



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2024: No. 313

BETWEEN:

**LORRAE EDWARDS
AMANDA GYLES**

Applicants

and

SUSAN TERNENT

Respondent

RULING

Date of Hearing: 2 July 2025

Date of Ruling: 24 July 2025

Appearances: Applicants, Litigants in Person
Craig Rothwell, Cox Hallett Wilkinson Limited, for Respondent

RULING of Mussenden CJ

Introduction

1. The Applicants caused an Originating Summons to be issued dated 26 November 2024. They were former employees of Bersalon Company Limited (the “**Company**”).
2. The Respondent Mrs. Ternent is a director and major shareholder of the Company which was in operation from 1972 until 28 March 2024.

3. The Applicants' claim is being made in accordance with section 44L(5) of the Employment Act 2000 (the "**2000 Act**"). They are seeking to recover as a civil debt in this Court, awards made to each of them by the Employment and Labour Relations Tribunal (the "**Tribunal**") following a decision made on 12 September 2024 (the "**Decision**") and after a complaint by the Applicants was made to the Tribunal which issued a further decision dated 11 December 2024 (the "**Non-Compliance Decision**")¹.
4. Ms. Edwards seeks recovery of her award in the amount of \$20,999.20 and Ms. Gyles seeks recovery of her award in the amount of \$11,152.00.

Preliminary Issue

5. The preliminary issue is that the Applicants have issued the Originating Summons against Mrs. Ternent personally rather than against the Company. The Applicants invite the Court to pierce the corporate veil and to find that Mrs. Ternent personally is the proper respondent in this matter. Mrs. Ternent objects to such a determination and invites the Court to dismiss the claim against her personally.
6. I gave directions for the parties to submit affidavit evidence and submissions for a hearing to determine the preliminary issue. Both parties filed affidavit evidence and made submissions. Ms. Edwards appeared in person whilst Mrs. Gyles appeared by zoom from England.

The Evidence

The Applicants

7. The Applicants filed affidavits of Ms. Edwards sworn 22 October 2024 ("**Edwards 1**"), 16 April 2025 ("**Edwards 2**") and 19 June 2025 ("**Edwards 3**") along with exhibits of documents which included the Decision, the work permits for Ms. Edwards dated 24 April

¹ In this Ruling, I refer to the Respondent as Mrs. Ternent. However, there is a need for me to refer to the respondent in the Decision and the Non-Compliance Decision of the Tribunal. For clarity, I do so by the use of the word 'respondent' in non-capitalised lowercase, although in those documents, the word 'respondent' is used capitalised.

2023 and for Mr. Gyles dated 13 April 2023 (together the “**Work Permits**”), various letter and email correspondence including between the parties, and references from former clients of Bersalon. The affidavits appeared to speak for both Applicants and contained fact and submissions. I have accepted the form of the affidavits as the Applicants are litigants in person and it is important for them to have access to justice. I ascertained the relevant facts from the affidavits.

8. The Applicants seek to maintain Ms. Ternent as the Respondent on the basis that the Court should pierce the corporate veil in order to do so. They set out various reasons to pierce the corporate veil as follows:
 - a. It was only in the non-compliance hearing that Mrs. Ternent engaged counsel, who took the position that the proper Respondent should be the Company, which they considered to be an act of bad faith.
 - b. The Tribunal had found that Mrs. Ternent had egregiously neglected her obligations under employment law and had blatantly disregarded her legal responsibilities under the 2000 Act.
 - c. Mrs. Ternent as director and owner of Bersalon, held legal, fiduciary and ethical obligations as specified in the Companies Act 1981, the Fraud Act 2017² and the 2000 Act.
 - d. Having brought the Applicants to Bermuda to work in her Company, Mrs. Ternent had a duty to act honestly and in good faith to prevent the Applicants from incurring any risk or loss as consequence of her decisions and conduct in the operation of the business.
 - e. Bersalon was a well established business with a 50-year history, comprising a hair salon, a barbershop and a spa offering various services to men and women.
 - f. In the post Covid-19 pandemic period, the business generated significant revenue, however, the business was in arrears in rent, land tax and other services.

² There is no Bermuda Fraud Act 2017 enacted. However, a Bill entitled “Fraud Act 2017” was tabled in the House of Assembly by the then Government One Bermuda Alliance in 2017. It appears that this was followed shortly after by the 2017 General Election which was won by the then opposition Progressive Labour Party, which, as Government, has not advanced a Bill for a Fraud Act.

- g. The rental delinquencies caused the landlords to give notice to vacate the premises. The Applicants state that the Respondent misled them and others that they were moving the business to another location when Mrs. Ternent knew she had no premises to move to and nowhere for the staff to go. They claimed that Mrs. Ternent had been untruthful to the staff for months, claiming talk about an eviction was gossip and that everything was fine, causing Ms. Gyles to continue to work and generate revenue until the last minute.
- h. Between January 2021 and March 2022 Mrs. Ternent had deducted funds from the Applicants' salaries but did not remit them for health insurance, social insurance and pension obligations.
- i. Mrs. Ternent had acted in bad faith and in breach of various provisions of the Fraud Act 2017, which amount to criminal offences and undermined the principles of trust and integrity.
- j. Mrs. Ternent sought to exploit staff by not giving notice to staff and not paying compensation for her own personal gain.

The Respondent

- 9. Mrs. Ternent filed affidavits sworn 16 April 2025 ("**Ternent 1**") and 23 April 2025 ("**Ternent 2**") along with exhibits of documents which included the Decision, the Non-Compliance Decision, the work permit dated 24 April 2023 for Ms. Edwards, letter and email correspondence including between the parties and HSBC bank statements for the Company's chequing accounts for the period 6 July 2023 to 7 November 2024.
- 10. Mrs. Ternent denied that she had engaged in any deceit, evasion, abuse of her position or a shocking disregard for all relevant laws as alleged by the Applicants. She stated that she had sought at every turn to take actions from 2020 onwards to have her business recover from the consequences of the Covid-19 pandemic, which placed the Company in debt to various entities. She stated that her actions were all made in good faith with a view to being able to maintain employment by the Company for both the Applicants and other employees.

11. Mrs. Ternent stated that the Company faced arrears as whilst the Company revenue stopped during the Covid-19 pandemic, the Company expenses continued, causing reserves to be used and exhausted. She denied that the lack of paying rent was a reason for being given notice to vacate, as the landlords had made their own decision on having experienced multiple issues with an old building.
12. Mrs. Ternent stated that, although the Company was in arrears in respect of Social Insurance payments pursuant to the Contributory Pensions Act 1970, it was always making payments and currently there is payment plan in existence to pay the arrears. She noted that the Company has made over \$2 million in payments into the Social insurance account over the years so there would be sufficient funds to cover any payments to the Applicants.
13. Mrs. Ternent stated that full payments to the private pension scheme had been made and the Company's account with the pension provider had been closed. Likewise, the Applicants had always been provided with health insurance, during the Covid-19 pandemic it had been paid for from reserves in order to cover 6 months with no requirement for co-payment.
14. Mrs. Ternent denied that the Company was operated for her personal benefit at the expense of its employees and she denied that she had engaged in dishonest or fraudulent acts or had stolen from employees. On the contrary, she had devoted her life to the business and the financial upset had a devastating effect on the business.

The Applicants Submissions

15. The Applicants submitted that the Respondent claimed to creditors that the Covid-19 pandemic had decimated her business, however, she was still continuing to trade, but taking revenue for her personal gain, and holding membership at the most exclusive clubs in Bermuda and boasting about it, whilst purchasing luxury goods.
16. The Applicants submitted that the fundamental principle behind a limited liability structure was to protect directors from personal liability in good faith governance. However, when

actions deviate significantly from this principle, as in this case, piercing the corporate veil may not only be justified but necessary to uphold justice and fairness. They submitted that Mrs. Ternent's gross mismanagement and fraudulent behaviour not only inflicted financial damage on her creditors and employees but also contravened the very ethos of corporate governance.

17. The Applicants referred to the HSBC bank statements. They submitted that there was significant revenue but there were arrears to Belco, land tax and other services. They submitted that Mrs. Ternent failed to provide evidence about her substantial financial injections into the Company, and that her explanations of financial hardships were uncorroborated and lacked evidentiary support. They stated that she was aware that her business was in financial distress yet she deliberately neglected to settle multiple debts and continued trading, paying herself and her daughter salaries and extracting funds from the Company, leaving it defunct, all which constituted wrongful trading while knowing or ought to knowing that insolvency continued was inevitable.
18. The Applicants submitted that Mrs. Ternent stripped the Company of money as shown by the HSBC bank statements. Thus, her conduct in continuing the business knowing it had no assets was fraudulent behavior and no creditor, especially employees, should be made victims of such fraudulent use of the corporate veil to evade financial obligations. Thus, there was fraud by abuse of power which occurs when an individual occupies a position of trust and responsibility and dishonestly uses that position causing a loss to others and a gain to themselves.
19. In light of those facts and submissions, the Applicants submitted that Mrs. Ternent should be held personally accountable and not be allowed to abuse her position or proceed in a pattern of deceit any further. They argued that Mrs. Ternent is Bersalon and they are one and the same.

The Respondent's Submissions

20. Mr. Rothwell submitted that the Applicants had never questioned that their correct employer was the Company as named on their Work Permits and as reported to the Department of Labour Relations. He also noted that the Respondent, in her capacity as a manager, director and majority shareholders of the Company had responded on behalf of the Company and as a representative of the Company at the Tribunal.
21. Mr. Rothwell submitted that the claim by the Applicants in this matter should be made properly against the Company because the Company is the legal entity as the employer of the Applicants as all relevant times. Thus, the claim should be dismissed. He conceded that the Applicants are entitled to commence a claim against the Company as the correct legal entity that owes the civil debt to them and to pursue the enforcement remedies available against the Company or alternatively seek to wind up the Company and seek recovery of assets. Further, he submitted that since the hearing of 24 November 2024 when it was made clear who the correct legal entity was, the Applicants had steadfastly pursued the claim against Mrs. Ternent personally, despite recommendations to obtain legal advice and where to obtain free legal advice – thus the Respondent seeks her legal costs.
22. Mr. Rothwell submitted that there was no basis for the corporate veil to be pierced. He relied on a number of cases for the submission that the court can only look behind the corporate entity in circumstances involving impropriety and dishonesty, for which there was no evidence in relation to the Respondent. He submitted that this matter was straightforward employer and employee relationship and the unfortunate scenario that had affected many business throughout the world, namely that a formerly successful business was badly affected by financially by the Covid-19 pandemic and then they were further challenged by their landlord giving a short notice to vacate the premises. Thus, the business never recovered from those circumstances, leaving debts owed to various parties, including its landlord and the Department of Social Insurance.
23. Mr. Rothwell submitted that there was no evidence that the Respondent was sheltering behind a corporate façade as the corporate entity was the employer of the Applicants and

well-known to them. Also, the Company was not a “device”, “cloak” or “sham” set up to deceive third parties or the Courts. Further there was: (i) no criminal offence committed to tear away the veil; (ii) there was no interposition of the Company to evade responsibility by the Respondent; and (iii) there has been no abuse of the separate legal personality of the Company as the Respondent has not used it to evade the law or frustrate employment; (iv) it was not an abuse to cause a legal liability to be incurred by the Company; and (v) it was not an abuse to rely upon the fact that liability is not the Respondent’s because it is the Company’s.

The Law

24. The Companies Act 1981 section 5 provides for the limited liability of shareholders by the formation of a company limited by shares. In the case of *Salomon v A Salomon and Co Ltd* [1897] AC 22 the legal separation between a company and its shareholders was firmly established. The applicants in that case sought to go behind the separate legal personality of the company in order to sue Aron Salomon personally for a liability that was legally that of the company which he had set up, with himself and his family as shareholders, to conduct his leather and boot-making business. The House of Lords set out that the company was a separate person from Mr. Salomon and he could not be made liable for the Company’s debts.

25. In *Attorney General v Carlos Manuel de Sao Vicente* 2024 Bda LR 4, Justice Subair Williams followed and applied the English Court of Appeal cases of *R v Seagar & Blatch* [2009] EWCA Crim 1303 and *Prest v Petrodel Resources Limited* [2013] UKSC 34 where, starting with the former, she stated as follows:

“81. The Court of Appeal said at [76]:

“... It is “hornbook” law that a duly formed and registered company is a separate legal entity from those who are its shareholders and it has rights and liabilities that are separate from its shareholders: *Salomon v A Salomon & Co Ltd* [1897] AC 22; A court can “pierce” the carapace of the corporate entity and look at what lies behind it only in certain circumstances. It cannot do so simply because it considers it might be just to do so. Each of these circumstances involves impropriety and dishonesty. The court will then be entitled to look for the legal substance, not just the form. In the context of criminal cases the courts have identified at least three

situations when the corporate veil can be pierced. First, if an offender attempts to shelter behind a corporate façade, or veil, to hide his crime and his benefits from it: Secondly, where an offender does acts in the name of a company which (with the necessary mens rea) constitute a criminal offence which leads to the offender's conviction, then "the veil of incorporation has been not so much pierced as rudely torn away": per Lord Bingham in Jennings v Crown Prosecution Service [2008] AC 1046, para 16. Thirdly, where the transaction or business structures constitute a "device", "cloak" or "sham", i.e. an attempt to disguise the true nature of the transaction or structure so as to deceive third parties or the courts: R v Dimsey [2000] QB 744, 772, per Laws LJ, applying Snook v London and West Riding Investment Ltd [1967] 2 QB 786, 802, per Diplock LJ."

82. *Prest v Petrodel Resources and others [2013] UKSC 34* was later described by the English Court of Appeal as the leading case on the issue, albeit that the following passages from Lord Sumption JSC is to be considered strictly obiter. At [28] and [35]:

"28. The difficulty is to identify what is a relevant wrongdoing. References to a "façade" or "sham" beg too many questions to provide a satisfactory answer. 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 "façade", 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. Many cases will fall into both categories, but in some circumstances the difference between them may be critical. This may be illustrated by reference to those cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil."

35. 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. ..."

26. *Prest v Petrodel* has been expressly followed and applied by the Privy Council and also by this Court in *Athene Holding Ltd v Siddiqui et al.* [2018] SC Bda 52 Civ. Lord Sumption JSC in *Prest v Petrodel* made the following comments:

“ 34. 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. It is not an abuse to rely upon 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. Thus in a case like VTB Capital, where the argument was that the corporate veil should be pierced so as to make the controllers of a company jointly and severally liable on the company’s contract, the fundamental objection to the argument was that the principle was being invoked so as to create a new liability that would not otherwise exist. The objection to that argument is obvious in the case of a consensual liability under a contract, where the ostensible contracting parties never intended that any one else should be party to it. But the objection would have been just as strong if the liability in question had not been consensual.

27. Lord Sumption applied the principles to the matrimonial case that was before him, confirming the decision below that piercing the corporate veil was not possible as follows:

“36. In the present case, Moylan J held that he could not pierce the corporate veil under the general law without some relevant impropriety, and declined to find that there was any. In my view he was right about this. The husband has acted improperly in many ways. In the first place, he has misapplied the assets of his companies for his own benefit, but in doing that he was neither concealing nor evading any legal obligation owed to his wife. Nor, more generally, was he concealing or evading the law relating to the distribution of assets of a marriage upon its dissolution. It cannot follow that the court should disregard the legal personality of the companies with the same insouciance as he did. Secondly, the husband has made use of the opacity of the Petrodel Group’s corporate structure to deny being its owner. But that, as the judge pointed out at para 219 “is simply [the] husband giving false evidence.” It may engage what I have called the concealment principle, but that simply means that the court must ascertain the truth that he has concealed, as it has done. The problem in the present case is that the legal interest in the properties is vested in the companies and not in the husband. They were vested in the companies long before the marriage broke up. Whatever the husband’s reasons for organising things in that way, there is no evidence that he was seeking to avoid any obligation which is relevant in these proceedings. The judge found that his purpose was “wealth protection and the avoidance of tax”. It follows that the piercing of the corporate veil cannot be justified in this case by reference to any general principle of law.”

28. The essence of the cases, as set out in *Prest v Petrodel* is that the concept of ‘piercing the corporate veil’ is a limited one to be used only in certain circumstances involving

impropriety and dishonesty. If applicable, the Court may only then pierce the corporate veil for the purpose of depriving the company and its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. Lord Sumption referred to the limited concept as engaging the 'evasion principle', that is, the evasion of an existing legal liability or an existing legal restriction through the use of a corporate structure. Lord Sumption acknowledged that in some cases where a fraud or dishonest scheme was alleged to have been perpetrated by the use of a company so as to conceal the identity of the dishonest wrongdoers (sometimes giving rise to the use of 'protean terms' such as 'façade' or 'sham'), a separate principle was engaged, which he referred to as the 'concealment principle'.

Analysis

29. I have determined this preliminary issue by finding that the Applicants' application for relief against Mrs. Ternent is dismissed for several reasons as set out below.
30. First, I am satisfied that the award in the Decision was made against the Company by undertaking a review of the various contemporaneous documents in this matter which included the documents as set out below in this paragraph. Also, the Applicants have never questioned that the Company was their employer.
- a. The work permits are issued in the name of the Company.
 - b. In an email dated 18 September 2023 from Ms. Gyles to Mr. Lauren Smith of the Department of Workforce Development, Ms. Gyles states that she "*joined Bersalon on 4 May 2021, under the employment of Susan Ternent. During my tenure at the Company,....*"
 - c. The letter dated 19 September 2023 from the Department of Labour Inspector in respect of the complaint was addressed to Mrs. Ternent as director/owner of the "*Bersalon Company Ltd*".
 - d. The Decision named the respondent in those proceedings as Susan Ternent, "*doing business as Bersalon*". Throughout the decision, the Tribunal refers to the "*the business, Bersalon*" and "*employees of Bersalon*".

- e. The Non-Compliance Decision named the respondent as “*Bersalon (Manager, Susan Ternent*” in both the heading and the appearances section. In the section entitled “Respondent’s Position”, the Tribunal noted that at the hearing for non-compliance, the respondent’s counsel requested “*that any further order make clear that the Respondent is Bersalon (as a limited liability company) and not Susan Ternent, the Manager of Bersalon*”. Although the Tribunal made no specific comment on the request, I am satisfied by the references in the written Non-Compliance Decision to the “Respondent” throughout, that the Tribunal had acceded to the request and was making references to the Company.
 - f. The HSBC bank statements were in the name of “*Bersalon Company Limited*”.
31. Second, I am not satisfied that there is evidence of impropriety and dishonesty as set out in *Prest v Petrodel* such that I should look behind the corporate entity. I do agree with Mrs. Ternent’s submissions that this was an employer and employee relationship which took place during the time of the Covid-19 Pandemic and its aftermath. Thus, I accept that on the face of it, the business had financial challenges from which it never recovered.
32. Third, in respect of impropriety and dishonesty there is no criminal case and there are no criminal offences in this matter which amount to circumstances to pierce the corporate veil. Taking the three points in turn as set out in *R v Seagar & Blatch*: (i) First, in my view Mrs. Ternent was not attempting to hide behind a corporate faced or veil in order to hide a crime or the benefits from a crime; (ii) Second, Mrs. Ternent was not doing acts in the name of the Company which led to a conviction; and (iii) Third, Mrs. Ternent was not attempting to disguise the true nature of transactions, in the form of a ‘device’, ‘cloak’ or ‘sham’ so as to deceive third parties or the Courts. To my mind, as stated above, Mrs. Ternent was operating a business that had financial challenges.
33. Fourth, I am not satisfied that there is any evidence that amounts to the concealment principle as set out by Lord Sumption in *Prest v Petrodel*. In this case, the Company was not interposed so as to conceal the identity of Mrs. Ternent as it appears that it was always known that Mrs. Ternent was a director and major shareholder of the Company. Likewise,

I am not satisfied that there is any evidence that amounts to the evasion principle set out by Lord Sumption. In my view, the Applicants did not have a legal right against Mrs. Ternent which existed independently of the Company's involvement. The legal relationship between the Applicants and the Respondent was always an employment one between the Applicants as employees and the Company as employer. Thus, frankly put, the Company has never been interposed between the Applicants and the Respondent in order to conceal or evade any circumstances.

34. Fifth, in *Prest v Petrodel*, as set out above, Lord Sumption stated that the corporate veil may be pierced only to prevent the abuse of a corporate legal personality, such as to evade the law or to frustrate its enforcement. However, I accept that Mrs. Ternent's operation of the Company involved incurring legal liabilities, but doing so was not an abuse. Thus, it follows that the liability of severance pay, vacation pay and unpaid wages was incurred by the Company in the first place. Likewise, it is not an abuse for Mrs. Ternent to rely upon the fact that a liability is not hers personally because it is the Company's liability. As Lord Sumption stated, "... that is what incorporation is all about".
35. Sixth, I have noted that the Applicants placed significant reliance on the "Fraud Act 2017" which as I have stated earlier, is not an act of the legislature as it was only ever tabled and was not ever passed into law. Thus, I place no reliance on those arguments.
36. In light of the above reasons, for this preliminary point, I dismiss the application to pierce the corporate veil and maintain Mrs. Ternent personally as the Respondent in this case.

Amendment

37. Mr. Rothwell conceded that the Respondent could properly be the Company with whom the Applicants had an employment relation. In the interest of fairness to the Applicants, in my view I will not dismiss the action, primarily because they can bring it again as against the Company. Thus, I grant leave to the Applicants to amend the Originating Summons to name the Company as the Respondent and to proceed to enforce the award accordingly.

Conclusion

38. For the reasons set out above:

- a. On the preliminary point, I dismiss the Applicants' application to pierce the corporate veil;
- b. I grant leave for the Applicants to amend the Originating Summons to name the Company as the Respondent; and
- c. The matter should be set down for a hearing in chambers soon for directions for the way forward.

39. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs, I direct that there be no order as to costs.

Dated this 24 July 2025



HON. MR. JUSTICE LARRY MUSSENDEN
CHIEF JUSTICE