

Prest v Petrodel Resources Ltd Supreme Court Ruling on Divorce Settlement

The Supreme Court's ruling in the landmark divorce case, *Prest v Petrodel Resources Ltd* [2013] UKSC 34, confirmed that placing assets into corporate structures for wealth protection reasons might not now protect that wealth against divorce claimants.

Whilst Mrs Prest lost on many of her points of appeal, the Supreme Court looked at the overall asset structure of her husband and made a ruling against him, as it found that he had deliberately evaded court orders and tried to keep assets out of the reach of his wife.

Mrs Prest had sought a pay out of more than £30 million, plus more than £730,000 per year by way of spousal maintenance to meet the 'reasonable needs' of her and their children. As part of the settlement, Mrs Prest had asked for an order for the transfer of ownership to her of eight residential properties (which included the former matrimonial home), legal title to which was vested in two companies incorporated in the Isle of Man: Petrodel Resources Limited ('Petrodel') and another company ultimately owned by Mr Prest, Vermont Petroleum Limited ('Vermont').

The Court found that the husband either wholly owned, or had effective control of both of the companies but had claimed they were in fact independent from him. However, the evidence showed that the husband ran the companies and used their assets as if they were his own. It was further held to be likely that it had been the husband who had provided the funds to purchase the properties which were then subsequently transferred to the companies for minimal consideration.

The corporate veil effectively separates the legal person who owns a company from the company itself. *Salomon v A Salomon & Co Ltd* [1897] AC 22 provides that a duly incorporated company is a legal entity separate from those who incorporate it, with rights, liabilities and property of its own.

The Supreme Court in *Prest v Petrodel Resources Ltd* reviewed the principles of English law which determine in what circumstances, if any, a court may disregard the corporate veil of a company and attribute to its members the legal consequences of the company's acts. This principle is frequently referred to as 'piercing' or 'lifting the corporate veil'. Numerous cases have set out various legal tests for the very limited circumstances in which this doctrine may be invoked by the courts, but the principles on which the courts can do so are not entirely clear or settled.

Importantly, in this instance the ownership of the properties was vested in the companies prior to the breakdown of the marriage, and there was no evidence that the husband's actions in arranging for the companies to own the properties was intended to evade any obligation to his wife connected with the divorce proceedings. The Court therefore held that there was no 'relevant impropriety' on the part of the husband sufficient to 'pierce the corporate veil'. The purpose of the corporate structure was wealth protection and the avoidance of tax but nothing more.

The Supreme Court did not therefore pierce the corporate veil in order to uphold Mrs Prest's appeal. The Supreme Court instead concluded that there was no veil that needed piercing, as the properties were beneficially owned by Mr Prest and were therefore held on trust for him by Petrodel and Vermont.

The Supreme Court ruled that assets which are held in the name of a company but which in reality are owned beneficially by a spouse can be accessed by the family courts - and has encouraged family judges to draw adverse inferences against spouses who fail to disclose important documents or provide relevant information.

Lord Sumption found that it was a 'fair inference' to draw from the respondent companies' continued refusal to engage with the court process in order to show that they were the true beneficial owners of the properties, that the main reason for the companies failure to co-operate was to protect the London properties and that proper disclosure of the facts would have revealed the properties to have been held beneficially by Mr Prest.

"Family judges", Lord Sumption explained, "are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative economically dominant spouse is likely to be concealing. Where the matrimonial home is held in the name of a company, it can frequently be inferred that the property is held on trust for the spouse who owns and controls the company."

However, the Supreme Court did also warn that family courts could not simply give company assets to one spouse just because the sole owner and controller of the company is the other spouse.

Whilst the decision in *Prest v Petrodel Resources Ltd* will have important implications for family law divorce cases, the Supreme Court's comprehensive judgment describing the limited circumstances in which the corporate veil may be pierced will be of significance in cases before the courts in all other common law jurisdictions, including the Isle of Man.

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