Pulling Back the Curtains – Separate Legal Personality and Lifting the Veil

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Introduction to the Concept of Separate Legal Personality:

It has been long established law that the key characteristic of a properly incorporated company is that it possesses separate legal personality. One of the seminal cases in relation to this concept is *Aron Salomon v A. Salomon and Company, Limited (1897)*[1]. In this case Salomon sold his sole trading leather and wholesale boot manufacturing business to a newly incorporated company, A. Salomon and Company, Limited. Upon incorporation Salomon and six members of his family[2] were each issued with one share in the company. Thereafter a debenture secured by a floating charge was created in Salomon's favour, as part of the purchase price. The rest of the purchase price for the sole trading business was paid to Salomon by issuing him with 20,000 shares in the newly created company. Although the business was solvent and profitable upon the incorporation, problems were encountered thereafter as a result of a period of depression in the trade, and a succession of strikes within the boot industry. Consequently, the company encountered financial problems and was placed into liquidation, as a result of defaulting on a debt. However, as the repayment of the debenture would have resulted in a lack of funds to pay other creditors, the liquidator sought to have the debenture cancelled, on the basis that the actions of the company amounted to fraud upon its creditors. Furthermore, it was contended that the company wasn't a real entity, but established as a mere nominee and agent of Salomon, and that therefore its formation was contrary to the true intent and meaning of the Companies Act 1862. On this basis it was asserted that Salomon should be liable to indemnify the company against the claims of its creditors.

Following a variety of differing opinions in the lower courts, the case was appealed to the House of Lords, who clearly enunciated the law in this regard. According to Lord Halsbury. L.C.:

> *"… once the company is legally incorporated it must be treated like any other independent person with … rights and liabilities appropriate to itself."*[3]

This position was supported by Lord Herschell who affirmed that a company is *ex hypothesi* a distinct legal persona[4]. Lord Macnaghten explored this concept in more depth when he declared that:

> *"[t]he company attains maturity on its birth. There is no period of minority – no interval of incapacity … The company is at law a different person altogether from the subscribers to the memorandum; and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law an agent of the subscribers or trustees for them. Nor are*

1 [1897] A.C. 22.

2 His wife, his daughter and his five sons.

3 Ibid at p. 30.

4 Ibid at p. 42.

the subscribers as members liable in any shape or form, except to the extent and in the manner provided by the [Companies] Act."[5]

The concept of separate legal personality is not eroded, even if the shareholders and directors of the company are the same person, as is common practice is most private companies in Ireland. As per Lord Macnaghten:

> *"[t]here is nothing in the [Companies] Act requiring that the subscribers to the memorandum should be independent or unconnected …"*[6]

Consequences of Separate Legal Personality:

The consequences of this separate legal personality were elucidated by Lord Davey who postulated that as a separate entity a company has the:

> *"… power to sue and be sued, to incur debts and be wound up, and to act as agents and trustees, and … to hold property."*[7]

Further effects of a company possessing separate legal personality, include:

A. The ability to be prosecuted and sanctioned, where the company commits a breach of criminal law[8];

B. The ability to exist, despite the death of company shareholders and officers – this is referred to as perpetual existence and is a key facet of a company as distinct from other business forms[9];

C. The ability of a company to create floating charges[10] on their assets as security for borrowings – no other business entity is empowered to create such a charge, the right is bestowed exclusively upon a company;

D. The ability of shareholders in a company to transfer their interests to a third party – in reality the type of corporate entity will impact upon the practical operation of this right, as there is a restriction upon the transfer of shares in a private company, although no such restriction exists in a public company;

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[5] Ibid at p. 51.
[6] Ibid at p.50.
[7] Ibid at p. 55.
[8] For example, the commission of an offence in contravention of the General Data Protection Regulation 2018, which attracts a maximum sanction of a fine of up to €20m, or in the case of an undertaking, up to 4% of its total worldwide annual turnover of the preceding financial year, whichever is the greater.
[9] One of the oldest companies in Ireland is Rathborne Candles (John. G. Rathborne Ltd), which was founded in 1488. Rathborne's candles were used to light the city's streets in the 1700s. Today, in the era of electricity, the company produces church candles alongside high-end candles sold through Brown Thomas.
[10] In *Yorkshire Woolcombers Association, Limited Houldsworth v Yorkshire Woolcombers Association, Limited* [1903] 2 Ch. 284 Romer L.J. (at p. 296) defined a floating charge as possessing the following characteristics: *"(1.) If it is a charge on a class of assets of a company present and future; (2.) if that class is one which, in the ordinary course of the business of the company, would be changing from time to time; and (3.) if you find that by the charge it is contemplated that, until some future step is taken by or on behalf of those interested in the charge, the company may carry on its business in the ordinary way as far as concerns the particular class of assets I am dealing with."*

E. The ability of company shareholders to hold limited liability in respect of fully-paid shares. In this regard it is important to note that it is the company's shareholders that have limited liability, the company is fully liable for its own debts and the officers of a company may be both criminally and civilly liable where they commit a breach of company or criminal law; and

F. The assets of the company belong to the company and are not the joint property of the shareholders.

This latter effect was explored in *Macaura v Northern Assurance Company, Limited, and Others*[11]. In this case Macaura was the owner of a timber estate which he sold to a timber company. The consideration for the sale was fully paid up shares in the timber company. Subsequent to this transaction Macaura effected policies in his own name with several insurance companies to insure this company's timber against fire. When a significant portion of the timber was destroyed by fire, he sued the insurance companies to recover the loss. The matter was referred to arbitration in accordance with the conditions of the insurance policies, but the claim was denied by the arbitrator on the grounds that Macaura, as claimant had no insurable interest in the goods. Macaura appealed this decision to the Court. In the House of Lords his appeal was rejected by Lord Buckmaster on the basis that:

> *"… no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein …. [n]either a simple creditor nor a shareholder in a company has any insurable interest in a particular asset which the company holds."*[12]

Lifting the Veil of Incorporation:

The separate legal personally of a corporate entity is viewed as a veil of incorporation, which prevents outsiders taking legal action against company members, even though the outsiders can ascertain the identities of those members and the number of shares that they hold. Although the principle of separation is central to company law, there are a number of situations where the company and its members can be identified together and treated the same. As per Lord Denning in *Littlewoods Mail Order Stores Ltd v IRC (1969)*[13], incorporation does not fully:

> *"… cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind."*[14]

Essentially, the privilege of incorporation can only be availed of as long as there was no fraud and no agency and if the company was a real one and not a fiction or a myth. When any of these circumstances occur, the Court may strip away the veil of incorporation surrounding the company – this is known as lifting/piercing the veil of incorporation. In doing so, the corporate personality remains intact but the officers, and in some cases the members and other parties, can be held responsible for the obligations which would normally be the obligations of the company.

The three main reasons why the veil may be lifted are: (1) to enforce the provisions of the Companies Act 2014, (2) to avoid fraud, and (3) to deal with a group of companies.

The corporate veil can be lifted in two ways:

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[11] [1925] A.C. 619.
[12] Ibid at p. 627-628.
[13] [1969] 1 W.L.R. 1241.
[14] Ibid at p. 1254.

A. By a specific provision in legislation.
B. At the absolute discretion of the Courts.

Lifting the Veil by Legislation:

There are several statutory provisions that have the effect of ignoring the separate legal personality of the company by attaching responsibility for the company's obligations to company officers, or others. These relate to the following:

1. **Personal Liability for Company Name Irregularities**: Section 27 CA 2014 provides that a company should not use a name that gives the impression that it is any type of company other than a private company limited by shares or that it is any other form of body corporate. Contravention of this requirement may result in both the company and *any officer* of it who is in default, being deemed guilty of a category 3 offence. The strict interpretation of this requirement was illustrated in the case of *Hendon v Adelman (1973)*[15] where personal liability was imposed upon the company's director as a result of a cheque that represented the company's name as LR Agencies Ltd and not L & R Agencies Ltd.

2. **Personal Liability where a Public Limited Company traded without a Certificate to Commence Trading:** In accordance with Section 1010(7) where a PLC does business or exercises borrowing powers without a valid trading certificate, the PLC and *any officer* of it who is in default will be guilty of a category 3 offence. Furthermore, the directors of the PLC will be deemed jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by that party by reason of the failure by the PLC to hold a valid trading certificate, where they fail to comply with their obligations in connection with obtaining this certificate within 21 days of the date they were called upon to do so[16].

3. **Personal Liability for Taxation Offences***:* Section 94 of the Finance Act 1983 provides that when a tax offence is committed by a company and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was *a director, manager, secretary or other officer of that company, or a member of the committee of management or other controlling authority of the company*, that person will also be deemed to be guilty of the offence, and subject to criminal proceedings and sanctions.

4. **Personal Liability for Fraudulent Trading**: Section 722 CA 2014 provides that if *any person* is knowingly a party to the carrying on the business of a company with intent to defraud its creditors or the creditors of any other person, or for any fraudulent purpose, he or she shall be guilty of a category 1 offence. Therefore, the company is not liable, the veil of incorporation is lifted and the person committing the fraudulent act becomes personally liable. In *Re Hunting Lodges Limited (1985)*[17] the High Court held the Directors of the company and the purchaser of the company's main asset, personally liable for the company's debts, as one director – following the sale of the main asset, deposited part of the sale price, paid by the purchaser by way of three bank drafts made out to fictitious persons, in a building society. According to Justice Carroll:

[15] 117 Sol.Jo. 631.
[16] Section 1010(9) CA 2014.
[17] [1985] ILRM 75.

"… in order for the section to apply, it is not necessary that there should be a common agreed fraudulent intent. If each of the participants acts for a fraudulent purpose then each may be liable."[18]

5. **Personal Liability for Reckless Trading**: Section 610 CA 2014 states that if in the course of liquidation *a company officer* is a party to carrying out business in a reckless matter, the court may, if it considers it proper to do so, upon application by a liquidator/creditor, hold such person personally responsible for all or any of the debts that the court directs. Again, the veil of incorporation is 'pierced' and the officer is made personally liable. Reckless trading is defined as occurring when a person was party to the carrying on of the business and, having regard to the general knowledge, skill and experience that might reasonably be expected of a person in that position, ought to have known that his actions or those of the company would cause loss to the creditors or he was party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due. It is a defence to have acted honestly and responsibly in relation to the conduct of the affairs of the company.

6. **Personal Liability re Contribution/Pooling Orders upon winding- up**: Under Section 600 CA 2014 *a company* may be required to contribute to the debts of related companies, taking into account the extent of the company's control over the related company. According to subsection 6, in deciding whether it is just and equitable to make a pooling order under this section, the Court take the following matters into consideration: (a) the extent to which any of the companies took part in the management of any of the other companies, (b) the conduct of any of the companies towards the creditors of any of the other companies, (c) the extent to which the circumstances that gave rise to the winding up of any of the companies is attributable to the acts or omissions of any of the other companies, and (d) the extent to which the businesses of the companies have been intermingled.

7. **Personal Liability for the Failure to Maintain Proper Books of Account:** In accordance with the requirements of Section 286 CA 2014 liability will be imposed upon the company *and its directors* for failure to take all reasonable steps to secure compliance by the company with its statutory obligations to maintain proper accounting records. Liability will also be imposed where a company officer has by his own intentional act been the cause of any default by the company of these statutory obligations. This breach may be classified as either a category 1 or 2 offence. Category 1 liability will only arise where the company is placed in insolvent liquidation and the failure to maintain statutory records contributed to the company's inability to pay all of its debts, resulted in substantial uncertainty as to the assets and liabilities of the company, or substantially impeded the orderly winding up of the company. Alternatively, Category 1 liability can also be imposed where the contravention took place over a continuous period of 3 years or more, or where the contravention involved the failure to correctly record and explain one or more transactions of a company the value or aggregate value of which exceeded €1 million or 10% per cent of the net assets of the company, whichever is the greater.

8. **Breach of Restriction and Disqualification Orders**: In accordance with Section 859 of the Companies Act 2014, where a restriction order or a disqualification order is imposed upon a company officer and that officer contravenes that order and continues to act (whether as a shadow officer or otherwise) the Court may impose personal liability, without limit, should that company become insolvent within 12 months of the person acting in contravention of these orders. This personal liability will be for all or part of the debts or other liabilities that the

[18] Ibid at para 51.

company has incurred. Thus, the veil of incorporation is pierced and a person is made personally responsible for the debts of the company.

Other miscellaneous examples of where the veil can be lifted by legislation and company officers deemed liable for their actions include:

9. Failing to provide a member with a copy of the company's constitution upon request will expose the company and *its officers* to a category 4 breach[19];

10. Where a private limited company offers their shares or debentures to the public or invites them to purchase them, or where they apply to have their securities (or interests in them) admitted to trading or to be listed on a public market, the company and *its officers* will be liable for prosecution in respect of a category 2 breach[20];

11. Failing to deliver to the CRO within 30 days after the date of it being passed, a copy of a resolution to vary the capital of a company, will expose the company and *its officers* to a category 3 breach[21];

12. Where a director of a company makes a declaration of solvency without having reasonable grounds for the opinion, the Court may declare that *the director* will be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company or successor company, as the case may be[22];

13. Where a person acts in the capacity of a director while an undischarged bankrupt that *person* can be prosecuted for a category 2 breach[23]; and

14. Where a director fails to comply with their obligations regarding Compliance Statements[24] they may be prosecuted for the commission of a category 3 breach.

Lifting the Veil by the Courts:

The Courts have a wide ambit of discretion in deciding whether to lift the corporate veil, and will only do so where they consider it fair and equitable. In past decisions the veil of incorporation has been lifted in the following situations:

1. **Implied Agency:** Where an agency relationship exists between the company and its members the Court may, at its discretion, lift the veil of incorporation. In *Firestone Tyre & Rubber Co. v Llewellin (1957)*[25] an American company, Akron, formed a wholly-owned subsidiary in Brentford, London for the purpose of manufacturing tyres and distributing them to their European customers. This subsidiary was wholly controlled by Akron, as they were responsible for obtaining the orders. Clause 4 of the agreement between the parent and the subsidiary provided that the subsidiary having received its costs plus a 5% commission would transfer the balance of the selling price/profit back to Akron. When Akron was assessed for UK tax on its profits, it

[19] Section 37(3) CA 2014.
[20] Section 68(9) CA 2014.
[21] Section 83(7) CA 2014.
[22] Section 210(1) CA 2014.
[23] Section 132(1) CA 2014 – this provision does not apply where the person acted with the leave of the Court.
[24] Section 225(6) CA 2014.
[25] [1957] 31 ITR 338 Bom.

claimed that it was a separate entity from the UK subsidiary company. The Court in lifting the corporate veil held that the UK subsidiary had acted as an agent of Akron, and therefore Akron was liable for to pay tax on all UK profits. As per Evershed L.J. the rationale for this conclusion was that the London subsidiary:

> *"… though a separate entity, is in fact wholly controlled by Akron, and in the making of what may be described as Akron proprietory branded articles it acts under the close direction of Akron in all respects, and in selling those articles to Akron's customers it does so on terms fixed by Akron so that after allowing Brentford its costs and a percentage thereon the whole of the profits on the transactions go to Akron."*[26]

In *Smith, Stone and Knight Ltd v Birmingham Corporation (1939)*[27] the claimant company owned all the shares of a subsidiary company that carried on business in Birmingham. The City of Birmingham expropriated the premises in which the subsidiary carried on business. Smith, Stone and Knight Ltd sought compensation for the expropriation. The City of Birmingham challenged the right of Smith, Stone and Knight Ltd to seek compensation since it was a separate legal entity, the subsidiary company, which carried on business on the premises. The law with respect to expropriation was such that a considerably lesser amount would be paid if it was the subsidiary's claim. However, the Court said that an exception to the *Salomon* principle applied as the corporation was simply an agent of the parent company. As per Atkinson J.:

> *"…[i]t seems therefore to be a question of fact in each case …. whether the subsidiary was carrying on the business as the company's business or as its own … I find six points which were deemed relevant for the determination of the question: Who was really carrying on the business? … [w]ere the profits treated as the profits of the company? … were the person[s] conducting the business appointed by the parent company? … was the company the head and the brain of the trading venture? … did the company govern the adventure, decide what should be done and what capital should be embarked on the venture? … did the company make the profits by its skill and direction? … was the company in effectual and constant control?"* [28]

2. **Single Economic Entity:** Where the relationship between companies in the same group is so intertwined that they should be treated as a single economic entity, the Courts will lift the veil of incorporation to reflect the economic and commercial realities of the situation. In *Power Supermarkets Limited v Crumlin Investments Limited & Dunnes Stores (Crumlin) Limited (1981)*[29] Crumlin Investments had developed a shopping centre and leased it to the Plaintiff. One of the terms of the lease included a covenant by Crumlin Investments that no other lease would be granted to another tenant in the grocery or food business in or over an area exceeding 3000 square feet. The shopping centre was not a great success and was offered for sale. It was subsequently purchased by Cornelscourt Shopping Centre Limited, a company owned by the Dunnes Stores Group. The Dunnes Stores Group then caused Crumlin Investments to convey a freehold interest to Dunnes Stores (Crumlin) Limited, which would enable the Dunnes Group to operate as a supermarket in the centre. The Court held that the Dunnes Group should be treated as a single entity and therefore Dunnes Stores (Crumlin) Limited should be bound by the restrictive covenant even though it was not a contractual party to it. According to the Costello, J.:

[26] Ibid at para 26.
[27] [1939] 4 All ER 116.
[28] Ibid at p. 121.
[29] 22 June 1981, unreported.

"… if the justice of the case so requires, a Court may treat two or more related companies as a single entity so that the business notionally carried on by one will be regarded as the business of the group, if this conforms to the economic and commercial realities of the situation. It would, in my view, be very hard to find a clearer case then the present one for the application of this principle … To treat the two companies as a single economic entity seems to me to accord fully with the realities of the situation."[30]

3. **Where the company was formed for fraudulent or illegal purposes, the avoidance of legal duties or evasion of existing legal obligations:** The Courts are willing to disregard separate legal personality where the justice of the case requires it, and in this regard liability may be imposed upon the company's officers. In *Jones v Lipman (1962)*[31] the defendant entered into an agreement to sell certain freehold lands to Jones for ST£5,250. Thereafter he changed his mind, and to avoid his contractual obligations he acquired a company and transferred the property to it. According to Russell, J.:

   "[t]he defendant company is … a device and a sham, a mask which he holds before his face in an attempt to avoid recognition by the eye of equity."[32]

   Consequently, the company was held bound by the defendant's obligations and an order of specific performance was granted in favour of the plaintiff.

   In *Gilford Motor Company v Horne (1933)*[33] the defendant was subject to a restraint of trade clause in his contract of employment, which bound him not to solicit the plaintiff's customers if he left the company for a period of 6 years. Upon ceasing this employment, Horne established a company (with his wife and son appointed as its directors and shareholders, and himself hired as an employee). From formation the company was subject to Horne's control and did things which, if they had been done by him, would have been a breach of the restrictive covenants in his employment contract[34]. The Court held that the company was formed for an improper purpose – to defeat the restrictive covenant in Horne's employment contract, and therefore they lifted the veil of incorporation and identified Horne with the new company. Consequently, an injunction was granted against both the company and Horne enforcing the terms of the restrictive clause. As per Romer L.J.:

   "… this defendant company was formed and was carrying on business merely as cloak or sham for the purpose of enabling … Horne to commit the breach of the covenant that he entered into deliberately with the plaintiffs on the occasion of and as consideration for his employment as managing director. For this reason, in addition to the reasons given by my Lords, I agree that the appeal must be allowed …"[35]

4. **Where the company is being used to perpetrate a fraud or an injustice against the minority shareholders**: In *Re Bugle Press Limited (1961)*[36] the two majority shareholders, holding 90% of the issued share-capital, wished to acquire the remaining 10% held by a third shareholder. The majority shareholders formed a company that made a take-over bid over the existing company, and having successfully obtained 90% of the shareholding sought to reinforce its right under

[30] Ibid at p. 8-9.
[31] [1962] 1 W.L.R. 832.
[32] Ibid at p. 836.
[33] [1933] Ch 939.
[34] Including the solicitation of customers of his former employer.
[35] Ibid at p. 969.
[36] Application of H.C. Treby; in Re Houses and Estates Ltd [1961] Ch. 270.

S209 of the UK CA 1948 to acquire the minority's stake compulsorily. The minority successfully applied to the Court for relief. The Court viewed the transaction as one designed for the sole purpose of expropriating a minority, which is forbidden by company law unless permitted specifically by the Articles of Association[37]. Therefore, the Court lifted the corporate veil to allow the minority shareholder to obtain relief from the majority shareholders, as according to Harman L.J:

"[t]he new company was nothing but a small hut built round the majority shareholders and the whole scheme was nothing but a hollow sham. All the minority shareholder had to do was shout and the walls of Jericho came tumbling down … [it was] a bare faced attempt to evade [a] fundamental rule of company law ..."[38]

5. **To establish the true residency of the company**: Where the Court lifts the veil to attribute characteristics to a company (such as residency) it does not disregard the separate legal existence of the company, rather it does so to acquire further knowledge regarding some facet of this corporate personality. In *Daimler Company v Continental Tyre and Rubber Company (Great Britain) (1916)*[39] the defendant owed monies to the plaintiff company and had defaulted on payment of the debt. However, the plaintiff company was established for the purpose of selling in England tyres made in Germany by a German company, who held the bulk of the shares in the English company. The holders of the remaining shares (save one) and all the directors were Germans, resident in Germany. Pursuant to wartime laws[40], it was illegal to trade with an enemy of the state and therefore the defendant company argued that they were legally prohibited from repaying this debt as to do so was to contract with an alien enemy company. In this case the Court looked beyond the corporate personality to those who controlled the company and concluded that the defendant was not obliged to pay the debt, as to do so would breach wartime laws. In the opinion of Lord Parker:

   "[t]he acts of a company's organs, its directors, managers, secretary, and so forth, functioning within the scope of their authority, are the company's acts and may invest it definitively with enemy character. It seems to me that similarly the character of those who can make and unmake those officers, dictate their conduct mediately or immediately, prescribe their duties and call them to account, may also be material in a question of the enemy character of the company. If not definite and conclusive, it must at least be prima facie relevant, as raising a presumption that those who are purporting to act in the name of the company are, in fact, under the control of those whom it is their interest to satisfy."[41]

6. **Where the company is, in reality, a quasi-partnership**: In certain instances the Courts are willing to pierce the veil to ascertain whether the company is, in reality, a quasi-partnership. This can be described as a company created on the basis of mutual understanding between the shareholders. If this is the case the continued existence of this company is dependent upon a degree of trust and communication between the partner/shareholders, and if that relationship is eroded, the company may be liquidated in the same way as the dissolution of a partnership. In *Re Murph's Restaurant (1979)*[42] three shareholder/directors ran a snack bar business together.

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[37] According to Buckley J. at p.276: *"…[i]n the ordinary case of an offer under this section, where the 90% majority who accept the offer are unconnected with the persons who are concerned with making the offer, the court pays the greatest attention to the views of that majority."*
[38] Ibid at p. 288.
[39] [1916] 2 AC 307.
[40] The Trading with the Enemy Act, 1914.
[41] Ibid at p. 340.
[42] In the Matter of Murph's Restaurant Limited and the Companies Act 1963 [1979] IEHC 1, [1979] ILRM 141.

The company was run on a very informal basis in that the company did not hold annual meetings, have annual accounts prepared, hold regular or formal board meetings of directors, maintain minutes of meetings or other formal company records. Instead the three shareholder/directors met every Monday night for management meetings, had their meals in the company premises and met regularly over lunch. The affairs of the company were conducted and the decisions taken at the Monday night meetings and the informal meetings. Unfortunately, two of the shareholder/directors fell out with the third and attempted to remove him from the company's board of directors. The third shareholder then sought to have the company wound up on the basis that he had been treated oppressively and unfairly, as they had also sought to purchase his shareholding in the company on unfavourable terms. The Court held that the removal of the shareholder/director repudiated a relationship that was based on mutual trust and confidence and was more akin to a partnership than a company. As a result the Court felt that it was fair and equitable to lift the corporate veil and wind up the company. Justice Gannon summarised the position as follows:

> *"[i]t is quite clear from the evidence taken as a whole and from practically every aspect of evidence relating to the different events and the conduct of the affairs of this company that [the three shareholders] were equal partners in a joint venture, and that the company was no more than a vehicle to secure a limited liability for possible losses and to provide a means of earning and distributing profits to their best advantage with minimum disclosure. The company was never conducted in accordance with statutory requirements nor in accordance with normal regular business methods. The directors received no fees, the shareholders received no dividends, and all three directors/ shareholders received by mutual agreement exactly the same income from the earnings of the company adjusted according to profitability in the form of drawings recorded as salary, drawings from cash unrecorded, credit deposits of cash in building societies' accounts, perquisites of meals and cars, and various expenses for purely personal purposes in respect of all of which strict equality was always maintained. This was achieved, and could be achieved, only by a relationship of mutual confidence and trust and active open participation in the management and conduct of the affairs of the company particularly in the irregularity or informality of its corporate quality of existence … [the action of removing the applicant from his position as company director] was a deliberate and calculated repudiation … of that relationship of equality, mutuality, trust and confidence … which constituted the very essence of the existence of the company."*[43]

Conclusion:

The principle of separate legal personality is at the core of company law, and treated as sacrosanct. Even where the Courts are prepared to lift or pierce the veil of incorporation, where it is deemed necessary, they are generally unwilling to dispense completely with all of the privileges attached to it. Although they may on occasion treat the company and its members as one in the same, or impose liability on company officers for corporate wrongdoing, this is the exception rather than the rule. The consequences of separate legal personality are advantageous, and this principle stands as the foundational pillar upon which a corporate entity can flourish.

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[43] Ibid at pp. 15-18.