

Supreme Court upholds decision in favour of wife in **Prest v Petrodel case**

In a ruling handed down yesterday, the Supreme Court upheld the decision made by the original High Court trial judge in the case of *Prest* ordering Mr Michael Prest, a wealthy oil tycoon and founder of Petrodel Resources, to transfer properties legally owned and held in the UK and abroad by the Petrodel companies (including the former matrimonial home) to his ex-wife, Mrs Yasmin Prest, as part payment of her £17.5 million divorce settlement.

The decision has been eagerly anticipated by family and corporate practitioners alike as it is of importance not only for family lawyers and the divorcing couples they represent but also for company law.

In brief

The family court has for some twenty years been used to invoking the wide discretionary jurisdiction conferred upon it by statute to consider and call upon, where necessary, the business resources of one or other party to a marriage in the interests of producing a fair overall financial award on divorce.

In recent years there have been several cases which appear to try to bring the family court “to heel” by bringing its approach to the application of general legal principles closer to that adopted by the commercial and civil courts.

In *Prest*, the original trial judge had found that as the Petrodel companies were effectively owned and controlled by Mr Prest, he was their *alter ego*, and so the properties legally vested in them were nevertheless resources available to Mr Prest, which could be called upon to satisfy Mrs Prest’s divorce settlement. He therefore ordered the transfer of the properties to Mrs Prest.

The Petrodel companies challenged this decision in the Court of Appeal. Their main argument was that the family court could not fly in the face of established company law principles whereby a company is a separate legal entity distinct from its shareholders (the notion of the “corporate veil”): Its property is its own not its shareholders and that these principles apply equally to a company that was wholly owned and controlled by one individual as to any other. They succeeded and the Court of Appeal overturned the trial Judge’s original decision.

The ruling

Mrs Prest yesterday won her appeal *but* the Supreme Court did not “pierce the corporate veil” in this instance. Instead Mrs Prest was successful on the basis that on the particular facts of the case, by virtue of the circumstances in which the properties came to be vested in the companies, the Court found that the companies in fact held the properties on trust for Mr Prest, so that he owned them beneficially.

Viewpoint

The Supreme Court decision is being hailed, therefore, as having something for everyone, as a “narrowing of the gap” between the family and commercial and civil jurisdictions.

By establishing in what circumstances the corporate veil may be lifted, the decision gives comfort to corporations and pays respect to established company law principles.

It clarifies that it is possible to lift the veil but only in a small residue category of cases where a company has been set up in some way to evade the law or its enforcement. So no *carte blanche* to the family court to adopt the *alter ego* approach, which is now effectively done away with.

Equally it does not offend the family lawyer’s sense of fairness to “get to the reality of the position” as the Supreme Court has clarified that assets which are held in the name of a company but which in truth are owned beneficially by a spouse can be tapped by the family court.

For advice on your particular situation please contact one of the specialist family lawyers at Russell-Cooke.

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