
PIERCING THE CORPORATE VEIL AND ENFORCEMENT – NICOLAS PRICE

In terms of the 'corporate veil' (in other words, the shield behind which individuals sometimes shelter to avoid/evade personal liability) and in order to consider the circumstances in which it can be pierced, it is necessary to understand the general principles that have developed and been applied by the courts.

It should be borne in mind that it is to be expected that in a great many cases the commercial costs and merits involved in pursuing enforcement may outweigh the sums sought many fold, effectively frustrating the claim from the outset.

It is important therefore to remind oneself of the purpose and objective of the claim in all respects, that is to say, the factual, legal and **commercial** merits.

In general terms, the concept of 'the corporate veil' is by no means new and has been around as a general principle since the case of (*Salomon v A Saloman & CO* [1897] AC 22) where the courts maintained their integrity recognizing that companies are separate legal entities and afford protection – save for circumstances where a person obtains an advantage, for example, by fraud, per Denning LJ in (*Lazarus Estates Ltd v Beasley* [1956]).

Be under no illusion, FRAUD is a very heavy burden to prove and the Courts will not entertain any such allegation without good evidence in support. It is not something that should be pleaded lightly. Whilst in certain cases it may be considered that it would be UNFAIR for an individual to take advantage behind a corporate veil, THAT IS NOT ENOUGH.

Although the Chancery Division courts accepted and acknowledged that the *interests of justice* were not enough to pierce the corporate veil, from the 1980's the Family Division took a different approach under the ancillary relief provisions, and made orders against company property 'when the interests of justice so required'.

Prest v Petrodel Resources Limited [2013] UKSC 34

The case arose out of ancillary relief proceedings. Property was divided and many of the assets were held in property. Mr. Prest argued that as the companies holding the properties were not being used for any impropriety, they could not be touched by reason of 'the corporate veil'. This was overcome at first instance by Moylan J. applying the relevant matrimonial provisions. This was overturned on appeal on the ground (amongst other things) that the company was not being abused for an improper purpose.

The matter was appealed further to the Supreme Court, in which Lord Sumpton JSC outlined the developments of the law in the area of the corporate veil, and the generally established principle that a court may be justified in piercing the corporate veil if a company's personality is being abused.



But what nature of impropriety is required in order for the veil to be pierced?

In this connection, Lord Sumpton JSC sought to characterize two principles:

The Concealment Principle: This does not involve piercing the veil but 'lifting' it. However, where the identity of the real actors/individuals is legally relevant, and one or a number of companies affectively conceal their identity, a Court will look behind that company or those companies to discover the facts and identity of those involved.

The Evasion Principle: "It is that a Court may disregard the corporate veil and pierce it if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company (under his control) is interposed so that the separate legal personality of the company will defeat the right of frustrate its enforcement."

On this basis, Mrs Prest could not succeed against Mr Prest by piercing the corporate veil. Mr Prest had not been under an existing legal obligation that his companies had sought to frustrate or avoid so the evasion principle did not apply.

Despite Lord Sumpton JSC's judgment, and there being broad agreement between the judges as to the general thrust of the approach, some reservation was made about the extent to which the principles of piercing the veil could be defined. There have since been numerous cases where attempts have been made to extend the principles, although these have not been straightforward, and indeed there has been some suggestion that compartmentalizing cases into principles of 'concealment' and 'evasion' is not always possible. (Lady Hale)

Conclusions:

- The clear distinction as between corporate and personal liabilities is well established in (Saloman)
- The primacy of the separation between personal and corporate liabilities can be overcome in cases of FRAUD although this is not a prerequisite for the principle of piercing the veil to be made out
- The Courts should distinguish between 'lifting' the veil, for the purposes of identifying the real actors, and 'piercing' the veil "where a person is under an existing legal obligation(s) or liability or subject to a legal restriction which he deliberately evades or whose enforcement he deliberately evades by interposing a company under his control"
- Piercing the veil is a matter of last resort



Enforcement by the Employment Tribunal

As referred to in the earlier paper, **an Employment Tribunal has no authority to enforce its own decisions.**

Unsuccessful non-litigious attempts to recover from the paying party sums determined by a tribunal may then require legal enforcement following the filing of the tribunal decision with the County Court.

The decision filed will be treated as a County Court judgment and can be enforced in the usual way.

NICHOLAS PRICE

6th September 2017

St John's Buildings
24a – 28 St John Street
Manchester
M3 4DJ