



# Scandic Journal of Advanced Research and Reviews

ISSN: 2703-965X CODEN (USA): SJARCA

Cross Ref DOI: [dx.doi.org/10.55966/sjarr](https://doi.org/10.55966/sjarr)

Journal homepage: [www.sjarr.com](http://www.sjarr.com)

## English Judicial Approach towards Piercing the Corporate Veil after *Prest v Petrodel*

Farqaleet Khokhar<sup>1</sup>

1, Legal Practitioner/Gold Medallist; University Gillani Law College; Bahauddin Zakariya University, Pakistan

Email: [farqaleet.khokhar@gmail.com](mailto:farqaleet.khokhar@gmail.com)

Scandic Journal of Advanced Research and Reviews, 2023, 4(02), 038–045

Article DOI: <https://doi.org/10.55966/sjarr.2023.4.2.0065>

---

### Abstract

The application of the evasion principle by Lord Sumption in *Petrodel v Prest* is critically inspected and investigated to highlight how the doctrine of piercing the corporate veil has been applied by the English Courts. To this end, it is pinpointed that the scope of the doctrine has been narrowed, and the courts frequently misinterpreted the evasion principle, as evinced by the recent case *Akhemodova v Akhemdov* and *Wood v Baker*

### 1. Facts of the Case

*Petrodel Resources v Prest*<sup>1</sup> has become an authoritative review of the established doctrine of piercing the corporate veil. Under the corporation veil, the husband held nearly seven properties, and that corporation was known as *Petrodel Resources Ltd*. The company was created by the couple when they had smooth relationships, and due to tax and financial reasons, they were holding these residential properties under the corporation's name. It was stated that, in this case, the piercing of the veil of corporation was impossible.

However, a remedy was given to the wife by the Supreme Court on the ground of trust. This remedy was given because of the particular instance of how the funds got shifted to her because of the special instances in which the residential properties came to be vested in them. After the perusal of the evidence, it was observed that the husband bought the residential properties, but

---

<sup>1</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [43]-[52]

such properties were transferred to the corporation for £1. On the basis of equity presumption that the corporation was not intended to gain any kind of beneficial interest in the residential properties, with the effect that these residential properties were held on a subsequent trust for the other spouse that was the husband. Moreover, the husband had not attended the cross-examination stage of the trial consequently; an adverse inference was drawn against him.

Apparently, it was a just remedy for the aggrieved party, albeit it was problematic. The dangers to the company's creditors envisaged and the remedies alternative to the veil piercing could also be acknowledged. The question is whether they are completely protected when the married couple owns the assets or assets belonging to them, and one of these assets is a nuptial or matrimonial home. Whether in such circumstances, it is significant for the creditors to investigate further.

## 2. Narrowing of the Scope of the Piercing the Corporate Veil Doctrine

The Supreme Court in *Petrodel v Prest*<sup>2</sup> endeavored to eradicate all the ambiguities and uncertainties about the doctrine of piercing the corporate veil. The main purpose of *Prest* was to rejuvenate the doctrine into a more stable, coherent, and principled basis. This segment inspects how the doctrine was applied before the decision of *Prest*, to highlight that *Prest* has narrowed the scope and extent of the common law doctrine, due to which piercing the corporate veil doctrine is still misapplied, which is why uncertainties and ambiguities are part of it.

Various dimensions of the piercing of the corporate veil doctrine were left uncertain in *Prest*. It has not been discussed, in the presence of other remedies, whether the doctrine is frustrated or not. *Prest* highlighted that in *Jones v Lipman*<sup>3</sup> and *Gilford v Horne*,<sup>4</sup> the veil was redundantly pierced. Consequently, Lord Clarke and Lord Neuberger upheld that the doctrine of veil piercing should be applied in such circumstances where all the other legal doctrines and principles are inapplicable. *Prest* remained unsuccessful in describing whether the doctrine of piercing the corporate veil will be invoked outside the ambit of the evasion principle or not.<sup>5</sup>

Very recently, the Supreme Court in *Hurstwood v Rossendale*<sup>6</sup> remained unsuccessful in clarifying the evasion principle that has evolved in *Prest*. Moreover, the Supreme Court has not tried to remove the existing ambiguities in the piercing of the corporate veil doctrine. Lord Sumption, in landmark *Prest*, stated that the veil of the corporation is pierced “where there is a legal right against the person in control of it which exists independently of the company's involvement and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement.” In this situation, the corporate veil will be pierced, and the company's separate legal personality will be ignored. This was called the Evasion Principle by Lord Sumption.

---

<sup>2</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415

<sup>3</sup> *Jones v Lipman* [1962] 1 W.L.R 832; [1962] 1 All E.R. 442

<sup>4</sup> *Gilford Motor Co Ltd v Horne* [1933] Ch 935

<sup>5</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [43]-[52]

<sup>6</sup> *Hurstwood Properties Ltd Rossendale* [2021] UKSC 16; [2021] 2 W.L.R 1125

### 3. Conflict of the Evasion and Concealment Principle

*Gilford Motor v Horne*<sup>7</sup> and *Jones v Lipman* were highlighted.<sup>8</sup> Lord Sumption elucidated that the courts in *Gencor v Dalby*<sup>9</sup> and *Trustor v Smallbone*<sup>10</sup> had not disregarded the established principle of the company's separate legal personality. The courts were only inspecting the existence of the legal relationship between a corporation and an individual. In fact, the principle of concealment was applied by the courts. Undoubtedly, piercing the corporate veil is not a requirement of the concealment principle. Lord Sumption stated that in evasion cases, the company's separate legal personality is being maltreated to avoid the obligation that exists independently of the involvement of the corporation, while in concealment cases, the liability will be incurred by the corporate body.

Surprisingly, Lord Mance and Lord Clarke held that the piercing of the corporate veil doctrine should not be restricted to the evasion principle, albeit it was recognised by Lord Mance that such cases or situations would be rare and very novel. However, Lord Sumption stated that the concealment principle would be applied in every case. Lord Neuberger emphasised that a doctrine is a valuable tool. Lord Walker recommended that piercing the veil of the corporation is not a doctrine and stated that "it is a convenient label to describe the disparate occasions on which some rule of law produced apparent exceptions to the principle of the separate juristic personality of a body corporate reaffirmed by the House of Lords in *Salomon v Salomon*."<sup>11</sup> Lady Hale proposed that all the cases should be categorised into concealment and evasion. Furthermore, the lady suggested that "individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business."

### 4. Aftermaths of the Prest Decision

*R v Sale*<sup>12</sup> discussed the doctrine shortly after the decision of *Prest*. In the case the claimant is the company's director and the only shareholder who offered bribes to a certain employee of a company to get a contract of great value. The confiscation order of £1.9 million was passed against the claimant. The claimant contended that the corporation was a legal business and was not a sham; hence he argued that he could only be liable for the personal benefits he had obtained in the form of bonuses, incentives, and salary. It was held by Lord Justice Treacy that, in this case, the evasion principle would not be applied on the ground that the claimant had not interposed the corporation for the sake of evading the existing legal obligation. Consequently, the concealment principle was invoked because the corporation and the claimant's actions were indivisibly interlinked or interconnected. The court emphasised that there were various situations set out in *R. v Seager*<sup>13</sup> in which the veil of a corporation can be pierced, and it is evinced that "the company's benefit may be said to have benefitted an individual" was still reasonable and authentic law regarding the criminal confiscation proceedings albeit it had to be subjected to

---

<sup>7</sup> *Gilford Motor Co Ltd v Horne* [1933] Ch 935

<sup>8</sup> *Jones v Lipman* [1962] 1 W.L.R 832; [1962] 1 All E.R. 442

<sup>9</sup> *Gencor ACP Ltd V Dalby* [2000] EWHC 1560

<sup>10</sup> *Trustor AB v Smallbone* [2001] 1 W.L.LR 1177; [2002] B.C.C 795

<sup>11</sup> *Salomon v Salomon* [1897] A.C. 22 HL

<sup>12</sup> *R v Sale* [2013] EWCA Crim 1306; [2014] 1 W.L.RL 663

<sup>13</sup> *R v Seager* [2009] EWCA Crim 1303; [2010] 1 W.L.R. 815

*Prest* understanding. Consequently, the court in *R. v Sale* was “entitled to discover the facts which the existence of the corporate structure would otherwise conceal so as properly to identify the claimant’s true benefit.”

*R. v McDowell*<sup>14</sup> authenticated the decision of *Sale*. In this case, the court discussed *Jennings v Crown Prosecutions Service* with the purpose of pinpointing the situations in which it becomes essential to pierce the corporate veil by reason of ascertaining the true position rather than calling it a classic example of a well-defined and well-established concealment principle. Undoubtedly, it is a perfect example of uncertainty and ambiguity surrounding the difference between the concealment principle, in which piercing the veil of the corporation is not necessary, and the evasion principle, in which the veil of the corporation is necessarily pierced.<sup>15</sup>

*R. v Boyle*<sup>16</sup> is another case discussing the application of the piercing the corporate veil doctrine in criminal confiscation proceedings. The main issue in the case was whether or not the company’s assets could be said to be the property of the individuals, which would lead to the application of the the Crime Act 2002 Provisions (2002 Act), making the assets subject to the 2002 Act. The court upheld the stance of the company and said that it is unreasonable to treat the company’s benefit as property belonging to the individuals. Moreover, Lord Justice Davis discussed *Prest* in order to make it relevant to criminal confiscation proceedings. He stated that *Prest* bound the criminal courts and that “the Provision of Crime Act 2002 contains no provision purporting to sanction a departure from ordinary principles of company law.” Furthermore, he concluded by relying on the point of view of Lord Sumption in *Prest* that the concealment principle will be applied in the confiscation proceedings;<sup>7</sup>. Hence, the veil of the corporate body will not be pierced.

*R. v Powell*<sup>17</sup> is another case discussing the confiscation order, and the scope of piercing the corporate veil doctrine was further narrowed by Treacy LJ. The company’s director got a permit to recycle waste. The terms and conditions of the permit were infringed by the company as the company had abandoned the site due to which the site was cleaned by the Defence Ministry which cost nearly £1,125 million. The orders for confiscation were issued against the company’s director as well as he was convicted for many other offences. After the investigation, it was found that the company’s director had benefitted from £60,000 and £30,000 amounts; hence, the confiscation orders were issued, and made for these amounts and the compensation orders were also made approximately £270,000. The company was not charged. In this case, neither the evasion nor the concealment principle was applied. The company’s director had no specific or direct legal obligation independently of any liability incurred by the corporation. Lord Justice Treacy was very observant to stress that “allowing the appeal would risk making every company director liable to the confiscation regime whenever a company broke the criminal law.” However, this approach will certainly not rest well with the *Prest* that the evasion principle will only be applied in rare cases.

---

<sup>14</sup> R v McDowell [2015] EWCA Crim 173; [2015] 2 Cr. APP. R. (S.) 14

<sup>15</sup> Jennings v Crown Prosecutions Service [2005] EWCA Civ 746; [2006] 1 W.L.R. 182

<sup>16</sup> R v Boyle Transport Ltd [2016] EWCA Crim 19; [2016] 4 W.L.R. 63

<sup>17</sup> R. v Powell [2016] EWCA Crim 1043; [2017] Env. L.R. 11

## 5. The Era after *Prest v Petrodel*

The scope of the doctrine was lessened in 2017.<sup>18</sup> In *Persad v Singh*, the appellant was held liable for the breach of covenant and arrears of rent. In this case, the lease was subjected between the distinct company and the claimant. The company was in the control of the appellant. It was held that the distinct company was an avoidance mechanism. Moreover, after perusal of the evidence, the company was pointed out as a one-man show. This similar verdict was upheld in the Appellant Court however, Privy Council overturned it. Lord Neuberger stated that when the claimant received an offer of the drafted lease by the appellant, at that time, the appellant was not evading an existing, legitimate obligation. Calling the company a one-man show was entirely extraneous, and Lord Neuberger highlighted that the court would not pierce the veil of the corporation merely on the ground that the corporation was made to limit personal liability.<sup>19</sup>

In *IBM United Kingdom Holding Ltd v Dalgleish*,<sup>20</sup> the doctrine was briefly discussed in the Appellant Court. the case evolved around pension schemes where the employer owed an imperial duty of good faith towards its employees. The appellant contended that the corporate veil was pierced by the court by imposing such duty on the headquarters of the company, disregarding the separate legal personalities of the companies. The court, however, found no justification for corporate veil piercing. : No duty was owed by the headquarters of the company to pension schemes' members and hence, there was no evasion of any existing lawful obligation. Additionally, the companies were not interposed between the members and the headquarters of the company. IBM, being a single enterprise was also not relevant. Undoubtedly, for the dispensation of justice, the separate legal personalities of the companies could not be ignored.

*Rossendale BC v Hurstwood Properties Ltd*<sup>21</sup> concerned unoccupied properties and schemes for evading the payment of the national non-domestic rates over such properties. The defendant leased the properties for business rates to special purpose vehicle companies, which were later voluntarily liquidated. It was suggested by the local authorities to the court to ignore the fundamental doctrine of separate legal personality and to consider the defendant liable.

It was held by Lord Justice David Richards that the evasion principle is not applicable in the case, rendering piercing the corporate veil impossible. On day by day basis, the liability is imposed on national non-domestic rates, and the legal obligation of paying the rates will only arise where such property is in the ownership of anyone. The liability for the business rates cannot be imposed on the defendant where he granted the properties on lease to special purpose vehicle companies. The evasion principle was not applied as the special purpose vehicle companies were not being used to evade the legal obligation.<sup>22</sup> While Lord Justice Richards did state that the application of the doctrine would be extended beyond the scope of the evasion principle in rare cases, he did not consider tax avoidance schemes as falling under these. The judge added that the company was not used to defraud or to gain a reprehensible advantage.<sup>23</sup>

---

<sup>18</sup> *Persad v Singh* [2017] UKPC 32; [2017] B.C.C. 779

<sup>19</sup> *Persad v Singh* [2017] UKPC 32; [2017] B.C.C. 779 at [20]

<sup>20</sup> *IBM United Kingdom Holdings Ltd v Dalgleish* [2017] EWCA Civ 1212; [2018] I.C.R 1681

<sup>21</sup> *Rossendale BC v Hurstwood Properties Ltd* [2019] EWCA Civ 364; [2019] 1 W.L.R. 4567

<sup>22</sup> *Rossendale BC v Hurstwood Properties Ltd* [2019] EWCA Civ 364; [2019] 1 W.L.R. 4567 at [39]

<sup>23</sup> *Rossendale BC v Hurstwood Properties Ltd* [2019] EWCA Civ 364; [2019] 1 W.L.R. 4567 at [51]

*Rossendale* appealed to the Supreme Court, and the court held that the Local Government Finance Act 1988 would be appropriately interpreted by application of the *Ramsay principle*.<sup>24</sup> In light of this principle, the person entitled to the possession of the property was the defendant, the landlord, as opposed to the special purpose vehicle companies.<sup>25</sup> There was a brief discussion on piercing the veil of a corporation, and the court emphasised the difference:

“between [...] extending the liability of a company to its owner or controller, and the opposite, where the liability of the owner is transferred to the company. While the liability of an individual could be extended to a company, the Court was reluctant as to whether an obligation imposed on a company could be transferred to an individual under the evasion principle. Further, they agreed with the analysis of David Richards LJ in that the liability to pay the rates was incurred by the Special purpose vehicle companies alone, so the defendants were not evading an existing legal obligation. Rather, the mischief arose from the method by which the Special purpose vehicle companies were dissolved and put into liquidation in order to avoid paying the rates.”<sup>26</sup>

No fruitful discussion took place between Lords Leggatt and Briggs on the stability, effectiveness, and soundness of the evasion principle. They agreed with the discussion of Lord Walker in the landmark *Prest* wherein he considered the piercing the corporate veil doctrine as a label that should be attached in cases where the company’s separate legal personality is ignored by the court.<sup>27</sup>

## 6. Exceptions after *Prest*

The courts, after the decision of *Prest*, seem reluctant in piercing the veil of the corporation, but there are a few exceptions as well. In *Wood v Baker*,<sup>28</sup> an injunction for freezing the various corporate defendants’ assets was pleaded for by the trustees of a bankruptcy. It was claimed that the assets were part of the estate of the bankrupt. Moreover, he owned and controlled various other companies. After the perusal of the evidence, it was ascertained that such corporations were not legal freestanding businesses. They were the fronts for bankruptcy. It was stated by Justice Hodge that the veil of the corporation should be pierced so as to evade the legal obligations of disclosure in light of section 333 of the Insolvency Act 1986, the bankrupt tried to interpose such corporations.<sup>29</sup> He also observed that “the evidence suggested the respondent companies were acting as agents or nominees for the purpose of holding assets on his behalf.”<sup>30</sup>

In *Akhmedova v Akhmedov*, the corporate veil was pierced. In this case, the veil of the corporation was pierced on the ground that the defendant was utilizing a corporation to evade the legal obligations.<sup>31</sup> In this case, the claimant was going to receive £350,000,000 from the

---

<sup>24</sup> *WT Ramsay Ltd v Inland Revenue Commissioners* [1982] A.C. 300; [1981] 2 W.L.R. 449

<sup>25</sup> Section 65(1) of Local Government Finance Act 1988

<sup>26</sup> *Hurstwood Properties Ltd v Rossendale BC* [2021] UKSC 16; [2021] 2 W.L.R. 1123 at [72] and [73]

<sup>27</sup> *Hurstwood Properties Ltd v Rossendale BC* [2021] UKSC 16; [2021] 2 W.L.R. 1123 at [71]

<sup>28</sup> *Wood v Baker* [2015] EWHC 2536 (Ch)

<sup>29</sup> *Wood v Baker* [2015] EWHC 2536 at [32]

<sup>30</sup> *Wood v Baker* [2015] EWHC 2536 at [32]

<sup>31</sup> *Akhmedova v Akhmedov* [2018] EWFC 23; [2018] 3 F.C.R 135

defendant. The doctrine of the corporate veil was invoked in order to a luxury yacht that was under the control of the defendant, but the claimant owned it. It was held by Mr Justice Haddon J-Cave that “the assets in question were owned beneficially by the defendant, and there was a presumption of a resulting trust. The corporate veil was held to be pierced on the basis that the respondent was using the companies in order to evade obligations arising under a judgment against him.”<sup>32</sup>

The applicability of the evasion principle is still a question in both of these cases. The legal relationship between the respondent and the bankrupt in *Wood v Baker*, and between the corporation and defendant in *Akhmedova v Akhmedov*, would have the effect of making the corporations liable to the claimants and leaving the doctrine terminated. The nominee ship in the *Akhmedova* resulting trust existed and was found by Haddon J. However, he applied the evasion principle. This can be compared with *Gencor*, where there was inappropriate transfer of the funds to a corporation that was found to be the defendant’s alter ego. It was questioned by Lord Sumption in *Prest* whether corporate veil piercing was important in such situations, as against the corporation an equitable claim could be made.<sup>33</sup> However, evading the lawful obligation by an individual does not invoke the applicability of the evasion principle.

## 7. Conclusion

Since *Prest*, the piercing of the corporate veil doctrine has only been invoked successfully a very small number of occasions, such as in the cases of *Akhmedova v Akhmedov*<sup>34</sup> and *Wood v Barker*.<sup>35</sup> It is submitted that the fact that the concept has been invoked less frequently suggests that its application and domain have been narrowed... In the aftermath of the decision of *Prest*, it can be observed that the power of the court to pierce the corporate veil is a kind of vacant power that would unlikely be exercised ever in the future. However, the doctrine was eventually invoked in cases following *Prest*. But, there are still there are still a number of ambiguities regarding its application. In *Rossendale BC v Hurstwood Properties Ltd*,<sup>36</sup> Lords Leggatt and Briggs stated that “talk of the piercing the corporate veil is a metaphor that is liable to obscure more than it illuminates.” It is submitted that the doctrine, as expressed in *Prest* by Lord Hale<sup>37</sup>, may be considered as a broader principle of law in the future. As stated in *Prest*, the doctrine also contains some degree of dualism. According to Lord Sumption, it can be found in both specific and general contexts. The company's separate legal personality is usually disregarded when interpreting it broadly.<sup>38</sup> This can be noticed by the recurrence of the doctrine in criminal confiscation proceedings. Lord Justice Pitchford in *McDowell*<sup>39</sup> stated that “examination of true ownership or control of the property is the bread and butter of confiscation proceedings, although it is correct to say that judges frequently speak of lifting or piercing the corporate veil when doing so.” However, the remarks of Lord Sumption were different as he emphasised that piercing

---

<sup>32</sup> *Akhmedova v Akhmedov* [2018] EWFC 23; [2018] 3 F.C.R 135 at [57]

<sup>33</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [16]

<sup>34</sup> *Akhmedova v Akhmedov* [2018] EWFC 23; [2018] 3 F.C.R 135

<sup>35</sup> *Wood v Baker* [2015] EWHC 2536 (Ch)

<sup>36</sup> *Rossendale BC v Hurstwood Properties Ltd* [2019] EWCA Civ 364; [2019] 1 W.L.R. 4567 at [64]

<sup>37</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [92]

<sup>38</sup> *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [106]

<sup>39</sup> *R v McDowell* [2015] EWCA Crim 173; [2015] 2 Cr. APP. R. (S.) 14 at [40]

the corporate veil doctrine is not involved in the implementation of the concealment principle.<sup>40</sup> It is submitted that the courts are hesitant to abandon the piercing the corporate veil doctrine, which the *Prest* has been redundant.

---

<sup>40</sup>*Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 A.C. 415 at [28]