

## **UK SUPREME COURT RULES ON “PIERCING THE CORPORATE VEIL”**

*Prest v Petrodel Resources Limited & Others* ( [2013] UKSC 34

### **Introduction**

The Supreme Court, in *Prest v Petrodel Resources Limited & Others* [2013] UKSC 34, sitting as a panel of seven justices, has specified the circumstances in which it is permissible to pierce the corporate veil. Piercing the corporate veil is the process by which the Court treats the rights and liabilities of a corporation as those of its shareholders.

### **Background**

The appeal concerned financial remedies arising out of a divorce between Michael Prest, a Nigerian oil tycoon and his wife, Yasim. Mr Prest wholly owned or controlled a number of companies belonging to the Petrodel Group. Among the assets of two of these companies was the legal ownership of seven residential properties. The question on appeal was whether or not, and if so, on what basis, these seven properties could be transferred to Mrs Prest under section 24(1)(a) of the Matrimonial Causes Act 1973 (“the 1973 Act”). Section 24(1)(a) stipulates that the court may order that “a party to a 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.”

In the High Court, Moylan J., ruled that there was no general principle permitting the Court to pierce the corporate veil, but that the Court did have jurisdiction to do so under section 24(1)(a) of the 1973 Act.

The Judge’s reasoning was rejected by a majority in the Court of Appeal who held that no such special jurisdiction existed under section 24(1)(a).

### **Judgment**

The Supreme Court unanimously allowed the appeal by Mrs Prest, holding that whilst there existed no jurisdiction to pierce the corporate veil in the present case, either under the general principle, or under section 24(1)(a), the seven properties in question should nonetheless be treated as being held on a resulting trust for the husband by his companies such as to be property to which he “is entitled either in possession or reversion.”

In the course of delivering the judgment of the Court, Lord Sumption stated:

*“...there is a limited principle of English law which applies when 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. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company’s separate legal personality.”*

However, Lord Sumption went on to state that, in the present case, these circumstances did not exist, since Mr Prest:

*“...was neither concealing nor evading any legal obligation owed to his wife. Nor, more generally, was he concealing or evading the law relating to the distribution of assets of a marriage upon its dissolution.”*

This coupled with their Lordships’ rejection of the existence of a special jurisdiction to pierce the veil under section 24(1), led them to grant the wife relief on the alternate ground that the properties in dispute were held on a resulting trust by the husband’s companies such that they could be counted as part of the matrimonial estate.

The *Petrodel* decision has already been referred to in *Antonio Gramsci Shipping Corp & Ors. v. Aviares Lembergs [2013] EWCA Civ 730* which cited it in support of the proposition that the current law of England and Wales permitted piercing of the corporate veil only when a person was under an existing legal obligation compliance with which he deliberately evaded or frustrated by interposing a company under his control.

### **Concluding Observations**

The decision in *Petrodel* has already given rise to a great deal of commentary in a very short space of time. This is a good indication of the importance it is likely to obtain in clarifying a particularly controversial area of law.

For access to the judgment, see

<http://www.bailii.org/ew/cases/EWCA/Civ/2011/1605.html>

8<sup>th</sup> July 2013