EVERSHEDS SUTHERLAND

Lawbite

Limited liability and piercing the corporate veil

Dave Persad v Anirudh Singh (Trinidad and Tobago) [2017] UKPC 32

Intro:

“Piercing the corporate veil" refers to a situation in which Courts put aside limited liability and hold a company’s shareholders or directors personally liable for the company’s actions or debts.

The Judicial Committee of the Privy Council has ruled that an individual was not liable for rent arrears under a lease granted to his company.

Mr Persad and Mr Singh had concluded negotiations whereby Mr Persad would take a lease of Mr Singh’s premises. Mr Persad was allowed into early occupation. In the course of negotiating the draft lease Mr Persad’s company (rather that Mr Persad personally) was substituted as tenant.

There had been no mention of the company in negotiations and the landlord did not challenge or question the inclusion of the company as tenant.

The landlord brought proceedings holding both the company and Mr Persad liable for breaches of covenant and rent arrears. Both the Judge at first instance and the Court of Appeal concluded piercing the corporate veil was justified and held that the company’s liabilities under the lease were also those of Mr Persad.

The Privy Council upheld Mr Persad’s appeal finding that to look beyond the company’s status and hold a director personally liable needed more than to merely claim that the company was a ‘front’. The facts of the case did not begin to justify piercing the corporate veil of incorporation. Mr Persad was not under a relevant legal obligation or liability to Mr Singh at the time the lease was executed by the Company or became binding. There was no evasive or frustrating action on his part. The Landlord was not misled. Avoiding personal liability was the whole point of corporate structures.

Key points

- limited liability is a fundamental principle of corporate law. Yet liability has never been absolutely limited. Courts occasionally allow creditors to “pierce the corporate veil”. Piercing the veil of incorporation is a controversial step and the case is a reminder of the key fundamental principles. The most common and debated reason is in cases where a company is used as a device to commit fraud.
- piercing the corporate veil in this way is only justified in very rare circumstances where 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
- one of the reasons that an individual, either on their own or together with others, will take advantage of limited liability is to avoid personal liability if things go wrong. If such a factor justified piercing the veil of incorporation, it would make something of a mockery of limited liability both in principle and in practice
- for landlords where there are concerns about the standing of a newly incorporated tenant company consideration should be given to requiring the individual connected to the tenant company to act as a guarantor who is personally liable for the tenant’s performance or requiring a rent deposit

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