IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No BZCV2025/001
BZ Civil Appeal No 11 of 2023

BETWEEN

BETH CLIFFORD	**FIRST APPELLANT**
BELTWAY INVESTMENT GROUP INC	**SECOND APPELLANT**

AND

LCW INVESTMENTS, LLC	**RESPONDENT**

Before: **Mme Justice Rajnauth-Lee**
Mr Justice Barrow
Mr Justice Jamadar
Mme Justice Ononaiwu
Mr Justice Eboe-Osuji

Date of Judgment: **10 December 2025**

Appearances

Mr Eamon H Courtenay, SC and Ms Pricilla J Banner, SC for the Appellants

Mr E Andrew Marshalleck, Jr, SC and Mr Jaraad Ysaguirre for the Respondent

Company law —Disregard of separate legal personality of a company — Piercing the corporate veil — Whether shareholder can be held jointly liable for company's breach of contract — Whether company can be held jointly liable with another company under common ownership and control for breach of contract to which it was not a party — Whether sole shareholder abused corporate structure or used corporate structure in a manner contrary to a lawful purpose or contrary to the purpose for which the benefit of incorporation was conferred.

SUMMARY

The appellants in this appeal, Beth Clifford and Beltway Investment Group Inc ('Beltway'), challenged an order of the Court of Appeal of Belize holding them jointly liable to pay damages to the respondent, LCW Investments, LLC ('LCW') for the breach of contract by another entity, Green Development Partners Ltd ('GDP').

In 2017, LCW entered into a contract with GDP for the purchase of land in Belize and for the construction of a house on that land. The contract provided that within 10 days of execution, the buyer shall enter into a land purchase agreement with a third party. The contract also stipulated that LCW should wire to Beltway all payments to GDP under the contract. While neither Beth Clifford nor Beltway was a party to the contract, Beth Clifford is the sole shareholder and director of both GDP and Beltway. After LCW had paid the contract sum and experienced excessive delay in receiving title for the land and in construction of the house, it rescinded the contract and commenced proceedings in the High Court against GDP, Beth Clifford and Beltway.

The High Court awarded damages to LCW against GDP only for breach of an implied contractual obligation for GDP to present LCW with the land purchase agreement within 10 days. On appeal, the Court of Appeal affirmed the High Court's finding that GDP breached the contract. In addition, the Court of Appeal considered that the structure of the companies under Beth Clifford's control (in ways that obscured their individual identities) combined with the nature of the transaction itself established the necessary impropriety to disregard the separate legal personality of GDP and held Beth Clifford jointly liable for the breach of contract. It also held Beltway liable for the contractual breach on the basis that it had been wired the contract sum from LCW and LCW had not received the lot title or house.

GDP did not appeal the Court of Appeal's decision. The issues before the Caribbean Court of Justice ('CCJ') were therefore limited to:

1. Whether the Court of Appeal erred in disregarding the separate legal personality of GDP to hold Beth Clifford personally liable for GDP's breach of contract ('Disregard of Separate Corporate Personality') and

2. Whether the Court of Appeal erred in holding Beltway jointly liable for GDP's breach of contract ('Beltway's Liability').

The CCJ unanimously allowed the appeal.

Disregard of Separate Corporate Personality

The Court found that there was no basis for holding Beth Clifford personally liable for GDP's breach of contract. As to whether the separate legal personality of GDP should be disregarded to impute liability for the contractual breach to Beth Clifford, counsel for both parties, and the Court of Appeal, had relied on the UK Supreme Court case *Prest v Petrodel Resources Ltd* (*'Prest'*). In that case, Lord Sumption, who delivered the leading judgment, had articulated the 'concealment' and 'evasion' principles when discussing the circumstances in which a court is entitled to pierce the corporate veil under English law. The concealment principle allows a court to look behind the veil to discover the facts the corporate structure is concealing without actually piercing the corporate veil. The evasion principle is a limited principle of English law that entitles a court to disregard the corporate veil where a company is interposed to evade or frustrate the enforcement of a pre-existing legal right against the controller.

A majority of the Court (Rajnauth-Lee, Jamadar, Ononaiwu and Eboe-Osuji JJ) agreed that the CCJ should not adopt Lord Sumption's concealment/evasion framework.

Ononaiwu J (with whom Rajnauth-Lee and Eboe-Osuji JJ agreed) proposed the approach that should guide the courts' exercise of their power at common law to disregard the separate legal personality of a company. First, the courts are entitled to disregard a company's separate legal personality to give relief to third parties where they are satisfied that the corporate form has been abused contrary to the purpose for which the benefit of incorporation is conferred under the Companies Act. Second, the corporate form can be abused in this manner in anticipation of the formation of the company, at the time of its formation or after the company has been operating legitimately following its formation. The degree to which the corporate form is abused would be a fact-specific inquiry, depending on how the controller has used the corporate vehicle to assist in the perpetration of the

relevant wrongdoing. Third, courts should assess whether there are other legal remedies available and should not disregard the company's separate legal personality if it is not necessary to do so. Fourth, where the company's separate legal personality is disregarded, this is done only for the purpose of depriving the company or controller of the advantage they would have otherwise obtained by the company's separate legal personality and the corporate form remains intact for all other purposes. Finally, where the court disregards the separate legal personality of the company, the result can be to attach consequences to controllers of the company directly.

On the facts of the case, Ononaiwu J found that there was no basis for the Court of Appeal to pierce GDP's corporate veil as there was no evidence that Beth Clifford abused or misused the separate legal personality of GDP in the context of the transaction for the lot purchase and house construction to avoid the accountability of GDP for breach of its contractual obligations to LCW.

Barrow J also decided that the appeal should be allowed because there was no justification for a departure from the principle that the controller of a limited liability company is not liable for the company's breach of contract. At the root of the matter, Barrow J found this was a simple contract for the sale of land and the construction of a building without any unusual features, in which there was no finding of relevant wrongdoing or impropriety on the part of Beth Clifford or Beltway that would warrant disregarding GDP's separate legal personality. In his view, the legal principles that the Court of Appeal decided governed the question of whether to disregard the separate legal personality of a company, did not operate on the facts of this case and, therefore, did not permit disregarding the separation of company and controller. Neither did those principles permit such disregard in the absence of dishonest action by the controller such as would amount to abuse of separate corporate personality. It was not wrong for an individual to rely on the separate legal personality of a company to avoid personal liability. There was accordingly no basis in law or fact to hold either appellant liable.

In his opinion allowing the appeal, Jamadar J took a statutorily based first principles approach and articulated the 'lawful purpose' principle that a company and its shareholders

receive the benefit of incorporation because a company can only be incorporated for a lawful purpose. Therefore, shareholders and controllers of a company risk losing the benefits of incorporation and the protection of the separate corporate personality if the company is used for an unlawful purpose or a purpose contrary to law. When determining whether to exercise their power to disregard a company's separate legal personality, Jamadar J urged courts to consider whether (i) the transactions were done in pursuit of an unlawful purpose and/or a purpose contrary to law, (ii) there has been an abuse or misuse of the corporate legal personality and structure, (iii) which is intended to avoid existing legal rights or rights that have accrued and/or to evade/defeat the law or frustrate its enforcement, (iv) which has resulted in harm or loss to the aggrieved party, and (v) who has been deprived of any effective relief (The five guideline criteria).

He pointed out that these guideline criteria are neither fixed, rigid, nor prescriptive in an absolute sense, but rather are intended to function as pointers that help evaluate whether to disregard the corporate veil. He also proposed a practical three-part analytical framework; inquire into (i) whether the impugned transaction itself is in furtherance of an unlawful purpose and/or a purpose contrary to law, (ii) whether the corporate structure has also been used unlawfully for this purpose, and (iii) whether the consequence is to deprive an aggrieved person of effective relief.

Applying those criteria to the facts, Jamadar J found the Court of Appeal erred in ascribing liability to Beth Clifford as it was not established that her use of the companies of GDP and Beltway was for an unlawful purpose. In fact, at no point did she incur a personal liability to LCW.

Eboe-Osuji J agreed that the appeal must succeed because the case for lifting the corporate veil was not made out in the circumstances of this case. He joined Jamadar and Ononaiwu JJ in rejecting the adoption in this Court of the 'concealment' and 'evasion' hypotheses that were articulated in *Prest*.

Eboe-Osuji J explained that the idea of incorporation was originally sensible. It was a legislative policy that permitted large groups of human beings to invest in business ventures,

by ‘limiting’ any resulting ‘liabilities’ to the extent of their individual contributions. The notion of the ‘corporate veil’ was thus always a figment of the legal imagination, deriving from the legislation that allowed shareholders to enjoy the privilege of ‘limited liability.’

As a fiction, the ‘corporate veil’ was never a contraption in cast iron, let alone one in heavyweight. The veil was always meant to be ‘pierced’ or ‘lifted’ whenever justice, through equitable sensibilities, demanded that course in the last resort, because of wrongdoing that was inconsistent with the purpose for which the incorporation privilege was granted. The principle that contemplated the setting aside of the incorporation privilege in the event of wrongdoing was a primary principle of remedy. Regrettably, the metaphor of ‘corporate veil’ has over the years resulted in the obscuring of that primary principle; ushering in, instead, an illusory quest for a secondary principle that would ‘coherently’ explain, as that secondary principle goes, every instance in which a court of law declines or awards the remedy in the particular circumstances of the case.

What is needed in this area of company law are not new secondary principles and metaphors - such as the ‘concealment’ and ‘evasion’ principles espoused in *Prest*, or ‘reverse piercing’ favoured by some legal scholars - to explain the primary principle of remedy. What is needed, rather, is a return to the basics of that primary principle in its own essence, stripped of the metaphorical cloak that has long distracted its fullest appreciation as an equitable remedy that courts may order in the different factual circumstances and guises in which wrongdoings can occur.

In the end, however, the overriding question remains whether the case for lifting the corporate veil is made out in a particular case.

Beltway’s Liability

The Court also found that there was no basis in law or fact to hold Beltway liable for the breach of contract. Ononaiwu J (with whom Rajnauth-Lee and Eboe-Osuji JJ agreed) found that Beltway did not contribute to GDP’s breach of contract and there was no finding in either of the courts below that Beltway was a constructive trustee for the funds or that the funds had been misused or misapplied. Barrow J (with whom Eboe-Osuji J agreed) found

that the contract between LCW and GDP contemplated that Beltway would receive the money and pay it over to GDP, which it did. Similarly, Jamadar J found that Beltway performed its role as agreed between LCW and GDP and there was no finding of a constructive trust arising, or that the funds had been misapplied or misused.

For the foregoing reasons, the Court ordered that:

1. The decision of the Court of Appeal be set aside and the order of the High Court be restored, and

2. Beth Clifford and Beltway be paid their costs before this Court as agreed by the parties and in the courts below.

Cases referred to:

642947 Ltd v Fleischer (2001) 56 OR (3d) 417; *Adams v Cape Industries plc* [1990] Ch 433; *A-G v Antigua Times Ltd* (1975) 21 WIR 560 (AG PC); *Antonio Gramsci Shipping Corp v Lembergs* [2013] 4 All ER 157; *ArcelorMittal India Private Ltd v Gupta* [2018] 12 SCR 362; *Bay Trust Corp Services Ltd v Longsworth* [2020| CCJ 8 (AJ) BZ, (2020) 99 WIR 131; *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, (2020) 100 WIR 109; *Ben Hashem v Al Syahif* [2009] 1 FLR 115; *Berkey v Third Ave Railway Co* 244 NY 84 (1926); *Bilta (UK) Ltd v Nazir (No 2)* [2016] AC 1; *Controller of Supplies v Gas Tomza Ltd* [2025] CCJ 16 (AJ) BZ; *Credit Lyonnais Bank Nederland NV v Burch* [1997] 1 All ER 144; *Delhi Development Authority v Skipper Construction Co (P) Ltd* (1996) 4 SCC 622; *Delpeache v Commissioner of Police* [2021] CCJ 10 (AJ) BB, BB 2021 CCJ 3 (CARILAW); *FNF Enterprises Inc v Wag and Train Inc* 165 OR (3d) 401; *Gencor ACP Ltd v Dalby* [2000] 2 BCLC 734; *GHL Pte Ltd v Unitrack Building Construction Pte Ltd* [1999] 3 SLR(R) 44; *Gilford Motor Co Ltd v Horne* [1933] Ch 935; *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592; *Green Development Partners Ltd v LCW Investments LLC* BZ 2024 CA 6 (CARILAW), (20 June 2024); *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) GY, [2022] 2 LRC 491; *Hook v Hoffman* (1915) 16 Ariz 540; *Insurance Corp of Belize Ltd v Kahtal Resorts International Ltd* [2024] CCJ 5 (AJ) BZ, BZ 2024 CCJ 3 (CARILAW); *International Academy of Management and Economics (I/AME) v Litton and Co Inc* (GR No 191525, 13 December 2017); *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418; *Jhaveri Darsan Jitendra v Salgaocar Anil Vassudeva* [2018] 5 SLR 689; *Jones v Lipman* [1962] 1 All ER 442; *Kosmopoulos v Constitution Insurance Co of Canada* [1987] 1 SCR 2; *LCW Investments LLC v Clifford* BZ 2023 SC 38 (CARILAW), (21 February 2023); *Lee v New South Wales Crime Commission* (2013) 251 CLR 196; *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705; *Life Insurance Corp of India v Escorts Ltd* (1986) 1 SCC 264; *Macaura v Northern Assurance Co* [1925] AC 619; *Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd* [2014] 4 SLR 832; *Meridian*

Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500; *Minister of Home Affairs v Fisher* [1980] AC 319; *Persad v Singh* [2017] UKPC 32 (TT); *Prest v Petrodel Resources Ltd* [2013] 2 AC 415; *Quebec (A-G) v 9147-0732 Québec Inc* [2020] 3 SCR 426; *R* (*Jackson) v A-G* [2006] 1 AC 262; *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2022] AC 690; *Rugby Football Union v Consolidated Information Services Ltd* [2012] 1 WLR 3333; *Salomon v A Salomon & Co Ltd* [1897] AC 22; *Saluja v Air India Ltd* (2014) 9 SCC 407; *Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v A-G of Trinidad and Tobago* (2009) 76 WIR 378 (TT HC); *Short v Treasury Commissioners* [1948] AC 534; *Stradling v Morgan* (1559) 1 Pl 198, 75 ER 305; *Supaul v Lalchand* (BZ SC, 29 January 2018); *Tata Engineering and Locomotive Co Ltd v State of Bihar* [1964] 6 SCR 885; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153; *Todd v Price* [2021] CCJ 2 (AJ) GY; *Transamerica Life Insurance Co of Canada v Canada Life Assurance Co* (1996) 28 OR (3d) 423; *Trustor AB v Smallbone (No 2)* [2001] 1 WLR 1177; *VTB Capital plc v Nutritek International Corp* [2013] 2 AC 337; *Wallersteiner v Moir* [1974] 1 WLR 991; *Woolfson v Strathclyde Regional Council* (1978) SC (HL) 90; *Yukong Line Ltd of Korea v Rendsburg Investments Corp of Liberia (No 2)* [1998] 1 WLR 294.

Legislation referred to:

Belize – Belize Companies Act 2022, Belize Constitution Act, CAP 4; **Saint Lucia** – Companies Act, Cap 13.01, Constitution of Saint Lucia, Cap 1.01; **United Kingdom** – Bubble Act 1720 (6 Geo 1 c 18), Companies Act 1862 (25 & 26 Vict c 89), Matrimonial Causes Act 1973.

Treaties and International Materials referred to:

Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

Other sources referred to:

Burgess A, *Commonwealth Caribbean Company Law* (Routledge 2013); Davies P L and Worthington S, *Gower's Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016); Dignam A and Canruh D, 'Into Reverse: Redesigning Veil Piercing' (2025) 45 Legal Studies 212; *Halsbury's Laws of England* (5th edn, 2025) vol 61; Hannigan B, 'Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-Man Company' (2013) 50 Irish Jurist 11; Ho M K, 'Piercing the Corporate Veil as a Last Resort' (2014) 26(1) Singapore Academy of Law Journal 249 (note); Holmes O W, *The Common Law* (1881); Hunt B C, 'The Joint-Stock Company in England, 1800-1825' (1935) 43(1) Journal of Political Economy 1; Kamdar N and Srinivasan A, 'Solving the Bad Loan Crisis in the Unconventional Way: Is Reverse Piercing the Corporate Veil a Solution?' (2019) 12 NUJS L Rev 169; Liew A, 'Three Steps Forward, Three Steps Back: Why the Supreme Court decision in Prest v Petrodel Resources Ltd Leads Us Nowhere' (2014) 5(2) King's Student L Rev 67; Macey J and Mitts J, 'Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil' (2014) 100(1) Cornell L Rev 99; McIntosh

S, *Caribbean Constitutional Reform: Rethinking the West Indian Polity* (Caribbean Law Publishing Co 2002); Mujih E C, 'Piercing the Corporate Veil: Where is the Reverse Gear?' (2017) 133 LQR 322; Ottolenghi S, 'From Peeping Behind the Corporate Veil, to Ignoring it Completely' (1990) 53(3) MLR 338; Scott W R, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720* (Cambridge University Press 1912) vol I ; Shannon H A, 'The Coming of General Limited Liability' (1931) 2(6) Economic History 267; Spiro P, 'Piercing the Corporate Veil in Reverse: Comment on Yaiguaje v Chevron Corporation' (2019) 62 Can Bus LJ 231; Tan C, 'Veil Piercing: A Fresh Start' [2015] JBL 20; Tan Z X, 'The New Era of Corporate Veil Piercing: Concealed Cracks and Evaded Issues?' (2016) 28 Singapore Academy of Law Journal 209; Tang I W H, 'Veil Piercing in Singapore: A Proposed Approach' (2024) 4 Singapore Law Journal (Lexicon) 34; Thompson R B, 'Piercing the Corporate Veil: An Empirical Study' (1991) 76(5) Cornell L Rev 1036; Upadhyay N, 'Piercing the Corporate Veil: An Analysis of Lord Sumption's Attempt to Avail a Troubled Doctrine' (2015) 21 Auckland University Law Review 114; Wormser M, 'Piercing the Veil of Corporate Entity' (1912) 12 Colum L Rev 496.

JUDGMENT

Reasons for Judgment:

ONONAIWU J:

Introduction

[1] This is an appeal against the judgment of the Court of Appeal of Belize, which held that the First Appellant, Beth Clifford, in her personal capacity, and the Second Appellant, Beltway Investment Group Inc ('Beltway'), were jointly liable along with Green Development Partners Ltd ('GDP') to pay damages for breach of contract to the Respondent, LCW Investments LLC ('LCW Investments'). The High Court had awarded damages to LCW Investments against GDP only for breach of an agreement for the purchase of land and construction of a house on that land. While GDP has not lodged a further appeal, Beth Clifford and Beltway have appealed the Court of Appeal's ruling that they are also liable to LCW Investments for the contractual breach.

[2] Neither Beth Clifford nor Beltway is a party to the contract between LCW Investments and GDP. However, the Court of Appeal felt entitled to pierce the corporate veil of GDP and imputed the company's contractual liability to Beth Clifford, who owns and controls it. A central issue in this appeal therefore concerns a court's power to disregard a company's separate legal personality in order to grant relief to third parties. The court also assigned liability to Beltway because that company was wired the purchase price for the land and house. The Caribbean Court of Justice ("This Court") unanimously held that the appeal should be allowed as it was not correct for the Court of Appeal to fix liability on Beth Clifford personally or on Beltway for GDP's breach.

Factual Background

[3] Steve Williams is a real estate investor and director of LCW Investments, a company incorporated in the United States. Beth Clifford is the sole shareholder and managing

director of GDP, a company incorporated in Saint Lucia, and of Beltway, a company incorporated in the United States.

[4] LCW Investments entered into an agreement dated 30 March 2017 with GDP for the purchase of Lot No 259 in a development called Mahogany Bay Village Resort in San Pedro, Ambergris Caye, Belize, and the construction of a house called the 'Keeping Suite' on that lot. The agreement was contained in a standard form document called a 'Lot Purchase and House Construction Order Form' ('Order Form'), which referred to the attached 'Lot Purchase and House Construction Summary' that set out the particulars of the transaction. The Order Form was signed by Steve Williams, on behalf of the buyer, LCW Investments, and Beth Clifford as 'President' of GDP, which was named as the 'House Construction Company'.

[5] The total purchase price was USD788,709, comprising the land price of USD135,000, the house price of USD645,000 and closing costs of USD7,809. No land deposit was specified. The buyer agreed to pay a house deposit of USD78,090 upon execution of the agreement and elected to pay the total balance in a lump sum by 1 August 2017. All payments to GDP were to be made by wire transfer to Beltway, pursuant to wiring instructions for all US-based banking that were attached to the Order Form.

[6] The Order Form provided that within 10 business days of execution, the buyer shall enter into a land purchase agreement with the Land Company, identified as Corporate Investments Holdings Company Ltd ('CIHC'), a company incorporated in Anguilla. 5801G0A2105 Inc, a company also incorporated in Anguilla, was named as the owner of Lot No 259. The buyer acknowledged that 'the Land Company and the House Construction Company are unrelated entities and that the House Construction Company shall have no responsibilities or obligations whatsoever with regard to the Purchase of the Land'.

[7] The Order Form similarly provided that within 10 business days of execution, the buyer shall enter into a House Construction Agreement with the House Construction Company. The Order Form was headed with an 'Important Notice' that the House Construction Agreement 'has no relevance with regard to the Land Purchase or Land Purchase Agreement and the House Construction Company is not obligated in any way with regard to the Land Purchase'.

[8] A Rental Management Services Agreement dated 14 June 2017 was concluded between the Unit Owner of the Keeping Suite on Lot No 259 and Mahogany Bay Management Ltd. The latter, a company incorporated in Belize, was the sole rental manager for the Mahogany Bay Village Resort. The Rental Management Services Agreement placed the unit in the rental programme of the resort. In addition, a Property Management Services Agreement was concluded in June 2017 between the Unit Owner and Mahogany Bay Management Ltd, which was also responsible for the maintenance and upkeep of the common property and property exterior in the development. On both documents, the unit owner of the Keeping Suite on Lot No 259 was identified as 5801G0A2105 Inc. Steve Williams signed the document on behalf of the unit owner and Beth Clifford signed as 'Director' of Mahogany Bay Management Ltd.

[9] On 17 July 2017, LCW Investments and GDP entered into the House Construction Agreement for the construction of the Keeping Suite on Lot No 259. Under this agreement, construction services shall be performed by 'qualified construction subcontractors and suppliers selected and paid by the House Construction Company'. The buyer was acknowledged as the 'record title holder or contract title buyer' of the land and agreed to furnish the House Construction Co with a copy of the buyer's title to the property prior to commencement of the 'active job life', defined as the period which started with active bidding of the work. 5801G0A2105 Inc was identified as the owner of Lot No 259. As with the Order Form, the construction start date was specified as 'Next Available'.

[10] The buyer paid the total purchase price by 31 October 2017. LCW Investments never received the land purchase agreement or title for Lot No 259. In October 2018, Steve Williams requested from GDP the title for the lot to support a loan application. Having not obtained the title or clarity about the timeline for completion of the Keeping Suite, despite persistent efforts, Mr Williams visited Mahogany Bay Village in late February 2019. On 2 March 2019 during that visit, Steve Williams met with Beth Clifford and registered the need to receive the title for the lot. Soon thereafter, Ms Clifford communicated to Mr Williams that she was working to expedite the title, which he should receive within 60 days. In April 2019, Ashley Keating, Owner Relations Administrator, Mahogany Bay Management Ltd, sent Steve Williams documents to effect the sale and transfer by GDP of the entire shares in 5801G0A2105 Inc to LCW Investments for the purchase price of USD150,000. Mr Williams signed these documents, which were subsequently voided.

[11] By a letter dated 5 August 2019, LCW Investments rescinded the Order Form and House Construction Agreement. On 26 August 2019, Robert Helms, director of real estate sales for GDP, presented Steve Williams with a settlement proposal, involving the purchase of the Lot 259 Keeping Suite by a buyer group and the payment to LCW Investments of USD780,900, over four payments, within 60 days of execution of the settlement agreement. Mr Williams did not accept this proposal, informing Mr Helms of his interest in a solution that would reimburse within 30 days the full amount of USD788,709 paid by LCW Investments. No settlement agreement was reached.

History of Litigation

(a) The High Court

[12] LCW Investments filed a claim in the High Court of Belize against Beth Clifford, GDP and Beltway. In the amended statement of claim dated 25 March 2021, LCW Investments sought rescission of the Order Form and House Construction Agreement, return of USD788,709, damages for breach of contract and, in the

alternative, a declaration that the defendants hold USD788,709 in trust for it and are liable to account for that sum, as well as damages for fraudulent misrepresentation. GDP counterclaimed for specific performance of the Order Form and House Construction Agreement and/or damages for breach of contract. The parties agreed on the issues to be determined at trial.

[13] In an oral judgment delivered on 21 February 2023,[1] the trial judge, Young J, dismissed the claims against Beth Clifford and Beltway, granted judgment against GDP, and dismissed GDP's counterclaim. In addressing the issue of whether there was a breach of the Order Form and House Construction Agreement by failure to deliver the land purchase agreement within 10 days or not transferring title, the judge found that there must have been some relation between the seller of the lot and the construction company since the Order Form conveyed the impression that it will enable the lot purchase and house construction. The court reasoned that the Order Form and House Construction Agreement revealed GDP to be more than a house construction company and that LCW Investments could not have been expected to seek out the owner of the lot to make arrangements for its purchase. The High Court therefore implied in the Order Form the obligation on GDP to present LCW Investments with the land purchase agreement within 10 days. The court found that GDP's failure to do so was a fundamental breach of the agreement made under the Order Form and that LCW Investments validly rescinded the agreement in its letter of 5 August 2019. The judge found that LCW Investments did not fail to mitigate its losses as it was asked to sell property for which it was not the legal owner and declined.

[14] The trial judge found no evidence of fraudulent misrepresentations by Beth Clifford, GDP or Beltway to induce LCW Investments to enter into the agreement. In addressing the issue of whether Beth Clifford used GDP and Beltway as her agents, a façade or her devices in her scheme to market and sell land and build houses within

[1] *LCW Investments LLC v Clifford* BZ 2023 SC 38 (CARILAW), (21 February 2023).

the resort thereby making her personally liable on the Order Form and House Construction Agreement, Young J observed that Beth Clifford 'seems to be the common denominator in this entire matter'.[2] However, the judge did not find that there was a fraud perpetrated which would allow the corporate veil of GDP and/or Beltway to be pierced to make Beth Clifford personally liable. Further, the court found no evidence that the defendants had used the funds paid by LCW Investments to purchase other lands and/or fund other structures and facilities in the development that are not part of the Lot 259 Keeping Suite. The court also found no evidence that Beltway holds the funds of LCW Investments as its trustee and did not find that the defendants were liable to account to LCW Investments for the funds paid.

[15] The High Court ruled that LCW Investments was entitled to the return of USD788,709, representing the land purchase price, construction price and closing costs, as this was its loss at the date it accepted GDP's renunciation of the contract. The court awarded damages in that sum to LCW Investments against GDP. The trial judge dismissed GDP's claim for specific performance or damages for breach of contract given that LCW Investments is not the legal owner of the lot and could lay no claim to the Keeping Suite built on it and that the Keeping Suite ought not to have been built until LCW Investments furnished title for the lot, which it was unable to do. The court awarded costs to LCW Investments against GDP on the claim and counterclaim in the agreed sum.

(b) **The Court of Appeal**

[16] In a Notice of Appeal filed on 28 March 2023, GDP appealed against the High Court's decision. GDP challenged the correctness of the trial judge's findings that it had breached the Order Form and House Construction Agreement, that the Order Form and House Construction Agreement had been validly rescinded, and that LCW Investments did not fail to mitigate its loss. GDP also asserted that the trial judge

[2] ibid at [27].

erred in dismissing the counterclaim for specific performance and/or damages for breach of contract.

[17] On 11 April 2023, LCW Investments filed a Notice of Intention to contend that the judgment below be varied to include additional relief, namely, declarations that Beth Clifford, GDP and Beltway hold the sum of USD788,709 in trust for LCW Investments and are liable to account to LCW Investments for that sum, as well as damages for fraudulent misrepresentation.

[18] In a judgment delivered by Bulkan JA (Hafiz-Bertram and Foster JJA concurring) on 20 June 2024,[3] the Court of Appeal dismissed the appeal and varied in part the High Court's judgment. As to the issue of the breach of contract, the Court of Appeal found that the trial judge did not misconstrue the Order Form and Construction Agreement. The court concluded that the only reasonable way to interpret the agreement for it to be commercially efficacious is that it was GDP's responsibility to deliver the land purchase agreement to LCW Investments for execution. The trial judge had correctly held that GDP's failure to do so constituted a material breach of the Order Form for which LCW Investments was entitled to rescind the contract.

[19] The Court of Appeal ruled that the trial judge was also correct to find that LCW Investments validly accepted GDP's repudiatory breach of the agreement. There was no performance of the agreements at the time of rescission as LCW Investments had received neither title nor the Keeping Suite. Accordingly, the trial judge's award of damages for the entire sum paid by LCW Investments correctly represented the losses sustained for GDP's unperformed obligations. Further, the Court of Appeal agreed with the trial judge's finding that LCW Investments did not fail to mitigate its losses. The court did not fault the trial judge's dismissal of GDP's claim for specific performance as it would be illogical to order completion of the contract found to be discharged.

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[3] *Green Development Partners Ltd v LCW Investments LLC* BZ 2024 CA 6 (CARILAW), (20 June 2024).

[20] LCW Investments was partly successful in its claim for variation of the High Court's ruling. The Court of Appeal upheld the trial judge's finding that no constructive trust arose on the evidence. The stated purpose of wiring the purchase price to Beltway (which in turn was required to transfer those funds to GDP) was simply that of convenience since GDP did not have a United States ('US') bank account. There was no evidence that the funds were misapplied or misappropriated, or that there was impropriety in their use. Since the trial judge had awarded LCW Investments damages for the contractual breach amounting to the full sum paid, the Court of Appeal found it unnecessary to order GDP to account for the sums received. Similarly, the Court of Appeal upheld the trial judge's finding that there was no evidence to support that any fraudulent misrepresentations were made to the buyer inducing it to enter into the contract. In particular, there was no evidence to substantiate LCW Investments' claim that any promises were made about construction timelines; the only uncontested evidence was what was stated on the Order Form, namely, 'Next Available'.

[21] However, the Court of Appeal concluded that the trial judge was wrong to absolve Beltway and Beth Clifford of any liability and varied the judge's ruling so as to hold them jointly and severally liable along with GDP for the breach of contract. The court found that Beltway was liable with GDP for the return of the entire sum paid by LCW Investments because it was wired the full purchase price from the buyer, which in turn did not receive the lot title or the Keeping Suite. The court found no proof of GDP's claim that it acquired Lot No 259 and that the building was constructed.

[22] The Court of Appeal ruled that Beth Clifford was personally liable for the breach of contract because 'the principle of separate legal personality of companies was deliberately used in the context of this transaction as a shield for liability, which satisfies the test for piercing the corporate veil'.[4] The court rejected GDP's procedural argument that there was no specific pleading below that LCW

[4] ibid at [130].

Investments was seeking an order to lift the corporate veil. The Court of Appeal pointed out that the pleaded case of LCW Investments was that Beth Clifford used GDP and Beltway as her agents in furtherance of her 'sham' scheme to access and deal with, for her private purposes, the proceeds of the sale of lots and construction of houses at Mahogany Bay Village Resort. Further, one of the agreed issues for the judge's determination was whether Beth Clifford used GDP and Beltway as her agents, a façade or devices in her scheme, thereby making her personally liable on the agreement. The court therefore found that LCW Investments' pleaded case gave clear notice of its claim to make Beth Clifford personally liable and GDP was aware of the case that had to be met.

[23] In addressing GDP's substantive argument that there was no proven impropriety that would warrant the trial judge's piercing of the corporate veil to hold Beth Clifford personally liable, the Court of Appeal recalled that the separate legal personality of companies is a longstanding and foundational principle of English company law, established in *Salomon v A Salomon & Co Ltd.*[5] The court noted, however, that the doctrine of 'lifting' or 'piercing' the corporate veil had developed under English law as a limited exception to the principle of a company's separate legal personality in recognition of the problem raised by the use of legal concepts to defeat mandatory rules of law. Bulkan JA indicated that in *Prest v Petrodel Resources Ltd,*[6] the UK Supreme Court acknowledged the controversial status and limited application of the doctrine of piercing the corporate veil but expressly refused to overrule it. He considered that Lord Sumption, who delivered the leading judgment in *Prest,* and his colleagues had concluded that the doctrine has considerable value. Lord Sumption, it was noted, explained that piercing the corporate veil is justified where the feature of separate legal personality is abused for the purpose of some 'relevant wrongdoing', which could take the form of the 'concealment' principle and the 'evasion' principle. In the former which is not strictly a situation of piercing the corporate veil, the court goes behind the 'façade' of the corporate structure to

[5] [1897] AC 22.
[6] [2013] 2 AC 415.

discover its true identity and in the latter, there is impropriety involved insofar as the principle of separate legal personality is used to evade a legal liability. Bulkan JA cited Lord Sumption's summary that the corporate veil may be pierced only to prevent the abuse of corporate legal personality, that it may be abuse of the separate legal personality of a company to use it to evade the law or frustrate its enforcement, but that it is not an abuse to cause a legal liability to be incurred by the company in the first place.

[24] The Court of Appeal used these principles as its framework to assess LCW Investments' claim that Beth Clifford be held personally liable along with GDP for the contractual breach. Ultimately, the court found that it is 'the ownership and control of the companies (in ways that themselves obscure their individual identities) *combined with* the nature of the transaction itself that establishes the impropriety necessary for piercing the corporate veil'.[7]

[25] In examining the companies controlled by Beth Clifford, Bulkan JA pointed to the blurred lines 'between these supposedly separate legal entities – not just between Beth Clifford vis-à-vis her companies, but also as between the companies themselves'.[8] In this regard, the judge noted that Beth Clifford acts in multiple capacities (sometimes simultaneously), has signature blocks containing multiple designations and it was sometimes unclear in which capacity she was acting. He also highlighted the personal control exerted by Beth Clifford over the companies, which raises the question as to whether the companies were 'just a 'cloak' or 'sham' for her personal dealings', or 'how independent and separate these various entities are, notwithstanding the cloak of separate legal personality'.[9] The judge stated that the events in the case called to mind Lord Denning MR's image in *Wallersteiner v Moir*[10] of companies that were 'puppets' of the controller or agents that did as the principal commanded.[11] As an example, he noted that, to facilitate the buyer

[7] *Green Development Partners* (n 3) at [112].
[8] ibid at [105].
[9] ibid at [106].
[10] [1974] 1 WLR 991.
[11] *Green Development Partners* (n 3) at [106].

obtaining the title to Lot 259, the holding company was acquired with great ease and the buyer was informed that Mahogany Bay would absorb the increase in the land price. He also noted that staff worked fluidly between different companies and funds were co-mingled. In relation to GDP, Bulkan JA asked how the company could be held accountable for its liabilities when it had no address, no employees, no directors or shareholders other than Beth Clifford and 'no clearly identified purpose'.[12] For the judge, this raised the question of whether GDP's 'shadowy and indistinct structure' was innocent or whether it was 'deliberately engineered as such to shield wrongdoing'.[13]

[26] Bulkan JA also pointed to what he regarded as the impropriety involved in the actual transaction. Characterising the transaction as 'an elaborate subterfuge', he opined that its terms were 'murky, with identities obscured and mischaracterised and roles, even consequential ones, omitted and denied'.[14] He considered that the contract imposed obligations on entities that were not parties. He stated that although GDP had agreed that Lot 259 would be sold to the buyer and a Keeping Suite constructed on the lot, GDP was neither the owner of the land nor, it was eventually revealed in Beth Clifford's cross-examination, a house construction company. Further, the judge opined that it was disingenuous that GDP sought in the contract to distance itself from the land transaction when it in fact played an integral role in the collection of the purchase price of the land and house as well as in the facilitation of the land transfer, and was the exclusive sales agent for the land company. Further, the judge pointed to the parties' conduct, in particular, Beth Clifford's claim that Steve Williams instructed the voiding of the share transfer documents but eventual admission in cross-examination that the voiding was probably done at the instance of the Anguillan attorneys. Bulkan JA identified what he considered to be other 'red flags' in the evidence, namely, Beth Clifford's statement that she did not know who owned Lot No 259 at the time she signed the Order Form (though statements as to ownership were made on the form), her eventual admission under cross-examination

[12] ibid at [107].
[13] ibid.
[14] ibid at [108].

that the funds were co-mingled, and the absence of evidence as to how the buyer's payments were actually used. Further, the judge found that Beth Clifford 'could give no straight answer' regarding the construction of the Keeping Suite, stating 'evasively' that it was 'substantially' completed as of December 2019, which did not shed light on the status of construction at the time of rescission.[15]

[27] Having regard to both the structure of the companies involved and the nature of the transaction itself, Bulkan JA was convinced that the 'tangled corporate structure comprising Beth Clifford's empire' obscured the breach of contract that had occurred.[16] He was satisfied, in other words, that 'the principle of separate legal personality of companies was deliberately used in the context of this transaction as a shield for liability'.[17] In the event of a breach, GDP could point to the clauses in which it asserted its lack of obligations, while other companies could simply rely on their separate identity and absence from the agreement to themselves deny any responsibility. The judge considered that 'to allow this would be to allow Beth Clifford – the common denominator – to misuse the law to evade the obligations and liability necessarily arising in her enterprise', which, in his view, 'is precisely what the law does not permit'.[18] The Court of Appeal therefore found that it was entitled to pierce the corporate veil and hold Beth Clifford personally liable for the breach of contract. The court noted that this conclusion does not mean that the companies were set up with a fraudulent intent, or that the corporate veil is pierced for all purposes.

[28] The Court of Appeal held that GDP, together with Beltway and Beth Clifford in her personal capacity, are jointly and severally liable to LCW Investments for damages in the sum of USD788,709. Costs of the appeal were awarded to LCW Investments.

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[15] ibid at [111].
[16] ibid at [113].
[17] ibid.
[18] ibid.

Appeal to the Caribbean Court of Justice

[29] Through a Notice of Appeal filed on 28 January 2025, Beth Clifford and Beltway appealed the judgment of the Court of Appeal pursuant to leave granted by that court on 13 November 2024. Beth Clifford challenged the Court of Appeal's finding that she was personally liable for GDP's breach of contract on six grounds, namely, that the Court of Appeal erred:

(i) by failing to conclude that neither the 'concealment' principle nor 'evasion' principle as defined in *Prest v Petrodel Resources Ltd* applied to the facts of the case and therefore there was no basis to pierce the corporate veil of GDP to find her personally liable;

(ii) by purporting to pierce the corporate veil of GDP without first identifying an existing legal obligation which she owed to LCW Investments and which she sought to evade by interposing GDP and thereby abusing the protection from personal liability afforded by GDP;

(iii) by performing a 'forward and reverse piercing' of GDP's corporate veil, that is, the court wrongly found that Ms Clifford was personally liable for a breach committed by GDP;

(iv) by concluding that on the facts of the case it was entitled to pierce the corporate veil of GDP and hold Ms Clifford personally liable for GDP's breach of contract, thereby violating the rule in *Salomon v A Salomon & Co Ltd* which established that as a shareholder Ms Clifford was protected from personal liability for GDP's breach of contract;

(v) by considering whether to pierce GDP's corporate veil so as to fix personal liability on Ms Clifford, having granted a conventional remedy – an award of damages – to LCW Investments;

(vi) as there was no sufficient evidence before it to pierce the corporate veil of any of the companies involved in the transaction.

[30] Beltway has appealed the Court of Appeal's finding that it is liable for the breach of contract on two grounds, namely, that the court erred:

(i) as Beltway was not a party to the contract for the sale of the lot and construction of the Keeping Suite and there was no evidence that it in any way interfered with or otherwise breached the contract;

(ii) in concluding that Beltway was liable for breach of the contract for sale of a lot and construction of a Keeping Suite because it received the purchase price from LCW Investments and paid it over, and LCW Investments did not receive the lot or the Keeping Suite.

[31] Beth Clifford and Beltway sought orders setting aside the Court of Appeal's finding that they are liable to LCW Investments for the breach of the agreement, as well as the award of costs against them.

[32] GDP did not appeal the Court of Appeal's judgment. Accordingly, there was no appeal against the Court of Appeal's findings that GDP is liable for the breach of contract and that the contract was validly rescinded, the award of damages against GDP to LCW Investments or the dismissal of the claims of fraudulent misrepresentation or creation of a constructive trust. Two core issues therefore arise for the determination of this Court: first, whether the Court of Appeal erred in piercing the corporate veil of GDP to hold Beth Clifford personally liable for the breach of contract and second, whether the Court of Appeal erred in holding Beltway liable along with GDP for the breach of contract.

Analysis and Conclusions

(a) Beth Clifford's Personal Liability for the Breach of Contract

[33] To assess whether the Court of Appeal was correct to pierce GDP's corporate veil and hold Beth Clifford personally liable for the proven breach of contract, it is

necessary to first determine the relevant principles governing the separate legal personality of a company and the circumstances in which a court can disregard the company's separate legal personality.

Disregard of the Separate Legal Personality of a Company

[34] In his text *Commonwealth Caribbean Company Law*, Andrew Burgess states:

> One of the most fundamental principles of Commonwealth Caribbean company law is the rule that a company incorporated under a Companies Act is a legal entity separate and distinct from its members. What this means is that a company is capable of enjoying rights and being subject to liabilities different from those enjoyed or borne by its shareholders. This is captured in company law theory by the metaphor that a company has a separate legal personality. Indeed, the metaphor continues that on incorporation, a veil is drawn between the company's personality and that of its shareholders.[19]

[35] In the 19th century, the House of Lords, in *Salomon*, established the separate legal personality of a company as an implication of incorporation under the companies' legislation. The court held that Mr Salomon, the controlling shareholder of a company he had formed to take over his business, was not liable to indemnify the company against its creditors' claims. The company was duly formed and registered under the Companies Act 1862 (UK) and was not merely Mr Salomon's nominee, agent or trustee. Lord MacNaughten stated:

> The company is at law a different person altogether from the subscribers … and though it may be that after the incorporation the business is precisely the same as it was before, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act.[20]

[36] Notably, s 27 of Belize's Companies Act 2022 expressly provides that a company incorporated under that Act is a separate legal entity from its members.[21] GDP was

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[19] Andrew Burgess, *Commonwealth Caribbean Company Law* (Routledge 2013) 86 (footnotes omitted).
[20] *Salomon* (n 5) at 51.
[21] Section 27 provides that: 'A company is a legal entity, in its own right, separate from its members and continues in existence until it is dissolved.'

incorporated under the Companies Act of Saint Lucia, which also captures the principle of the separate legal personality of the company, though not in the same terms as s 27 of the Belize Companies Act. The Companies Act of Saint Lucia provides that a company incorporated under the Act comes into existence on the date on its certificate of incorporation[22] and 'has the capacity, and, subject to the Act, the rights, powers and privileges of an individual.'[23] The Act also stipulates that 'the shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except' in the limited circumstances prescribed in the Act.[24] Further, a member or past member of a company is not liable as such for any of the debts or liabilities of the company, except where they may be personally liable to make a contribution to the company's assets in the event of a winding up.[25]

[37] Courts have disregarded the separate legal personality of a company and 'pierced' the corporate veil when they interpreted the terms of a particular statute (other than the companies legislation) or contract to so authorise. Exceptionally, courts have also disregarded the separate legal personality of a company as a matter of common law. Writing in 2013, Burgess noted that there had been no systematic, principled approach to piercing the corporate veil and catalogued various explanations that had been invoked in the authorities for disregarding the *Salomon* principle at common law.[26] These include the existence of special circumstances indicating that the company is a 'mere façade concealing the true facts',[27] such as where the corporate structure was used as a device to evade limitations imposed on the defendant's conduct by law[28] or to evade rights of relief already possessed by third parties.[29] The corporate veil has also been pulled aside and the controller held responsible for the company's acts where the court found that the company acted as an agent of the

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[22] Companies Act, Cap 13.01, s 9 (LC).
[23] ibid s 17(1).
[24] ibid s 56.
[25] ibid s 379(4).
[26] Burgess (n 19) 92.
[27] *Woolfson v Strathclyde Regional Council* (1978) SC (HL) 90, 96.
[28] *Adams v Cape Industries plc* [1990] Ch 433. Cases which have been cited as examples of the application of this principle are *Jones v Lipman* [1962] 1 All ER 442, and *Gilford Motor Co Ltd v Horne* [1933] Ch 935.
[29] *Adams v Cape Industries plc* [1990] Ch 433; *Trustor AB v Smallbone (No 2)* [2001] 1 WLR 1177 has been referenced as an example of the application of this principle.

controller in the face of evidence of serious impropriety which it wished to frustrate.[30]

[38] In this appeal, the parties referred heavily in their submissions to the UK Supreme Court case *Prest v Petrodel Resources Ltd,* in which Lord Sumption sought to clarify the circumstances in which a court can pierce the corporate veil under English law. As previously mentioned, the Court of Appeal of Belize also relied on *Prest* in articulating its framework for assessing whether Beth Clifford should be held personally liable. A critical examination of the views expressed in *Prest* by Lord Sumption and his colleagues on piercing the corporate veil is warranted.

[39] *Prest* involved an application for ancillary relief in matrimonial proceedings and raised the issue of whether the court had the power to pierce the corporate veil of companies owned and controlled by the husband so that the company's assets could be available to satisfy a lump sum order in favour of the wife. The UK Supreme Court agreed with the Court of Appeal that there was no justification for piercing the corporate veil but ultimately found that the assets were held by the companies on trust for the husband and could be transferred to the wife.

[40] Lord Sumption, who delivered the leading judgment, made extensive comments on piercing the corporate veil. He noted that the expression 'piercing the corporate veil' is used indiscriminately but properly speaking, means disregarding the separate personality of the company so that a person who owns and controls a company is said to be identified with it in law by virtue of that ownership and control. Piercing the corporate veil does not refer to situations in which the law attributes a company's acts or property to those who control it, without disregarding its separate legal personality, for example, where the controller is held personally liable, in addition to the company, as its agent or as a joint actor, or the company holds property in trust for the controller.[31]

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[30] *Wallersteiner* (n 10) at 1013 (Lord Denning MR).
[31] *Prest* (n 6) at [16].

[41] Having reviewed prior case law, Lord Sumption concluded that the principle that the court may be justified in piercing the corporate veil if 'a company's separate legal personality is being abused for the purpose of some relevant wrongdoing' is 'well established in the authorities'.[32] He opined that 'the recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse'.[33] Provided the limits were recognised and respected, he considered the power to pierce the corporate veil to be 'consistent with the general approach of English law to the problems raised by the use of legal concepts to defeat mandatory rules of law'.[34]

[42] Regarding references to a 'façade' or 'sham' to be unsatisfactory to identify what is relevant wrongdoing, Lord Sumption relied instead on two distinct principles which he called the 'concealment principle' and the 'evasion principle'. The concealment principle is applied in cases where a company is interposed to conceal the identity of the real actors. Assuming their identity is legally relevant, the court may look behind the veil to discover the facts the corporate structure is concealing without actually piercing the corporate veil. The evasion principle is different. It applies where a legal right against the controller exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. In such cases, the court may disregard the corporate veil.[35]

[43] Lord Sumption opined that the limited cases in which a court is entitled to pierce the corporate veil are those in which the evasion principle is engaged. He formulated the test for piercing the corporate veil as follows:

> [T]here is a limited principle of English law which applies when 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. The court may then pierce the corporate veil for this purpose, and only for this purpose,

[32] ibid at [27].
[33] ibid.
[34] ibid.
[35] ibid at [28].

> of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality.[36]

[44] Additionally, Lord Sumption considered that even in cases where the evasion principle applies, a court should only afford the remedy of piercing the corporate veil if it is necessary to do so. The separate legal personality of the company should not be disregarded if other conventional remedies (for example, in agency or trust) are available. In this regard, Lord Sumption stated:

> The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil…I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative that justifies that course.[37]

[45] Lord Sumption therefore recognised, under the rubric of the evasion principle, 'a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company'.[38]

[46] Both parties in this appeal relied on *Prest* but advanced different understandings of Lord Sumption's veil piercing test. Counsel for Beth Clifford, Mr Courtenay SC, submitted that a court can only pierce the corporate veil in circumstances where the evasion principle is engaged, namely, a controller interposes a company to evade or frustrate the enforcement of a pre-existing liability. However, counsel for LCW Investments, Mr Marshalleck SC, disagreed that *Prest* imposed such a 'straitjacket' on a court's power to disregard a company's separate legal personality. Mr Marshalleck contended that Lord Sumption recognised that a court may disregard the company's separate personality not only in cases in which the evasion principle applies, but also in a 'residual category' of cases where the controller abuses the corporate veil to evade or frustrate the law. I do not share Mr Marshalleck's

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[36] ibid at [35].
[37] ibid.
[38] ibid.

interpretation of Lord Sumption's formulation of the veil piercing test. As discussed in the preceding paragraph of this judgment, Lord Sumption's reference to the 'small residual category' of cases that justifies veil piercing was directed at cases in which the evasion principle is engaged.

[47] To date, this Court has not endorsed Lord Sumption's formulation of the veil piercing test. In fact, in *Delpeache v Commissioner of Police*,[39] a case before this Court concerning corporate criminal liability, Burgess J expressed the view that this Court should not adopt Lord Sumption's concealment/evasion test and urged a searching examination of the principles that underlie it as well as its practical utility.[40] He noted the considerable doubts that other judges of the UK Supreme Court in *Prest* had registered about Lord Sumption's test. In fact, Lord Walker did not even consider piercing the corporate veil to be a doctrine at all, in the sense of a coherent principle or rule of law, but rather simply a label 'to describe the disparate occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a body corporate'. He doubted that there is a small residual category of cases outside of these exceptions in which piercing of the veil operates independently.[41] In *Rossendale Borough Council v Hurstwood Properties (A) Ltd*,[42] the UK Supreme Court subsequently stated that it is open to debate whether the evasion principle is needed and was inclined to share Lord Walker's doubts.[43]

[48] Like Burgess J, I have reservations about Lord Sumption's concealment/evasion framework and do not favour its adoption by this Court. I will highlight three areas of difficulty with Lord Sumption's framework and, in so doing, refer to relevant opinions of other judges of the UK Supreme Court in *Prest* as well as subsequent case law.

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[39] [2021] CCJ 10 (AJ) BB, BB 2021 CCJ 3 (CARILAW).
[40] ibid at [117], [121].
[41] *Prest* (n 6) at [106].
[42] [2022] AC 690.
[43] ibid at [71].

[49] One difficulty with Lord Sumption's analysis of veil piercing is that it does not frontally address the distinction between two different situations in which a court may be invited to disregard the separate legal personality of the company. In one situation, the court is asked to disregard the separate legal personality of the company to hold a shareholder personally liable for the company's obligation. The classic example, which is illustrated by *Salomon,* involves a creditor seeking to attach liability for the company's debt to a shareholder. This scenario, which has been referred to as 'forward piercing', departs from the statutory intention that a shareholder shall not be liable as such for the company's liabilities, which is an important consequence of separate corporate personality.[44] In the other situation, the court is invited to disregard the separate legal personality of the company to make the company liable for an obligation of a controlling shareholder. This could have implications for the segregation of the assets of the company and shareholder, which is an important advantage of corporate personality.[45] The latter situation has been described as 'reverse piercing',[46] though, as is evident from the opinion of Eboe-Osuji J, there is a strongly held view that it should not be referred to as piercing of the corporate veil at all.

[50] Without using the terms 'forward piercing' and 'reverse piercing', Baroness Hale in *Prest* had distinguished between two analogous situations: cases where 'the separate legal personality of the company is being disregarded to obtain a remedy against someone other than the company in respect of a liability that would otherwise be that of the company alone', and the converse case of seeking to 'convert the personal liability of the owner or controller into the liability of the company'.[47]

[51] Lord Sumption's 'evasion principle' is applicable in cases referred to as 'reverse piercing', where a third party seeks to hold a company liable for a breach of an obligation owed by its controlling shareholder. Lord Sumption cited two cases in

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[44] Paul L Davies and Sarah Worthington, *Gower's Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 198.
[45] ibid.
[46] Edwin C Mujih, 'Piercing the Corporate Veil: Where is the Reverse Gear?' (2017) 133 LQR 322; Alan Dignam and Deniz Canruh 'Into Reverse: Redesigning Veil Piercing' (2025) 45 Legal Studies 212.
[47] *Prest* (n 6) at [92].

which he considered the courts to be applying the evasion principle: both involved the situation described as reverse piercing. In *Gilford Motor Co Ltd v Horne,*[48] Horne, after leaving his employment with Gilford Motor Co Ltd, formed a company that competed with his former employer, contrary to an agreement not to engage in a competing business after the end of his employment. The Court of Appeal granted an injunction against both Horne and the company. Similarly, in *Jones v Lipman,*[49] Lipman sold a property to the plaintiffs and subsequently sold it to a company to prevent the plaintiffs from getting specific performance. Russell J ordered specific performance against Lipman and the company. *Prest* was also a case in which the court considered (but ultimately rejected) what has been described as reverse piercing, as the wife sought relief against the companies controlled by the husband in respect of his obligation to satisfy the lump sum order.

[52] A critical element of the evasion principle is the controlling shareholder's use of the company to evade liability for some wrongdoing that existed entirely outside of the company. In *Rossendale,* the UK Supreme Court recognised that the evasion principle could not enable the company's liability to be extended to the person who controls it. The court stated that even if there is an evasion principle which may justify holding a company liable for a breach of an obligation owed by its controlling shareholder, it was not convinced that there is any real scope for applying such a principle to hold a person who owns or controls a company liable for a breach of an obligation which has only ever been undertaken by the company itself.[50] The court agreed with Lord Sumption's analysis in *Prest* that:

> It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement. It is not an abuse to cause a legal liability to be incurred by the company in the first place. It is not an abuse to rely on the fact (if it is a fact) that a liability is not the controller's because it is the company's. On the contrary, that is what incorporation is all about.[51]

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[48] [1933] Ch 935.
[49] [1962] 1 All ER 442.
[50] *Rossendale* (n 42) at [72].
[51] *Prest* (n 6) at [34].

The court in *Rossendale* further noted Lord Sumption's reference in *Prest* to *VTB Capital plc v Nutritek International Corp,*[52] where it had been argued unsuccessfully that the corporate veil should be pierced to make the controllers of a company jointly and severally liable on the company's contract. It agreed with Lord Sumption's analysis that the fundamental objection to that argument was that the principle of piercing the corporate veil was being invoked so as to create a new liability that would not otherwise exist. This objection was obvious in the case of a consensual liability under a contract, where the ostensible contracting parties never intended that anyone else should be party to it.[53]

[53] The courts in *VTB Capital plc* had applied *Yukong Line Ltd of Korea v Rendsburg Investments Corp of Liberia (No 2),*[54] in which Toulson J had rejected any power to pierce the corporate veil to make the controller of a company personally liable for the company's debts. In that case, a company had wrongly repudiated a charterparty and, on the day of repudiation, the company director and controller transferred assets away from the repudiating company to a related company. The judge refused to pierce the corporate veil of the repudiating company to make the controller a party to the charterparty and personally liable in damages for the wrongful repudiation.

[54] *Persad v Singh,*[55]a Privy Council appeal from Trinidad and Tobago, demonstrates the futility of applying the evasion principle to effect what has been described as forward piercing. In that case, Singh, the owner of premises, negotiated with Persad to lease the premises to him. Singh executed the lease drafted by Persad, in which the lessee was a company that Persad had formed after the negotiations. The issue before the Board was whether the trial judge was entitled to pierce the corporate veil and hold Persad personally liable to Singh for sums due under the lease. In finding that there was no justification for piercing the corporate veil, the Privy Council applied the evasion principle and found that Persad was under no relevant legal

[52] [2013] 2 AC 337.
[53] *Rossendale* (n 42) at [72].
[54] [1998] 1 WLR 294.
[55] [2017] UKPC 32 (TT).

obligation or liability to Singh prior to the completion of the lease.[56] The Board reiterated that the court cannot pierce the veil where the purpose of an individual interposing a company into a transaction was to enable the individual who owned or controlled the company to avoid personal liability.[57]

[55] As counsel for Beth Clifford contended that a court can only pierce the corporate veil on the basis of the evasion principle, it was argued that a court pierces the corporate veil to ensure that the controller of the company, under an existing obligation, does not enjoy the advantage that flows from separate legal personality. Therefore, Beth Clifford submitted that veil piercing could result in the company being liable to meet an existing obligation that the controller owes to another party, but it never results in the company's liability being imposed on the controller. Relying on *Rossendale* and *Persad,* counsel for Beth Clifford submitted that it is impermissible for a court to perform a forward piercing.[58]

[56] In contrast, counsel for LCW Investments argued that a court's veil piercing power extends beyond the application of the evasion principle and can also be exercised in other situations where there was an abuse of the corporate structure. Accordingly, it was submitted that a court could pierce the corporate veil to allow the liability of the company to be visited on a controller ('forward piercing') as well as to allow the liability of a shareholder to be visited on the company ('reverse piercing').

[57] As there was no examination in *Prest* of the different situations in which a court may be invited to disregard the company's separate legal personality, the UK Supreme Court's judgment did not provide clarity about whether a court could disregard the company's separate legal personality in order to hold its controller personally liable for the company's liability. In subsequent cases, such as those cited above, this has resulted in the application of the evasion principle (which is suited to cases involving

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[56] ibid at [17].
[57] ibid at [20].
[58] In the Notice of Appeal and submissions for the Appellants, the terms 'forward and reverse piercing' and 'reverse piercing' are erroneously used to connote the situation that describes 'forward piercing'.

what has been described as reverse piercing) to situations where the court is asked to perform what is described as forward piercing.

[58] A second concern with Lord Sumption's framework relates to the practical utility and workability of the distinction drawn between the concealment principle and the evasion principle. There may be little substantive difference between looking behind the corporate veil to identify the real actors and piercing the veil because of the revealed abuse or misuse of the corporate form by those actors. Although Lord Sumption described the concealment principle as 'legally banal', its application is usually for the same reason as piercing the corporate veil, namely, to identify the shareholders so as to attach some consequence to them which typically denies them an advantage they or the company would have obtained from the company's separate legal personality.[59]

[59] This point is demonstrated by two cases in which the courts pierced the corporate veil, but which Lord Sumption categorised as examples of only the concealment principle: *Gencor ACP Ltd v Dalby*[60] and *Trustor AB v Smallbone (No 2*).[61] In *Gencor,* Dalby (a director of the ACP group of companies) dishonestly diverted assets and opportunities into his nominee company. Invoking piercing of the corporate veil, Rimer J held that both Dalby and the company were liable to account for the benefits received by the company. In *Trustor,* funds which had gone missing from Trustor AB were discovered in the accounts of Intercom Ltd, which was owned and operated by a trust, of which the previous managing director of Trustor AB was a beneficiary. The court found that Intercom was a façade and pierced the corporate veil to allow Trustor AB recourse against the managing director. Lord Sumption viewed both cases as examples of the concealment principle, in which the court looked behind the arrangement to identify the true recipient of the profits and applied ordinary legal principles to provide remedies against both the company and the controller. In both cases, the company was used to hide inappropriately acquired

[59] Brenda Hannigan, 'Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-Man Company' (2013) 50 Irish Jurist 11, 31.
[60] [2000] 2 BCLC 734.
[61] [2001] 1 WLR 1177.

profits, which would have allowed the controllers to gain an advantage they would not have received but for the interposition of a company with separate legal personality. Accordingly, whether the cases are viewed as veil piercing or concealment cases, the consequence is the same, namely, to deny an advantage that would have been obtained from the company's separate legal personality.[62]

[60] Although Lord Sumption observed that the differences between cases falling into the concealment category and the evasion category may be critical,[63] *Prest* does not provide adequate guidance about the precise mechanism of the concealment principle or substantially clarify the boundary lines between evasion and concealment.[64] The difficulty in drawing a clear distinction between evasion and concealment is evident from the opinions of the justices in *Prest* itself. Lord Neuberger considered *Gilford* and *Jones,* which Lord Sumption had cited as examples of the evasion principle, and opined that *Gilford* was a concealment case and veil piercing was unnecessary in *Jones.*[65] Indeed, Baroness Hale, when referring to cases where it is sought to convert the personal liability of the owner or controller into a liability of the company, commented that 'it is usually more appropriate to rely on the concepts of agency and of the "directing mind"'.[66] Lord Clarke expressly did not support the definitive adoption of the distinction between the evasion and the concealment principle.[67]

[61] A third challenge with Lord Sumption's test for piercing the corporate veil concerns whether the circumstances covered by the evasion principle are exhaustive of the situations that might warrant disregard of a company's separate legal personality. In *Prest,* of the seven judges on the panel, Lord Neuberger was the only other judge who agreed that the corporate veil should only be pierced on the basis of the evasion

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[62] Nupur Upadhyay, 'Piercing the Corporate Veil: An Analysis of Lord Sumption's Attempt to Avail a Troubled Doctrine' (2015) 21 Auckland University Law Review 114, 132; Hannigan (n 59) 32.
[63] *Prest* (n 6) at [28].
[64] Nupur Upadhyay, 'Piercing the Corporate Veil: An Analysis of Lord Sumption's Attempt to Avail a Troubled Doctrine' (2015) 21 Auckland University Law Review 114, 132; Zhong Xing Tan, 'The New Era of Corporate Veil Piercing: Concealed Cracks and Evaded Issues?' (2016) 28 Singapore Academy of Law Journal 209, 226.
[65] *Prest* (n 6) at [70], [73].
[66] ibid at [92].
[67] ibid at [103].

principle.[68] Baroness Hale (with whom Lord Wilson agreed) expressed doubts that it was possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal personality of a company neatly into cases of either concealment or evasion.[69] Lord Mance and Lord Clarke registered concerns about foreclosing all possible future situations in which piercing the veil may be relevant, but observed that given the number of other tools which the law has available, the situations in which piercing the veil may be relevant as a final fallback are likely to be rare.[70]

[62] Instead of adopting Lord Sumption's concealment/evasion framework, it would be better to consider the court's power to disregard the separate personality of a company in the context of the Companies Act which creates this legal entity with separate personality. In *Delpeache,* Burgess J noted that 'the veil of incorporation is undoubtedly bestowed legislatively by the relevant Companies Act'. In his view, consistent with the statutory basis of the corporate veil, general piercing of the corporate veil emanates from the Companies Acts.[71]

[63] Referring to provisions in the Companies Acts to the effect that a company cannot be formed for a purpose 'contrary to law',[72] Burgess J reasoned that the Acts must be interpreted as forbidding the use of a company for an unlawful purpose or a purpose contrary to law. He expressed the view that where a company is sought to be so used, the courts are entitled to pierce the corporate veil to prevent that unlawful purpose or purpose contrary to law.[73]

[64] Similarly, Cheng-Han Tan persuasively argues that the limits to the separate personality of a company are implicit in companies legislation. He observes that '[c]orporations are facilitative instruments and that the privilege of incorporation

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[68] ibid at [81].
[69] ibid at [92].
[70] ibid at [100], [103].
[71] *Delpeache* (n 39) at [118], [119].
[72] In the Companies Act, Cap 13.01 of Saint Lucia, s 517(1)(a) confers on the Registrar the power to 'refuse to receive, file or register a document submitted to him or her, if he or she is of the opinion that the document…contains matter contrary to the law'.
[73] *Delpeache* (n 39) at [120].

was granted to facilitate legitimate human endeavour' and not to 'facilitate dishonesty or acts against public policy'.[74] In his view, where the corporate form has been abused to take unfair advantage of third parties (and therefore used in a manner that is not contemplated by the companies legislation), the courts may disregard the separate legal personality of the company to prevent that abuse.[75]

[65] Notably, the courts in Singapore have emphasised that the underlying rationale for piercing the corporate veil is to prevent a shareholder or controller of the company from abusing its separate legal personality to the detriment of third parties.[76] In a similar vein, the Court of Appeal of the Philippines, in explaining the court's power to pierce the corporate veil, observed that 'the privilege of being considered a distinct and separate entity is confined to legitimate uses, and is subject to equitable limitations to prevent its being exercised for fraudulent, unfair or illegal purposes'.[77]

[66] These perspectives echo the opinion of Baroness Hale in *Prest,* in which she framed the question for consideration as whether the 'courts have power to prevent the statutes under which limited liability companies may be established as separate legal persons…being used as an engine of fraud'.[78] Baroness Hale considered that the cases in which the courts have been or should have been prepared to disregard the separate legal personality of a company 'may simply be examples of the principle that individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business'.[79]

The Proposed Approach to Disregard of Separate Corporate Personality

[67] At this juncture, I will propose the approach that should guide the courts' exercise of their power at common law to disregard the separate legal personality of a

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[74] Cheng-Han Tan, 'Veil Piercing: A Fresh Start' [2015] JBL 20, 29.
[75] ibid 29–30.
[76] *Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd* [2014] 4 SLR 832 at [96]; *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [75]; *Jhaveri Darsan Jitendra v Salgaocar Anil Vassudeva* [2018] 5 SLR 689 at [71].
[77] *International Academy of Management and Economics (I/AME) v Litton and Co Inc* (GR No 191525, 13 December 2017) at 3.
[78] *Prest* (n 6) at [89].
[79] ibid at [92].

company. First, the courts are entitled to disregard a company's separate legal personality to give relief to third parties where they are satisfied that the corporate form has been abused contrary to the purpose for which the benefit of incorporation is conferred under the Companies Act. Second, the corporate form can be abused in this manner in anticipation of the formation of the company, at the time of its formation or after the company has been operating legitimately following its formation.[80] The degree to which the corporate form is abused would be a fact-specific inquiry, depending on how the controller has used the corporate vehicle to assist in the perpetration of the relevant wrongdoing.[81] Third, courts should assess whether there are other legal remedies available and should not disregard the company's separate legal personality if it is not necessary to do so. Fourth, where the company's separate legal personality is disregarded, this is done only for the purpose of depriving the company or controller of the advantage they would have otherwise obtained by the company's separate legal personality, and the corporate form remains intact for all other purposes. Finally, where the court disregards the separate legal personality of the company, the result can be to attach consequences to controllers of the company directly.

The Court of Appeal's Decision

[68] In the six grounds of appeal, Beth Clifford has challenged the propriety of the Court of Appeal's decision to disregard the separate legal personality of GDP and to find her personally liable for GDP's proven breach of contract. Ms Clifford repeated the procedural objection that was made before the Court of Appeal to the court's piercing of GDP's corporate veil, namely, that LCW Investments had not specifically pleaded that it sought an order to pierce the corporate veil and the basis for such an order. Further, Ms Clifford contends that, having found GDP liable for breach of contract and granted LCW Investments the conventional remedy of damages, it was an error for the Court of Appeal to proceed to consider the remedy

[80] Zhong Xing Tan, 'The New Era of Corporate Veil Piercing: Concealed Cracks and Evaded Issues?' (2016) 28 Singapore Academy of Law Journal 209, 231.
[81] ibid.

of piercing GDP's corporate veil to fix her with personal liability. Fundamentally, Beth Clifford's substantive contention that the Court of Appeal's decision was erroneous in law and fact is founded on her submissions, mentioned above, that a court can only pierce the corporate veil on the basis of the evasion principle laid out in *Prest* and that forward piercing is impermissible. Ms Clifford submitted that the evasion principle does not apply to the facts of this case as there was no evidence of an existing legal obligation, liability or legal restriction which she owed to LCW Investments and sought to deliberately evade by interposing GDP, a company controlled by her. Accordingly, Ms Clifford argued that the Court of Appeal erred by performing a forward piercing of GDP's corporate veil, that is, by holding her personally liable for a breach committed by GDP.

[69] In response to Beth Clifford's complaint that there was no specific pleading of piercing of the corporate veil, LCW Investments submitted that piercing of the corporate veil is not a cause of action and the Court of Appeal's findings were consistent with the pleaded case which had sought imposition of liability on GDP, Beltway and Beth Clifford jointly and severally. As to Beth Clifford's contention that it was unnecessary for the Court of Appeal to pierce GDP's corporate veil and hold her personally liable, LCW Investments argued that there is need for an effective remedy over and above the conventional award of damages against GDP because GDP is unlikely to satisfy that award given what it has said of its own financial position.

[70] Further, LCW Investments submitted that the Court of Appeal was correct to disregard the separate personalities of GDP *and* Beltway in the context of the transactions and impose the liability of the companies for breach of the contract on Beth Clifford. It contends that the Court of Appeal was right to do so as Ms Clifford is the sole director and shareholder of the companies and the 'mastermind and principal' of the scheme to market and sell shares in offshore companies which she did not own under the guise of selling land and to entice the payment of monies to construct buildings under the guise of the operation of a construction company.

Relying on *Gencor,* LCW Investments submitted that the Court of Appeal properly found that GDP and Beltway were merely the alter egos of Beth Clifford. It was argued that consistent with the concealment principle in *Prest,* the Court of Appeal was correct to look past the separate corporate personalities of GDP and Beltway to identify the real actor in the transactions as Beth Clifford. LCW Investments submitted that the Court of Appeal properly found, using agency principles, that Ms Clifford was personally liable under the contract as principal. It was observed that, in the strict sense, this would not be an instance of piercing the veil as no liability of the company was imposed on the controller. LCW Investments submitted that the Court of Appeal's decision to hold Beth Clifford personally liable could also be justified in accordance with the residual category of cases recognised in *Prest* because Beth Clifford abused the separate corporate personalities of GDP and Beltway to evade or frustrate the law. The Court of Appeal was correct to find on the evidence the relevant impropriety giving rise to the power to pierce the veil of GDP *and* Beltway, namely, actions to avoid the obligations and liabilities, necessarily arising from Beth Clifford's enterprise, to purchase land and construct the building thereon.

[71] I do not find merit in Beth Clifford's procedural complaint that LCW Investments did not specifically plead that it sought an order for piercing of the corporate veil. I agree with the Court of Appeal that LCW Investments' pleaded case and the trial judge's agreed issues for determination provided adequate notice of, and indicated the need to respond to, the claim that Beth Clifford used GDP and Beltway as her agents, a façade or devices in her sham scheme and should thereby be held personally liable. Like the Court of Appeal, I do not find that the authorities cited by Beth Clifford – *Todd v Price*[82] and *Supaul v Lalchand*[83] – support her contention that there is a need to specifically plead an order to pierce the corporate veil. As the Court of Appeal noted, the judgment of Barrow J in *Todd v Price,* an appeal before this Court, points to the need for a case to be pleaded with sufficient particularity to

[82] [2021] CCJ 2 (AJ) GY.
[83] (BZ SC, 29 January 2018).

afford the other party an opportunity to appropriately respond to the claim.[84] *Supaul* concerned an application for division of property arising from a common law union, in which the applicant sought to attach the property of a company claimed to be owned by the other party. The Supreme Court of Belize struck out the company as a party to the action as there was no basis for piercing the corporate veil and making orders attaching to the company's property.[85] The court did not advert to any requirement of a specific pleading for an order to pierce the corporate veil. In the present case, there was no deficiency in the pleadings that would have precluded the making of an order to pierce the corporate veil.

[72] Contrary to the submissions of LCW Investments, any inability on the part of GDP to satisfy the award of damages to LCW Investments would not be a proper basis for a court to consider disregarding GDP's separate legal personality. By virtue of the principle of separate legal personality, the company, and not its controller, is liable for obligations incurred on its behalf. The Court of Appeal could only have properly disregarded GDP's separate personality and held Beth Clifford personally liable if there was evidence that Beth Clifford abused the corporate structure of GDP.

[73] Before addressing the core substantive issue of whether the Court of Appeal was correct to fix personal liability on Beth Clifford, it is important to correct certain assertions made by LCW Investments about what the Court of Appeal actually decided. The Court of Appeal held Beth Clifford personally liable for the proven breach of contract because it was satisfied there was evidence of the impropriety necessary for piercing the corporate veil. The court did not disregard the separate legal personality of Beltway and assign any liability of Beltway to Beth Clifford. Although Bulkan JA stated that Beth Clifford's personal control over the companies in question called to mind the image of puppetry, the Court of Appeal did not apply agency principles and hold Beth Clifford personally liable under the contract as

[84] *Todd* (n 82), [20] and [21].
[85] *Supaul* (n 83) at [28], [29].

principal. It is also notable that the trial judge made no findings that Beth Clifford used GDP and Beltway as her agents.

[74] The key issue for this Court's consideration is therefore whether there was a proper basis in law and fact for the Court of Appeal to disregard GDP's separate legal personality and hold Beth Clifford personally liable for the company's breach of contract. As noted above, Beth Clifford is correct that in *Prest*, Lord Sumption found that there is a limited power of the court to pierce the corporate veil on the basis of the evasion principle only. The Court of Appeal did not point to any evidence that Beth Clifford owed a pre-existing legal obligation or liability to LCW Investments which she deliberately evaded or whose enforcement she deliberately frustrated by interposing GDP. I also do not find such evidence. However, this is not dispositive of whether the Court of Appeal erred in piercing the corporate veil of GDP and holding Beth Clifford personally liable for the breach of contract. As previously discussed, I do not agree with this Court's adoption of Lord Sumption's concealment/evasion framework. It is therefore necessary to consider whether the Court of Appeal established evidence that Beth Clifford abused the corporate structure of GDP contrary to the purpose for which the benefit of incorporation is conferred under the Companies Act of Saint Lucia.

[75] In establishing the impropriety necessary to pierce the corporate veil, the Court of Appeal found that Beth Clifford, the 'common denominator' in the matter, had deliberately used the principle of separate legal personality of companies in the context of the transaction for the lot purchase and house construction to shield the companies she controlled from responsibility for breach of the contract. In the estimation of the Court of Appeal, Ms Clifford had misused the law to 'evade the obligations and liability necessarily arising in her enterprise'. The court considered that this impropriety was evidenced by the structure of the companies under Beth Clifford's control, along with the nature of the transaction itself.

[76] In terms of the structure of the companies, the Court of Appeal called into question whether there was any real separation between them and drew attention to the

personal control that Beth Clifford exerted over these entities. The court also questioned whether GDP's structure was 'deliberately engineered' to avoid accountability for its liabilities, given that it had no physical address, bank account, employees, directors or shareholders other than Beth Clifford, and clearly identified purpose. At the hearing, Mr Marshalleck contended that this pointed to GDP's undercapitalisation or its lack of the basic resources required to perform its functions, which is indicative of an abuse of the corporate structure to avoid the company's obligations.

[77] With respect to the transaction, the Court of Appeal considered that the agreement obscured and mischaracterised identities, omitted and denied roles and included obligations to be carried out by entities that were not parties. In that regard, the court found that the evidence revealed that GDP played a larger role in the land purchase than the contract suggested and was not a house construction company, as designated in the contract. The Court of Appeal also found to be suspicious Beth Clifford's initial insistence that the buyer had voided the documents for the transfer of the shares in 5801G0A2105 Inc, her claim that she did not know the owner of Lot 259 at the time she signed the order form, the absence of evidence as to how the buyer's payments were actually used and Beth Clifford's obfuscation about the timing of the construction of the Keeping Suite.

[78] Ms Clifford contends that much of the evidence relied on by the Court of Appeal to establish impropriety did not take account of the counter evidence tendered by her, which the trial judge saw and heard directly. Further, the evidence relied on by the Court of Appeal speaks to the breach of contract by GDP, which has accepted the finding of liability. I agree.

[79] In my view, the matters raised by the Court of Appeal do not establish that Beth Clifford abused or misused GDP's corporate structure (or that of other companies under her control) to avoid GDP's accountability for any breach of the contract. The evidence at trial does not point to Ms Clifford's deliberate engineering or use of these companies to ensure their avoidance of their liabilities. Ms Clifford testified

that she has multiple companies because it is standard and customary for real estate developers to create single purpose entities for each company.[86] She indicated that she is the director of several companies involved in the Mahogany Bay Village Resort, including GDP, Beltway, Mahogany Bay Management Ltd and Caribbean Homes and Exports, a company incorporated in Belize that is subcontracted to build the houses in the resort.[87] She testified that as director of these companies, she was responsible for ensuring that they fulfilled their contractual obligations.[88] In the case of GDP, Ms Clifford stated that it is involved in real estate development outside the United States and creates the concept strategy, architectural designs and financial models for development projects.[89] Ms Clifford's evidence was that GDP has no employees but regularly contracts services,[90] does not have a physical office but conducts its business virtually[91] and has a bank account.[92] This evidence was not contradicted.

[80] Similarly, I do not find that the nature of the transaction itself evidences Ms Clifford's abuse of the corporate form of the entities she controlled to ensure that they would avoid liability in the event of a breach of the contract. Through a standard template agreement, GDP and LCW Investments contracted for the purchase of Lot 259 and the construction of the Keeping Suite. Beltway assisted US-based buyers to use a US-based bank account to transfer funds to GDP.[93] Ms Clifford testified that GDP had contracted with Beltway for treasury support operations.[94] CIHC, a company not owned or controlled by Ms Clifford, owned Anguillan international business companies ('GOAs') which each owned land lots in the development. Ms Clifford's evidence is that GDP had a contract with CIHC to be its exclusive sales agent.[95] She testified that, in 2017 when GDP and LCW Investments had entered into the agreement, GDP's standard operating procedure was to make CIHC aware

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[86] Record of Appeal, 'Transcript of Proceedings in the High Court' 1756.
[87] ibid 1596, 1730.
[88] ibid 1614.
[89] ibid 1577, 1578.
[90] ibid 1580.
[91] ibid 1586.
[92] ibid 1624.
[93] ibid 1624–1625.
[94] ibid 1645.
[95] ibid 1682, 1684, 1685.

of the lot purchase and house construction order. CIHC would then follow up with the buyer to enter into a land purchase agreement for the transfer of the shares in the respective GOA, with the land title remaining with the GOA.[96] The listing of 5801G0A2105 Inc as the owner of Lot 259 on the Order Form and House Construction Agreement, as well as the unit owner on the Rental Management Services Agreement and Property Services Management Agreement signed by Steve Williams, is consistent with an arrangement involving the transfer of the shares in the GOA to the buyer. The House Construction Agreement contemplated that GDP would select and pay qualified subcontractors to perform construction services. Ms Clifford testified that GDP subcontracted all construction of houses in the resort to Caribbean Homes and Exports. It is notable that both the trial judge and Court of Appeal found no evidence of fraudulent misrepresentation.

[81] GDP has accepted liability for the proven breach of its implied obligation to produce the land purchase agreement to LCW Investments within 10 days of execution of the Order Form. Without in any way reopening the matter of the contractual breach, it is worth noting Beth Clifford's testimony that after she met with Steve Williams in March 2019 and reviewed the relevant files, she discovered that CIHC had not transferred the shares in the GOA to LCW Investments. To facilitate the acquisition by LCW Investments of ownership of 5801G0A2105 Inc, GDP acquired ownership of the GOA from CIHC (which was held by a bearer share certificate) for USD150,000. The documents sent to LCW Investments, which Steve Williams signed, included a resolution by the board of directors of GDP to cancel the bearer share certificate and issue ordinary shares of 5801G0A2105 Inc to LCW Investments, as well as an instrument purporting to transfer those ordinary shares from GDP to LCW Investments. These documents were subsequently voided and, in the cross-examination of Ms Clifford, Mr Marshalleck pointed out the inconsistency of the direct share issuance to LCW Investments, on the one hand, and the transfer of those shares from GDP to LCW Investments, on the other hand.[97]

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[96] ibid 1655,1658, 1662, 1665.
[97] ibid 1701.

Beth Clifford testified that due to errors in dealings with CIHC, the procedure changed to GDP acquiring the shares in the GOA from CIHC and then transferring them to the buyer.[98] In my view, Beth Clifford's efforts to facilitate the buyer's acquisition of an ownership interest in Lot No 259 are not indicative of her abuse of GDP's corporate structure.

[82] Finally, Ms Clifford testified that the Lot 259 Keeping Suite was 'substantially completed' (defined in the House Construction Agreement as completed to the point when furniture, fixtures and equipment remain to be installed) as of December 2019 and provided photos of the house.[99] In presenting the settlement proposal to Steve Williams in August 2019, Robert Helms had indicated that most of the purchase price had been deployed towards the lot purchase, construction materials, installation of the sea wall and furniture and fixtures. It is also notable that the trial judge and Court of Appeal found no evidence of misapplication or misuse of the funds paid by LCW Investments. I therefore do not agree with the Court of Appeal that there was evidence of impropriety on the part of Beth Clifford with respect to these aspects of the transaction.

[83] In light of the foregoing considerations, I do not find that there was any basis for the Court of Appeal to pierce the corporate veil of GDP and hold Beth Clifford personally liable for GDP's breach of contract. By virtue of the incorporation of GDP under the Companies Act of Saint Lucia, the liabilities incurred by the company are not those of Beth Clifford, its controller. I am not satisfied that there is evidence that Beth Clifford abused or misused the separate legal personality of GDP contrary to the purpose for which the benefit of incorporation is conferred under the Companies Act of Saint Lucia. There was no evidence, as the Court of Appeal found, that Beth Clifford abused or misused the separate legal personality of GDP in the context of the transaction for the purchase of Lot 259 and construction of the

[98] ibid 1666.
[99] Record of Appeal, 'Witness Summary of Beth Clifford' 435.

Keeping Suite to avoid the accountability of GDP for breach of its contractual obligations to LCW Investments.

(b) **Beltway's Liability for Breach of Contract**

[84] Beltway submits that the Court of Appeal erred in holding it liable jointly and severally for the contractual breach along with GDP and for the return of the entire sum received from LCW Investments because it was wired the full purchase price from LCW Investments and LCW Investments did not receive the lot title or Keeping Suite. Beltway submits that it is not a party to the Order Form and House Construction Agreement and has no interest in the obligations under that agreement other than to transmit funds to GDP. Rather, Beltway's agreement with GDP was for it to receive funds from U-S based buyers who wanted an easy option for sending money to GDP. Further, Beltway disbursed all the funds received from LCW Investments to GDP or for the benefit of the construction works. There was no evidence that Beltway interfered with the contract. Beltway submits that the evidence of Robert Helms and Ms Clifford demonstrates the purposes to which the funds were applied and photographic evidence was submitted that suggested that GDP had commenced construction of the Keeping Suite.

[85] In response, LCW Investments submits that the Court of Appeal assigned liability to Beltway because it was the alter ego of Beth Clifford, notwithstanding that the court did not find that Beltway held the funds on trust. Relying on *Gencor*, LCW Investments contends that the sole purpose of Beltway is to receive funds purportedly through some undisclosed agreement negotiated by Beth Clifford with herself. It argued that Beltway has no employees, its bank account is wholly owned and operated by Beth Clifford and is merely Beth Clifford's bank account with a different name, it can only act on the instructions of Beth Clifford, it offers no services to the public and has no place of business. Further, LCW Investments contends that the Court of Appeal's decision can also be justified on the basis of the evasion principle in *Prest,* as Beltway was interposed to shield Beth Clifford and

GDP from their separate contractual liability to deal with the house price in accordance with the terms of the written contract.

[86] The submissions of LCW Investments are wholly misplaced. The Court of Appeal's determination of Beltway's liability did not rest on any finding that Beltway is an alter ego of Beth Clifford. Further, the court did not purport to pierce the corporate veil of Beltway and there is no evidence of the abuse of Beltway's corporate structure which the evasion principle covers. There is no pre-existing liability that Beth Clifford owed to LCW Investments which she deliberately sought to evade through the interposition of Beltway. Moreover, GDP is not a shareholder of Beltway.

[87] As Beth Clifford submitted, the Court of Appeal's decision rests solely on the basis that LCW Investments was wired the purchase price and although it was paid to GDP (as contemplated in the agreement), LCW Investments did not receive what it paid for, and one cannot account for the use to which the money was put. There was no proper basis in law or fact for the Court of Appeal's finding of Beltway's liability for breach of the contract. Beltway in no way contributed to GDP's failure to produce the land purchase agreement within 10 days of execution and consequential loss to LCW Investments, such that it should be held liable jointly for that breach. There was no finding by the trial judge or Court of Appeal of a constructive trust or misapplication or misuse of the funds paid and as previously discussed, there was evidence tendered of how the funds were applied and of construction of the Keeping Suite.

Disposition

[88] For the foregoing reasons, the Court orders that:

(i) the decision of the Court of Appeal be set aside and the order of the High Court be restored.

(ii) the First and Second Appellants be paid their costs before this Court as agreed by the parties and in the courts below.

BARROW J:

[89] This appeal considers the justification for departing from the legal principle that the controller of a limited liability company is not liable for the company's breach of contract because the company is a separate legal personality, distinct from the controller.

[90] The legal issue is honed by the absence of an appeal to this Court against the decision, which was upheld by the Court of Appeal, that there was a breach of contract by the company. Substantially, the only issue for this Court to decide was whether the two appellants, who were not parties to the contract, should be made jointly liable to pay damages for its breach because of the role they played in the transaction, as the Court of Appeal decided.

Parties and Persons

[91] The contract was for the sale of land and the construction of a building in a resort development on San Pedro, Ambergris Caye in Belize. It involved the natural and artificial persons named as parties in the title of these proceedings as well as those who played the roles indicated. Beth Clifford is a businesswoman from the United States of America who was in control of the companies on the selling side of the transaction. Beltway Investment Group Inc ('BIG') is a United States company that performed 'treasury' functions, which was to receive and pay onward the purchase money. LCW Investments LLC ('LCW') is a United States company that agreed to buy the land and pay for a building to be built on it by the seller and did not obtain same.

[92] Other relevant persons included Green Development Partners Ltd ('GDP') a Saint Lucian company that agreed to sell the land and build the building. Steve Williams, a real estate investor with 25 years' experience (at the time), was in control of LCW. Corporate Investment Holdings Co Ltd ('CIHC'), incorporated in Anguilla, was the sole shareholder in another Anguilla company, named 5801GOA210 Inc, that owned the land that GDP was to sell.

The Contract

[93] The legal issue that calls for determination on this appeal requires only a brief summary of the contract that was the foundation for the claim. GDP agreed, pursuant to a 'Lot Purchase and House Construction Summary Order Form', to sell Lot 259 in a development called Mahogany Bay Village Resort in San Pedro, Belize. GDP was obliged to construct a house called a Keeping Suite on that land. The total value of the contract was USD788,709 divided into the price of the land, USD135,000; the price of the Keeping Suite, USD645,000; and closing costs of USD8,709.

[94] The agreement was dated 30 March 2017. LCW paid the entire purchase price by 31 October 2017. Performance of the seller's obligations was greatly delayed, and on 5 August 2019, LCW rescinded the agreement, stating that it was accepting the repudiatory breach of the implied term that GDP had been obliged to present a land purchase agreement within 10 days of the date of the agreement.

[95] In 2020 LCW claimed in the High Court against Beth Clifford, GDP and BIG and amended its claim on 25 March 2021 seeking rescission of the contract, a return of the money spent in pursuance of the contract, and damages for breach of contract. Further and in the alternative, it sought a declaration that the defendants held the monies on trust for it and an account thereof, and damages for fraudulent misrepresentation. GDP counterclaimed for specific performance of the agreement and/or damages for breach of contract, together with interest and costs.

High Court Decision

[96] In the High Court, Young J rendered an oral decision[100] holding that no claim whatsoever had been made out against Beth Clifford and BIG and dismissed the action against them, with costs. The judge found the claim had been made out against GDP for breach of contract and awarded damages to LCW, with interest and costs. The claim against all defendants for fraudulent misrepresentation and breach of trust was dismissed. The counterclaim by GDP for specific performance and breach of contract was dismissed, with costs.

Court of Appeal Decision

[97] The Court of Appeal dismissed GDP's appeal against the judgment. LCW had cross-appealed the High Court's dismissal of the claim against Beth Clifford and BIG and the Court of Appeal allowed the cross-appeal, reversed that dismissal and held them both liable along with GDP to LCW.

Liability of BIG

[98] On the basis that LCW paid the contract sum to BIG, the Court of Appeal found BIG jointly and severally liable with GDP to refund the contract money to LCW. The court found liability on the part of BIG solely because it was controlled by Ms Clifford in common with GDP and was part of the transaction by paying to GDP the funds sent to it by LCW. As had been agreed, LCW had wired the purchase price to BIG, which in turn transferred the said funds to GDP. The court found there was no fraud in the arrangement and accepted that the purpose of this routing was simply for convenience, as GDP did not have a US bank account. It was also found that there was no evidence that the funds were misapplied, misappropriated, or that there was any impropriety in their use. The court, therefore, dismissed the claim for a declaration of constructive trust.

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[100] The judge is to be commended rather than criticised for giving an oral judgment. The imputation (if any) that the oral decision was deficient for taking that form must be rejected and the practice is to be encouraged.

[99] The court went on, however, to say that there was no evidence of what had become of LCW's payment. That led to the disposition stated at [86] and [87] of the judgment that while the appellant claimed that Lot 259 was duly purchased and the Keeping Suite constructed, there was no proof that any of this happened. The court accepted the appellant had attempted to transfer shares in the title-holding Anguillan company to the LCW but said that transfer had collapsed through no fault of LCW. 'Astonishingly,' the court said, no title deed was ever tendered in evidence, nor any photographs of the Keeping Suite, and the court had only the appellant's word that it had since acquired the lot and constructed the building. That summary led to this conclusion on liability:

> [87] In the circumstances, I find that having been wired the full purchase price from the buyer, who in turn did not receive either title to the lot and/or the building he (sic) was promised, BIG is liable jointly and severally along with the appellant house construction company [GDP] for the return of the entire sum received. To this extent, therefore, the order of the trial judge is varied to include BIG along with Green Development Partners.[101]

Liability of Beth Clifford

[100] As regards the liability of Beth Clifford, the Court of Appeal upheld the finding that there was no fraudulent representation made to LCW to permit the disregarding of the separate personality of the company or, as that recourse is expressed, for piercing of the corporate veil of GDP or BIG. However, the court considered that the test for piercing the corporate veil had been met on the evidence, and so, Beth Clifford as the sole shareholder and director of both GDP and BIG, was also liable to repay the contract sum to LCW.

[101] The reasoning that led to that conclusion began by recalling the establishment of the principle of the separate legal personality of a company in *Salomon v A Salomon & Co Ltd*[102] and referenced the development in English law of the device of 'lifting'

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[101] *Green Development Partners* (n 3) at [87].
[102] *Salomon* (n 5).

or 'piercing' the corporate veil, as a limited exception to the principle of a company's separate legal personality. The Court of Appeal considered *Prest v Petrodel Resources Ltd*[103] where the UK Supreme Court surveyed the legal decisions in this area and both affirmed the principle of separate legal personality[104] and expressly refused to discard the device of piercing that veil.[105]

[102] Bulkan JA summarised[106] Lord Sumption in *Prest* as explaining that piercing the corporate veil is justified where the feature of separate legal personality is abused for the purpose of some 'relevant wrongdoing.'[107] In *Prest,* the thesis was advanced that relevant wrongdoing could take one of two forms and fall for treatment under the 'concealment' principle or the 'evasion' principle. In the former, it was not strictly a situation of piercing the veil because the court goes behind the 'façade' of the corporate structure to discover its true identity. 'In the evasion scenario, there is impropriety involved insofar as the principle of separate legal personality is used to evade a legal liability.'[108]

Use of the Corporate Structure

[103] Against that backdrop, the Court of Appeal examined the ways in which Beth Clifford presided over a vast number of companies in different jurisdictions, perhaps as many as 100 companies. It remarked on how blurred the lines were between these supposedly separate legal entities, not just between Beth Clifford and her companies but as between the companies themselves. The court referred to Beth Clifford's self-identification as if she were the companies and to her possessive reference to 'my manager', 'our facilities' and so on, calling into question how independent or separate they were. The court found notable her control over the companies in question, which it thought raised the question as to whether the companies were just a 'cloak' or 'sham' for her personal dealings. The court said this called to mind an

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[103] *Prest* (n 6).
[104] ibid at [27] (Lord Sumption).
[105] ibid at [80] (Lord Neuberger).
[106] *Green Development Partners* (n 3) at [103].
[107] ibid.
[108] ibid.

assessment in one case where a leading judge described the companies as just the puppets of the individual.[109] The court thought that the analogy of puppetry applied in this case, in which Ms Clifford made decisions and gave directions, unbeholden to anyone. It cited aspects which it thought all legitimately raised the question of how independent and separate these various entities were, notwithstanding the cloak of separate legal personality. The court asked how GDP, with no address, no employees, no directors or shareholders other than Beth Clifford, and no clearly identified purpose was to be held accountable or responsible for any liabilities it incurred. He asked, is such a shadowy and indistinct structure innocent? Or is it deliberately engineered as such to shield wrongdoing?

[104] The court then examined the structure of the transaction in issue and concluded at [108]:

> Ultimately, the terms of the transaction were murky, with identities obscured and mischaracterised and roles, even consequential ones, omitted and denied. I can think of no way to describe all this other than an elaborate subterfuge.[110]

[105] The court concluded that any residual doubt about the impropriety involved in the transaction vanished when one considered the conduct of the parties, which he proceeded to review. The judgment referred to other red flags that arose on the evidence and the lack of veracity or credibility of statements made by Ms Clifford. The court thought most serious of all was that Beth Clifford could give no straight answer regarding the construction of the Keeping Suite. It regarded the explanation she gave about the pace of construction of the Keeping Suite as a 'masterpiece of obfuscation, that leaves one no clearer by the end as to when construction actually commenced ...'[111]

[106] The conclusion that the veil should be lifted appears at [112], where the judge stated that in his view, the combination of all these factors met the test for piercing the

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[109] *Wallersteiner* (n 10) at 1013 (Lord Denning MR).
[110] *Green Development Partners* (n 3) at [108].
[111] ibid at [111].

corporate veil and imposing personal liability on Beth Clifford for breach of contract. He found it was the ownership and control of the company (in ways that themselves obscure their individual identities) *combined with* the nature of the transaction itself that established the impropriety necessary for piercing the corporate veil (emphasis added). He concluded that the principle of separate legal personality of companies was deliberately used in the context of this transaction as a 'shield for liability.'[112] He pointed to where responsibility could be denied and decided:

> However, to allow this would be to allow Beth Clifford – the common denominator – to misuse the law to evade the obligations and liability necessarily arising in her (sic) enterprise. That, in my view, is precisely what the law does not permit and in the circumstances of this case as described, the court is fully entitled to pierce the corporate veil and hold Beth Clifford personally liable for the breach of contract.[113]

Relevant Impropriety or Wrongdoing

[107] Beth Clifford's appeal against the piercing of the corporate veil rested on the submission that there was no basis in fact or in law that permitted the Court of Appeal to ignore the separate legal personality and make Beth Clifford liable for GDP's breach of contract. The ratio of the decision of the Court of Appeal, drawn directly from the formulation in *Prest* as shown above,[114] is that piercing is justified where the separate legal personality is abused for the purpose of some 'relevant wrongdoing.' The court decided that the necessary impropriety lay in the obscurity in the ownership and control of the company, combined with the nature of the transaction itself.

[108] The appellant disagreed with the Court of Appeal's entire finding of impropriety that the court presaged in the opening paragraph of the judgment, which counsel described as startling. The judgment opened with the statement that Ms Clifford

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[112] ibid at [113].
[113] ibid.
[114] At [103] above.

'perches atop a real estate empire in Belize and beyond' which the court said, 'may be a house of cards over which she hovers, the reality is not easy to discern.' It stated that Ms Clifford 'revealed' that she was 'the director of over forty-five (45) companies, and of those featuring in this case, she is the sole director and shareholder.' The opening continued by stating that Steve Williams, director of LCW, 'became entangled in this web' of different companies which 'broker land sales, construct houses, manage properties, companies just to receive and disburse funds, companies that simply execute and sign deeds' and that these companies were based in Belize, in Anguilla, in Saint Lucia and in the United States of America, and there was such a plethora of companies that it was sometimes confusing to know which company or whose employee was responsible for which transaction.[115] Mr Courtenay SC submitted that from the outset of that analysis Ms Clifford seemed to have been damned for using multiple companies to conduct business, which counsel indicated was properly to have been treated as simply a fact of commercial life.

[109] As mentioned, the judge decried the terms of the transaction as murky, identities obscured and mischaracterised, roles omitted and denied and the whole thing a subterfuge.[116] Mr Marshalleck SC, counsel for LCW, further damned Ms Clifford by contributing the allegory of piracy, declaiming that the Caribbean has historically been a safe haven for pirates, and that the final determination of the issue before this Court will largely determine whether it continues to be so. It was submitted that the preferred vehicle for piracy, these days, is not the man o' war or the galleons of the past, with decks filled with cannons and barrels of gun powder and cannon balls but rather it is the limited liability company. In full flight of metaphor, counsel declared that Caribbean islands compete with each other to provide berths for them, and these vehicles find refuge not in perilous reef systems or obscure inlets of these islands but in sanctimonious legal principle. The separate legal personality of companies is a legal principle used to provide a veil of camouflage for these vehicles. The power of the Court to pierce that veil exposes the camouflage for what it really is – an

[115] *Green Development Partners Ltd* (n 3) at [1].
[116] ibid at [106].

attempt to deceive. The principles governing piercing the corporate veil seek to find a balance between the tension of the interests of the business community and the need to make reparations for damage when caused.

[110] Whatever its literary merits or aptness, the allegory of piracy may be convenient to ask the question: What is the act of piracy committed by Beth Clifford and BIG? The closest the submission came to alleging wrongdoing was in its claim[117] that GDP and Beltway were obviously 'not operated as the law contemplates' when conferring the benefit of the protection of separate legal personality. Reprising the Court of Appeal, the submission refers to the non-existence of offices, employees, no bank accounts for GDP, a sole shareholder and director that controlled and used it as a puppet and it did no business in Belize. All this, it was submitted, rests on top of convoluted and contrived contracts designed to do nothing but deceive. The submission also echoes the determination that it was the obscurity in the ownership and control of the company, combined with the nature of the transaction itself that established the necessary impropriety. No other act of supposed piracy presented itself.

Lifting the Corporate Veil

[111] *Prest* confirmed that a court may lift the corporate veil to prevent relevant wrongdoing or impropriety but fundamentally, and critically, the justification for piercing is to prevent the dishonest use of the law of corporate personality;[118]. The object of preventing dishonesty is ever to be borne in mind as the foundation and condition of the public policy determination as to whether and when the corporate veil may be lifted. English cases on piercing the corporate veil arose from judicial refusal to allow the evading of the law by reliance on absolute legal principle for a dishonest purpose.[119] The first systematic analysis of the principle was said to have been provided in *Adams v Cape Industries plc*[120] where a strong Court of Appeal

[117] Respondent's Speaking Note filed 11 July 2025, at para 24.
[118] *Prest* (n 6) at [18].
[119] ibid.
[120] [1990] Ch 433.

held that 'the corporate veil could be disregarded only in cases where it was being used for a deliberately dishonest purpose'[121] Apart from that, it was noted, the court was not free to disregard the principle of *Salomon* 'merely because it considers that justice so requires'.[122]

[112] As indicated, in *Prest* the court examined how to identify what is a relevant wrongdoing that justifies piercing and thought it convenient to regard such wrongdoing as falling within the concealment principle and the evasion principle. It must be kept in mind in reviewing the analysis in *Prest,* that it was identifying heads or categories into which to place different types of wrongdoing or impropriety for which persons would not be permitted to escape liability by abusing the corporate veil. The overarching factor, therefore, is that it is the *conduct* so categorised that must be examined to decide if it amounts to *relevant* wrongdoing or impropriety. The cardinal element of wrongdoing or impropriety is that it is *dishonesty* (emphasis added).

[113] The concealment principle, it was stated in *Prest*, is banal and does not involve piercing the corporate veil at all. '[The principle] is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant.'[123] The court thought that '[i]n these cases the court is not disregarding the "façade", but only looking behind it to discover the facts which the corporate structure is concealing.'[124] The reference to identifying actors recalls the requirement that it is the action or conduct of the actors that is relevant.

[114] The evasion principle, *Prest* decided, was different and according to this principle 'the court may disregard the corporate veil if there is a legal right against the person in control of it, *which exists independently of the company's involvement*, and a company is interposed so that the separate legal personality of the company will

[121] See *Prest* (n 6) at [21].
[122] ibid at [21].
[123] ibid at [28].
[124] ibid.

defeat the right or frustrate its enforcement.'[125] Again, it is useful to observe that there needs to be some action or conduct by a person (or actor) that gives rise to a legal right against them. It is illustrative to look at only some instances in which piercing occurred to see what was considered to be relevant wrongdoing that justified the piercing.

[115] These cases confirm that there must be some wrongful or improper conduct or action on the part of the individual who a claimant seeks to make liable along with or despite the company. There must be the element of dishonesty. In *Gilford Motor Co Ltd v Horne*[126] a former employee set up a company to compete with his former employer in breach of a non-compete agreement with the individual. It was held that the company was a mere cloak or sham. In *Jones v Lipman*[127] a man sold property to a company he controlled to avoid a specific performance order. The court pierced the corporate veil, treating the company as a facade or diversion. In *Trustor AB v Smallbone (No 2)*[128] the court pierced the veil where a company was used to conceal the improper diversion of funds, holding that the company was a device to conceal wrongdoing. In *Prest,*[129]piercing was refused because the holding of a husband's properties by various companies was an arrangement that preceded the wife making a claim in relation to the properties and had not been done to defeat the wife's claim. Hence, there was no wrongdoing that was hidden by companies. The wife obtained relief on another basis.

Residual Category

[116] The case for the appellants is that neither the concealment nor the evasion principle applies. The appellants submit that there was no action or conduct by Ms Clifford that is capable of amounting to relevant wrongdoing, and which falls into either principle. In its response, while the respondent does not concede that neither

[125] ibid (emphasis added).
[126] *Gilford Motor* (n 48).
[127] *Jones* (n 49).
[128] *Trustor* (n 61).
[129] *Prest* (n 6).

principle applies it comes close enough to doing so. The respondent accepted that, according to *Prest*, decisions may be categorised by reference to the 'concealment' and the 'evasion' principles but asserted there was a residual category which it described as comprising an abuse of the law. The respondent submitted that the Court of Appeal placed the instant appeal in this residual category and that how the Caribbean Court of Justice chooses to categorise it is 'largely irrelevant' because of the existence of the residual category.

[117] While *Prest* acknowledged the existence 'of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law'[130] may call for the law to permit piercing to prevent such abuse, it was clear that this spoke to the possibility of such a case arising. It was not suggesting in the least that if conduct did not fall into either of the concealment or evasion categories that there was some general principle of law that caught it. [131] Thus, in *Prest,* neither the fact that the husband had acted 'improperly in many ways' by misapplying the assets of his companies nor that he had used the opacity of the corporate structure to deny being the owner of the company[132] permitted piercing. In the instant appeal, the respondent identified no case that fell into a residual category and did not suggest that a hypothetical case could escape the requirement that there must be dishonest conduct for piercing to be permitted. The true position regarding abuse of the law on the separate legal personality of a company is that the principle may legitimately be used for avoiding personal liability and, thus, as a shield. It is only when it is used dishonestly and, therefore, misused or abused to evade personal liability that the corporate veil may be pierced.

The Transaction

[118] At root, this was a simple contract for the sale of land and the construction of a building. There were no unusual features to it. All the companies involved were

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[130] ibid at [35].
[131] ibid at [35], [36].
[132] ibid at [36].

already in existence when the agreement was made. Bulkan JA accepted that the companies were not created with any intent to deceive.[133] There were no neophytes involved; the principal of the purchaser had in excess of 25 years' experience as a real estate investor and would have had expert knowledge of how to structure a real estate transaction. Beth Clifford was not a party to the making of the agreement and when it was made, she was only a name. Mr Williams stated that he did not personally meet or speak with Ms Clifford before signing the Order Form. [134] The witness stated that he signed the Order Form on 3 April 2017 and had his first meeting with Ms Clifford, a chance social encounter, in March 2018, some 11 months after the agreement was made.[135]

[119] The fact that Beth Clifford was the sole director of GDP, BIG and other companies was of no significance in the court's judgment of liability for breach of contract. There was no finding that she did anything material (apart from controlling and directing the company that breached the contract). The Court of Appeal misled itself in finding it astonishing[136] that no document of title for the subject land was ever produced because the court disregarded the structure of the transaction as confirmed in the exhibits to Mr Williams' witness statement. Among these was a signed agreement (later voided) whereby GDP transferred to LCW the total shareholding in the Anguilla company which was the sole owner of the relevant parcel of land identified as Registration Section San Pedro, Block 7 Parcel 5801.[137] The proprietor was the Anguillan company identified at [93], above which Mr Williams accepted as the fact, from the outset.[138] Further, it was a perfectly anodyne commercial arrangement that would have been attractive to especially a foreign buyer and seller to be able to transfer title to land, in perhaps one day, by simply transferring the share in a one-shareholder, one-asset company that holds title instead of waiting for however many months for the lands department bureaucracy to process a transfer of

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[133] *Green Development Partners* (n 3) at [114].
[134] Record of Appeal, 'Transcript of Proceedings in the High Court' 1498.
[135] Record of Appeal, 'Witness Statement of Steven Williams' 210–211.
[136] *Green Development Partners* (n 3) at [86].
[137] Record of Appeal, 'Witness Statement of Steven Williams' 400–405.
[138] ibid at [15]–[16].

title. The fact that LCW's principal, with over 25 years' experience as a real estate investor, accepted, and had been prepared to accept this title arrangement (from which he later resiled when delay and distrust took over), should have indicated to the court there was nothing dodgy about the land title, whatever may have been the judges' subjective view of that modality of title holding.

[120] The Court of Appeal also misled itself in doubting that the land and building existed, as this ignored the counterclaim of GDP against LCW for specific performance of the contract which, of course, GDP could only ask of the court if GDP could transfer land and building. Beth Clifford testified in her witness summary[139] that as of December 2019 the Keeping Suite had been substantially completed. The court's doubt that land and building existed also ignored the evidence of LCW's principal that he was invited to compromise his company's claim by joining in the selling of the contracted land and building to third parties at a loss to LCW of USD8,000 even though the witness claimed to doubt that they existed.[140] It is unimaginable that counsel would have failed to denounce any false representation being foisted upon the court that land and building existed, available to being transferred. The finding of both courts below that there was no fraud accords with the evidence that the subject transaction was one of many in the creation of a well-established and apparently attractive development project that had been in progress since 2013.[141] The erroneous findings of the court are immaterial to the ultimate decision on the appeal before this Court, but they clearly informed the Court of Appeal's finding of impropriety.

The Corporate Shield

[121] The true object and nature of the claim pursued on the cross-appeal in the Court of Appeal against Beth Clifford and BIG has not been stated forthrightly, however they

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[139] Record of Appeal, 'Witness Summary of Beth Clifford' at [49]. She also stated she had attached as Annex 21, photos of the Lot 25 (presumably 259) Keeping Suite.
[140] Record of Appeal, 'Witness Statement of Steven Williams' at [110]. Although the witness seemed to accept at [115] that Beth Clifford had built a house on the lot, he then turned right around in [116] to say Beth Clifford had not accounted for what was done with the money he paid to her.
[141] Record of Appeal, 'Witness Statement of Robert Helms' at [2].

may be inferred from the decision reached by the Court of Appeal. The reason was that GDP had not paid the damages awarded against it and the Court of Appeal accepted that because 'justice so requires,'[142] the principle of *Salomon* should be disregarded and Beth Clifford and BIG should be made also liable to pay. The Court of Appeal decided that it was wrong for the principle of separate legal personality of companies deliberately to be used in the context of this transaction as a shield for liability. It found that the purpose of using the corporate structure was to avoid liability[143] and, further, that to allow denial of liability would be to allow Beth Clifford to use the law to 'evade' the obligations and liability necessarily arising in 'her enterprise'.[144]

[122] The Court of Appeal's decision that Beth Clifford should not be permitted to 'evade' liability for GDP's breach of contract was based, with respect, on the vitiating error in its decision that premised that there existed liability on the part of Beth Clifford to evade. As *Prest* affirmed, it is only if there is relevant impropriety or wrongdoing –some dishonesty – for which the individual is personally liable that the corporate veil is pierced. The judgment of the Court of Appeal itself, in this case, reveals there was none. This could have been seen by considering that the contract came as close to full performance as it could have come. There remained for completion only the delivery of final legal documents that already had been virtually signed and sealed by both sides. At that stage of the life of the contract, there was no allegation of impropriety or wrongdoing on the part of Beth Clifford or BIG. It was only after the contract was rescinded for breach of an implied term of timely performance that wrongdoing, in the form of that delayed performance, was alleged. It is apparent there was never any relevant impropriety or wrongdoing on the part of Beth Clifford or BIG.

[123] To my mind, that disposes of the decision that there was liability on the part of Beth Clifford, but the analysis can be taken further. Even if there was an abuse of the law

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[142] See *Prest* (n 6) at [21].
[143] *Green Development Partners Ltd* (n 3) at [113].
[144] ibid.

of separate legal personality by the creation of a hypothetical wall of obscure corporate entities to exclude all personal responsibility, and that could be taken as capable of bringing this transaction into a residual category of impropriety or wrongdoing, – of abuse of the law – there was not an iota of evidence that such hypothetical impropriety caused or contributed to a breach of contract or any injury whatsoever to the respondent. The existence of the supposedly murky corporate structure had no relevant effect whatsoever. More particularly, it was immaterial to the claim that Ms Clifford 'owned' 45 or 100 companies since only three played any part in what was, a perfectly legitimate land transaction. The court inveighed against the use of a corporation as a shield against liability. It is ironic that both sides in the litigation were represented by a highly reputable law firm that was a Limited Liability Partnership ('LLP') and the claimant itself was a Limited Liability Corporation ('LLC'). It is to be accepted generally as no more than ordinary business prudence and not an abuse of the law or a subterfuge – or a vehicle of piracy – for persons to carry on business through a limited liability structure and shield themselves from individual liability.

[124] There was no *relevant* wrongdoing or impropriety (emphasis added). As observed in *Prest*, in discussing the decision in *Trustor AB v Smallbone (No 2)*[145] for there to be piercing, the situation had to be that the impropriety was a relevant one, ie 'linked to the use of the company structure to avoid or conceal liability for that impropriety'.[146] It is perfectly clear that, in this case, there was no liability by Beth Clifford for anything whatsoever. Beth Clifford did nothing for which she could be liable and which the corporate structure could be used to avoid or evade.

[125] The respondent saved effort when it submitted[147] that it was largely irrelevant to engage with deciding into which category of wrongdoing Beth Clifford's alleged impropriety fell. As has now emerged, there was no relevant impropriety to place into any category. The respondent's case against Beth Clifford has always only been

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[145] *Trustor* (n 61).
[146] See *Prest* (n 6) at [22].
[147] Respondent's Speaking Note filed 11 July 2025, at para 23.

the one that *Prest* stated was not a proper justification for departing from the principle of *Salomon*: it is not permissible to claim that justice requires that persons who were not parties to a contract should also be held liable for the default of the corporation that was the contracting party; see *Prest* at 480 G.

[126] The cardinal principle governing piercing the corporate veil must prevail: the object of piercing is to defeat dishonesty. The Court of Appeal found no dishonesty.

The Judgment Against BIG

[127] It was a conclusionary decision that BIG was liable to LCW because of having paid over money to GDP. Undoubtedly, that is exactly what it was supposed to do. Apart from making payment, it did nothing. The decision against it was made because LCW did not get what it paid for. No legal principle or reasoning was offered for concluding that BIG should bear any liability for that outcome. The loss LCW suffered was not caused by the payment. It was caused by the failure of the party to whom the money was paid to transfer to LCW the object for which it had paid. There was no finding that BIG should have not paid the money until title had been transferred. From the nature of the contractual arrangement, the money needed to be paid for construction to commence including constructing a seawall to keep the land on which the house was to be built from collapsing into the sea.

[128] It is difficult to deduce what made the Court of Appeal decide to fix liability on BIG except on the thinking that it, too, along with GDP was part of Ms Clifford's enterprise (whatever that may mean) and, therefore, should be liable, too. That view comes within the Latin legal term *ex aequo et bono*, meaning according to what is right and good. It rests on a sense of fundamental fairness and the justice of a case, even if this means diverging from strict legal rules.[148] It is settled law that the power of an adjudicator, often an arbitrator, to act according to the maxim must be expressly authorised by the parties. It was, therefore, not a power available to the Court of Appeal.

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[148] *Halsbury's Laws of England* (5th edn, 2025) vol 61, para 490.

Result

[129] For the reasons given, I am satisfied the appeal must be allowed. I would set aside the decision of the Court of Appeal and restore the decision of the High Court and award costs in this Court as agreed by the parties and the courts below to the appellants.

JAMADAR J:

Introduction

[130] This appeal raises frontally the nature of corporate personality and the circumstances in which courts can disregard that ascribed persona, make certain inquiries about the ownership, control and use/misuse of corporate structure, and grant relief for the benefit of third parties doing business with a company. In this case, that relief could be against a company and/or its shareholders. Indeed, the singular issue before this Court concerned whether the Court of Appeal was correct in disregarding the corporate veil of Green Development Partners Ltd. The relevant law, for the purposes of this appeal as has been agreed, is Belizean law. And therefore, for the purposes of this opinion, and in particular, reliance will be placed on the Belize Companies Act.[149]

[131] The essential facts are that Beth Clifford is the sole director and shareholder – the owner – of Beltway Investment Group Inc ('BIG') a one-person company duly incorporated in the United States of America. Ms Clifford is the single directing and controlling influence in all its decision making and actions. She is also similarly circumstanced in relation to Green Development Partners Ltd ('GDP'), a company incorporated in Saint Lucia, against which LCW Investments LLC ('LCW'), another US company, has secured a judgment for breach of a contract which was to be

[149] Act 11 of 2022, as amended by Act 27 of 2023.

performed in Belize. Further and based on the available evidence and uncontested submissions, GDP is a shell company, devoid of any assets, and LCW is unable to enforce or satisfy its judgment against it.[150] LCW also asserts that BIG is a shell company, devoid of any assets.[151]

[132] The contracts in question were entered into between GDP and LCW and contained a specific clause that they were to be governed by, or interpreted in accordance with, the laws of Belize. The trial judge dismissed the claim against Beth Clifford and BIG, rejecting the claim that Beth Clifford used GDP and BIG as her agents or as a façade in a fraudulent scheme against LCW, or that BIG was a trustee in relation to LCW. The trial judge concluded that, there being no proven fraud, there was no sufficient basis to disregard the corporate veils of GDP and/or BIG. However, the trial judge found LCW's claim against GDP for breach of contract had been established and entered judgment for LCW in the sum of USD788,709 with interest at 6 per cent per annum from 5 August 2019 to the date of payment in full.

[133] In the Court of Appeal, GDP's appeal failed and has not been pursued any further. The Court of Appeal upheld the order made by the High Court against GDP. However, and in disagreement with the High Court, the Court of Appeal was prepared to go behind and disregard the corporate veil of GDP, and to affix joint and several liability to Beth Clifford (in her personal capacity), BIG and GDP. The Court of Appeal therefore concluded that GDP, BIG and Beth Clifford are jointly liable to LCW for breach of contract and thus required to pay damages and interest as determined by the High Court and on the same terms. Essentially, the Court of Appeal concluded that the test for disregarding (piercing) the corporate veil had been met in the circumstances of this case, and because Beth Clifford was the sole shareholder and director of both GDP and BIG and their single directing and controlling influence, she was also accountable and liable to LCW.

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[150] GDP has not appealed the Court of Appeal's decision. LCW contends that it has not been paid any of the sums that GDP is liable to pay to LCW. LCW also contends that GDP has no assets to do so and there has therefore been no effective remedy afforded to it.

[151] LCW Investments LLC, 'Submissions on behalf of the Respondent', Submission in *Clifford v LCW Investments LLC,* BZCV2025/001, 29 April 2025, at [46]: 'Beltway has no employees, and its bank account is wholly owned and operated by Beth Clifford. It is an entity that can only act on the instructions of Beth Clifford. It offers no services to the public and has no place of business. Its bank account is merely Beth Clifford's account in a different name'.

[134] This appeal therefore raises the core issue of whether the Court of Appeal was correct in disregarding the separate legal personality of GDP, and holding Beth Clifford, GDP and BIG jointly and severally liable for breaching the contract agreed between GDP and LCW. This Court has been invited not only to determine the appeal on the facts, but also to clarify and state its jurisprudential approach to disregarding the corporate veil in circumstances such as arise in this matter. A core concern is the continuing usefulness of the approach taken in *Prest v Petrodel Resources Ltd.*[152]

Disposition

[135] On the law, and based on the Belizean Companies Act (or alternatively and *arguendo*, also based on the Companies Act of Saint Lucia,[153] since GDP was incorporated in Saint Lucia), the foundation upon which the corporate veil may be disregarded and liability ascribed otherwise than to the company involved in the impugned transaction(s), is grounded in the *lawful purpose principle* (emphasis added). This is a well-established principle, anchored in statute, common law, and the Constitution. It is neither novel nor unknown, and on the contrary, is easily discoverable in the relevant statutory regime.

[136] In Anglo-Caribbean independent constitutional democracies, the rule of law is part of the basic deep structure and is constitutive.[154] Inherent in the rule of law in these liberal democracies is the principle of legality (as is the enjoyment of avowed fundamental rights and freedoms). A principle which, because of the supremacy-inconsistency concept,[155] governs the interpretation and application of all laws and the behaviours of all persons. The rule of law is linked to freedom in these constitutions, and the import is that persons are free to conduct their affairs within the contexts of rule of law legality. As Professor Simeon McIntosh has so aptly

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[152] *Prest* (n 6).
[153] Companies Act, Cap 13:01 (LC).
[154] Preambular cl (d) of Belize Constitution Act, CAP 4 : 'recognise that men and institutions remain free *only when freedom is founded upon* respect for moral and spiritual values *and upon the rule of law*'(emphasis added). Preambular cl (d) of Constitution of Saint Lucia, Cap 1.01: 'maintain that these freedoms can only be safeguarded by the rule of law'.
[155] Belize Constitution Act, CAP 4, s 2.

explained: 'It (a constitution) is an architectonic plan for the founding and ordering of a political society …'.[156]

[137] Companies incorporated in these Caribbean states are statutory creations. They are therefore subject to the rule of law and to the principle of legality, broadly interpreted and applied. The *lawful purpose principle* articulated in this opinion gives effect to this constitutional imperative, and as well to this very lawful purpose principle that is contained in the Companies Act of Belize.[157] Correspondingly, the use of a company for an unlawful purpose or a purpose contrary to law is encompassing and includes, but is not limited to, say, fraud, dishonesty, unconscionability, and the abuse or misuse of corporate structure, powers and protections (all of which are subsets of and rooted in the more fundamental principle of legality).

[138] The core tools for analysis for discovering whether to disregard the corporate veil, and which flow from the *lawful purpose principle*, are the lenses of unlawful purpose and/or a purpose contrary to law. These are applied in relation to the impugned transaction(s) and in order to discover generally, whether (i) the transactions were done in pursuit of an unlawful purpose and/or a purpose contrary to law, (ii) there has been an abuse or misuse of the corporate legal personality and structure, (iii) which is intended to avoid existing legal rights or rights that have accrued and/or to evade/defeat the law or frustrate its enforcement, (iv) which has resulted in harm or loss to the aggrieved party, and (v) who has been deprived of any effective relief. (The five guideline criteria)

[139] These criteria are neither fixed, rigid, nor prescriptive in an absolute sense, but rather are intended to function as pointers, guidelines, that help evaluate whether to disregard the corporate veil in the context of an open-ended *lawful purpose principle*.

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[156] Simeon McIntosh, *Caribbean Constitutional Reform: Rethinking the West Indian Polity* (Caribbean Law Publishing Co 2002) 37.
[157] And, indeed, as is generally inherent in companies acts across the Commonwealth.

[140] The methodology for analysis generally inquires into whether the impugned transaction itself is in furtherance of an unlawful purpose and/or a purpose contrary to law, whether the corporate structure has also been used unlawfully for this purpose, and whether the consequence is to deprive an aggrieved person of effective relief. Disregarding the corporate veil is generally only resorted to when it is necessary to give effective relief and usually when relief is not otherwise available against the company *per se* or its controllers.

[141] In my opinion, concerns that the articulation of this *lawful purpose principle* as a basis for disregarding the corporate veil is somehow fraught, are unfounded. The principle is grounded in the constitution, statute and common law, and maybe most importantly, in this Court's jurisprudence. Its development considers and accommodates the historical (precedential) circumstances in which the corporate veil has been both disregarded and regarded. And it seeks to simplify and streamline, in practical terms, the relevant analysis to be undertaken in considering the questions of whether and when the corporate veil may be disregarded. Indeed, it is consistent with and embraces the core remedial offerings of other opinions in this matter.

[142] I am of the view that in this matter disregarding the corporate veil to ascribe liability as per the order of the Court of Appeal was not justified, because Beth Clifford's use of the two companies has not been established as being for an unlawful purpose or contrary to law. That is to say, the *lawful purpose principle* has not been shown to have been breached.

Disregarding Separate Legal Personality

(i) *General*

[143] The separate legal personality doctrine ascribes legal status to the nature of corporate personality.[158] The doctrine asserts that a company exists as a separate legal person distinct from its shareholders/members and directors. Members are therefore

[158] Burgess (n 19) 86–91.

exempted from personal liability. It has its origins in the English Companies Act of 1862 and in *Salomon v A Salomon & Co Ltd*.[159] Prior to *Prest v Petrodel Resources Ltd*,[160] English case law recognised an assorted variety of exceptions to the doctrine (often described as instances of 'piercing' or 'lifting' or 'disregarding' the corporate veil). These 'exceptions' included: (i) the 'mere façade' test, (ii) using the corporate structure as a device to evade limitations imposed on conduct by law, (iii) using the corporate structure as a device to evade rights of relief already possessed by third parties, and (iv) agency principles.[161] If the facts of the case warranted a disregard of a company's separate legal personality based on the application of one or more of these exceptions to the doctrine of separate legal personality, a consequence could be to hold persons other than the company, including its members, additionally liable for liability that would otherwise belong to the company only.

[144] In instances of 'piercing' or 'lifting' the corporate veil, a court is not looking at the legality of the company *per se*, but at the legality of the impugned transactions which are before the court. Disregarding ('lifting' and 'piercing') the veil are interventions deployed by the courts to interrogate such transactions and grant appropriate (effective) relief if warranted. The general legal personality and status of the company are not under review or threat. This is so because, as for example, in Belize, s 27 of the Companies Act states that: 'A company is a legal entity, in its own right, separate from its members *and continues in existence until it is dissolved.*'[162] Thus, the focus is on the impugned transaction, and the company *per se* 'continues in existence until dissolved.'

(ii) *Prest's Case*

[145] However, with *Prest* and per Lord Sumption, the more open-ended approach for disregarding the corporate veil has changed. The court held that the concepts of 'piercing' and 'lifting' are not interchangeable, and rather are distinct terms, as they

[159] *Salomon* (n 5).
[160] *Prest* (n 6).
[161] Burgess (n 19) 92–98.
[162] Belize Companies Act 2022, s 27 (emphasis added). The Companies Act, Cap 13.01, ss 9, 17 (LC) also make clear that a company has its own separate and independent existence, along with the powers and capacities of an individual.

serve different purposes. Moreover, the separate legal personality doctrine is only properly disapplied in instances of 'piercing'. Further, 'piercing' only applies when a company is interposed for the purposes of evading or frustrating the enforcement of existing legal obligations, which exist independently of the company.[163] And, even further, that 'piercing' is only appropriate when other available and more conventional remedies are inadequate.[164]

[146] This Court has been invited to consider as a matter of law: (i) whether Lord Sumption's formulation in *Prest*'s case, of when courts can disregard the separate legal personality of a company and ascribe personal liability to members of the company, should be adopted as the law of Belize, and (ii) if not, what is an appropriate formulation of the applicable principles. These are the issues that preoccupy this opinion.

[147] For my part, much of the conceptual heavy lifting on these issues has already been done by this Court in the erudite opinion of Burgess J, in the recent Barbadian case of *Delpeache v Commissioner of Police*.[165] That appeal dealt with 'lifting the corporate veil' in the context of criminal acts. Burgess J examined *Prest*'s case, which is still considered the *locus classicus* in this area of the law, and had this to say:[166]

> As I have already said, this is not a proper case for this Court to pursue a close analysis of the *Prest v Petrodel* evasion/concealment test. For my part, I wish only to indicate that *my view is that this Court should not adopt that test* as argued by counsel for the appellant *without a searching examination of the principles that underlie that test as well as to its practical utility*.

[148] In fact, Burgess J had effectively engaged that 'searching inquiry' himself in *Delpeache*, prior to making this statement. In so doing, he demonstrated, from among other things including the multiple opinions in *Prest*'s case itself, that circumscribing the power to 'lift' or 'pierce' the corporate veil to circumstances of 'concealment' or 'evasion' are fraught. Indeed, Burgess J would state: 'For my part,

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[163] *Antonio Gramsci Shipping Corp v Lembergs* [2013] 4 All ER 157 at [65].
[164] *Prest* (n 6) at [62].
[165] *Delpeache* (n 39) at [113]–[121].
[166] ibid at [121] (emphasis added).

I have serious reservations on the correctness, as well as the practical usefulness, of that test and so I do not agree that this Court should accept it.'[167]

Concealment and Evasion: Introductory Matters

[149] The concealment and evasion principles were discussed by Lord Sumption in *Prest's* case after making the following observations:[168]

> Subject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders. It has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders. In *Salomon v A Salomon & Co Ltd* [1897] AC 22, the House of Lords held that these principles applied as much to a company that was wholly owned and controlled by one man as to any other company.
> …
> The separate personality and property of a company is sometimes described as a fiction, and in a sense it is. But the fiction is the whole foundation of English company and insolvency law.

In *Delpeache*, Burgess J would agree with these propositions, as follows:[169]

> The House of Lords decision in *Salomon v Salomon & Co Ltd*, which established for the first time that the incorporated company has a legal personality of its own separate from its incorporators, shareholders, and directors, is now treated as a hallowed principle across the Commonwealth and in the United States. Unsurprisingly then, the *Salomon* principle, as that principle is affectionally known, is the foundation stone upon which company law in Barbados has been erected.
> …
> As Rajnauth-Lee and Burgess JJCCJ in delivering the judgment of this Court in *Bay Trust Corporate Services Ltd v Longsworth* observed,[170] a company is a *persona ficta* deemed to exist and to have the powers, rights, and the liabilities of a natural person.

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[167] ibid at [117] (emphasis added).
[168] *Prest* (n 6) at [8].
[169] *Delpeache* (n 38) at [42], [76].
[170] [2020] CCJ 8 (AJ) BZ, (2020) 99 WIR 131 at [28].

[150] In Belize, this doctrine of a separate legal personality, a *persona ficta,* has statutory underpinning pursuant to the Companies Act. Section 5 provides for incorporation, and s 27 declares that: 'A company is a legal entity, in its own right, separate from its members and continues in existence until it is dissolved.' Section 28 speaks to the 'full capacity to carry on or undertake any business or activity …' and for this for this purpose a company has 'full rights, powers and privileges.'[171] And s 30 of the Companies Act[172] reinforces this concept in purporting to exempt any 'director, agent … of a company' from being:

> liable for any debt, obligation or default of the company, unless specifically provided in this Act, in any other enactment, the articles, or agreements made, and except in so far as he may be liable for his own conduct or acts.

[151] Thus, according to Belizean law, a company has (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transactions; and (b) for the purposes of paragraph *(a)*, full rights, powers and privileges (and similarly in Saint Lucia).[173]

The Corporate Veil Enigma: To Regard or to Disregard

[152] In this context and as relevant to the instant appeal, Lord Sumption would opine in light of the circumstances in *Prest*'s case:[174]

> Against this background, there are three possible legal bases on which the assets of the Petrodel companies might be available to satisfy the lump sum order against the husband: (1) It might be said that this is a case in which, exceptionally, *a court is at liberty to disregard the corporate veil in order to give effective relief.* …

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[171] Belize Companies Act 2022, ss 27, 28. See also Companies Act, Cap 13.01 ss 4, 17 (LC) (incorporation: 'one or more persons may incorporate a company …') and (capacity and powers: 'A company has the capacity … the rights, powers and privileges of an individual.').
[172] Belize Companies Act 2022, s 30. See also Companies Act, Cap 13.01, s 99 (LC).
[173] Belize Companies Act 2022, s 28(1). See also Companies Act, Cap 13.01, ss 4,17 (LC).
[174] *Prest* (n 6) at [9] (emphasis added). The two other bases were grounded in the Matrimonial Causes Act 1973 (UK) and the law of trusts.

[153] Noteworthy, is the language used in these introductory forays to explain the first basis (in *Prest*'s case) that may justify an attack on the corporate veil - 'to *disregard* the corporate veil' and to do so 'in order to give *effective relief*'. This language conveys, aptly in my opinion, a conceptual basis for what this Court is invited to interrogate. Language that is more helpful because it is not pigeonholed into narrow and /or rigid concepts of 'evasion' or 'concealment' but rather anchored in a concept of 'disregard' for the corporate veil which is deployed in order to achieve 'effective justice'.

[154] This does not mean that the concepts of concealment and evasion are completely unhelpful tools. But, as I will posit, what a court is doing in both 'lifting' and 'piercing' the corporate veil for the purpose of ascribing liability, is better described as 'disregarding' the protections afforded by the legal status of separate corporate legal personality.

[155] In *Delpeache*, Burgess J clarifies the function of metaphoric references in the jurisprudence to a 'corporate veil', to which I now turn:[175]

> The *Salomon* principle is not a mere technical rule. In practical business terms, this principle means that a company, once incorporated, enjoys rights and is subject to liabilities (civil and criminal) different from those enjoyed or borne by its incorporators or shareholders. The principle is captured in company law theory by the metaphor that a company has a separate legal personality. Indeed, *the metaphor continues that on incorporation, a veil, called the "veil of incorporation", is drawn between the company's personality and that of its incorporators or its shareholders or its directors*.

[156] In *Prest*, Lord Sumption also makes the following general points in the context of piercing the corporate veil:[176]

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[175] *Delpeache* (n 39) at [61] (emphasis added); citing *Macaura v Northern Assurance Co* [1925] AC 619 at 626; *Short v Treasury Commissioners* [1948] AC 534 at 545; *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418; *Persad v Singh* [2017] UKPC 32 (TT) at [20].
[176] *Prest* (n 6) at [16] (emphasis added).

> "Piercing the corporate veil" is an expression rather indiscriminately used to describe a number of different things. Properly speaking, *it means disregarding the separate personality of the company*. There is a range of situations in which the law attributes the acts or property of a company to those who control it, without disregarding its separate legal personality. The controller may be personally liable, generally in addition to the company, for something that he has done as its agent or as a joint actor. Property legally vested in a company may belong beneficially to the controller … *But when we speak of piercing the corporate veil, we are not (or should not be) speaking of any of these situations, but only of those cases which are true exceptions to the rule in Salomon v A Salomon and Co Ltd [1897] AC 22, i.e. where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control*.

[157] He goes on to explain, again conceptually, the civilian approach to circumstances which may permit disregarding the separate corporate personality, as follows:[177]

> Most advanced legal systems recognise corporate legal personality while acknowledging some *limits to its logical implications. In civil law jurisdictions, the juridical basis of the exceptions is generally the concept of abuse of rights* to which the International Court of Justice was referring in *Case concerning Barcelona Traction, Light and Power Co Ltd (Belgium v Spain) (Second Phase)* [1970] ICJ 3 when it derived from municipal law *a limited principle permitting the piercing of the corporate veil in cases of misuse, fraud, malfeasance or evasion of legal obligations.* These examples illustrate the breadth, at least as a matter of legal theory, of the concept of abuse of rights, *which extends not just to the illegal and improper invocation of a right but to its use for some purpose collateral to that for which it exists*.

[158] Only to then state: '*English law* has no general doctrine of this kind. But it *has a variety of specific principles which achieve the same result* in some cases.'[178] Which begs the question: Why shouldn't, as a general principle, the abuse of the rights, powers, and privileges of a separate corporate personality and structure, or an unconscionable or dishonest or fraudulent use of that *persona ficta*, *which are all uses for unlawful or illegal or collateral purposes,* not be presumptively considered

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[177] ibid at [17] (emphasis added).
[178] ibid at [18] (emphasis added).

bases for disregarding the separate corporate personality and ascribing liability to achieve effective relief for aggrieved parties? And can these all be consolidated in an encompassing 'lawful purpose' principle? More on that later, but to say at present that in Prest's case these core underpinning principles are recognised and acknowledged.

[159] The metaphor of the 'veil' is in itself revealing, as its use is intended as a functional methodological tool for determining when there can be disregard for the corporate *persona ficta*. A veil can be a protection. A veil can also cover, and hide, it can conceal that which is real, and in its uncovering, reveal what is real. In cases such as this, the salient question is: To veil or unveil? The High Court chose the former, and the Court of Appeal the latter.

[160] Yet, surely there can be little that is contrary to legal policy in the act of corporate unveiling, in order to see, in relevant circumstances, for example, whether 'a person who owns and controls a company [can be] said in certain circumstances to be identified with it in law by virtue of that ownership and control[?]'[179] This unveiling process, which Lord Sumption grounds in the 'concealment principle', justifies the 'lifting of the veil' (but not the 'piercing of the veil'). Indeed, there can be little that is contrary to legal policy in the act of corporate unveiling to see, in relevant circumstances, whether the corporate structure is being used for unlawful or illegal or collateral purposes. Both of which inquiries and any others into an abuse of the corporate structure, I will suggest in due course, can be appropriately grounded in an underpinning 'lawful purpose' principle.

(Un)common Law

[161] Lord Sumption next considers the development of the English common law in this area. He identifies that a primary principle: 'is that the law defines the incidents of most legal relationships between persons (natural or artificial) on *the fundamental*

[179] ibid at [16].

assumption that their dealings are honest.'[180] And that therefore: 'The *same legal incidents will not necessarily apply if they are not.*'[181] Using cases of fraud as the quintessential example, he concludes:[182]

> These decisions … illustrate *a broader principle governing cases in which the benefit of some apparently absolute legal principle has been obtained by dishonesty*. The authorities show that there are limited circumstances in which the law treats the use of a company as a means of evading the law as dishonest for this purpose.

[162] These two sentences, juxtaposed as they are, initiate Lord Sumption's movement into a path of reductionism which I find difficult to follow. The first sentence maps a broad principle and policy justifying intervention and premised on an 'absolute legal principle' of 'honesty' – which I will suggest is synonymous in jurisprudential terms with a principle of 'lawfulness'. This yields, for our purposes of unveiling, what we may call an 'honesty principle', or, to maintain the analogy, a 'lawfulness principle'.

[163] However, be that as it may, the second sentence, somewhat surprisingly, circumscribes the permissiveness of such a principle. Thus, his point of embarkation in relation to disregarding the *persona ficta* of a separate corporate personality and structure in order to ascribe liability otherwise, is that this is an exceptional remedy only to be applied in 'limited circumstances' of dishonesty. Why so? Because the 'authorities' demonstrate this – a classic application of the common law approach to the use of precedent. Which calls to remembrance Sam Foss's 1895 didactic and allegorical poem 'The Calf Path'!

[164] However, even the authorities cited by Lord Sumption do not necessarily or even readily conduce to the neat and narrow conclusions that he eventually arrives at as singularly justifying disregarding the corporate veil for the purposes of ascribing liability otherwise. For him: (i) 'the court may be justified in piercing the corporate

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[180] ibid at [18] (emphasis added).
[181] ibid (emphasis added).
[182] ibid (emphasis added).

veil if a company's separate legal personality is being abused for the purpose of some relevant wrongdoing…"[183] and further narrowing this test, (ii) 'the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement.'[184]

[165] For Lord Sumption, in the final analysis there are only two applicable principles that assist in determining whether there is abuse and 'some relevant wrongdoing'.[185] He eschews as too vague and unhelpful 'references to a "façade" or "sham"',[186] and summarises his preferred understandings and the essence of his analysis, as follows:

> It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called *the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all*. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the "facade", but only looking behind it to discover the facts which the corporate structure is concealing. *The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement.*[187]

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[183] ibid at [27]. To be clear, the use of a company's separate legal personality for the purpose of some relevant wrongdoing can amount to an abuse of the corporate veil and use for an unlawful or illegal or collateral purpose.
[184] ibid at [28].
[185] ibid.
[186] ibid. One assumes that the use of a company as a façade or sham can also result in a conclusion that 'a company's separate legal personality is being abused for the purpose of some relevant wrongdoing.'
[187] ibid (emphasis added).

[166] The end and ultimate result of his analysis, is that a court may only disregard the corporate veil and grant relief, concluding that a company's separate legal personality is being abused for the purpose of some relevant wrongdoing (Lord Sumption's 'piercing of the veil'), if: (i) there is a legal right against the person in control of it which exists independently of the company's involvement, and (ii) a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement (the evasion principle).[188] Looking behind the corporate veil to discover the true facts, the deployment of the concealment principle (Lord Sumption's 'lifting of the veil'), is materially and functionally different from disregarding the separate legal personality of a company in order to vest liability otherwise than in it *per se*. The 'lifting of the veil' is a tool that may lead to the 'piercing of the veil' and the grant of appropriate remedies.

***Prest*: A Preliminary Comment**

[167] Lord Sumption's insight in *Prest*'s case, that 'the court may be justified in piercing the corporate veil *if a company's separate legal personality is being abused for the purpose of some relevant wrongdoing*'[189] accords with the lawful purpose principle approach that I will articulate as apt. That is to say, the use of a company's separate legal personality (ie of the corporate structure) for the purpose *of some relevant wrongdoing* can amount to an abuse of the corporate veil and use for an unlawful or illegal or collateral purpose – a purpose *contrary to the law* (to use the statutory language).[190] My preference is to ground the governing principle in the statutory language used in the Companies Act. However, his narrowing of its applicability does not, and in my opinion unnecessarily undermines it.

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[188] See *Antonio Gramsci Shipping Corp* (n 163) at [65]: '[I]t is clear from the decision of the Supreme Court that, in the present state of English law, the court can only pierce the corporate veil when "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."'

[189] *Prest* (n 6) at [27] (emphasis added).

[190] Belize Companies Act 2022, s 296(1)(a). See also Companies Act, Cap 13.01, s 17(4) (LC).

***Prest*: Concerns**

[168] There are several concerns with what ends up for Lord Sumption as being a narrowed analysis and test, for whether and when a court may be at liberty to disregard the corporate veil and the *persona ficta* of a separate corporate personality and structure, in order to give effective relief to an aggrieved party.

[169] Burgess J adroitly points out that the other members of the panel in *Prest*'s case had expressed their own reservations.[191] He notes that, in the words of Lord Mance, 'it is often dangerous to seek to foreclose all possible future situations which may arise.'[192] And further notes (in the same paragraph) that Lord Clarke was of like mind.[193] This is a criticism focused on an overly rigid and not always helpful binary approach to classification.[194] However, it is also important to note that both Lord Mance and Lord Clarke in *Prest* also agreed that the evasion principle as outlined by Lord Sumption was an established exception to the doctrine first enunciated in *Salomon's case*.[195] And both also agreed that the piercing of the corporate veil is an exceptional remedy.[196]

[170] In the case of Lady Hale, Burgess J summarised her reservation as follows:[197]
'Lady Hale doubted the possibility of "neatly" classifying all cases in which courts disregard separate legal personality into the two categories of concealment and evasion.'

[171] In fact, Lady Hale opined as follows:[198]

> I am not sure whether it is possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal

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[191] *Delpeache* (n 39) at [113]–[116].
[192] *Delpeache* (n 39 at [115]; *Prest* (n 6) at [100].
[193] *Prest* (n 6) at [103].
[194] For example, in the discussion in *Prest* (n 6) of *Gilford Motor Co Ltd* (n 48), Lord Sumption deemed it a case of evasion (at [29]), but Lord Neuberger thought it to be one of concealment (at [70]), whereas in the case itself the company was considered by Lord Hanworth to be a 'mere cloak or sham' (at 961), and by Lawrence LJ (at 965) 'as a mere channel by the defendant Horne for the purpose of enabling him, for his own benefit, to obtain the advantage of the customers of the plaintiff company'.
[195] *Prest* (n 6) at [102], [103]; *Salomon* (n 5).
[196] *Prest* (n 6) at [100], [103].
[197] *Delpeache* (n 39) at [114].
[198] *Prest* (n 6) at [92] (emphasis added).

> personality of a company neatly into cases of either concealment or evasion. They may simply be *examples of the principle that the individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business.* But what the cases do have in common is that *the separate legal personality is being disregarded in order to obtain a remedy against someone other than the company in respect of a liability which would otherwise be that of the company alone* (if it existed at all).

[172] What is discerning about Lady Hale's insights, is that the overarching justification for disregarding the separate legal personality turns on a principle of unlawfulness –the abuse of its use, linked to the taking of 'unconscionable advantage' (ie relevant wrongdoing).[199] For her, the categories of such unlawfulness – abuse and unconscionable advantage, are not closed. And further, for Lady Hale, the purpose of disregarding the separate legal personality, is to 'obtain a remedy against someone other than the company in respect of a liability which would otherwise be that of the company alone.' Again, this formulation of purpose evokes a more unbounded and open-ended objective to render effective relief. Lady Hale's overarching justification is, in my opinion, one that resonates more with fundamental principles of 'honesty' and 'good faith', and one that is certainly encompassed by a principle of 'lawfulness'.

[173] Moreover, what exactly does this 'unconscionable advantage' exception to the corporate *persona ficta* encompass? Generally, when lawyers speak of unconscionability in contract law, they are referring to terms of a contract or conduct that are so unfair and/or one-sided that they 'shock the conscience' of the court. It commonly refers to a doctrine designed to protect vulnerable parties from exploitation, usually by those with greater bargaining power. The operating principle is that the terms of a contract or conduct are so egregious that they offend a court's sense of justice and fairness.[200] Underpinning it are the principles of fair

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[199] A test that would make great sense, as illustrated in a case such as *Gilford Motor* (n 48).

[200] See, for example, *Credit Lyonnais Bank Nederland NV v Burch* [1997] 1 All ER 144 at 152 (Millett LJ): 'Miss Burch did not seek to have the transaction set aside as a harsh and unconscionable bargain. To do so she would have had to show not only that the terms of the transaction were harsh or oppressive, but that "one of the parties to it has imposed the objectionable terms in a morally reprehensible manner, that is to say, in a way which affects his conscience"'.

dealing and good faith. And its objective is to prevent unconscionable exploitation – hence 'advantage', by one party of another.

[174] Lady Hale seemed less concerned with the technicalities of contract law, and more so with broader considerations of unfairness (as unfair dealing) that exceeds reasonable limits and that has the effect of being exploitative, when she suggested as a general principle for disregarding the corporate veil 'unconscionable advantage'.[201]

[175] Indeed, the Singaporean Court of Appeal, in *GHL Pte Ltd v Unitrack Building Construction Pte Ltd,*[202] held that the definition of 'unconscionability' involved 'unfairness, as distinct from dishonesty or fraud, or conduct of a kind so reprehensible or lacking in good faith that a court of conscience would either restrain the party or refuse to assist the party.' Which would confirm that 'unconscionability', manifesting as unfair and/or bad faith dealings, could also be a basis for disregarding the corporate veil in appropriate cases (as a category of the corporate structure being used for an unlawful purpose or purposes contrary to law).

[176] The undisputed principle that dishonesty can be a basis for disregarding the corporate *persona ficta,* suggests that good faith dealings, which are honest dealings, are implied in the use of the corporate structure for lawful purposes.

[177] It is convenient to note here, that s 112(1) of the Belize Companies Act provides that a director 'in exercising his powers or performing his duties, *shall act honestly and in good faith*'.[203] Thus, the legal standards of good faith and honesty for the conduct of the business of companies, have statutory bases in Belize (and in Saint Lucia).[204] And both are statutorily grounded in an overarching lawful purpose principle.

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[201] In plain English, unconscionability refers to actions that are shockingly or grossly unfair or unjust, excessive, unreasonable, unscrupulous, extortionate, and hence exceeding reasonable limits.
[202] [1999] 3 SLR(R) 44 at [17].
[203] Belize Companies Act 2022, s 112(1) (emphasis added).
[204] See Companies Act, Cap 13.01 , s 97(1)(a) (LC).

[178] There are some other concerns with Lord Sumption's formulations in *Prest*. First, in so far as the piercing-lifting dichotomy is prescriptive, it may not always be helpful. This is because both principles can apply to the same factual matrix.[205] That is to say, the facts that justify looking behind the veil, may also be the very facts that warrant disregarding the separate legal personality of the company.

[179] Second, the imposition of a 'last resort rule'[206] may be too restrictive and not facilitate the flexibility to achieve both justice and effective remedies across the spectrum of cases. In *Prest*, Lord Sumption says: 'I consider that *if it is not necessary* to pierce the corporate veil, *it is not appropriate* to do so …'.[207] If this is one policy that governs intervention, then why not frame the approach based on a principle of necessity? Indeed, in my opinion, when one examines Lord Sumption's source for this policy statement, such a principle of necessity is more apt.[208] Such a principle would, to my mind and as we shall see, also align better with an underpinning approach to intervention based on lawful purpose. The distinction is important, because '[a] test of necessity will not require a remedy to be one of last resort,'[209]and indeed, neither will one based on lawful purpose.

[180] Third, Lord Sumption's formulations, as already demonstrated, suffer the criticisms of a majority of the panel, who were not willing to ring fence 'piercing' as narrowly as he proposed, and left the door open, albeit for exceptional cases.[210] However, little assistance has been given as to what may constitute such exceptional circumstances

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[205] See, fn 176 above.
[206] *Prest* (n 6) at [35], [62], [103].
[207] ibid at [35] (emphasis added).
[208] Lord Sumption lifts this policy statement from Munby J in *Ben Hashem v Al Syahif* [2009] 1 FLR 115, in which Munby J stated at [164]: 'Finally, and flowing from this, a company can be a façade even though it was not originally incorporated with any deceptive intent. The question is whether it is being used as a façade at the time of the relevant transaction(s). And the court will pierce the veil only so far as is necessary to provide a remedy for the particular wrong which those controlling the company have done. In other words, the fact that the court pierces the veil for one purpose does not mean that it will necessarily be pierced for all purposes.' In fact, Lord Sumption seemed to quite favour Munby J's approach to piercing the corporate veil – see *Prest* (n 6) at [24], [25]. And also see, May Kim Ho, 'Piercing the Corporate Veil as a Last resort (2014) 26(1) Singapore Academy of Law Journal) 249 (note).
[209] *Rugby Football Union v Consolidated Information Services Ltd* [2012] 1 WLR 3333 at [16]. And see Adam Liew, 'Three Steps Forward, Three Steps Back: Why the Supreme Court Decision in Prest v Petrodel Resources Ltd Leads us Nowhere' (2014) 5(2) King's Student Law Review 67.
[210] See also, Adam Liew, 'Three Steps Forward, Three Steps Back: Why the Supreme Court decision in Prest v Petrodel Resources Ltd Leads Us Nowhere' (2014) 5(2) King's Student L Rev 67. The author makes the point, for example, that for Lord Sumption, cases of lifting the corporate veil may still attribute the actions or property of a company to persons controlling it without disregarding the separate corporate personality.

or what other principle(s) may underpin and justify disregarding the corporate veil.[211] To my mind, this all leaves the law in a rather unsatisfactory state.

[181] Fourth, and maybe more fundamentally, it is difficult to see how Lord Sumption's articulation and approval of the evasion-concealment principles reflect and/or can be derived from the Belize Companies Act (or that of Saint Lucia). I would venture to say that they do not easily reflect or derive from it and therefore do not seem to have any clear statutory underpinning in Belizean (or Saint Lucian) law.

[182] In *Salomon's case*, Lord Macnaghten explained that:[212]

> *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 the agent of the subscribers or trustee for them. *Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.* That is, I think, the declared intention of the enactment.

[183] He makes the critical point, that members cannot be liable 'in any shape or form, except to the extent and in the manner provided by the Act.' It is therefore to the Companies Act that we must turn to find a principled basis and approach for disregarding the corporate veil and for ascribing liability to members.

[184] One would think that Lord Sumption's principles should abide Lord Macnaghten's assertion in *Salomon's* case that any exceptions to the protections afforded by the separate legal personality must be derived from the Companies Act. It is the Companies Act that vests the separate legal personality, and it is to the legislation that one should turn to discover when a court may take away the protections of this separate legal personality. To put it more positively, the statutory protection of a

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[211] Apart from Lady Hale's principle of 'unconscionable advantage'.
[212] *Salomon* (n 5) at 51 (emphasis added).

separate legal personality can be taken away to the extent by and manner in which the Companies Act contemplates.

Post-*Prest*

[185] Post *Prest*, the English Court of Appeal, in *Antonio Gramsci Shipping Corp v Lembergs,* noted:[213]

> As to further development of the law, doing so by classical common law techniques may not be easy… *Absent a principle, further development of the law will be difficult* for the courts because development of common law and equity is incremental and often by analogical reasoning.

[186] We have already seen that in civil law jurisdictions, the juridical basis for the exceptions which allow for disregarding the corporate veil is generally the concept of abuse of rights. And that, in those jurisdictions there exists 'a limited principle permitting the piercing of the corporate veil in cases of misuse, fraud, malfeasance or evasion of legal obligations.'[214] Discovering a principled approach to the issue confronting this Court is well within its juridic bounds.

The CCJ's Developmental Role

[187] This Court is mandated to play a 'determinative role in the further development of Caribbean Jurisprudence through the judicial process.'[215] The English Common Law has evolved incrementally on a case-by-case basis that has much merit. But it is not the only way in which law has been developed in the Caribbean. The Civil Law tradition has also taken root in certain territories, and in some of these (such as Guyana and Saint Lucia) hybrid common-law and Civil Law systems co-exist. The result has been a conceptualising influence on the development of Caribbean

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[213] *Antonio Gramsci Shipping Corp* (n 163) at [66] (emphasis added).
[214] *Prest* (n 6) at [17].
[215] Preamble to the Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

common law, certainly as is being developed by this Court.[216] This is an invitation, if not a mandate, for this Court, in appropriate instances, to develop relevant legal principles. This is one such instance.

Finding a Framework

[188] For myself, I think a first principles approach to these issues can bring much needed clarity and certainty to the law. Burgess J, in *Delpeache* and in the context of the Barbados Company Act, explains his framework for such an approach, as follows:[217]

> [118] The veil of incorporation is undoubtedly bestowed legislatively by the relevant Companies Act. In *Prest v Petrodel*, Lord Neuberger regarded as self-evident that the veil of incorporation may be pierced with "statutory authority". Indeed, it seems to me that, consistent with its statutory basis, the corporate veil may only be removed or pierced or lifted, (whichever expression be used), to the extent that the Companies Act, or some other statute, provides for such removal or piercing or lifting. Put simply, the corporate veil may only be lifted or pierced on statutory authority.
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> [119] … Lady Hale came very close to supporting this view when she suggested that general veil piercing may be grounded in *the rule of statutory interpretation that a statute, the Companies Act, must not be allowed to be used as an engine of fraud.* As it appears to me, however, *there may be an even firmer basis for the view that general veil piercing emanates from the Companies Acts* and not, as asserted by Lord Sumption, from the "the well-recognised principle that "fraud unravels everything"."
>
> [120] Successive English Companies Acts have provided expressly that *a company may only be incorporated for a "lawful purpose".* Inspired by this, s 410 (1) (a) of Cap 308 is to the effect that a company cannot be formed for a purpose "contrary to the law". *If a company cannot by these Acts be formed for an unlawful purpose or a purpose contrary to the law, then, it follows naturally that the Acts must be interpreted as forbidding the use of a company for an unlawful purpose or a purpose contrary to law. Where a*

[216] For example, see this Court's nuanced recognition and deployment of the Good Faith principle in contract law, in *Insurance Corp of Belize Ltd v Kahtal Resorts International Ltd* [2024] CCJ 5 (AJ) BZ, BZ 2024 CCJ 3 (CARILAW).
[217] *Delpeache* (n 39) at [118]–[120] (emphasis added).

company is sought to be so used, the courts are entitled to pierce the corporate veil to prevent that unlawful purpose or purpose contrary to law.

Lawful Purpose Principle

[189] It would seem to me that (i) in the constitutional framework of Belize in which the Constitution is supreme,[218] (ii) where the rule of law prevails as part of its basic deep structure,[219] and (iii) in agreement with Burgess J, the rational application of the *Salomon* principle of a separate corporate personality, acknowledged as a *persona ficta,* must imply that since a company may only be incorporated for a lawful purpose, that consequently a company cannot be used for an unlawful purpose or a purpose contrary to the law.[220] In this opinion, I call this the '*lawful purpose principle*', and I am indebted to Burgess J for mining the phrase from statute and laying the groundwork in this regard.

[190] Apart from the Constitution, which is the supreme law,[221] no other statutory underpinning is necessary for these assertions (of lawful purpose) as they flow from and are constitutive elements of lawfulness in a democratic society governed by the rule of law. The Constitution of Belize provides for a jurisprudence of rights.[222] It embraces written and unwritten rights. No individual has a right to do unlawful things. Therefore, a company, which enjoys a corporate personality, cannot have more rights than an individual;[223] it cannot do what is unlawful for an individual to do. Parliament could not have intended this, and the presumption of constitutionality in statutory interpretation reinforces this.

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[218] Belize Constitution (n 155) s 2(1): 'This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.'

[219] ibid s 131(1): '"law" – means any law in force in Belize or any part thereof, including any instrument having the force of law and any unwritten rule of law.' And see also *Belize International Services Ltd v A-G of Belize* [2020] CCJ 9 (AJ) BZ, (2020) 100 WIR 109 at [299]–[305].

[220] A fortiori, also in Saint Lucia.

[221] Belize Constitution (n 155) s 2.

[222] Preamble to the Constitution of Belize, pt III.

[223] In relation to a jurisprudence of rights and its intersection with companies, see *Controller of Supplies v Gas Tomza Ltd* [2025] CCJ 16 (AJ) BZ (Jamadar J), affirming that companies are capable of enjoying certain constitutional rights. See also *Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v A-G of Trinidad and Tobago* (2009) 76 WIR 378 (TT HC) at 418; *A-G v Antigua Times Ltd* (1975) 21 WIR 560 (AG PC); *Quebec (A-G) v 9147-0732 Québec Inc* [2020] 3 SCR 426.

[191] Indeed, these assertions are also derived from the fundamental common law principle of legality.[224] This Court has emphasised that the principle of legality is intrinsic to democratic governance.[225] The lawful purpose principle is therefore grounded in core Belizean constitutional first principles.

[192] In Belize[226] there are also specific statutory underpinnings for these assertions. Underpinnings that abide Lord Macnaghten's statement in *Salomon*'s case, that members cannot be liable 'in any shape or form, *except to the extent and in the manner provided by the Act*.'[227] The Companies Act in Belize, as we have seen, codifies the *Salomon* principle.[228] Importantly, s 296 prescribes the lawful purpose principle.[229] Further, s 276(2), permits an investigation of a company where its business is 'being carried on with intent to defraud any person', or where a company 'was formed for a fraudulent or unlawful purpose', or where 'persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly.'[230] These all being instances illustrative of unlawful purpose.

[193] Moreover, in the Belize Companies Act, ss 112(1) and 113, which speak to the duties of directors, are clear that: (i) 'a director of a company, in exercising his powers or performing his duties, *shall act honestly and in good faith*', and (ii) 'a director shall exercise his powers as a director *for a proper purpose* and shall not act, or agree to the company acting, in a manner that contravenes this Act or the articles or by-laws

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[224] The principle of legality is a common law rule of statutory interpretation which mandates that Parliament may only legislate to override constitutional norms using clear language. See Lord Bingham in *R* (*Jackson) v A-G* [2006] 1 AC 262 at [28], citing *Stradling v Morgan* (1559) 1 Pl 198, 75 ER 305 as authority for the proposition that 'the courts will often imply qualifications into the literal meaning of wide and general words in order to prevent them having some unreasonable consequence which Parliament could not have intended.' Indeed, as Gageler and Keane JJ explained in *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at [304], [307]–[312], [313] (emphasis added): 'The *principle extends to the protection of fundamental principles and systemic values. ...* it exists to protect from inadvertent and collateral alteration rights, freedoms, immunities, principles and values that are important within our system of representative and responsible government under the rule of law.'

[225] *Guyana Geology and Mines Commission v BK International Inc* [2021] CCJ 13 (AJ) GY, [2022] 2 LRC 491 at [69]–[72], [77], albeit in the context of administrative law and judicial review.

[226] And also in Saint Lucia, as we have seen.

[227] *Salomon* (n 6) at 51.

[228] Belize Companies Act 2022, s 27.

[229] The Registrar may not receive or register company documents if any such document 'contains matter contrary to the law.' See Companies Act, Cap 13.01, s 17(4) (LC) which proscribes a company carrying on business '… in breach of – (a) any enactment prohibiting or restricting the carrying on of the business or activity.'

[230] See also Companies Act, Cap13.01, s 67(2) (LC).

of the company.'[231] It therefore follows that in Belize (and in Saint Lucia), a company can only be used for a lawful purpose and therefore cannot be used for an unlawful purpose or a purpose contrary to law.

[194] There is therefore statutory authority and underpinning within the Belize Companies Act for both the separate legal personality of companies, and as well for the disregarding (lifting/piercing) of the corporate veil. A company cannot be formed for an unlawful purpose, and *a fortiori*, it cannot be used for any such purposes. Such uses are an abuse and/or misuse of the corporate legal personality and structure, and contrary to law.

[195] The Companies Act must be interpreted in conformity with established principles of statutory interpretation. It would be irrational and absurd to assert, on the one hand, that a company can only be formed for lawful purposes and in that context enjoy the protections of a separate legal personality, but, on the other hand, if used otherwise a court cannot disregard that corporate veil and inquire into, and if warranted ascribe liability on, members using it for unlawful purposes.

[196] However, the examples of unlawful purpose in the statute do not, in my opinion, circumscribe the only circumstances in which the separate legal personality of a company can be disregarded and liability affixed otherwise. The cases illustrate this as well as the aptness of an *a priori* single overarching and foundational lawful purpose principle for disregarding the corporate veil and ascribing liability otherwise (including on members).

[197] Take as an example, *Jones v Lipman*.[232] Jones sold Lipman a house and refused to complete the sale. There was a written contract. Jones offered Lipman damages for the breach of contract. In order to evade an order for specific performance compelling him to transfer the house to Lipman, Jones transferred the house to a company owned by him. The court disregarded the corporate veil and the protection

[231] ibid s 97(1).
[232] *Jones* (n 49).

of a separate legal personality and made an order of specific performance against the company. Russell J explained this was justified because the company was 'the creature of (Jones), a device and sham, a mask … to avoid recognition …'.[233] Basically, Jones was using his company in relation to this particular transaction for an unlawful purpose, that is, to avoid an order for specific performance for what was an undeniable and unlawful breach of contract.

[198] Take another example, *Gilford Motor Co Ltd v Horne*.[234] Horne, a former managing director of Gilford Motor, agreed as a term of his employment contract not to solicit customers from Gilford Motor. Essentially, Horne was contractually bound not to compete with Gilford Motor. Horne left his employment with Gilford Motor. He formed a company to solicit the customers of Gilford Motor and did so to evade his personal contractual covenant not to do so. The Court of Appeal concluded that the company was a sham to cloak Horne's wrongdoing and granted an injunction against both Horne and the company to restrain Horne from breaching his contractual agreement with Gilford Motor. Again, it is quite evident that the company established by Horne was being used for an unlawful purpose. In my opinion, nothing of substance turns on whether the company was formed for that unlawful purpose, or whether Horne had, say, used an already existing company of his for the same unlawful purpose. What was unlawful were Horne's unlawful actions and the use of his company for an unlawful purpose in relation to this specific breach of his contractual obligations to Gilford Motor.

[199] A final example is *Adams v Cape Industries plc*, to which attention is focused on the legal principles articulated.[235] The English Court of Appeal conceptualised three principles with respect to disregarding the corporate veil:[236]

(i) Where there are existing (contractual) rights, the corporate separate legal personality (the corporate form) cannot be used as a device or cover to breach such rights. A clear example of unlawful use.

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[233] ibid at 445.
[234] *Gilford Motor* (n 48).
[235] *Adams* (n 120).
[236] See Burgess (n 19) 94–96.

(ii) Where remedies have already been granted (rights accrued), the corporate form cannot be used as a device to avoid these remedies/rights. Another example of unlawful use.

In both of these circumstances the determining factor for disregarding the corporate veil can be explained on the basis of a lawful purpose principle. And, in both situations (of unlawful use) the corporate veil can be disregarded and appropriate liability ascribed to achieve effective relief in the circumstances of each particular case. Noteworthy, is that in both of these circumstances, there are rights in existence or accrued, and the impugned actions breach those rights, and are hence unlawful.

(iii) Where a company is formed to avoid liabilities that may arise in the future and before any such obligations have arisen, and where this is part of corporate strategic planning and not for the purpose of avoiding anything in existence, there is generally no justification in disregarding the corporate veil.[237] In justifying this third principle, Slade LJ stated:[238] 'Whether or not this is desirable, *the right to use the corporate structure in this way is inherent in our corporate law ...'*. That is, for Slade LJ such a use is use for a lawful purpose.

In my opinion, the use of the corporate personality to plan for corporate affairs and liabilities when these are for lawful purposes and within the law is permissible; but equally clearly, the corporate personality cannot be used for any unlawful purposes, and the third principle of Slade LJ is subject to this.

[200] Thus, even in the conceptual circumstance where the corporate veil should not be disregarded, the lawful purpose principle is the underpinning principle. And in all three situations envisaged by Slade LJ, the unlawful use test (the flip side of the lawful purpose principle) applies to determine whether and when to disregard the corporate veil. Furthermore, the deployment of the lawful purpose principle would apply to the formation of companies as well as to their use after formation. Simply

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[237] *Adams* (n 120) at 544.
[238] ibid (emphasis added).

put, in Belize (or in Saint Lucia), one cannot assert a right to use a company for an unlawful purpose or a purpose contrary to law.

[201] One final observation is also integral. In all of these instances five guideline criteria are generally satisfied, (i) there has been a transaction done in pursuit of an unlawful purpose and/or a purpose contrary to law, (ii) constituting an abuse or misuse of the corporate legal personality and structure, (iii) intended to avoid existing legal rights or rights that have accrued and/or to evade/defeat the law or frustrate its enforcement, (iv) which has resulted in harm or loss to the aggrieved party, and (v) who has been deprived of any effective relief. It is in these circumstances that, historically, disregarding the corporate veil and ascribing liability otherwise than to the company involved in the impugned transaction is generally considered apt.

[202] So as not to fall into the trap of rigidity, it is worth repeating that these criteria are general guidelines. Indeed, even within these guidelines, it may often be the case that it is the proofs of, say, (ii) to (v) that lead to the conclusion at (i) and the satisfaction of use of a company for an unlawful purpose or a purpose contrary to law sufficient to disregard the corporate veil.

Three-Part Methodology for Disregarding the Corporate Veil

[203] The lawful purpose principle, whether applied to both 'lifting' and 'piercing' and what I would prefer to call the 'disregarding' of the corporate veil, also yields what I describe as a three-part methodology of analysis. The fundamental inquiry is to look and see if the actions, transactions, or circumstances impugned are lawful/unlawful and whether, say, the five guideline criteria stated above have been satisfied. Each case would turn on its own facts, taken in the particular contexts and the five guideline criteria are not exclusively prescriptive. However, this three-part framework is articulated in service of clarity and consistency of analysis.

[204] First, determine what are the legal contours and considerations for disregarding (lifting/piercing) the corporate veil in a particular case. Second, look at the facts. Are

there any 'red flags' that may excite the suspicion of the court to consider an inquiry into the facts that may lead to disregarding the corporate veil in the particular circumstances of a case? Third, determine whether the facts justify disregarding the veil and granting relief. This third step requires a deeper consideration of the facts to determine whether the facts justify disregarding the veil and granting effective relief. That is, as a matter of fact, and of law, is it justifiable to disregard the corporate veil?

[205] Throughout this exercise, a court is to be mindful that such interventions have always been considered extraordinary, but, and as has already been explained, a court is expected to be guided by the underpinning principle and consequences of lawful purpose. The result is an analysis to be undertaken in relation to the impugned transaction(s), done through the lenses of unlawful purpose and/or a purpose contrary to law, and one that is generally filtered through the five stated guideline criteria.

[206] On the first matter concerning the legal contours and considerations for disregarding (lifting/piercing) the corporate veil, the test is simple – look to see whether in relation to the impugned transactions the company (the corporate structure) is being used for a lawful purpose or not. This depends on the circumstances of the case and in particular on the circumstances surrounding the impugned transactions. The five stated guideline criteria are pertinent factors.

[207] The following are some relevant considerations which flow directly from the lawful purpose principle, and which may evidence unlawful purpose or use contrary to law. These may include circumstances which *prima facie* raise and/or indicate in relation to the impugned transactions: (i) an abuse or misuse of corporate structure, (ii) fraudulent, dishonest, or unconscionable use of corporate structure, and (iii) the use or operation of a company for any other unlawful or illegal purposes. Provided these circumstances adversely affect, harm and/or take advantage of the persons with whom the company does or has done business. And also provided that the alleged actions and uses are intentional and deliberately motivated and undertaken for any

of the stated, or other, unlawful purposes in relation to the impugned transactions. The legal contours defining intervention are therefore dictated by the lawful purpose principle.

[208] In the words of Burgess J, 'where a company is sought to be so used, the courts are entitled to pierce the corporate veil to prevent that unlawful purpose or purpose contrary to law.'[239] And in the words of Lady Hale, in such circumstances: 'the separate legal personality is being disregarded in order to obtain a remedy against someone other than the company in respect of a liability which would otherwise be that of the company alone.'[240]

[209] On the second and third matters, and without wanting to overly complicate matters, it is for the courts to investigate the facts and make the necessary determinations. The inquiry into 'effective remedy' is relevant at the third stage and can be seen through the lens of 'necessity'. The operative questions include: (i) What is an effective remedy? (ii) Is it necessary in the circumstances of the case? It may be, for instance, that effective remedies are already available under the Companies Act (for both civil and criminal liabilities).

[210] Munby J's formulations, worked out by him in *Ben Hashem v Al Shayif,*[241] of some fact-based considerations, are also illustrative of some pragmatic indicators of factors that a court may consider in order to determine unlawful purpose or use contrary to law, disregard the corporate veil, and to prevent and/or ascribe liability for the misuse/abuse of corporate structure for an unlawful purpose or purpose contrary to law. These include a requirement for 'some impropriety' which is 'linked to the (mis)use of the company structure to avoid or conceal liability'. As well as control of the company by the wrongdoers and the '(mis)use of the company by them as a device to conceal their wrongdoing'.

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[239] *Delpeache* (n 39) at [120].
[240] *Prest* (n 6) at [92].
[241] [2009] 1 FLR 115 at [159]–[164]; and cited in *Prest* (n 6) at [25].

[211] Some key ‘red flag’ components and factual justifications for inquiring into and/or finding unlawful purpose or purpose contrary to law and for disregarding the corporate veil in relation to relevant business transactions, taken from the cases, include evidence/proof on the part of members-wrongdoers in relation to an impugned transaction, of: (i) impropriety, (ii) misuse/abuse of corporate structure, (iii) ownership and control linked to misuse/abuse, (iv) concealment and/or avoidance linked to misuse/abuse, (v) an intention to deliberately disadvantage or take advantage of, harm and/or adversely affect the persons impacted by the misuse/abuse, and (vi) awareness or knowledge of related adverse consequences for persons with whom the company has done business, or the reasonable likelihood thereof.

[212] Evidence of these considerations could amount to proof of unlawful purpose and/or use contrary to law. Once these thresholds are crossed, it is then a matter of considering what amounts to effective relief, and considerations of necessity are relevant, bearing in mind whether relief against the company *per se* is sufficient. These are, however, not exhaustive. The point being, that each case must be determined in context and in its particular circumstances.

Finding Coherence

[213] The primary test is grounded in the lawful purpose principle, which is the foundation upon which the corporate veil may be disregarded and liability ascribed otherwise than to the company involved in the impugned transaction(s). This is a well-established principle anchored in both common law and statute. It is neither novel nor unknown, and on the contrary, is well established in the relevant statutory regime.

[214] The core tools for analysis are the lenses of unlawful purpose and/or a purpose contrary to law. These are applied in relation to the impugned transaction(s) and in order to discover generally, whether (i) the transactions were done in pursuit of an unlawful purpose and/or a purpose contrary to law, (ii) there has been an abuse or

misuse of the corporate legal personality and structure, (iii) which is intended to avoid existing legal rights or rights that have accrued and/or to evade/defeat the law or frustrate its enforcement, (iv) which has resulted in harm or loss to the aggrieved party, and (v) who has been deprived of any effective relief. (The five guideline criteria).

These criteria are neither fixed, rigid, nor prescriptive in an absolute sense, but rather are intended to function as pointers that help evaluate whether to disregard the corporate veil.

[215] The methodology for analysis inquires into whether the impugned transaction itself is in furtherance of an unlawful purpose and/or a purpose contrary to law, whether the corporate structure has also been used unlawfully for this purpose, and whether the consequence is to deprive an aggrieved person of effective relief. Disregarding the corporate veil is generally only resorted to when it is necessary to give effective relief and usually when relief is not otherwise available against the company *per se*.

[216] There will be many instances, in which a company in carrying out its business commits civil or criminal breaches of the law, and for which an effective remedy lies in law against the company *per se*. However, when the unlawful use is so contrary to the lawful purpose principle as to say, constitute an abuse and/or misuse of the corporate structure and to, say, satisfy the five guideline criteria, and where an effective remedy is not readily available against a company *per se* for the relevant wrongdoing, then the corporate veil may be disregarded and liability ascribed otherwise than to the company.

[217] To my mind, this three-part methodology of analysis provides a coherent basis of analysis for determining whether to disregard the protections afforded by law to the separate corporate personality, and to otherwise ascribe liability to members of a company. The interlocking factual matrices, that are both ‘red flag’ indicators and relevant proofs, underpinned and guided by the lawful purpose principle, lead

logically to and also easily accommodate a circumscribing principle of granting effective remedy. These all work together as an overarching analytical framework.

Applying the Framework/Methodology to the Facts

In Relation to the Impugned Transactions, are the Companies, Namely GDP and BIG, Being Used for a Lawful Purpose?

[218] The transaction that precipitated this litigation was essentially for LCW's purchase of land at Lot 259 in the development of the Mahogany Bay Village Resort in San Pedro, Belize and for the construction of a house called a Keeping Suite by GDP on that land. The documents underpinning this transaction consisted of two contracts entered between LCW and GDP, namely: (i) the Lot Purchase and House Construction Order Form ('the Order Form') and (ii) the House Construction Agreement ('the HCA'). Notwithstanding the fact that its contracts were made with GDP, LCW joined Beth Clifford personally and BIG to the proceedings, primarily because Beth Clifford is the sole director and shareholder of both GDP and BIG and the Order Form stipulated that purchase monies payable by LCW to GDP should be routed through BIG. In that regard, LCW alleged that Beth Clifford used GDP and BIG as her agents or as a façade in a fraudulent scheme to misappropriate LCW's money.

Are there any Salient Facts or 'Red Flags' that Excite the Suspicion of the Court to Consider an Inquiry into the Facts that may Lead to Disregarding the Corporate Veil in the Particular Circumstances of the Case?

[219] The limited liability company is the main vehicle through which entrepreneurs do business because the corporate veil prevents a company's creditors from looking to the shareholders' assets to satisfy a liability that distinctly belongs to the company. In keeping with the lawfulness principle, however, shareholders risk losing the benefit of the corporate veil's protection if they abuse corporate legal personality,

for example by using the corporate structure for an unlawful purpose or a purpose contrary to law. Lord Sumption is not wrong when he stated in *Prest*'s case:

> These considerations reflect the broader principle that the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement. It is not an abuse to cause a legal liability to be incurred by the company in the first place.[242]

[220] The Court of Appeal properly identified what, in this framework, are categorised as 'red flags', that excited the court's suspicion and provoked an inquiry into whether the separate legal personality of GDP should be disregarded. Those red flags include:

a. The lines between the 'separate' legal personalities were blurred as Beth Clifford acted for multiple companies simultaneously and at times it was unclear in which capacity and on whose behalf she was acting.[243]

b. The personal control Beth Clifford exerted over the companies raised suspicion as to whether the companies were just a 'cloak' or 'sham' for her personal dealings.[244]

c. Staff apparently worked fluidly between the different companies.[245]

d. When the price of the land increased by USD15,000,[246] Beth Clifford caused another company that is a stranger to the contracts, Mahogany Bay Village, to absorb the increase.[247]

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[242] *Prest* (n 6) at [34].
[243] *Green Development Partners Ltd* (n 3) at [105].
[244] *Green Development Partners* (n 3) at [106].
[245] ibid.
[246] ibid at [55].
[247] ibid.

e. GDP described itself in the contract as a house construction company, but it was revealed at trial that it was not such a company.[248]

f. GDP has no employees or place of business in Belize, but it conducts business in Belize and may not even have a bank account.[249]

g. GDP attempted in the contracts to distance itself from having any involvement with the acquisition of the land but this was not so as it collected the land deposit, failing which the contracts would be null and void, and it would be responsible for disbursing the land deposit.[250] (Bulkan JA regarded the terms of the contracts as 'an elaborate subterfuge.')[251]

h. GDP submitted that the funds had been substantially spent with respect to the purchase of Lot 259 and the construction of the Lot 259 Keeping Suite, but the contract between LCW and GDP required conveyance of title to LCW which has not yet occurred.[252]

[221] In addition, other 'red flags' to note are that:

i. The transaction contemplated a conveyance to LCW of title to land, as opposed to the conveyance of shares in a company.

j. GDP comingled the funds received from LCW with funds received from other buyers of lots in the development.

k. The contracts required LCW to pay GDP by paying monies into an account belonging to a third company, namely BIG.

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[248] ibid at [107]–[108].
[249] ibid at [107].
[250] ibid at [4].
[251] ibid at [108].
[252] ibid at [69].

[222] These factual findings justified the Court of Appeal's inquiry into whether the separate legal personalities of GDP and/or BIG should be disregarded. They were sufficient to excite the suspicion of the court and cause the court to investigate whether in relation to GDP and BIG, (i) an abuse or misuse of the corporate legal personality and structure had occurred, (ii) done in pursuit of an unlawful purpose and/or a purpose contrary to law (say, through dishonest means or in bad faith or to take unconscionable advantage of LCW or otherwise in relation to the impugned transactions), and (iii) which was intended to avoid, in relation to LCW and the impugned transaction, existing legal rights or rights that have accrued and/or to evade/defeat the law or frustrate its enforcement.

[223] The fact that Steve Williams has over two decades of experience in real estate investment[253] and understood the transaction does not prevent the court from examining whether the corporate structures of GDP and BIG were being abused or misused in pursuit of an unlawful purpose and/or a purpose contrary to law.

Is it Justifiable in the Circumstances of the Case to Disregard the Separate Legal Personality of GDP and/or BIG, and to Hold BIG and Beth Clifford Jointly Liable, Together with GDP, for Breach of Contract?

[224] While there was ample basis for the Court of Appeal to embark on an inquiry as to whether the corporate structures of GDP and/or BIG were being abused in this case, in the final analysis Beth Clifford's use of these two companies did not amount to unlawful use or use contrary to law sufficient to justify disregarding GDP's separate legal personality and ascribing liability jointly, as determined by the Court of Appeal.

[225] First, Beth Clifford at no point in time incurred personal liability. Although she is the sole director and shareholder of GDP, GDP is the sole company that entered into the contracts with LCW, the breach and non-performance of which led to this

[253] Record of Appeal, 'Witness Statement of Steven Williams' at [2].

litigation. There is nothing illegal in a shareholder using a limited liability company, even a one-person company, to transact business with the benefit of shielding their personal assets from creditors of the company. In fact, that is one of the very purposes of limited liability and a separate corporate personality in company law.

[226] Following the conclusion of the proceedings in the Court of Appeal, GDP has accepted that it has breached its contract with LCW as there was no appeal of that finding to the CCJ. Accordingly, GDP is obligated to pay to LCW the judgment debt that was awarded by the High Court and affirmed by the Court of Appeal. The non-satisfaction of that obligation, which persists to date, prompted LCW's cross-appeal to the Court of Appeal to hold Beth Clifford and BIG jointly liable for the breach of contract/judgment debt.

[227] The Court of Appeal's judgment made Beth Clifford and BIG, for separate reasons, jointly liable for GDP's breach of contract. Neither Beth Clifford nor BIG was privy to that contract. In the case of BIG, the basis for liability was that BIG received the purchase money from LCW and LCW did not receive what it paid for.[254] The parties' contract required BIG to transfer the funds received to GDP. The Court of Appeal did not find that BIG had misappropriated or misapplied the funds and it upheld the High Court's finding that no constructive trust arose.[255] LCW has not appealed those findings to this court. BIG therefore was not only a stranger to the contract, but it seems reasonable to assume that it also performed its role as agreed by the parties to the contract. There was therefore, no basis to find BIG liable for the breach of contract.

[228] In the case of Beth Clifford, the finding of joint liability resulted from disregarding GDP's separate legal personality. The Court of Appeal identified similarities between the control exerted by Beth Clifford over GDP and BIG on the one hand, and the control exerted by Dr Wallersteiner, in the case of *Wallersteiner v Moir*,[256]

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[254] *Green Development Partners* (n 3) at [87].
[255] ibid at [83]–[84].
[256] *Wallersteiner* (n 10).

over the companies in that case. This led the Court of Appeal to suggest that GDP and BIG were Beth Clifford's puppets or agents.[257] There would be no need to disregard the corporate veil if agency or vicarious liability were the basis for holding Beth Clifford liable. However, the Court of Appeal expressly stated that the test for piercing the corporate veil had been met.[258] I am not convinced that there is sufficient legal justification for taking this step.

[229] GDP's non-payment of the judgment debt, whether due to inability or otherwise, is not a sufficient basis to disregard the corporate veil and impose liability on Beth Clifford or on any other company that she may control. Such a corporate debt or default does not, *ipso facto*, trigger the need or necessity for intervening by disregarding the corporate veil so as to give effective relief. This is particularly so in this case since the courts below found there was no fraud or fraudulent misrepresentation, and for the reasons given above. Whether Beth Clifford may be exposed to liability as a director of GDP, if it could be shown that she played, say, a culpable role in engineering GDP's breach of contract, is not an issue that was raised before this Court.

Conclusion

[230] In the circumstances, I am of the view that disregarding the corporate veil to ascribe liability as per the order of the Court of Appeal was not justified, because Beth Clifford's use of the two companies has not been established as being for an unlawful purpose or contrary to law. That is to say, the lawful purpose principle has not been shown to have been breached.

[231] I would therefore allow this appeal, restore the order of the High Court, and award costs to the appellants in this court as agreed by the parties and in the courts below.

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[257] *Green Development Partners* (n 3) at [106].
[258] ibid at [112].

EBOE-OSUJI J:

Introduction

[232] The so-called notion of the 'corporate veil' was always a figment of the legal imagination. But it was derived from legislation. The fiction was never a contraption in cast iron, let alone one in heavyweight: the veil was always meant to be 'pierced' or 'lifted' (I shall thenceforth use the transitive 'lift') whenever justice, through equitable sensibilities, demands that course in the last resort. However, the overriding question in the end remains whether the case for lifting the corporate veil is made out in a particular case.

[233] I have read in draft the opinions of Barrow, Jamadar and Ononaiwu JJ. I concur in their united conclusion that the appeal must succeed because the case for lifting the corporate veil is not made out. I concur with the factual analyses of Barrow and Ononaiwu JJ that demonstrate that outcome. I join Jamadar and Ononaiwu JJ in rejecting the adoption in this Court of Lord Sumption's 'concealment' and 'evasion' hypotheses articulated in *Prest v Petrodel Resources Ltd*.[259] And I accept the approach proposed by Ononaiwu J,[260] which should serve as a guide to judges when exercising their power to lift the corporate veil when justice demands it.

[234] I have found it necessary to contribute these general observations to add dimension to my concurrence with my colleagues as outlined above.

The Complication of a Sensible Legislative Policy

[235] In a famous passage rendered in 1881, Oliver Wendell Holmes Jr observed that '[t]he life of the law has not been logic; it has been experience.' The law, he continued down the page, 'cannot be dealt with as if it contained only the axioms

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[259] *Prest* (n 6).
[260] See [67] of Ononaiwu J's opinion, under the subheading 'The Proposed Approach to Disregard of Separate Corporate Personality'.

and corollaries of a book of mathematics.'[261] A hundred years later, Lord Wilberforce observed that 'the austerity of tabulated legalism' must be eschewed in the process of constitutional interpretations, so that 'the full measure of the fundamental rights and freedoms' may be enjoyed by those for whom they are intended.[262] And long before Holmes and Wilberforce, their occupational forerunners had developed rules of equity to ameliorate harsh understandings and applications of the law. And equity, notably, occupies a central place in the matter of lifting the corporate veil. These are but a few of the adages and strategies that mark the profile of a real anomaly of the legal profession: which is the tendency of lawyers (in academia, at the bar, and on the bench) to complicate eventually aspects of the legal process, through hypotheses, theories and doctrines that are as scholastically erudite as they are painfully recondite to the average subject of the law.

[236] In no area of the law has this tendency become more pronounced, it seems, than in the area of 'lifting' the corporate veil. There are even hypotheses that purport a profound distinction between 'lifting' and 'piercing' of the corporate veil!

[237] The idea of incorporation started life sensibly enough. It gave incentive to large groups of *human beings* to invest in business ventures, by 'limiting' their 'liabilities' arising from those ventures to the extent of their individual contributions.[263] That is the meaning of 'limited liability' in the context of business corporations. Against an earlier history of deep suspicion and prejudice against joint stock companies feared as cartels for wagering and speculation[264]—evidenced by the *Bubble Act* (1720)[265]—the idea of limited liability enterprises, once permitted, was never to preclude individual liabilities altogether, but only to limit them. Over time, that simple idea

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[261] Oliver Wendell Holmes Jr, *The Common Law* (1881) 1.
[262] *Minister of Home Affairs v Fisher* [1980] AC 319 at 328.
[263] See H A Shannon, 'The Coming of General Limited Liability' (1931) 2(6) Economic History 267.
[264] See William Robert Scott, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720* (Cambridge University Press 1912) vol I ch XVIII and XXI. See also Bishop C Hunt, 'The Joint-Stock Company in England, 1800-1825' (1935) 43(1) Journal of Political Economy 1.
[265] See Bishop C Hunt, 'The Joint-Stock Company in England, 1800-1825' (1935) 43(1) Journal of Political Economy 1. See also Shannon (n 263). To that effect, Scott notes, in particular, the emblematic invective of 'pernicious art of stock-jobbing' deployed by the Commissioners for Trade in their report of 24 November 1696: see William Robert Scott, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720* (Cambridge University Press 1912) vol I 357.

of limited liability has been worked up by enthusiastic intellection, premised on a string of fictions, into labyrinths that in most cases make sense only to those who construct them.

[238] At their inauguration in the late 19th century, the terminologies of 'corporate personality' and 'corporate veil' seemed convenient metaphors, to give concrete explanation to the idea of limited liability of shareholders of a company. But it has since become clear that the metaphors and the insistence of lawyers and judges to spawn 'principles' from them have produced endless confusion. Although Lord Neuberger rightly lamented that problem, he restrained himself, nevertheless, from urging their interment.[266] Lord Neuberger's difficulty recalls a similar dilemma registered by an American appellate judge a hundred years earlier:

> It is no more of a solecism to say immovable personal property than it is to say removable fixtures, nor more contradicting than in the division of actions to use the term 'in rem', when, under the particular state of facts, the action is primarily 'in personam.' In the development of the law it is seldom possible, or, when possible, seldom expedient, to discard established terms. In this connection an observation by Mr. Justice Holmes is peculiarly applicable:
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> > 'As long as the matter to be considered is debated in artificial terms, there is danger of being led by a technical definition to apply a certain name, and then to deduce consequences which have no relation to the grounds on which the name was applied.' Guy v. Donald, 203 U.S. 406.
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> Instead of rejecting convenient terms because they are ambiguous or not comprehensive, it is better to explain their meanings, or, in the language of old Hobbes, 'to snuff them with distinctions and definitions,' so as to give a better light.[267]

[239] The challenge, of course, is to be sure that the project of using 'distinctions and definitions' to snuff out the ambiguities that result from convenient terms, in hopes

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[266] See *Prest* (n 6) at [66]–[80].
[267] *Hook v Hoffman* (1915) 16 Ariz 540 at 558 (Franklin J) (citation omitted).

of giving a better light to an idea, doesn't end up producing ambiguities of its own, which will also need to be snuffed out in future.

'<u>Corporate Personality': A Legislative Construct</u>

[240] As indicated earlier, the concept of incorporation of business associations is a legislative construct. It is a feature shared with any number of governmental policies rendered through statute. It is so in the areas of taxation, insolvency, marriage, family, industrial relations, social security, charity, environmental protection, etc. The basic idea is that people in a position to do so may take advantage of the provided statutory privileges and entitlements, as long as the scheme is not abused, especially in a way that unduly detracts from obligations and rights equally recognised by the law in its other domains. It is a familiar idea that the range of someone's rights and legitimate interests is necessarily limited by the range of other persons' rights and legitimate interests. In the event of a conflict, judges may ultimately step in to resolve the dispute. That basic idea of justice does not change by the mere fact that any of the parties to the conflict is draped by a corporate veil.

[241] In the area of company law, the product of the main scheme is framed in the general description of 'corporate personality'. The consequences of its abuse are encompassed within the remedy that came to be described as 'lifting' the corporate veil, to provide the needed relief. Again, this is an unremarkable legal phenomenon, entirely in keeping with the notion that there is rarely a legal general rule that has no exception. But what has happened since the judgment in *Salomon v A Salomon & Co Ltd*[268] has been a sprawling succession of theories, principles and doctrines, and more theories, principles and doctrines intended to explain or limit the earlier ones. Once in a while, a charismatic judge steps in to try and re-imagine and realign understanding. For a while, that becomes the reigning *locus classicus*. But in time, its potency degrades, as other hypotheses, theories and doctrines are deployed to

[268] *Salomon* (n 5).

address the shortcomings that are thrown up in the operation of the last leading case. So it is with Lord Sumption's exegesis in *Prest.*[269]

The Complaint of Lack of Coherent Principles

[242] Commentary on judicial decisions on the matter of lifting the 'corporate veil' is rife with complaints about the lack of 'coherent principles'. Reprising those complaints, Lord Neuberger observed, amongst other things, that 'the law relating to the doctrine is unsatisfactory and confused' and 'it is impossible to discern any coherent approach, applicable principles, or defined limitations to the doctrine.'[270] From academia, some of the harsher complaints have been captured in representative observations such as this: 'Legal writers have described judicial decisions to pierce the veil as "irreconcilable and not entirely comprehensible," "defy[ing] any attempt at rational explanation," and occurring "freakishly."'[271]

[243] It is perhaps instructive that judges aren't the only ones who have been criticised for 'analytical incoherence' on the subject of lifting the corporate veil. Legal scholars have themselves been objects of similar criticisms from their peers. As two scholars recently put it:

> The academic literature on piercing the corporate veil largely suffers from the same analytical incoherence as the doctrine itself. Numerous scholars have attempted to make sense of the confusing and contradictory applications found in the case law by offering various normative and descriptive theories as well as empirical studies. Unfortunately, these important works have yet to provide a comprehensive taxonomy that systematically explains existing case law.[272]

[244] These complaints about the absence of a 'coherent principle' in this area of the law seem to be practically misguided, in my view. First, the clamour for 'coherent' guiding 'principles' for the determination of cases of 'piercing the corporate veil'

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[269] *Prest* (n 6).
[270] See *Prest* (n 6) at [64].
[271] Robert B Thompson, 'Piercing the Corporate Veil: An Empirical Study' (1991) 76(5) Cornell L Rev 1036, 1037.
[272] Jonathan Macey and Joshua Mitts, 'Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil' (2014) 100(1) Cornell L Rev 99, 110.

stems from the mistaken anxiety to protect limited liability companies from whimsical or insouciant judicial inclination to lift the corporate veil. The clamour fails to appreciate that the contemplated guiding 'principles' are only secondary principles at best. The primary and essential principle remains this: separate corporate personality is a privilege, which, on grounds of applicable legislation or principles of equity, will be denied in circumstances that fall short or afoul of the legislative purpose of incorporation, or in circumstances found to be otherwise abusive of the purpose for which the privilege was granted. That primary and essential principle is unmistakably coherent and uniting of all the cases in which the separate corporate personality has been actually disregarded. It is thus a mistake to suppose that a decision based on that primary, essential principle was 'unprincipled'[273] merely because it was not readily explained by a further or secondary principle seen by critics as 'coherent.'

[245] Second, many important voices correctly insist that it is impossible to devise uniting 'principles' beyond the primary principle described above. In *Prest*, for instance, Lord Walker 'consider[ed] that "piercing the corporate veil" is not a doctrine at all, in the sense of a coherent principle or rule of law. It is simply a label—often … used indiscriminately—to describe the disparate occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a body corporate …'.[274] It has been found at the Supreme Court of India that 'it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not.'[275] Similar observations exist in legal scholarship.[276]

[246] Third, indeed, the original infelicity began with the figurative ascription of a name—'piercing or lifting the corporate veil'—to a basic principle of remedy. The metaphor

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[273] See *VTB Capital* (n 52) at [128].
[274] See *Prest* (n 6) at [106].
[275] See *ArcelorMittal India Private Ltd v Gupta* [2018] 12 SCR 362 at [33]; *Delhi Development Authority v Skipper Construction Co (P) Ltd* (1996) 4 SCC 622 at [26]; *Tata Engineering and Locomotive Co Ltd v State of Bihar* [1964] 6 SCR 885 at 900.
[276] See, for instance, Macey (n 272), 100–101: 'We begin with the observation that the so-called "doctrine" of piercing the corporate is not a doctrine at all. It is a remedy. Like any good remedy, of course, the corporate veil is pierced in order to achieve discrete, specific policy objectives.'

was then mistaken as a 'doctrine' that required defined principles of its own to operate or understand it—ignoring (as indicated earlier) that there was already a primary and essential principle of remedy entailed in what the metaphor was originally intended to describe. This explains Cardozo J's familiar caution (specifically made in a case on piercing the 'corporate veil') about the downside of legal metaphors that entails the risk of distracting focus from the essential matter.[277]

[247] Fourth, each instance of a decided case on the subject resulted from litigation in which counsel for the parties respectively argued for and against lifting the corporate veil. The outcome was often subjected to at least one level of appellate review. It is thus wrong to deride the adjudicated outcome in terms suggesting that to 'do justice' in the circumstances is something of a term of abuse, merely because that outcome did not follow a pattern of predetermined analysis. (I return to this below under the subtitle of 'The Judicial Job Description'.)

[248] Fifth, critical academics would concede that the judgments of the courts on veil lifting cases were usually 'disciplined' and 'structured', even if they didn't neatly fall into predetermined grooves of legal reasoning. As Professors Macey and Mitts observed, following an empirical study, 'judges have in fact decided veil piercing cases in a highly disciplined and structured way when one analyzes the actual outcomes of the cases in isolation from the reasoning displayed in the decisions themselves.'[278] This consideration undoubtedly explains the paradox of scant success in efforts to pierce the corporate veil notwithstanding the plethora of litigation seeking the remedy.[279] And the outcome in the case at bar is very much part of that phenomenon.

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[277] As he put it: 'Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it. We say at times that the corporate entity will be ignored when the parent corporation operates a business through a subsidiary which is characterized as an "alias" or a "dummy." All this is well enough if the picturesqueness of the epithets does not lead us to forget that the essential term to be defined is the act of operation': *Berkey v Third Ave Railway Co* 244 NY 84 (1926) at 94 – 95.

[278] See Macey (n 272) 106.

[279] See *Prest* (n 6) at [64] (Lord Neuburger): '[T]here is not a single instance in this jurisdiction where the doctrine has been invoked properly and successfully'.

The Judicial Job Description

[249] In light of the foregoing, the lurking hazard seems to be that judges have been hectored into the illusory quest for a 'coherent principle,' lest they are criticised for 'doing justice' according to personal whims, notwithstanding that justice was done according to a readily understood legislative framework. But 'doing justice' according to a judge's conscience is never a reprobate idea—even in company law. The judicial job description is summarised in the composite norm that a neutral and independent arbiter is required to 'do justice' between disputing parties according to his or her conscience guided by the law. In most cases, the law that guides the judicial conscience is laid down in a basic framework that doesn't require a judge to take a long run to the crease, let alone ramble round the ground, before the delivery.

[250] On the subject of lifting the corporate veil, the law that should guide the judicial conscience is adequately expressed in the basic principle that abuse of separate corporate personality will result in forfeiture of the privilege in the particular instance. This is the primary principle of the inquiry. Beyond that primary legal principle, the proper exercise of the judicial function requires no further or secondary theories for 'justice' to be done. And that primary principle would be more amenable to the workload of the average judge expected to deliver judgment speedily and in simpler terms, than dwell on protracted analyses that appeal exclusively to legal scholars, while invariably mystifying the average business person required to govern him- or herself according to the judgment of the court.

The Restrictive Versus Flexible Approach

[251] The UK Supreme Court judges in *Prest* grappled with the scope of exceptions to the corporate personality. Following his discourse on the 'evasion' hypothesis as the only real exception to corporate personality, Lord Sumption concluded with the following observation:

> I conclude that there is *a limited principle of English law* which applies when *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.* The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. Like Munby J in *Ben Hashem*, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course. I therefore disagree with the Court of Appeal in *VTB Capital* who suggested otherwise at para 79. For all of these reasons, the principle has been recognised far more often than it has been applied. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy.[280]

[252] It is, of course, relatively unproblematic to accept the proposition that 'if it is not necessary to pierce the corporate veil,' given the availability of alternative remedies, then 'it is not appropriate to do so'. The greater question, however, is whether the force of Lord Sumption's evasion theory connotes a doctrinal limitation to the category of exceptions in a way that lends to the impression that 'the senior judiciary has repeatedly attempted … to narrow [standard veil lifting] to the point of disappearance.'[281] Indeed, that concern has been specifically implicated in a commentary concerning *Prest.*[282]

[253] That question acquired evident dimension, even if unwittingly, in the opinions of Lord Mance and Lord Clarke. Although agreeing with Lord Sumption's reasons for

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[280] ibid at [35] (emphasis added) (citation omitted).
[281] Alan Dignam and Deniz Canruh, 'Into Reverse: Redesigning Veil Piercing' (2025) 45 Legal Studies 212, 213.
[282] As the two commentators mentioned in the preceding footnote observed: 'As we discuss below, what is broadly clear within the case law since *Adams, Prest* and *Hurstwood*, is that [forward veil piercing] has become increasingly unlikely within the *restrictive judicial analytical framework*, despite there being a theoretical possibility that it could occur, and arguably good reasons why the doctrine should be developed. Where we are, though, with [reverse veil piercing] remains somewhat uncertain as although *it now seems to operate through the evasion principle,* that principle is insensitive to the different considerations that arise when evasive capitalisation is at issue rather than limited liability. This risks [reverse veil piercing] being subjected to the *narrow closed judicial development of the evasion principle* in the context of [forward veil piercing] and its relationship to limited liability rather than the considerations that should be in play in [a reverse veil piercing] where limited liability is unaffected': Dignam and Canruh, 'Into Reverse' (n 278) 217 (emphasis added).

judgment, Lord Mance still felt it important to observe that it is 'often dangerous to seek to foreclose all possible future situations which may arise,' though they may be rare.[283] He observed in conclusion that no-one 'should … be encouraged to think that any further exception, in addition to the evasion principle, will be easy to establish, if any exists at all. The evident absence, under the close scrutiny to which Lord Sumption has subjected the case law, of authority for any further exception speaks for itself.'[284] Lord Clarke 'agree[d] with Lord Mance that it is often dangerous to seek to foreclose all possible future situations which may arise and, like him, I would not wish to do so. … I also agree with Lord Mance and others that the situations in which piercing the corporate veil may be available as a fall-back are likely to be very rare and that no-one should be encouraged to think that any further exception, in addition to the evasion principle, will be easy to establish. It will not.'[285] It is unclear whether Lord Clarke was communicating his own independent understanding of English law on the matter or his appreciation of the objective effect of the new 'principle of evasion' laid down by Lord Sumption.

[254] Notably, in espousing the 'evasion principle' in *Prest* as an evidently restrictive approach to lifting the corporate veil, Lord Sumption evoked the singular importance of limited liability companies to the world of commerce. According to him, the concept of separate corporate personality 'is not just legally but economically fundamental, since limited [liability] companies have been the principal unit of commercial life for more than a century. Their separate personality and property are the basis on which third parties are entitled to deal with them and commonly do deal with them.'[286] While the last proposition is obscure, and the first is not assured. The century and more, in which commercial life was apparently dominated by the concept of corporate personality, came long after the United Kingdom established itself as a dominant economic power, during an earlier era when corporate

[283] As he put it: 'It is however often dangerous to seek to foreclose all possible future situations which may arise and I would not wish to do so. What can be said with confidence is that the strength of the principle in *Salomon*'s case and the number of other tools which the law has available mean that, if there are other situations in which piercing the veil may be relevant as a final fall-back, they are likely to be novel and very rare.' See *Prest* (n 6) at [100].
[284] ibid at [102].
[285] ibid at [103].
[286] ibid at [8].

personality was not a general feature of commercial law. Firms like the East India Companies, the Royal African Company, the South Sea Company, and the Hudson's Bay Company helped Britain to build a dominant commercial and political empire—even in depressingly inhumane ways in some instances—long before the passage of the Companies Act of 1862 (UK) the application of which culminated both in the judgment of the House of Lords in *Salomon* in 1896 and in the eventual metaphor of the 'corporate veil.' And the world has seen other dominant economic powers—notably China, France, Germany, and Japan—whose legal traditions owe nothing at all to the fiction of the corporate personality rooted in the jurisprudence of *Salomon*.[287] Even in other advanced trading economies of the modern common law world, corporate personality is not treated as a sacred cow of the jural meadow. A more flexible approach to lifting the corporate veil is discernible in the leading case law of India and Canada.

[255] In their 2014 judgment in *Saluja v Air India Ltd*, the Supreme Court of India noted Lord Sumption's conclusion that 'there is a limited principle of English law' which applies when 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. According to Lord Sumption, it is only those limited circumstances that the court may pierce the corporate veil only for the purpose of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality.[288]

[256] In a contrasting analysis, the Indian Supreme Court immediately recalled that '[t]he position of law regarding this principle in India has been enumerated in various decisions.'[289] A key case law in that regard is *Life Insurance Corporation of India ('LIC') v Escorts Ltd*, a decision of a constitution bench of the Supreme Court,

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[287] *Salomon* (n 5).
[288] *Saluja v Air India Ltd* (2014) 9 SCC 407 at [72].
[289] ibid at [73].

registering the following open-ended pronouncement about the circumstances in which the corporate veil may be lifted:

> Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. *It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the achieved, involvement of the element of the public interest, the effect on parties who may be affected, etc*.[290]

[257] Recalling that line of case law four years later, the Supreme Court of India noted in *ArcelorMittal India Private Ltd v Gupta* that the courts have since 'come to recognise *several* exceptions' (emphasis added) to the rule of independent corporate personality.[291] 'While it is not necessary to refer to all of them,' the Court noted, 'the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct".'[292] In that regard, the Indian Supreme Court quoted a number of academic works, notably including Robert Pennington's textbook on *Company Law* saying that '"where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law" the court *will* disregard the corporate veil.'[293] To the same effect, the Supreme Court quoted Professor Samdar Ottolenghi:

> The concept of 'piercing the veil' in the United States is much more developed than in the UK. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' The same can be seen in various European jurisdictions.[294]

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[290] *LIC v Escorts Ltd* (1986) 1 SCC 264 at [90] (emphasis added).
[291] *ArcelorMittal India Private Ltd v Gupta* [2018] 12 SCR 362 at [33].
[292] ibid.
[293] ibid (emphasis added).
[294] ibid. See also Samdar Ottolenghi, 'From Peeping Behind the Corporate Veil, to Ignoring it Completely' (1990) 53(3) MLR 338, 339.

[258] In Canada, Zarnett JA, a foremost commercial law specialist on the appellate judiciary, recently summarised the Canadian position on lifting corporate veil. 'Piercing or lifting the corporate veil,' he began, 'is an equitable exception to certain statutory rules.'[295] And he continued:

> Those rules provide that a corporation is a separate legal person (with the consequence that its property, rights, and obligations are its own, not those of the individuals through whom it acts) and that a shareholder is not liable for any act, default, obligation, or liability of the corporation … .[296]

[259] Zarnett JA recalled that the test for piercing or lifting the corporate veil in the Canadian province of Ontario (Canada's most dominant business jurisdiction) remains the two part test set out in *Transamerica Life Insurance Co of Canada v Canada Life Assurance Co*, in terms that 'courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or *improper conduct*.'[297]

[260] The simplicity of the Canadian approach, it seems to me, resonates in Zarnett JA's uncomplicated primary observation that piercing or lifting the corporate veil is an equitable remedy. The inherent flexibility of that recognition is not contradicted by Laskin JA's earlier observation in *642947 Ltd v Fleischer* (which also relied on *Transamerica*) that 'the separate legal personality of the corporation cannot be lightly set aside.'[298] Flexibility is inconsistent only with rigidity, not rigour.

[261] In that regard, the currency of judicial attitude on veil lifting in Canada and India is consistent, it seems, with the following observation of Professor Maurice Wormser made long ago following a review of American case law on the subject:

> The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to

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[295] *FNF Enterprises Inc v Wag and Train Inc* 165 OR (3d) 401 at [17].
[296] ibid.
[297] ibid at [18] (emphasis added). See also *Transamerica Life Insurance Co of Canada v Canada Life Assurance Co* (1996) 28 OR (3d) 423 at 433–434.
[298] *642947 Ltd v Fleischer* (2001) 56 OR (3d) 417 at [69].

> generalization which the present state of the authorities would warrant is this: *When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime,* ***the courts will draw aside the web of entity****, will regard the corporate company as an association of live, up-and-doing, men and women shareholders,* ***and will do justice between real persons****. This is particularly true in courts of equity, but finds many illustrations in courts of law as well,* for it must not be thought that "our lady of the Common Law" is not sufficiently powerful to explode sophistry or scholastic theory where used as a cloak for wrongdoing. In neither tribunal is the concept exalted into a fetich to be worshipped "in the sacrifice of those who, in the last analysis, are the real parties in interest."[299]

[262] In *ArcelorMittal*, the Indian Supreme Court described Professor Wormser's article (containing a part of the foregoing quote) as 'a brilliantly written article'.[300] It thus seems to me that if Lord Sumption intended to signal a restrictive approach in *Prest*, that approach has not been followed in Canada and India.

[263] That also seems the case in Singapore. One commentator recently observed that the Court of Appeal of Singapore 'has reserved its views on *Prest* to a time when this issue is directly before it. This is despite the general increase, over the years, in the number of cases in Singapore where veil piercing has been argued. The other Singapore courts have thus generally also been unwilling and unable to decide on the applicability of the English approach in Singapore.'[301] It appears that the failure to adopt *Prest* thus far in Singapore is not explained by the lack of opportunity. As noted by the commentator in his piece written in 2024, during the 2020s alone approximately 40 cases had engaged the question of piercing the corporate veil.[302]

A Salutary Understanding of 'Existing Legal Obligation'

[264] A few remarks may be made about Lord Sumption's anchor of his 'evasion principle' on an 'existing' legal obligation, liability or restriction. As he put it (in a passage noted earlier):

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[299] Maurice Wormser, 'Piercing the Veil of Corporate Entity' (1912) 12 Colum L Rev 496, 517 (emphasis added).
[300] See *ArcelorMittal India* (n 291) at [33].
[301] Ivan Wu Hwan Tang, 'Veil Piercing in Singapore: A Proposed Approach' (2024) 4 Singapore Law Journal (Lexicon) 34, 35–36.
[302] ibid 36 at footnote 12.

> I conclude that there is a limited principle of English law which applies when 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. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality.[303]

[265] That frame of analysis apparently reflects an understandable concern that once a company is incorporated, it should thenceforth operate as an entity whose separate personality should not to be confused with that of its controller or shareholder. Any role that its controller will necessarily play in the transactions of the company—as its brain, organ or limb—will not, as a general rule, be treated as the transactions of the controller in his or her personal capacity. Those post-incorporation transactions are those of the company. The only transactions that should remain those of the controller are transactions undertaken before incorporation or those undertaken in the controller's personal capacity.

[266] But that understanding entails at best only a presumption or a general rule. It cannot foreshadow exhaustively the range of conduct that can amount to abuse of corporate personality, for transactions entered into after incorporation, such as may warrant the denial of the separate corporate personality privilege in specific instances. There is, therefore, much that recommends the approach of focusing, for present purposes, on the general rule of corporate personality; and then considering with an open mind whether any alleged abuse is truly so when measured against the general rule. That is what Barrow, Jamadar and Ononaiwu JJ have essentially done in this case, in arriving at our shared conclusion that there was nothing in the facts that takes the case outside the general rule.

[267] From that perspective, Lord Sumption's ultimate conclusion (to the effect that only pre-existing liabilities and obligations are captured by his 'evasion' theory) takes his analysis no further than the obvious point—or the general rule—of incorporation.

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[303] *Prest* (n 6) at [35].

That is to say, following incorporation, the actions of the human controller through whom the company necessarily acts are actions of the company and not those of the human controller.

[268] I am not convinced that it is necessary to devise special legal principles in order to stimulate a unified understanding of the case law in those instances in which allegations of abuse of corporate personality were considered. In that regard, there is much force in Lord Walker's view 'that "piercing the corporate veil" is not a doctrine at all, in the sense of a coherent principle or rule of law. It is simply a label—often … used indiscriminately—to describe the disparate occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a body corporate …'.[304] And like Lady Hale and Lord Wilson,[305] I am much less confident about the attempt to devise such a coherent principle by realigning understanding of the subject along the axes of 'concealment' and 'evasion' principles. I fear that, rather than resolve the protracted doctrinal difficulties that may obstruct a composite understanding of the pre-*Prest* case law, the end result has been the introduction of new theories that come with their own set of difficulties. Jamadar and Ononaiwu JJ—citing earlier observations of Burgess J—have compellingly identified many of those difficulties.

[269] But Jamadar and Ononaiwu JJ—and Burgess J before them—are not alone in perceiving difficulty with Lord Sumption's 'evasion principle' in *Prest*, once its premises, elements or overall thesis are subjected to closer scrutiny. Indeed, many of the UK Supreme Court justices in *Prest* itself were not convinced as to the true value of the new hypothesis presented as 'concealment' and 'evasion principles'. As noted earlier, Lord Walker, said '"piercing the corporate veil" is not a doctrine at all, in the sense of a coherent principle or rule of law.'[306] The joint observations of Lady Hale and Lord Wilson were to a similar effect.[307] For his part, Lord Mance, agreed with Lord Sumption's reasons for judgment, but still, as noted earlier,

[304] ibid at [106].
[305] ibid at [92].
[306] ibid at [106].
[307] ibid at [92].

registered evident caution regarding restrictive orientation of those reasons and their premise.[308] Lord Clarke also didn't endorse the 'concealment' and 'evasion' distinction as 'principles' that the UK Supreme Court should adopt in *Prest* for purposes of lifting corporate veil. As he put it:

> Lord Sumption may be right to say that it will only be done in a case of evasion, as opposed to concealment, where it is not necessary. However, this was not a distinction that was discussed in the course of the argument and, to my mind, should not be definitively adopted unless and until the court has heard detailed submissions upon it. I agree with Lord Mance that it is often dangerous to seek to foreclose all possible future situations which may arise and, like him, I would not wish to do so.[309]

[270] A decade later, the entire panel of the UK Supreme Court in *Rossendale Borough Council v Hurstwood Properties (A) Ltd* did not greet Lord Sumption's analysis with evident warmth.[310] Without coming to a final view on the necessity of the evasion principle, the Court unanimously shared Lord Walker's doubts as to 'whether "piercing the corporate veil" represents a coherent principle of law as opposed to simply a label used to describe the disparate occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a corporate body.'[311] In this Court, Burgess J (an eminent academic expert on company law in his own right),[312] following careful reflection, rejected Lord Sumption's proposals and urged against their incorporation into the jurisprudence of this Court.[313] And now, my colleagues Jamadar and Ononaiwu JJ have demonstrably come to the same view on *Prest* as did Burgess J. I agree with them.

A View of Some Harmony in the Case Law

[271] I fully share Lady Hale's and Lord Wilson's joint point of view, which is to stand back, as it were, and perceive some doctrinal harmony in all the cases that Lord

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[308] ibid, at [100].
[309] ibid at [103].
[310] See *Rossendale* (n 42) at [63].
[311] ibid at [71].
[312] His scholarship includes the textbook *Commonwealth Caribbean Company Law*.
[313] See *Delpeache* (n 39) at [117].

Sumption and Lord Neuberger identified as registers of doctrinal babel. The perception of doctrinal harmony is sufficiently clear if those cases are seen as variegated *instances* that engaged the question of lifting the corporate veil, as the exception to the general rule of corporate personality. As Lady Hale (also writing for Lord Wilson) persuasively put it:

> I am not sure whether it is possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal personality of a company neatly into cases of either concealment or evasion. They may simply be examples of the principle that the individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business. But what the cases do have in common is that the separate legal personality is being disregarded in order to obtain a remedy against someone other than the company in respect of a liability which would otherwise be that of the company alone (if it existed at all).[314]

[272] Perhaps, the quest for principle, if any is needed, takes the matter back to Lord Sumption's starting point at [27], and to which he returned in full circle at [34]. It is in the 'general approach' of mature legal systems 'to the problems raised by the [abuse] of legal concepts to defeat mandatory rules of law' directed at their own legitimate purposes. That is the basis principle readily, understandable by everyone.

[273] It requires keeping in view that the general rule of separate corporate personality has a purpose in good faith. For the most part, that purpose has served the world of business quite well—certainly in the common law system—since *Salomon*. A banking corporation, for instance, which credibly carried on the business of banking for years, may not have its investors exposed to unlimited personal liability if a political or economic spark sufficiently unsettled the stock market to an extent that triggers a bank run. But, where there is unmistakable evidence that cynical manipulation, for instance, was found to have corrupted a particular conduct hidden behind the corporate veil, the hands of equity must firmly lift the corporate veil in the last resort, if that is the appropriate remedy in the circumstances. Doing so means

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[314] *Prest* (n 6) at [92].

neither that the court 'disregard[ed] the principle of *Salomon v A Salomon & Co Ltd* … ***merely*** because [the court] *considers* that justice so requires,'[315] nor that it did so with 'insouciance'.[316] To lift the corporate veil, in the last resort, to attach legal remedy to conduct tainted by deliberate wrongdoing—that being the distinctive feature of the principle—cannot be seen as lifting corporate veil insouciantly or 'merely' because the court 'considers' that justice so requires.

Corporate Wrongdoing

[274] I hasten to add that I do not suggest that the corporate veil must always be lifted when an abuse or 'a relevant wrongdoing'[317] (using the expression favoured in *Prest*) has been found.

[275] Corporations are said to own property, they have 'brains' and other 'organs,' and they can 'transact business.' For all that, they *employ* human beings to exercise the corporate functions. But the possibility of employment in the context of corporate personality need not be a one-way street. If it is the case that a corporation in its emanation of separate legal personality can employ a human being, it is equally apparent, as a matter of law, that a corporation in its emanation of separate legal personality—with all its brains and organs and ability to transact business—can also be an employee of a human being or of another corporation.

[276] The purpose of characterising a human being as the 'directing mind' of a company is to attribute his or her actions to the company, where appropriate.[318] From that perspective, the relevant wrongdoing may well be wrongdoing that is properly attributable to the company itself—*qua* corporate person in its own right. Company law has striven to approximate human attributes in corporations through the fiction of separate legal personality. The corollary idea is that the law must also recognise

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[315] As the concern was expressed Slade LJ's dictum in *Adams* (n 120) at 536 (emphasis added); quoted with approval in *Prest* (n 6) at [21].
[316] See *Prest* (n 6) at [36].
[317] ibid at [26], [27], [28].
[318] See *Bay Trust Corp Services Ltd v Longsworth* [2020| CCJ 8 (AJ) BZ, (2020) 99 WIR 131 at [28]–[52]. See also *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 at 713 (Viscount Haldane LC); *Tesco Supermarkets Ltd v Natrass* [1972] AC 153; *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500; *Bilta (UK) Ltd v Nazir (No 2)*[2016] AC 1.

in corporations, as necessary, the possibility of transgressions that is often a fact of human life. Many an upstanding human being in a moment of weakness or conscious villainy has been known to deploy his or her human faculties and facilities to wrongdoing. Incorporation is no immaculate conception, resulting in the birth of a sinless creature. As human transgressions do not result in the negation or disregard of the culprit's humanity, the corporate personality is not to be disregarded or negated merely because the corporation has, through the attributable conduct of its human functionaries, or other associates, engaged in transgressions. It is against that background that I consider the notion of 'reverse piercing.'

'Reverse Piercing'

[277] Counsel for the Appellants introduced into his arguments notion of 'forward and reverse piercing of GDP's corporate veil', [sic] alleging that the Court of Appeal did both things simultaneously to GDP.[319]

[278] Notably, the neologism of 'forward' and 'reverse' piercing received a neutral mention in *Rossendale Borough Council v Hurstwood Properties (A) Ltd*, without real endorsement.[320] One advocate of this distinction has explained it as follows:

> [W]hen the court pierces the veil, it holds a member personally liable for a corporate obligation. This is the normal operation of the veil-piercing rule and is referred to in this article as 'forward piercing' or 'standard piercing'. On the contrary, the court may sometimes be invited to pierce the veil in order to make the company liable for an obligation of a controlling shareholder. This is referred to as "reverse piercing" or 'backward piercing' … .[321]

[279] The commentator quoted above found a passage from Lady Hale's and Lord Wilson's joint opinion as describing a 'reverse piercing' situation, although the judges did not employ that terminology in their opinion. The passage in question is

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[319] See Beth Clifford, 'Submissions on behalf of the Appellant', Submission in *Clifford v LCW Investments LLC,* BZCV2025/001, filed 11 April 2025, [13], [21].
[320] See *Rossendale* (n 42) at [68].
[321] See Edwin Mujih, 'Piercing the Corporate Veil: Where is the Reverse Gear?' (2017) 133 LQR 322.

where Lady Hale and Lord Wilson considered that 'the converse case, where it is sought to convert the personal liability of the owner or controller into a liability of the company, it is usually more appropriate to rely upon the concepts of agency and of the "directing mind".'[322] I am not convinced that the situation being described, even if it involves a wrongdoing, is truly one of piercing the corporate veil. Nor am I convinced that 'reverse piercing' is conceptually valid as a notion. It seems to me that what is being described falls squarely within the main frame or general rule of corporate personality, as a conventional feature of attribution of conduct to a corporation. That the conduct in question is a wrongdoing changes nothing in that regard. It may not warrant the lifting of corporate veil, because (as mentioned earlier) corporations can conceptually engage in transgressions even with their veils fully in place.

[280] The expression 'reverse piercing' appears to be a mixed metaphor if not a solecism. At any rate, it is of limited to no practical value. Consider a popular title in the associated literature: 'Piercing the Corporate Veil: Where is the Reverse Gear?'[323] It seems strange to associate a 'reverse gear' to the process of lifting or piercing the corporate veil. Beyond that, the logic of what is legally entailed contradicts the sense intended by those who favour its terminology. Lifting or piercing the corporate veil involves an exception, an aberration, to the general rule that recognises separate corporate personality. According to that exception or aberration, the corporate veil is lifted to 'see' the human functionary and hold him or her liable for what should be the company's acts, transactions or obligations. (See Figure 1 below) This is the real sense of lifting or piercing the corporate veil. It is true that the incidence of seeking to hold the company liable (other than in that real sense) for the acts, transactions or obligations of its human functionary entails an inverse phenomenon. (See Figure 2 below) But, it doesn't follow that the inverse phenomenon is, as a matter of law, also an exception or aberration operating in 'reverse'. Quite the contrary, that inverse phenomenon, properly understood, only takes the process back

[322] See *Prest* (n 6) at [92].
[323] See Mujih (n 321).

to the general rule of corporate personality. In a sense, the physical imagery entailed in the fiction possibly illustrates the point. From the point of view of the company, the corporate veil is lifted to see a functionary or associated entity other than the company. The inverse process entails looking from the perspective of the functionary or associated entity to see the company. That is the whole point of the concept of corporate personality.

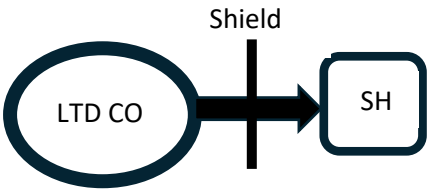

Figure 1: Forward

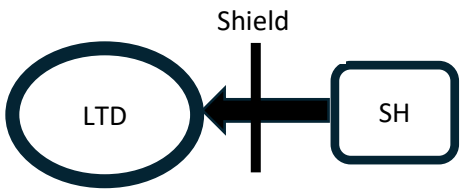

Figure 2: Reverse

[281] It is a demonstration of the futility of the 'reverse veil piercing' metaphor that courts have regularly awarded remedies in appropriate cases without needing to use the metaphor of piercing corporate veils at all, let alone saying they did so in the 'reverse' mode, in circumstances that proponents of those metaphors insist on using those metaphors to describe.[324] As one proponent of the 'reverse veil piercing' metaphor observed of a judgment of the Court of Appeal for Ontario:

> [In fact,] the Court of Appeal's decision in *Downtown Eatery* itself does not contain the term "corporate veil," though the outcome [is tantamount to having pierced the veil] ... The panel in *Downtown Eatery* speaks of it purely as a remedy for corporate oppression. … This once again underlines the point that piercing the veil is a metaphor. Occasionally [a court] may [even] pierce the veil without, at the time, feeling a need to draw attention to it by using that metaphor.[325]

[282] In another instance of the same phenomenon, the same commentator referred to *Kosmopoulos v Constitution Insurance Co of Canada*[326] as the 'most cited veil piercing *claim* in Canadian judicial history'.[327] Andreas Kosmopoulos, a sole

[324] See generally Dignam (n 281). See also Mujih, 'Piercing the Corporate Veil' (n 318).
[325] Peter Spiro, 'Piercing the Corporate Veil in Reverse: Comment on Yaiguaje v Chevron Corporation' (2019) 62 Can Bus LJ 231, 240.
[326] [1987] 1 SCR 2.
[327] Spiro (n 325) 240.

shareholder and director of Kosmopoulos Leather Goods Ltd, a limited liability company, sought to have the corporate veil lifted to recognise company property as his own. This was because he had inadvertently insured the company's property in his own name, as a carryover from the pre-incorporation period. When the property was destroyed by fire, the insurance company denied the claim for indemnity on grounds that it had no insurance contract with owner of the property (ie the company); and, that Mr Kosmopoulos was also not entitled to indemnity because he had no insurable interest in the destroyed company property. In view of other equitable remedies available to it, the Supreme Court of Canada considered it theoretically possible, yet inappropriate, to lift the corporate veil in order to do justice in the case. Veil lifting, held the Court, is more appropriate 'in the interests of third parties who would otherwise suffer' than at the instance of an individual who had through incorporation converted what used to be a sole proprietorship into sole shareholder limited liability company. In the circumstances, the court considered it more appropriate to interpret the insurance policy in a manner that required the insurance company to indemnify the loss, by finding that Mr Kosmopoulos had an insurable interest in the property of the company. In a commentary, a view of the Court's judgment was registered as follows: 'The court in *Kosmopoulos* stated that their decision did not pierce the veil, but it could be said that this is a distinction without a difference.'[328] But, viewed from the perspective of equity—which not only looks at substance and not form, but which also regards as done that which ought to be done—the outcome of the case is unremarkable. Courts regularly order equitable remedies without putting them into pigeon holes with metaphorical labels. I return to this below.

[283] There is, then, immense value in restating the contemplated remedy in terms stripped of the 'corporate veil' metaphors. It is to say that the remedy, which is the antithesis of recognition of separate legal personality, is quite simple to understand and requires no special principle to explain it. That simply stated remedy is that *separate legal personality* will be disregarded, when the evidence shows that the privilege

[328] ibid 241.

has been deliberately employed to escape legal responsibility that is properly that of the controller and not that of the company as contemplated by company law.

[284] It is about a return to the *status quo ante* before the advent of the notion of separate corporate personality in the late 19th century: it is about treating the business association as a simple partnership (in the case of two or more shareholders); and, it is about treating the business entity as a sole proprietorship (in the case of a single shareholder company). So understood, the remedy will not require the terminology of 'forward piercing,' 'reverse piercing,' and its many permutations—such as 'insider reverse piercing', 'outsider reverse piercing,' 'triangular reverse piercing', which have been described as the 'most common' forms of 'reverse piercing,'[329] suggestive of the possibility of many other forms of 'reverse piercing' now or in future.

[285] Yet, whether or not an abuse of corporate personality has occurred is a different question that must be investigated on the merits of the particular case.

An Equitable Remedy

[286] As a remedy that a court may impose in an appropriate case, there is nothing novel about lifting the corporate veil when justice so demands. The jurisprudence of separate corporate personality since *Salomon* could not be presumed to have devised a legal fiction intended to escape the remedial net of equity. Nor should that fiction be given that effect in its operation. As Zarnett JA noted, '[p]iercing or lifting the corporate veil is an equitable exception to certain statutory rules.'[330] As a remedy dictated by principles of equity, it is easy to see how some principles or maxims of equity are in active service in those instances in which courts felt it appropriate to lift the corporate veil. Indeed, *Prest* gives that indication in the sense that the remedies that recommended themselves to the UK Supreme Court in *Prest* are

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Naman Kamdar and Akash Srinivasan, 'Solving the Bad Loan Crisis in the Unconventional Way: Is Reverse Piercing the Corporate Veil a Solution?' (2019) 12 NUJS L Rev 169, 174.

[330] *FNF Enterprises* (n 295) at [17].

remedies in the domain of equity. The Court considered that non-veil lifting remedies—such as constructive trust and the suggestion that Mr Prest (after all equity acting *in personam*) could be compelled to transfer shares of the company to his wife—were more appropriate than lifting the corporate veil. What was missing in the speeches of the UK Supreme Court justices was a clear and systematic connection of their analyses to the main line of equity, as Zarnett JA did in Canada. That absence entailed the risk evident in Lord Sumption's attempt to reformulate the law, by devising a novel, complicated system to replace an older, simpler system complicated by secondary legal theories espoused in the case law and the law journals. There is the worry that the effort might bring to mind the era when judges were doing their best to implement the then newly-devised principles of equity, only to end up making its system more complicated by the different categories they were coming up with. And it led people to complain about *rigor aequitatis*.

Back to Basics

[287] In my view, Lord Sumption's discourse in *Prest* and sundry academic commentary take understanding no further either as to the notion of corporate personality or the circumstances in which that privilege may be disregarded.

[288] If the ultimate aim was to avoid *insouciant* lifting of the corporate veil—as passages in *Prest* suggest[331]—then the discourse is unnecessary because the case law before *Prest* didn't show many instances of successful claims of lifting the corporate veil. Lord Neuburger, writing in *Prest*, couldn't find 'a single instance in this jurisdiction where the doctrine has been invoked properly and successfully.'[332]

[289] If, on the other hand, the aim of *Prest* was to simplify an understanding of the case law in that field by providing a new theory to explain existing case law, then the new theory seems to me both artificial and counterproductive. Artificial, because the new theory proceeded on what seems to me a mistaken premise: a view of the various

[331] See *Prest* (n 6) at [36].
[332] ibid at [64].

instances of application of a basic, readily understandable principle as a multitude of first principles. On the basis of that mistaken premise, a new theory of 'evasion' was introduced to replace an existing primary, readily understood principle that had been elided or obscured in the discourse. Counterproductive, because the new notion of 'evasion' comes with its own set of questions and confusion[333]; and there is no assurance that its operation will not in time produce a multitude of instances of application that judges, lawyers and legal practitioners will not in future mistake for first principles.

[290] In the end, it is possible that the best approach requires a restatement of the remedy in its basic terms. It is to do so in terms free of the 'corporate veil' metaphors. All that is needed is to recall that the remedy in its essence is the antithesis of the recognition of separate legal personality. So stated, the remedy is, as indicated earlier, quite simple to understand and requires no special principle or metaphor to explain it. That simple remedy, as indicated earlier, is that the privilege of *separate legal personality* will be set aside, when the evidence shows that the privilege has been deliberately employed to escape legal responsibility that is properly that of the controller and not the company's as contemplated by company law.

[291] A minimum practical advantage in returning to the basic understanding of the remedy is that judges will channel their time and energy into doing justice on the basis of that readily understandable basic principle, rather than waste time and energy reading and discussing the theories and hypotheses about lifting the corporate veil, after which they dismiss the case as they mostly do, and as we now do.

Disposition

[292] In the outcome, I allow the appeal on the basis of the same factual analyses made by Ononaiwu, Barrow and Jamadar JJ, and on the same terms proposed by them.

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[333] In the case at hand, for instance, counsel had used the new 'principles' espoused in *Prest* to arrive at a view that the Court of Appeal performed both 'forward and reverse piercing' against GDP in one go. See Beth Clifford, 'Submissions on behalf of the Appellant', Submission in *Clifford v LCW Investments LLC,* BZCV2025/001 filed 11 April 2025, at [13], [21].

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji