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Piercing the Corporate Veil — How Far Can the Court Go?

The Court of Appeal has made a significant decision on the question of how far a court can reach once the corporate veil to be pierced, ruling that the English courts should not allow the corporate veil to be pierced in order for contractual claims to be brought against non-contracting parties.

In the recent case of *VTB Capital plc v. Nutritek International Corp & Others*¹, the Court of Appeal made an significant decision on the question of how far a court can reach once the corporate veil has been pierced. A court can, and will, 'pierce the corporate veil' if a company is found to be a mere façade concealing the true facts, but the Court of Appeal ruled that the English courts should not pierce the corporate veil to allow contractual claims to be brought against non-contracting parties.

Piercing the Corporate Veil — Fundamental Principles

It is a fundamental principle of English Law that a company has its own legal personality, distinct from its members.² However, in certain circumstances, it is recognised that a court may 'pierce the corporate veil' in order to hold those who control the company (e.g., directors or shareholders) personally responsible for the acts of the company: "*it is appropriate to pierce the corporate veil only where special circumstances exist indicating that it is a mere façade concealing the true facts*"³.

How Far Can the Court Go? — Conflicting Case Law

In *Antonio Gramsci Shipping Corp & Others v. Stepanovs*⁴, the High Court decided that the corporate veil should be pierced to allow contractual claims to be brought against non-contracting parties. In situations where the contracting party was merely a 'puppet' company, a victim could bring a contractual claim against both the 'puppet' company and the non-contracting 'puppeteer', who 'all the time was pulling the strings'.

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However, in *VTB Capital plc v. Nutritek International Corp & Others*⁵, the High Court declined to follow *Gramsci v. Stepanovs*. The facts are set out below.

VTB entered into a loan agreement with a third party (RAP) in order to fund the acquisition of various dairy companies from Nutritek. RAP subsequently defaulted on the loan. VTB alleged that it had been induced to enter into the loan agreement by fraudulent misrepresentations made by Nutritek as to Nutritek's control of RAP and the value of the dairy companies. After entering into the loan agreement, VTB discovered that RAP and Nutritek were under common control and, therefore, the transaction was not '*at arm's length*'.

VTB initially pleaded causes of action against the defendants in deceit and unlawful means conspiracy, but later applied to amend its particulars of claim in order to bring a contractual claim against the second, third and fourth defendants. VTB's application was refused; the High Court held that it was not appropriate to pierce the corporate veil and allow contractual claims to proceed against the defendants, who were not contracting parties to the loan agreement, *i.e.*, the puppeteer could not be placed into the puppet's contract.

Clarification by the Court of Appeal

On appeal, the Court of Appeal upheld the decision of the High Court; it was not open to the English courts to hold, once the corporate veil has been pierced, that a puppeteer was a party to a puppet company's contract.

The Court of Appeal also used the opportunity to re-state and clarify the general principles a court should apply when deciding whether to pierce the corporate veil:

1. Ownership and control of a company are not of themselves sufficient to justify piercing the veil
2. The court cannot pierce the corporate veil, even when no unconnected third party is involved, merely because it is perceived that to do so is necessary in the interests of justice
3. The corporate veil can only be pierced when there is some impropriety
4. The company's involvement in an impropriety will not by itself justify a piercing of its veil: the impropriety "*must be linked to use of the company structure to avoid or conceal liability*"
5. It follows that if the court is to pierce the veil, it is necessary to show both control of the company by the wrongdoer and impropriety in the sense of a misuse of the company as a device or façade to conceal wrongdoing
6. A company can be a façade for such purposes even though not incorporated with deceptive intent; "*the question is whether it is being used as a façade at the time of the relevant transaction(s)*"
7. A piercing of the corporate veil will not be available only if there is no other remedy available against the wrongdoers for the wrong they have committed

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Conclusion

The Court of Appeal, in upholding the decision of the High Court in this case, has provided much-needed clarity to the question of the circumstances in which the corporate veil can be pierced. As such, it serves as a useful reminder of the fundamental principle of English law that a company has a separate legal personality from its members, and that only in exceptional circumstances will the court pierce the corporate veil.

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Endnotes

¹ [2012] EWCA Civ 808.

² *Salomon v A Salomon and Co Ltd* [1897] AC 22.

³ *Woolfson v. Strathclyde Regional Council* [1978] SLT 159, confirmed by the Court of Appeal in *Adams v. Cape Industries Plc* [1990] 2 WLR 657.

⁴ [2011] EWHC 333 (*Comm*).

⁵ [2011] EWHC 3107 (*Ch*).

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