Prest (Appellant) v Petrodel Resources Limited and Others (Respondents) [2013] UKSC 34 On appeal…

Insights - 13/06/2013

Prest (Appellant) v Petrodel Resources Limited & Others (Respondents) [2013] UKSC 34 On appeal from: [2012] EWCA Civ 1395

On 12 June 2013, the English Supreme Court handed down a unanimous judgment which discussed the ability of the English Family Division to treat the assets of companies wholly owned by one party to a divorce as available to that party for the purposes of ancillary relief.

The Court confirmed that there is a principle of English law which enables a court in very limited circumstances to pierce the corporate veil, although there was not unanimity among their Lordships regarding the width of the test to be applied. In any event, the Court unanimously considered that those circumstances were not present in this case. The Court also confirmed that the English Matrimonial Causes Act 1973 did not give the Court any power to cut across the statutory scheme of company and insolvency law. However, on the facts of this case, the Court found that the properties were held by the companies on a resulting trust by virtue of the particular circumstances in which the properties came to be vested in them.

The Facts

This appeal arose out of proceedings for financial remedies following a divorce between Michael and Yasmin Prest. The appeal concerned the position of a number of companies belonging to the Petrodel Group which were assumed to be wholly owned and controlled by Michael Prest, the husband (although neither Mr Prest nor the companies had complied with orders for disclosure sufficient to enable the court to fully ascertain the position). One of the companies was the legal owner of five residential properties in the UK and another was the legal owner of two more. The question on appeal was whether the court has power to order the transfer of these seven properties to the wife given that they legally belong not to the husband but to his companies.

Under Section 24(1)(a) of the Matrimonial Causes Act 1973 ("the 1973 Act"), the court may 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." In the High Court, Moylan J had concluded that there was no general principle that entitled him to reach the companies' assets by piercing the corporate veil. He nevertheless concluded that a wider jurisdiction to pierce the corporate veil was available under section 24 of the 1973 Act. In the Court of Appeal, three of the companies challenged the decision on the ground that there was no jurisdiction to order their property to be conveyed to the wife. The majority in the Court of Appeal agreed and criticised the practice of the Family Division of treating assets of companies substantially owed by one party to a marriage as available for distribution under section 24 of the 1973 Act.

Extracts of the Supreme Court's published summaries of the reasons for the judgment follow below, and a more detailed consideration of this judgment, the discussion of the circumstances in which the corporate veil may be pierced, and the reasons why a resulting trust was found to exist in this case, will follow.

Judgement

"The Supreme Court unanimously allows the appeal by Yasmin Prest and declares that the seven disputed properties vested in the companies are held on trust for the husband on the ground (which was not considered by the courts below) that, in the particular circumstances of the case, the properties were held by the husband's companies on a resulting trust for the husband, and were accordingly "property to which the [husband] is entitled, either in possession or reversion".

After surveying the authorities, the Court holds that there is a principle of English law which enables a court in very limited circumstances to pierce the corporate veil. It 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 but only for the purpose of depriving the company or its controller of the advantage which they would otherwise have obtained by the company's separate legal personality. In most cases the facts necessary to establish this will disclose a legal relationship between the company and its controller giving rise to legal or equitable rights of the controller over the company's property, thus making it unnecessary to pierce the veil. In these cases, there is no public policy imperative justifying piercing the corporate veil. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is consistent with authority and long-standing principles of legal policy. The principle has no application in the present case because the husband's actions did not evade or frustrate any legal obligation to his wife, nor was he concealing or evading the law in relation to the distribution of assets of the marriage upon its dissolution. Some of the concurring judgments reserve the possibility of a somewhat wider test, but not in respects which affect its application to the present case.

The Court rejects the argument that a broader principle applies in matrimonial proceedings by virtue of section 24(1)(a) of the 1973 Act. The section invokes concepts of the law of property with an established legal meaning which cannot be suspended or taken to mean something different in matrimonial proceedings. Nothing in the statutory history or wording of the 1973 Act suggests otherwise. General words in a statute are not to be read in a manner inconsistent with fundamental principles of law unless this result is required by express words or necessary implication. The trial judge's reasoning cut across the statutory scheme of company and insolvency law which are essential for protecting those dealing with companies.

It follows that the only basis on which the companies could be ordered to convey properties to the wife is that they belong beneficially to the husband, by virtue of the particular circumstances in which the properties came to be vested in them. After examining the relevant findings about the acquisition of the seven disputed properties, the Court finds that the most plausible inference from the known facts was that each of the properties was held on resulting trust by the companies for the husband. The trial judge found that the husband had deliberately sought to conceal the fact in his evidence and failed to comply with court orders with particular regard to disclosing evidence. Adverse influences could therefore be drawn against him. The Court inferred that the reason for the companies' failure to co-operate was to protect the properties, which suggested that proper disclosure would reveal them to beneficially owned by the husband . It followed that there was no reliable evidence to rebut the most plausible inference from the facts."

Jersey Law

The Jersey Courts have tended to follow the English law regarding the circumstances in which the Court may pierce the corporate veil of a company, and so the discussion of the test to be applied will be of direct relevance to Jersey practitioners. The same is true regarding the circumstances in which a resulting trust arises.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

Meet the Author

Edward Mackereth

Global Managing Partner

Jersey

E: edward.mackereth@ogier.com

T: +44 1534 514320

Key Contacts

Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: +44 1534 514318

Related Services

Dispute Resolution

Private Wealth

Related Sectors

Trusts Advisory Group