

Секция «Английский язык и право (на английском языке)»

Corporate Personality

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The principal idea of company law is that a company is a separate legal person, which can own property, be a party to contract and legal proceedings, and have its own legal rights and obligations. [1,2] These paradigmatic cases, such as *Salomon v A. Salomon and Co Ltd [1897]*, *Macaura v Northern Assurance Co Ltd [1925]*, *Farrar v Farrar Ltd [1888]* and *Lee v Lee's Air Farming Ltd [1961]* confirm it is a basic principle of company law that the members of a company are not responsible for its liabilities. It follows from the widely known rule stated by Lord Halsbury LC in *Salomon v A. Salomon and Co Ltd [1897]* that "**...once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself.**" [2]

For many years there has been extensive discussion of whether a court can ignore this separate legal personality and can treat a company's property, rights and obligations as belonging to a person who owns and controls the company. This has been called "**piercing the corporate veil**". [4]

There are four main legal principles which can be used to attribute one person's property, rights or liabilities to another person, whether the persons are legal or natural persons. Here they are:

- (1) statutory provisions;
- (2) contractual provisions;
- (3) liability of a person for the acts of an agent;
- (4) beneficial ownership of trust property.

Statutory provisions.

The separate corporate personality of a company is created by a statute, CA 2006, and can be modified by other statutes. In *Dimbleby and Sons Ltd v National Union of Journalists [1984]* Lord Diplock said: "**The "corporate veil" in the case of companies incorporated under The Companies Act is drawn by a statute and it can be pierced by some other statute if such other statute so provides.**" Example can be found in Landlord and Tenant Act 1954, s 30, which sets out the circumstances in which a landlord of a business tenant can oppose renewal of the tenant's lease. One of these circumstances is where it is intended that the premises will be occupied for the purposes of a business to be carried on by the landlord (*Tunstall v Steigmann [1962]*).

Contractual provisions.

It is very common for the members of an owned-managed company to make contracts agreeing to guarantee its obligations. Banks and landlords, for example, are usually able to insist on guarantees which effectively nullify the limited liability that the member has in company law. Nothing in company law prevents a person contracting out of any benefit this person could derive from the principle of separate corporate personality. [3]

Agency.

If the legal relationship of agency exists between two persons, called the principal and the agent, then the principal is responsible for whatever the agent does within the scope of the agency. Also the agent has authority to create legal relations, such as contracts, between the principal and third parties. Whether one person is an agent of another is a question of fact, and agency can be inferred from the circumstances, though it can only be established by the consent of the principal and the agent (*Garnac Grain Co Inc v H M F Faure and Fairclough Ltd [1968]*). In this case the liability arises under agency law (not company law). In the case of absence of agreement to an agency relationship we should highlight that:

(1) The circumstances that a person is a member of a company does not in itself make the company an agent of that person (*Salomon v A. Salomon and Co Ltd [1897]*).

(2) Agency cannot be inferred from the control exercisable by the members over the company - either by virtue of their votes in general meeting or because they are also directors (*British Thomson-Houston Co Ltd v Sterling Accessories [1924]*).

(3) The fact that one company is a subsidiary to another company does not in itself make the subsidiary an agent of its parent company (*Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority [1951]*).

Property held in trust.

Here we should discuss the recent family law case - *Prest v Petrodel Resources [2013]* concerned the divorce of the major shareholder of the company. Michael Prest owned and controlled a number of companies which owned residential properties. The question was whether Mr. Prest was entitled to those properties for the purpose of the Matrimonial Causes Act 1973 s 24(1)(a), which allows to transfer the properties to the spouse. The Supreme Court held that property legally vested in a company may belong beneficially to the controller, if the arrangements in relation to the property are such as to make the company its controller's nominee or trustee for that purpose. The point at issue is that it is important that properties were held by the person's companies on a resulting trust for that person and there is no need for application of family law such as Matrimonial Causes Act 1973. [2,5]

In conclusion it should be said that the Supreme Court held that **there is a principle of English law which enables a court in very limited circumstances to pierce the corporate veil**. The court may pierce the veil but only for the purpose of depriving the company or its controller of the advantage which they would otherwise have obtained by the company's separate legal personality. However, the recognition of a small category of cases where the abuse of the corporate form to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is consistent with long-standing principles of legal policy. [5]

Источники и литература

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- 4) Wormser M. Piercing the Veil of Corporate Entity // Columbia Law Review 1912. Vol. 12.

5) Supreme Court of The UK: http://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0004_PressSummary.pdf

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