly claim a special and wider jurisdiction to pierce the corporate veil in applications for ancillary relief under the 1973 Act.
- iii. On the evidence, Mr. Prest had at all relevant times been the beneficial owner of the Properties. This finding was the only basis upon which Petrodel and Vermont could be ordered to convey the Properties to Mrs. Prest.

The Supreme Court allowed Mrs. Prest's appeal, declared that Petrodel and Vermont held the Properties on trust for Mr. Prest, and reinstated those parts of the order which directed Petrodel and Vermont to execute the documents necessary to effect the transfer of the Properties.

Conclusion – limited circumstances in which the court will pierce the corporate veil

The Supreme Court concluded that the separate legal personality of a company should only be disregarded where "a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control."

Lord Sumption, in his leading judgment, cited with approval the principles formulated in *Ben Hashem*²:

- i. Ownership and control of the company are not enough to justify piercing the corporate veil.

- ii. The court cannot pierce the corporate veil merely because it is thought to be necessary in the interests of justice.
- iii. The corporate veil can be pierced only if there is some impropriety, which must be linked to the use of the company structure to avoid or conceal liability.
- iv. There must be both control of the company by the wrongdoer(s) and impropriety, that is (mis)use of the company by them as a device or façade to conceal their wrongdoing.
- v. The company may be a façade even though it was not originally incorporated with an deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions.

The Supreme Court agreed that if it is not necessary to pierce the corporate veil, it is inappropriate for the court to do so. It should only do so when all other remedies have proved to be of no assistance.

¹ *Prest v. Petrodel Resources Ltd and others* [2013] UKSC 34

² *Ben Hashem v. Al Shayif* [2008] EWHC 2380 (Fam)