Case No: B6/2011/3168
B6/2011/3170

Neutral Citation Number: [2012] EWCA Civ 1395
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
THE HIGH COURT OF JUSTICE FAMILY DIVISION
MR JUSTICE MOYLAN
FD08D01163

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/10/2012

Before:

LORD JUSTICE THORPE
LORD JUSTICE RIMER
and
LORD JUSTICE PATTEN

- -

Between:

Petrodel Resources Limited (1) **Petrodel Upstream Limited (2)** **Vermont Petroleum Limited (3)**	**Appellants**
- and -	
Yasmin Aishatu Mohammed Prest (1) **Michael Jenseabla Prest (2)** **Elysium Diem Limited (3)**	**Respondents**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Tim Amos QC and Ben Shaw (instructed by **Jeffrey Green Russell**) for the **Appellants**
Richard Todd QC and Stephen Trowell (instructed by **Farrer & Co LLP**) for the **First Respondent**
The second and third Respondents were not represented

Hearing dates: 2nd and 3rd July 2012

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Judgment

Lord Justice Thorpe :

Introduction

1. On 4th October 2011 Moylan J delivered judgment in the financial provision case of Prest, a truly extraordinary case even within the breadth and depth of family division bounds.

2. The husband and wife are both about 50 and both have dual Nigerian and British citizenship. The husband was born in Nigeria, the wife in England, both are highly educated. The husband was called to the Nigerian Bar. The wife graduated from Thames Polytechnic and subsequently obtained an MBA from Cranfield.

3. They met in 1992 and married in 1993. They have four children who are teenagers. Throughout the marriage they lived principally in London but with properties in Nigeria and the Caribbean. They lived to a very high standard. Both came from affluent backgrounds. At all material times the husband has been prominent and successful in international oil development and trade. The final matrimonial home at Warwick Avenue is worth about £4 million and there are a number of other properties that the husband has acquired in London, most in the name of three companies.

4. As well as the husband and the first respondent, there were seven corporate respondents. None of the corporate respondents took any part in the proceedings until the final hearing when the second, fourth and fifth appeared by leading counsel.

5. In paragraph three of his judgment Moylan J thus recorded the principal issues in the case:-

> "(a) The extent of the husband's wealth including the nature and extent of his interest in the respondent companies; and
>
> (b) Whether I can make orders directly against properties and shares held in the name of some of the respondent companies."

6. Continuing with his introduction, the judge recorded the husband's case that the net excess of his liabilities over assets equalled £48 million.

7. The wife's case was that the husband's assets net of liabilities equalled "tens if not hundreds of millions of pounds".

8. Thus on issue (a) the gulf between the respective positions of the husband and wife could hardly have been wider.

9. As to issue (b) Mr Todd QC, for the wife, stressed the extent of the court's power under s.24 (1) (a) of the Matrimonial Causes Act 1973 which enabled orders to be made against alter ego companies. Mr Todd relied on *Nicholas v Nicholas* (1984) FLR 285. He distinguished *Ben Hashem v Al Shayif* [2009] 1 FLR 115. Alternatively if *Ben Hashem* was not to be distinguished Mr Todd asserted impropriety in respect of the companies. Mr Todd further submitted that the companies held the shares and assets as bare trustee for the husband.

10. Mr Pointer QC for the husband and Mr Wagstaffe QC for the companies disputed the assertion that the properties and shares in the company were held on trust for the husband and they further submitted that the authority of *Ben Hashem* prevented the judge from making orders against the properties or the shares.

11. As to outcome the wife sought an overall award of £30.4 million. The husband proposed a package that amounted to a little over £2 million.

12. As is not uncommon in this specialist field of litigation the husband had repeatedly flouted his duty to give full frank and clear disclosure of his finances. He was in breach of many orders for disclosure; he had been repeatedly condemned in costs which he had not paid. At trial his evidence was both deceitful and shambolic. In paragraph 12 of his judgment Moylan J stated:-

> "….I have sought to make sense of the husband's factual case. Ultimately I have decided that this has been a vain task because the husband has failed so comprehensively to comply with his obligation to provide full and frank disclosure and to give clear evidence that his case does not permit of such an exercise (words omitted). The result of the way in which the case has developed is that a great deal of energy has been expended by the husband on seeking to establish what he is not worth rather than the more conventional focus being on seeking to demonstrate what he is worth (words omitted). His evidence consisted significantly of obfuscation and dissembling."

13. This introduction to the case illustrates what a difficult and frustrating task the judge faced. Responsibility for that state of affairs rested squarely with the husband and his companies.

The Proceedings and the trial

14. The proceedings have not run smoothly. In paragraph 34 of the judgment below Moylan J recorded:-

> "The husband has not voluntarily paid any part of the maintenance pending suit order in respect of costs. This is not a minor breach of the order; it is a significant failure. It is made the more significant when contrasted with the fact that the husband has paid in excess of £760,000 towards his own costs".

15. In a manoeuvre which I have not previously encountered the husband's brother issued against the husband and one of his companies an application in the High Court in Nigeria which produced an order unopposed restraining the husband from:-

    i) Disclosing any information concerning the accounts or affairs of the company.

    ii) Asserting or disclosing information that he is sole owner of the company.

16. As to this device the judge recorded at paragraph 142 of his judgment:-

> "Notwithstanding the terms of the Nigerian order the husband has been able to produce documents which would appear to be covered by its terms. They have been produced at random and in a manner which has given me the clear impression that the husband does so when he considers it might help his case… Such attempts to manipulate the process have been a recurrent feature of the husband's conduct during the proceedings."

17. In like manner when the Senior Master directed a letter of request to judicial authorities in the Isle of Man, a director of the Manx company avoided production, asserting concerns about claims that would be made against the board by shareholders or commercial partners for breach of confidence. Of that Moylan J aptly said:-

> "Given the husband's control over the corporate structure it is hard to understand how these concerns could be genuine. It is not difficult, in my judgment, to see the hand of the husband behind this obstructive line which is also reflected in letters written on behalf of the company by Manx advocates."

18. These sort of manoeuvrings in the interlocutory stages gravely impede the court and waste large sums of money. The trial judge faced a formidable task when he sat between 13th and 30th June 2011 to conduct the final hearing. He heard extensive oral evidence. As well as the husband and the wife there were two accountants whose evidence was of very limited value since they at least agreed that neither had received the information and documents that would enable them to make any worthwhile assessment or valuation. However, there was a strong card in the wife's hand given that she was able to call as a witness Mr Le Breton, a former business associate and fellow director of the husband.

19. The interval between 30th June and 4th October resulted from the judge's struggle to make sense of the evidence and some thirty lever arch files of documents.

20. Between paragraphs 55 and 78 of his judgment the judge wrestled with the incomplete, inadequate, confused and conflicting evidence as to the husband's activities through the corporate vehicles. The husband sought to rely on the evidence of a director of the companies, Mr Murphy. Mr Murphy chose not to appear. In paragraph 69 the judge concluded that Mr Murphy was unwilling rather than unable to attend.

21. In this section of his judgment the judge made two crucial findings. This is the first:-

> "I am satisfied that the directors of the group, including Mr Murphy, act in accordance with instructions given by or on behalf of the husband. The husband was unable in his oral evidence to provide details of any specific occasion when the directors had not acted in accordance with his instructions."

22. Here is the second:-

> "I have no doubt at all that the husband does, indeed, just draw from PRL whatever he and his family need, as and when they need it."

23. In the next section of his judgment the judge reviewed the London properties. Apart from the final matrimonial home there were eleven. Apart from one they were all in the name of one or other company. BNP had a loan charged against the properties. As to that the judge said:-

> "However, as a result of the husband's failure to give clear disclosure, the evidence is not sufficient for me to reach any firm conclusions as to what the true net position is in respect of the loan due to BNP."

24. The judge then reviewed the overseas properties and recorded the evidence that had been given by the husband and the wife. He also recorded the evidence of Mr Le Breton. In his evidence Mr Le Breton asserted that the husband was the ultimate owner of the companies. This is the judge's record of his evidence:-

> "…the husband was the effective owner of the Petrodel Group. He controlled every business decision. The directors acted merely on his instructions. Throughout the seven or eight years that he worked with the husband and Petrodel, the directors, according to Mr Le Breton, acted only on the husband's instructions. There was also significant expenditure through Petrodel for the benefit of the husband, the wife and the children but Mr Le Breton was not aware of any significant sums being spent for other family members. There are also investments made through the company which were not business opportunities but were, he said, "private commitments that (the husband) chose to make.""

25. Mr Le Breton also informed the judge that between 2001 and 2004 the husband stated that he was worth between $40 to $50 million.

26. Of the wife's evidence the judge said:-

> "I found the wife to be a careful and honest witness. She gave her evidence in a calm and dispassionate manner which was convincing."

27. The judge continued:-

> "I also found Mr le Breton to be an honest witness… As I have said… I am satisfied that his evidence was reliable. For many years Mr Le Breton and the husband were very close work colleagues and were also friends. I am satisfied that Mr Le Breton is in a very good position to give me an accurate insight into the husband's and Petrodel's affairs."

28. By contrast the judge said:-

> "…I have found the husband to be a wholly unreliable witness. The husband is clearly an extremely intelligent, articulate and astute individual. I form the clear impression that he regards the proceedings as a game in which he has sought to manipulate the process to his advantage. Despite occasional suggestions, largely by prompting, that he was seeking to help the court, the husband was an extremely evasive witness. He was adroit but was deliberately evasive. He would frequently fail to answer a question although he clearly understood its meaning and would often digress on to a different subject or ask questions about the question. I do not consider that I can rely on any of the husband's evidence unless corroborated by other reliable evidence."

29. Having then condemned the husband for his breach of obligation to provide full frank and clear disclosure he said:-

> "It would, as I have said, be a vain task to seek to make sense of his evidence because I am satisfied that much of it was opportunistic in that he would say whatever he felt at the moment best suited his case or at least provided him with an answer to the question."

30. The husband had asserted that he held corporate assets in trust for his birth family because the initial capital, or seed money, had been supplied by his father subject to that trust. This manoeuvre was trenchantly dismissed. The judge said in paragraph 136:-

> "I found the husband's evidence on this issue particularly unconvincing and I am satisfied that it is a deliberate invention."

Then in the next paragraph two sentences must be cited:-

> "I am satisfied the husband's evidence as to the existence of any seed monies is false. This has been invented for the purposes of seeking to defeat the wife's claims. In so far as the husband has an interest in the group or any of the companies within it or any of the assets held by the companies, such interests are held solely for the benefit of himself and his immediate family."

31. When the judge turned to the s.25 exercise he considered the general position thus in paragraph 143:-

> "As a result of the husband's failure to provide proper disclosure and honest evidence I do not have the information needed to enable me to determine the extent and value of the husband's resources. I am satisfied that the husband's failure has been deliberate. I have rejected his attempt to rely on the Nigerian proceedings and orders. I am satisfied that they are

> based on a false factual case and were contrived at the husband's instigation in an attempt to provide him with an explanation for his failure to comply with his obligations in these proceedings."

32. In relation to Petrodel the judge said:-

> "Specifically as a result of the husband's failure to comply with his disclosure obligations, the evidence which would be required to enable the value of Petrodel to be determined is almost completely lacking."

33. At least the judge was able to value the London properties at £11.3 million gross and £9 million net.

34. As to standard of living, the husband accepted that the running costs of the London home were about $400,000 per annum. He put his annual income needs at £800,000. The wife put her annual needs for herself and the children at £730,000.

35. Counsel's submissions were predictable. Mr Todd relied upon *Nicholas v Nicholas* and *Mubarak v Mubarak* [2001] 1 FLR 673. Mr Pointer relied on *Ben Hashem*. Mr Wagstaffe relied upon company rather than family authority, including *Salomon v Salomon & Co Ltd* [1897] AC 22, *Adams v Cape Industries Plc* [1990] Ch 433 and *Prudential Assurance Co Ltd v Newman Industries Ltd* [1982] Ch 204.

36. The judge in his review of authorities considered *Nicholas v Nicholas*, *Crittenden v Crittenden* [1990] 2 FLR 361, *Mubarak*, *Minwalla v Minwalla* [2005] 1 FLR 771, *W v H* (financial relief: without notice orders) [2001] All ER 300, A v A [2007] 2 FLR 467 and *Ben Hashem*.

37. From his review of these authorities he drew out the following principles:-

    a) Ownership and control were not in themselves sufficient to pierce the corporate veil.

    b) Even where there was no unconnected third party interest the veil could not be pierced only because it is necessary in the interests of justice.

    c) The veil can only be pierced if there is impropriety.

    d) The impropriety must be linked to the use of the company structure to avoid or conceal liability.

    e) In order to pierce the veil, both control by the wrongdoer and impropriety must be demonstrated.

    f) A company may be a façade even though originally incorporated without deceptive intent.

38. The judge then applied those principles to the facts before him. As to Petrodel he held that the whole structure was for the husband's benefit alone and in his control, the

husband "is able to change the structure and distribute the wealth within it to himself and/or his family as may be required or, I would add, as he wishes."

39. The judge concluded this important section of his judgment in paragraphs 208-210 which I must cite in full:-

> "I spent some time during the hearing, and longer since trying to make sense of what appeared to be inconsistent themes in the husband's evidence and seeking to identify how they might be reconciled. Ultimately I have decided that I have been seeking to impose an unduly legalistic framework onto a relatively simple factual situation, namely that the husband operates and controls the Petrodel group and its assets for the benefit of his immediate family. The wealth within the group is the family's wealth to which the husband has unrestricted access. I am satisfied that the husband is both the effective owner and controller of the whole of Petrodel corporate structure. In coming to this conclusion I accept the evidence of Mr Le Breton that the husband told him that he is the ultimate beneficial owner and I also accept his apposite phrase that Petrodel is the husband and the husband is Petrodel. In my judgment, the information memorandum as found by the wife accurately describes the husband as the owner.
>
> The extent to which the companies are the husband's nominees is demonstrated by the term in the contract, which I repeat, that he:
>
> > 'shall be assumed to report to the board for issues pertaining to the management of the company, yet you shall have and employ full discretion with the way you manage all the affairs of the company insofar as your actions are for the benefit of the company and its shareholders.'
>
> As the husband is the only effective shareholder, the husband is managing the affairs of the company solely for his benefit, hence the complete lack of any need for real board control. The husband has clearly used the companies to meet his and his family's personal expenditure, as well as his legal costs in these proceedings, without any inhibition. The lack of any paper accounting also demonstrates the lack of any board control or supervision.
>
> I am also satisfied that all the assets held within the companies are effectively the husband's property. He is able to procure their disposal as he may direct based again on his being the controller of the companies and the only beneficial owner. There are no third party interests of any relevance because the other shareholders are merely nominal with no expectation of benefiting from their shareholdings."

40. The judge then turned to the heart of his judgment, the wife's award. He began by reminding himself of the dicta of Sachs J in *J v J* [1955] P. 215 as to not only the duty of disclosure but also the consequences of breach, namely the drawing of adverse inferences. Being free to draw adverse inferences the judge concluded:-

> "I consider that, conservatively, the husband must be worth at least $60 million, i.e. approximately £37.5 million."

41. From that conclusion the judge assessed the wife's fair award at £17.5 million. The judge then addressed the vital question of how the husband's liability to the wife was to be discharged. Orders against foreign properties would be difficult to enforce. Orders against the husband's shareholdings impossible, given that they were shrouded in the mist of concealment, subterfuge and lies. The judge felt unable to find impropriety within the meaning of the decided cases. The husband's litigation misconduct was not so much impropriety as the giving of false evidence. The judge considered that he had to choose between the *Nicholas* approach and the *Ben Hashem* approach. But the judge's essential ratio is to be found in paragraph 220 when he posed the question: were the London houses "property" to which the husband was "entitled, either in possession or reversion" within the meaning of s.24 (1) (a). There could be no doubt that the houses were property. Thus "the crucial words are, therefore, entitled either in possession or reversion, words which have not been the subject of any particular analysis." The judge then concluded that that test was satisfied on the facts of this exceptional case. The directors were "stooges or ciphers". Payments were made for the benefit of the husband and his family without any apparent attempt to see whether the husband was entitled to such payments. The wealth within the structure was feely available to be distributed as the husband directed. Accordingly:-

> "In this case the husband can without inhibition acquire the properties and shares which the wife seeks because in effect, the companies are his nominees or agents. As a result, in my judgment, the husband is entitled to the shares and properties held in the names of the corporate respondents because there is no impediment, including third party interests, to his enjoying the full benefit of those assets. They are held by the companies for the husband because the corporate structure is being used as a repository for the family wealth. Effectively the husband, in respect of the companies and their assets, is in the same position as he would be in if he was the beneficiary of a bare trust or the companies were his nominees. There exists no legal impediment to his procuring the transfer of the assets held by the companies into his name. In the language of the cases they are his "alter ego". "

42. In so holding and ordering the judge rested on the statutory power of s.24 which freed him from the constraints of company law as identified in *Salomon v Salomon* and following cases.

43. Accordingly, in the order giving effect to judgment, the husband was ordered to transfer or cause to be transferred to the wife the London properties together with three properties in Nevis and the shares in a Nevis company. Following transfer the

properties were to be sold and the net proceeds of sale applied in satisfaction of the lump sum.

44. I have followed the structure of the judgment in such detail and drawn out the judge's findings and conclusions in order to substantiate my opening observation that this was a truly exceptional case for the scale of the husband's litigation misconduct. There was almost no length to which he was not prepared to go in order to attempt to defeat or diminish the wife's claim. In such a case the judge's search for reality is never easy but it is vital that the court should not be prevented or emasculated by the devious and dishonest.

Submissions on appeal

45. It is in that context that I turn to the submissions on this appeal. The only appellants are the three companies who have had the advantage of representation by Mr Amos QC whose style of advocacy seems to clothe any client with respectability. They also had the advantage of a specialist company law junior in Mr Shaw.

46. Mr Amos first urged that the word "entitled" could not mean by custody or control but only by enforceable legal right.

47. Second, Mr Amos submitted that the corporate veil could only be pierced if impropriety of a particular character could be established. That proposition applied as much in Family as in Chancery proceedings. *Ben Hashem* had been specifically approved by the recent decision of this court in *VTB Plc v Nutritek International Corporation* [2012] EWCA Civ 808.

48. Third, he submitted that that last word from this court implicitly overruled the dicta in *Nicholas v Nicholas* and in *Re a company* [1985] BCLC 333.

49. Fourth, Mr Amos distinguished *Mubarak*. Bodey J was considering the court's powers in the enforcement of an award arising from a contested hearing in which the husband had conceded that the company assets were to be treated as his.

50. Finally Mr Amos submitted that the regulatory structure of company law militated strongly in favour of allowing the appeal. For what the order had achieved was to change the order of priority, not just preferring one creditor over another but advancing the husband as shareholder over any and all creditors.

51. Mr Todd QC and Mr Trowell essentially relied on the legal analysis of Moylan J. However, Mr Todd submitted that the cases of *Ben Hashem* and *Nicholas* were not in conflict rather that they illustrated the operation of two separate principles. *Ben Hashem* considered and applied to financial provision cases the classic rules of company law which tightly confined the circumstances in which a court might pierce the corporate veil. However, *Nicholas v Nicholas* recognised an essential power in financial provision cases to make orders against assets which undoubtedly belonged to the husband, despite the fact that he might, for whatever reason, have chosen to hold them in a trust or company.

Conclusions

52. In weighing these rival submissions on the development of the case law I prefer the submissions of Mr Todd. Were there only one line of authority and were the Family Division judge bound to apply the company law as stated in *VTB Plc*. in many cases he or she would be unable to make orders fair to applicant wives.

53. The powers of redistribution of assets on pronouncement of a decree came into force on 1st January 1971 and the development of the necessary case law was a gradual process. The decision in *Nicholas v Nicholas* can be seen as a relatively early pronouncement of the power necessary to enable the judge in financial provision cases to do justice.

54. More recently, Munby J was ideally qualified to hold the balance between the family law and the company law authorities. Important is his decision in *W v H*. Between pp 310e and 311d Munby J recognised the importance of the power of Family Division judge in financial provision cases as first stated in *Nicholas v Nicholas*. He struck the balance in financial provision proceedings precisely when he said in the final paragraph of the passage to which I have referred above:-

> "Nothing that I say should be taken as intended to water down in any way the robustness with which the family division ought to deal in appropriate cases with husbands who seek to obfuscate or to hide or mask the reality behind shams, artificial devices and similar contrivances. Nor do I doubt for a moment the propriety and utility of treating as one and the same a husband and some corporate or trust structure which it is apparent is simply the alter ego or creature of the husband. On the other hand, and as the *Nicholas* case itself demonstrates, the court does not – in my judgment cannot properly – adopt this robust approach where, for example, property is held by a company in which, although the husband has a majority shareholding, the minority shareholdings are what Cumming Bruce LJ called 'real interest' held by individuals who as Dillon LJ put it, are not nominees but business associates of the husband."

55. I would adopt that paragraph as a clear statement of the principle properly and necessarily applied in family provision proceedings.

56. When Munby J came to deliver his judgment in *Ben Hashem* the number of cases referred to in judgment is impressive and includes his earlier decision in *W v H* (cited as *W(ex parte orders*) which is how it had been designated in the Family Law Reports).

57. In *A v A* [2007] 2FLR 467 Munby J had emphasised that his observations in *W v H* did not permit a court to ride rough shod over established principles especially if third party interests were involved. In *Ben Hashem* at paragraph 94 he made the same point, citing from his judgment in A v A those paragraphs in which he had set limit on his prior observations in *W v H*. Thus, although in *A v A* and *Ben Hashem* I find

Munby J cautioning against excess and emphasising that company law was uniform in all divisions, he does not disavow the propositions stated in ***W v H***.

58. I would not complicate the approach that a Family Division judge can legitimately adopt either by reference to company law authority on "lifting or piercing the corporate veil" or by questioning whether judges have used an alternative expression of the same principle when they have referred to ownership by an alter ego. The simple question is whether the individual is entitled to the property within the meaning of s.24 (1) (a). The Family Division judges with particular expertise in this field (such as, Bodey J, Coleridge J and Mostyn J) have on many occasions stressed the need to get to the reality in determining the assets to which the husband is entitled. Indeed Mostyn J in an obiter passage in his judgment in ***Hope v Krejci***, handed down on 29th June 2012, considered the impact of the decision in ***VTB***. He concluded in paragraph 22:-

> "I can easily see why these principles are critically necessary when the objective is that which was sought in the *VTB* case, namely to deem someone to be a party to a contract to which he plainly is not. But I have great difficulty in seeing why they must be satisfied for the form of piercing of the veil that is the telescoping order, which is almost invariably the situation confronted in financial remedy proceedings."

59. Moylan J, whose expertise in this area is no less, adopted that approach and thereby achieved justice for the applicant.

60. Mr Amos's submissions in this court are essentially the submissions advanced by Mr Wagstaff below. They were rightly rejected by the judge. Vital are the judge's findings as to the complete absence of boundaries between the husband and his companies observed by not only him, who is not an appellant, but also the companies, who are. On the exceptional facts of this case I conclude that the judge was entitled to order the husband to transfer or cause to be transferred the assets which he did.

61. In the course of argument we were referred to a process which is known as telescoping which involves ordering the individual not to transfer the property but to transfer shares or to vote himself dividends or loans as a route to the property. That seems to me both cumbersome, expensive and uncertain to achieve the desired end. It is to import the discipline of company law in to a situation where at all material times the individual has not respected or utilised that discipline. However, that point hardly arises in the present case where none of the parties has ever advocated it.

62. As indicated above I would dismiss this appeal.

63. I have of course reviewed the judgment which I wrote in July in response to the receipt in October of the powerful judgment written by my lord, Rimer LJ. However, despite its cogency I emphasise that all judges who have endeavoured to achieve fairness in big money cases at first instance, including Munby J, have followed the pathway marked by Cumming-Bruce LJ, himself a former judge of the Division. I myself followed this path in the eight years that I sat in the Division and I have not questioned it in the more years that I have sat in this court. If this court now concludes that all these cases were wrongly decided they present an open road and a fast car to

the money maker who disapproves of the principles developed by the House of Lords that now govern the exercise of the judicial discretion in big money cases.

64. In this case the reality is plain. So long as the marriage lasted, the husband's companies were milked to provide him and his family with an extravagant lifestyle. That was only possible because the companies were wholly owned and controlled by the husband and there were no third party interests. Of course in so operating them husband ignored all company law requirements and checks.

65. Once the marriage broke down, the husband resorted to an array of strategies, of varying degrees of ingenuity and dishonesty, in order to deprive his wife of her accustomed affluence. Amongst them is his invocation of company law measures in an endeavour to achieve his irresponsible and selfish ends. If the law permits him so to do it defeats the Family Division judge's overriding duty to achieve a fair result.

Lord Justice Rimer :

Introduction

66. This appeal raises a question as to the court's jurisdiction in ancillary relief proceedings between spouses to order assets held by companies to be transferred to the applicant spouse in or towards satisfaction of her claim. The applicant (respondent to the appeal) was Yasmin Prest ('the wife'). Michael Prest ('the husband'), the main respondent to her application, was originally an appellant but his appeal was struck out for want of compliance with conditions of orders of the court. The remaining appellants, also respondents to her application, are three companies in his control: Petrodel Resources Limited ('PRL'), Petrodel Upstream Limited ('Upstream') and Vermont Petroleum Limited ('Vermont'). All three are incorporated in the Isle of Man.

67. The main orders under challenge are those in paragraph 5 of Moylan J's order of 16 November 2011 by which he ordered the husband to 'transfer or cause to be transferred' to the wife: (i) four London properties and an interest in a fifth all 'held in the name of' PRL; and (ii) two London properties 'held in the name of' Vermont. Paragraph 5 did not also relate to properties held by Upstream, but Upstream appeals (as do PRL and Vermont) against other orders made by the judge, including his costs orders, although there is no need to refer further to them in this judgment.

68. In making the paragraph 5 orders the judge was purporting to exercise the jurisdiction conferred upon the court by section 24(1)(a) of the Matrimonial Causes Act 1973, which provides so far as material:

> '(1) On granting a decree of divorce … the court may make any one or more of the following orders, that is to say –
>
> > (a) an order that a party to the marriage shall transfer to the other party, … such property as may be so specified, *being property to which the first-mentioned party is entitled, either in possession or reversion;'* [emphasis supplied]

69. A question that exercised the judge, and this court on the appeal, was whether the properties the subject of his paragraph 5 orders were 'property' to which the husband was so entitled. Only if they were did the judge have jurisdiction to make the orders. Thorpe LJ has concluded that the judge was entitled to regard the properties as such 'property' and so make the orders that he did.

70. I respectfully disagree with Thorpe LJ's reasoning and conclusion and would allow the appeals against the paragraph 5 orders. I consider, with respect, that the judge fell into fundamental error. He made no primary findings justifying any conclusion other than that the properties were part of the assets of, and belonged beneficially to, the companies that respectively owned them. He held, however, that the husband's sole control of the companies as their 100% owner enabled him to deal as he wished with the companies' assets, and that it followed that the husband was therefore the beneficial owner of such assets and so 'entitled' to them within the meaning of section 24(1)(a).

71. In so holding the judge was wrong. He should have held that section 24(1)(a) had no application to the paragraph 5 properties and gave the court no jurisdiction to make the orders. That is because the shareholders of a company have no interest in, let alone entitlement to, the company's assets and the same applies to a shareholder who is a 100% owner of the company. The distinction between the respective legal personalities, rights and liabilities of a company and those of its shareholders is as valid today as when the House of Lords decided *Salomon v. A. Salomon and Company, Limited* [1897] AC 22 and it applies as much in the disposition of ancillary relief proceedings as in other proceedings. The judge, however, simply equated the companies with the husband and regarded their assets as his.

The judge's judgment

72. The judge gave a very full judgment in which he explained that the husband's failure to co-operate in the disclosure process and to give clear evidence prevented him from giving a comprehensive account into which all the pieces of the jigsaw could be fitted. I do not question that such lack of co-operation made the judge's task more difficult than it should have been. The judge's findings of central importance are, however, as to the companies, their ownership and their assets and I must explain them.

73. The structure of the many companies in the Petrodel group is complicated but the relevant shareholdings are as follows. A Nevis company, Petrodel Resources (Nevis) Limited ('the Nevis company'), holds 100% of Upstream. The Nevis company also holds 97.5% of a Nigerian company called Petrodel Resources (Nigeria) Limited ('PRNL'), the other 2.5% being held as to half each by the wife and Helen Davies (the husband's sister). PRNL holds 99.99% of PRL, with the other 0.01% being held by Margaret Wilson, the wife's mother; and PRNL and PRL respectively hold 51% and 49% of Vermont. The husband's evidence was that the Nevis company (which owned 97.5% of PRNL) was itself wholly owned as to 100% by PRNL. The judge said (paragraph 55(c)) that 'this circular ownership is but one of the puzzling features of this case.' He also, however, referred to the different evidence of Mr Le Breton (who had worked in the Petrodel group until 2008), which was that the Nevis company was not owned by PRNL but that its shares were held for the husband's benefit through a trust; and at the hearing of the appeal, Mr Amos QC, for the appellants, told us that the Nevis company is now owned by a Nevis entity called the Family One

Foundation, whose shares are held on trust for, amongst others, the husband. There are other companies in the group to which the judge referred in his judgment, but it is unnecessary to refer to them. The appeals are only about, or only directly about, PRL, Vermont and Upstream.

74. The judge said (paragraph 55(b)) that PRNL was 'effectively a holding company for [PRL]'. Both companies were incorporated in 1993. PRL was the main trading company of the group, its accounts showing that it started trading in 2002. Its original shareholders were the husband and the wife and its first directors were relatives of the wife. By the trial, its shareholding was held as I have described and its directors were Ms Walters and Mr Murphy, the latter providing his services through a management company. The judge found that the husband began working full-time in the group in 2005, as chief executive officer of PRL. The judge said of PRL (paragraph 22) that:

> '[it] has been involved in the oil business in what are called downstream activities, namely trade and transportation, and more recently has been involved in upstream activities, namely oil exploration and production. Accounts for the years 2005, 2007 and 2008 … show turnover of between $572 million and profits of between just under $3 million and approximately $6 million.'

75. The judge referred (paragraph 77) to the husband's evidence that although PRL was still trading in gasoline, it had not undertaken a trade since one effected in early 2010 for which payment remained due. Documents produced during the trial showed, however, that 'substantial trades have continued to be made by companies within the group, probably, either [Vermont] and/or [the Nevis company].' Both PRL and Vermont are, or were, trading companies.

76. The former matrimonial home, 16 Warwick Avenue, London W2, was bought in PRL's name in 2001. The judge said (paragraph 228) that if it were necessary so to decide, he would have held that Warwick Avenue was held by PRL on trust, or as a nominee, for the husband (he had earlier set out the evidence justifying such a finding) and (by paragraph 3 of his order) he ordered its transfer to the wife. There is no appeal against that order, permission to appeal having been refused. As for the seven other London properties respectively held by PRL and Vermont which are the subject of the appeals, the judge made no like finding that any was held either on trust, or as nominee, for the husband although he had been pressed by the wife to do so. The judge explained that all the London properties were the subject of a charge by their respective corporate owners to BNP Paribas and that all save for Warwick Avenue were also charged to Ahli United Bank (UK) Plc. The charged properties had a combined gross value of £11.3m, the indebtedness to Ahli being just under £1.9m. In paragraphs 80 to 84 and 159 to 161, the judge explained the evidence as to the indebtedness to BNP Paribas but was unable to make a clear finding as to its amount. On one view, it may have been about $7.6m.

77. The judge made an important finding as to the husband's role in the governance of PRL. He referred to Mr Le Breton's evidence that its directors acted pursuant to the husband's instructions and to the terms of the husband's employment contract as chief executive officer, which gave him full discretion as to the management of PRL's affairs 'insofar as [his] actions are for the benefit of the company and its shareholders.' He said (paragraph 70) that:

> ‘I am satisfied that the directors of the group, including Mr Murphy, act in accordance with instructions given by or on behalf of the husband. The husband was unable in his oral evidence to provide details of any specific occasion when the directors had not acted in accordance with his instructions.’

The judge thus found the husband to be a ‘shadow director’ of PRL (compare section 251(1) of the Companies Act 2006), although he did not so describe him.

78. The judge explained (paragraphs 71 to 74) the unsatisfactory evidence in relation to the directors’ current account shown in the PRL accounts, which showed liabilities to directors of just over $10m for each of 2008 and 2009. This appeared to baffle the husband in his cross-examination, who at one point denied that he had a current or loan account with PRL as he was not a director. Despite this, the judge found it to be clear that ‘there is no person other than the husband to whom such sums could or would be due’ and he referred to the husband’s acknowledgement elsewhere that he did have a director’s loan account. The judge then said:-

> “74. The loan account has not been produced. Indeed, there is no direct evidence at all as to how the husband’s income and bonuses are dealt with in PRL’s accounts save possibly for references to directors’ remuneration which, given the amounts, are very unlikely to relate to actual directors. Further, the amounts given for directors’ emoluments are significantly less than the annual amounts spent by the husband on himself and his family and for which there appears to be no significant source other than PRL. … The husband told me that he does not know how his income and bonus are dealt with in the accounts. When he was asked whether he receives any benefits from PRL other than his salary he replied that this is an accounting question. When asked in cross-examination to explain how some of the payments relating to the wife’s mother were for the company’s benefit, the husband replied that she was a shareholder. When Mr Todd asked whether a dividend had been declared, the husband said he was not sure how this benefit or these payments had been received.
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> 75. It was suggested to the husband in the course of his cross-examination that he just draws from PRL whatever he and his family need. He denied this but when then asked how he paid for school fees he said he would either pay it himself or he would take a director’s loan. The only company of which the husband is a director is [PRNL]. There is no indication that this company has had sufficient resources to enable school fees to be paid. As the husband’s employment contract permits him to set his own bonus, the whole exercise is artificial in any event as, if required, he could simply ascribe all payments made for his or his family’s benefit as being part of his bonus. I have no doubt at all that the husband does, indeed, just draw from PRL whatever he and his family need, as and when they need it.”

The judge referred (paragraph 93) to the fact that school fees, other educational costs, holidays in Italy and the cost of a chalet in Meribel had been paid by PRL out of its Royal Bank of Scotland account in the Isle of Man.

79. The judge made certain findings with regard to the husband’s interest in the Petrodel group between paragraphs 199 and 210. He concluded as follows:

‘208. I spent some time during the hearing, and longer since, trying to make sense of what appeared to be inconsistent themes in the husband’s evidence and seeking to identify how they might be reconciled. Ultimately I have decided that I have been seeking to impose an unduly legalistic framework onto a relatively simple factual situation, namely that the husband operates and controls the Petrodel group and its assets for the benefit of his immediate family. The wealth within the group is the family’s wealth to which the husband has unrestricted access. I am satisfied that the husband is both the effective owner and controller of the whole of the Petrodel corporate structure. In coming to this conclusion I accept the evidence of Mr Le Breton that the husband told him that he is the ultimate beneficial owner and I also accept his apposite phrase that Petrodel is the husband and the husband is Petrodel. In my judgment, the Information Memorandum as found by the wife accurately describes the husband as the owner.

209. The extent to which the companies are the husband’s nominees is demonstrated by the term in his contract … that he:

> “shall be assumed to report to the board for issues pertaining to the management of the company, yet you shall have and employ full discretion with the way you manage all the affairs of the company insofar as your actions are for the benefit of the company and its shareholders.”

As the husband is the only effective shareholder, the husband is managing the affairs of the company solely for his benefit, hence the complete lack of any need for real board control. The husband has clearly used the companies to meet his and his family’s personal expenditure, as well as his legal costs in these proceedings, without any inhibition. The lack of proper accounting also demonstrates the lack of any board control or supervision.

210. I am also satisfied that all the assets held within the companies are effectively the husband’s property. He is able to procure their disposal as he may direct based again on his being the controller of the companies and the only beneficial owner. There are no third party interests of any relevance because the other shareholders are merely nominal with no expectation of benefiting from their shareholdings.’

80. Those paragraphs include a clear finding that the husband was the ultimate owner of the group and so in a position to control its affairs. The judge described him as the ‘effective owner’ of the group and I read the ‘effective’ as reflecting that, whilst the ultimate shareholding was not vested in the husband, he was nevertheless its sole controller. Given the evidence he heard, that finding was unsurprising and the appeals involved no challenge to it.

81. The question in the appeal is not, however, as to the ownership of the ultimate shareholding that conferred control of the group companies, but as to the ownership of the properties the subject of the paragraph 5 orders. There is no dispute that they were vested in and held by one or other of PRL and Vermont and so, prima facie, were *their* assets. They could not therefore be made the subject of the paragraph 5 orders unless the true analysis was that, although held by the companies, they were properties to which the husband was ‘entitled, either in possession or reversion’ within the meaning of section 24(1)(a). In paragraph 210 the judge found that all the

Petrodel group's assets were 'effectively the husband's property'. I interpret the 'effectively' as reflecting the judge's reluctance, at any rate by that point in his judgment, to go so far as to say that they *were* his property.

82. During the argument, Thorpe LJ suggested that the judge probably there meant that the assets belonged to the husband 'in reality'. With respect, that is to substitute for the judge's own imprecise wording a phrase of like imprecision. The question for the judge was in principle simple. Section 24(1)(a) obviously focuses only on property to which the respondent spouse is beneficially entitled, the location of the legal title being immaterial. The assets held by the companies (including therefore the properties) either belonged beneficially to the companies or to the husband. No third alternative was canvassed. Before the judge could make an order under section 24(1)(a) in relation to the various London properties, he had to be satisfied that they were the husband's beneficial property: and a finding that were 'effectively' his property (whatever that may mean) was not good enough. The judge appears there to have been basing that finding on no more than his primary finding that the husband's sole control of the Petrodel group carried with it the authority to deal with all the group's assets. The critical question, however, is whether such control meant that the husband was in fact the beneficial owner of the companies' assets and, therefore, that the companies had no beneficial interest in them. The judge has not yet answered that question unambiguously, although these paragraphs were not his last word on the topic. The ordinary principle is that the shareholders of a company (including a shareholder with 100% control) have no interest of any nature in the company's assets.

83. In paragraphs 211 to 230, the judge explained the award that he proposed to make in favour of the wife. In assessing the husband's financial resources, which was the first issue upon which the judge embarked, he referred again to the husband's failure to give full and frank disclosure of his resources and held that he was entitled to draw adverse inferences against him. In making his assessment, the judge took into account the value of his interests in the Petrodel group and explained, in paragraph 215, that he was satisfied that the husband had continued through Petrodel to trade successfully since 2004, the accounts of PRL suggesting that it had made a net profit for the four years 2005 to 2008 of $19m. The judge concluded that the husband 'must be worth at least $60 million, ie approximately £37.5 million.' That finding reflected that the husband's wealth included the value of his ultimate shareholding in the Petrodel group. The judge decided that a fair award to make to the wife was for her to receive resources totalling £17.5m.

84. The judge turned, at paragraph 217, to consider how that award should be structured. Mr Todd QC, for the wife, had sought a lump sum order, with property transfer orders in respect of the London properties and the company shares in part satisfaction. Counsel for the husband and the companies had respectively submitted that no direct orders could be made in respect of the shares or properties held by the companies unless the judge was able to 'find the requisite impropriety as set out in [*Ben Hashem v. Al Shayif* [2008] EWHC 2380 (Fam); [2009] 1 FLR 115, a decision of Munby J]'. That was a decision to the effect that, without such a finding, it was not open to the court to pierce the Petrodel companies' veils of incorporation and so identify the companies with the husband; and that, without such piercing and identification, there was no basis for an order directly in respect of shares and/or properties held by the

companies, because such assets were their assets, not the husband's. The judge added that there was 'also the separate issue of whether the companies hold the shares and properties on trust for the husband or as his nominee.' If the answer to that was yes, the route to the order sought by Mr Todd was straightforward: because if such shares and/or properties were so held, they were plainly 'property to which [the husband was entitled], either in possession or reversion' within the meaning of section 24(1)(a). In the event, the judge declined to answer that latter question in the affirmative.

85. Importantly, the judge also expressly rejected the case that there was any relevant impropriety or, therefore (as might be thought to follow), any case for piercing the corporate veils of the Petrodel companies. His reasons were these:

> '218. Dealing first with the issue of impropriety, has the wife established that the company structure has been used to avoid or conceal liability? In my judgment the company structure in this case was set up and has been used for conventional reasons including wealth protection and the avoidance of tax. Mr Todd is right, for example, to point to the reference in the annex to the husband's Form E to his transferring his shares in [PRNL] to the Nevis company because he was involved in litigation. However, this does not result in the company structure being used to conceal or avoid liability. It is seeking to provide a degree of protection for the wealth, which may or may not be effective depending on the nature of the rights retained by the husband. He is also right to point to the company structure effectively being the husband's money box which he uses at will. This might be contrary to accounting or company law principles but any disregard of those principles does not, in my view, mean that the structure is being used to avoid or conceal liability. From the husband's perspective the wealth and the corporate structure is and remains his but at the same time he is able to take advantage of the tax and other benefits of holding it within a corporate structure.
>
> 219. I also do not accept Mr Todd's submission that the undoubted use by the husband of the corporate structure to seek to deny that the companies or their assets are his resources or are assets available to him amounts to impropriety as that word is used in the authorities. It is simply a husband giving false evidence. Accordingly, I do not consider that the wife has established impropriety in this case.'

86. Having held that the conditions for piercing the corporate veil were not satisfied, the judge nevertheless went on to hold that the husband was 'entitled' to the relevant properties within the meaning of section 24(1)(a) and, therefore, that he could and should make the paragraph 5 orders for the transfer of the properties held by PRL and Vermont. That reasoning substantially repeated what the judge had found in paragraphs 208 to 210 (quoted above) but he re-reasoned the issues and I must set out what he said. I should also first set out his interpretation, in paragraph 193, of Bodey J's decision in *Mubarak v. Mubarak* [2001] 1 FLR 673:

> '193. In essence, Bodey J decided, notwithstanding the comments in [*Crittenden v. Crittenden* [1990] 2 FLR 361], that property is within the scope of section 24 if it is property to which a spouse is to be treated as being "entitled" which can include property held by a company of which a spouse effectively has complete, or perhaps more accurately a sufficient degree of, control or ownership. Although the effect is to pierce the corporate veil it is, in my view, a question of statutory

interpretation. Does the power given to the court by the Matrimonial Causes Act extend to property held through a corporate or other structure to which one spouse is (in effect) entitled through the use of rights and powers available to him and her? Bodey J decided that if a party has effective control of the legal or corporate structure and, because third party interests would not be prejudiced, is also the only person effectively entitled to the benefit of the property, then that property is within the scope of section 24 as being "property to which … (that) party is entitled in possession". …

220. In my judgment, the question I must decide is whether the relevant shares and properties are "property" to which the husband "is entitled, either in possession or reversion". It is plain that the word "property" is extremely broad and covers all forms of property. The crucial words are, therefore, "entitled either in possession or reversion," words which have not been the subject of any particular analysis. I agree with Mr Wagstaffe that if a lay person was asked the question whether a husband who owns a company which owns a house is entitled to the house, they would reply in the affirmative but I also agree with him that I must decide from a legal perspective whether as a matter of statutory interpretation, as applied to the facts of this case, the answer is the same. In undertaking this task, I am persuaded that I should apply [*Nicholas v. Nicholas* [1984] FLR 285] and what appears to me to be Bodey J's reasoning in *Mubarak* as set out in paragraph 193 above.

221. As I have indicated, I am satisfied that the husband has complete control over the Respondent companies both in terms of their operation and in terms of their management. He is the controlling force and the directors clearly act on his instructions. They are, to use the words of Munby J from *Ben Hashem*, the husband's "stooges" or "ciphers". I could also adopt the following passage from Lord Denning MR's judgment in *Wallersteiner v. Moir* [1974] 3 All ER 217:

> "He was in control of them as much as any one-man company is under the control of the one man who owns all the shares and is the chairman and managing director. He controlled their every movement. Each danced to his bidding. He pulled the strings."

222. There is no evidence that any of the directors of any of the companies acted other than in accordance with the husband's instructions. There is good evidence provided by Mr Le Breton that the corporate structure, the whole of it, was managed as the husband directed and I remind myself, again, of the terms of the husband's contract of employment. Payments were made for the benefit of the husband and his family without any apparent attempt to see whether the husband was entitled to such payments. I have seen no reference to any determination being made of the husband's bonus. The husband does not know how his income and bonus were accounted for in the accounts. There is reference to director's remuneration but the amounts are substantially less than the amounts paid to the husband or for the benefit of the family. The husband himself accepts that the structure is such that he is able to effect whatever might be required to meet his obligations under Itsekiri customary law, be it transferring shares to his siblings or otherwise. How, I ask, would the husband be able to achieve this if he is not the effective owner of the whole group and of the companies?

223. The superficial nature of the company structure and the extent of the husband's control can be seen from his contract of employment and the other matters to which I have referred. It is also clear to me that the husband looks at things from the perspective of obligations or need. The legal structure is of secondary importance save that clearly any such structure must be capable of being used to enable his obligations and/or his needs to be met. So, for example, if the husband's customary law obligations require him to give his siblings shares in the company, then the structure must be such as to enable him to do so. I am confident that Mr Elusogbon did tell the husband not to worry because, indeed, the structure which holds the wealth and assets can be adjusted as required, or to put it another way the wealth held within the structure is freely available to be distributed as the husband directs. It is difficult to see how this could be achieved by him unless he controls, in English law terms, both the legal and the beneficial interest in the worth. Further, if the husband not only has complete control but also is the sole effective owner, which I have found that he is, in my judgment, again in English law terms, I would see this as equating to beneficial ownership.

224. In summary, therefore, in my judgment the answer to the question of whether an asset held in the legal name of a company is property which falls within section 24(1)(a) depends on the facts of the case. It is right, of course, that as a matter of company law a shareholder only has a right of participation in accordance with the Articles of Association and has no right to any particular item of property. But, what if the shareholder is, in fact, able to procure the transfer to them of a particular item of company property, such as a matrimonial home, as a result of their control and ownership of the property and the absence of any third party interests. Am I to ignore the reality that the shareholder is able to procure the transfer to them of that property for the purposes of deciding whether it is property to which they are entitled?

225. In my judgment, it would be contrary to the purpose and intention of the legislation if I were to do so. The legislation is intended to ensure that marital wealth can be distributed by the court between the parties in a fair and just manner. In this case the husband can without inhibition acquire the properties and shares which the wife seeks because, in effect, the companies are his nominees or agents. As a result, in my judgment, the husband is "entitled" to the shares and properties held in the names of the corporate respondents because there is no impediment, including third party interests, to his enjoying the full benefit of these assets. They are held by the companies for the husband because the corporate structure is being used as a repository for the family wealth. Effectively the husband, in respect of the companies and their assets, is in the same position he would be in if he was the beneficiary of a bare trust or the companies were his nominees. There exists no legal impediment to his procuring the transfer of the assets held by the companies into his name. In the language of the cases, they are his "alter ego".

226. I do not consider that the company law principles, relied upon in particular by Mr Wagstaffe, determine the scope of the powers given to the court under the Matrimonial Causes Act. In my view, if a party is both the effective controller and the effective owner of a company it does not strain the language of the Matrimonial Causes Act to decide that he is "entitled … in possession" to an asset

held by that company such as the former matrimonial home. This interpretation accords with what was said in *Nicholas.* As identified in *Mubarak,* he is entitled to the asset in possession because he has the right and ability to procure its transfer to him for his own use. This is not to challenge the principles established by *Salomon* or *Adams v. Cape* or the other authorities referred to in the decision of *Ben Hashem.* It is to recognise, as was said by Slade LJ in *Cape* at page 536G, with my emphasis:

> "*save* in cases which turn on the wording of particular statutes, the court is not free to disregard the principles of *Salomon* merely because it considers that justice so requires.'

227. As a matter of general law the companies in the Petrodel group may be separate legal entities but, in my judgment, under the Matrimonial Causes Act their assets fall within the scope of section 24 as a result of the complete nature of the husband's control and ownership. As Mr Wagstaffe submitted, the wife can have no stronger claim than the husband's. In this case, as a result of control and ownership, the husband is able to procure the transfer of the properties and shares into his sole name or as he may direct. The case was argued on behalf of the husband and the companies on the basis of the husband's rights as against the company. Apart from the alleged interests of the husband's siblings, which I have rejected, it has not been asserted that any other rights or interests would or should inhibit me from making the orders sought by the wife.

228. I also propose to deal specifically with the position of Warwick Avenue. I am satisfied that the monies used in the purchase and refurbishment of that property came from the husband. There is no evidence that he lent this money to the company, nor that he gifted it to the company. Accordingly, if it were necessary for me to decide the issue, I would decide specifically that the company holds that property on resulting trust for the husband.'

The appeals

87. I make first some observations about section 24(1)(a) of the Matrimonial Causes Act 1973. It is a clear and uncomplicated provision. The task that section 24(1)(a) sets the court is to identify 'property to which [the respondent spouse] is entitled, either in possession or reversion', and then to consider whether to make a property adjustment order in relation to any property so identified. The 'property' to which the paragraph refers means property to which the respondent spouse is beneficially entitled. The nature of the court's inquiry as to the beneficial ownership of a particular asset will be the same as it would be in a case not arising under the section 24 jurisdiction: 'property' for the purposes of section 24(1)(a) cannot and does not mean something different from 'property' in other contexts. The inquiry will show that the asset in question either is, or is not, property of the respondent spouse. If it is, it is vulnerable to the exercise of the section 24 jurisdiction. If it is not, it is not.

88. This takes me back to paragraph 218 of the judge's judgment. The judge's rejection there of the submission that the establishment of the Petrodel structure involved any impropriety such as to entitle the court to pierce the companies' respective corporate veils was crucial to the disposition of the inquiry as to the beneficial ownership of the assets held by the appellants. The relevance of the 'need for impropriety' submission

was that it was *only* if relevant impropriety could be shown that the corporate veils could in consequence be pierced, following which it would then be open to the court, so far as it might think fit, to treat certain of the companies' assets as the husband's and make transfer orders in respect of them under section 24(1)(a).

89. The judge, however, rejected the submission that there had been any relevant impropriety and instead found that the company structure 'was set up and has been used for conventional reasons including wealth protection and the avoidance of tax'. That can mean only that he was making a conventional finding that the 'wealth' of the companies (which I presume means their assets) belonged beneficially to them. That is because, if he was instead finding that their 'wealth' had always belonged, and continued to belong, not to the companies but exclusively to the husband, he could in consequence only have found that the companies were mere nominees for him, which would undermine his finding as to the legitimacy of the establishment and use of the company structure. The judge underlined this by noting that the husband's use of the companies 'effectively [as his] money box … at will' might have been contrary to accounting or legal principles but that such use did not undermine the legitimacy of the establishment of their structure. He was implicitly saying that the companies were entities with assets of their own the use and disposal of which might be constrained by law, as a company's assets are; and that the husband, perhaps improperly, had helped himself to their assets did not alter that.

90. The last sentence of paragraph 218 is more difficult. The judge there said that whilst 'from the husband's perspective' the companies' 'wealth and corporate structure is and remains his', at the same time 'he is able to take advantage of the tax and other benefits of holding it within a corporate structure.' I am not confident that I understand what the judge was saying there. If he was saying that the companies' 'wealth' in fact belonged (and, presumably, had always belonged) beneficially to the husband, it would follow that the husband was not entitled to take advantage of the suggested benefits of holding them within a corporate structure: the assets (and liabilities) would, on that basis, have belonged to him alone, the companies would simply have held the assets as his nominees and the incorporation of the companies could have achieved no relevant change in his personal position. If, however, the judge was simply saying (as I regard more probable, since otherwise paragraph 218 would overall make no sense) that the husband was, at least in substance, the sole beneficial owner of the shares in the ultimate holding company and so had complete control of all the group companies and *their* respective wealth, there is no problem. He would then simply have been describing the commonplace circumstance under which the one-man owner of a company, or a group of companies, enjoys total control of its or their affairs.

91. I therefore arrive at the judge's paragraph 220 on the basis that he has not only made no finding that the assets held by the Petrodel companies were other than assets that belonged to them beneficially (as a company's assets do) but has in fact found (in paragraph 218) that they did so belong. In paragraph 220 the judge focused on question that section 24(1)(a) posed for him and indicated that he derived guidance from *Nicholas* and *Mubarak* as to how he should answer it.

92. The judge then again explained, in paragraphs 221 to 223, how the husband had sole control of the Petrodel companies and how he exercised that control by being their sole (shadow) director and how he was 'the effective owner of the whole group'

(meaning, as I have said, that he had sole control of the shares in the ultimate parent, the Nevis company). At the end of paragraph 223, he concluded that the combined facts of the husband's complete control and the fact that he was 'the sole effective owner' equated to 'beneficial ownership': and he was apparently there saying that those combined circumstances made the husband the sole beneficial owner of the companies' assets. If he was not saying that, I do not know what he meant; if he was saying it, his statement cannot stand with paragraph 218.

93. In paragraphs 224 and 225, the judge made clear his findings that the husband *was* 'entitled' to all the companies' assets, and that finding necessarily carried with it a finding that the husband was the exclusive beneficial owner of such assets and that the companies had no beneficial interest in them. The companies which, in paragraph 218, the judge had found to be legitimately established 'for conventional reasons, including wealth protection and the avoidance of tax' have, therefore, by paragraph 225 become the husband's nominees or agents in respect of his own assets.

94. The judge's conclusion to that effect was based on his holding that the husband's sole control of the companies' affairs gave him the beneficial ownership of all the assets held by the companies. His view was that such a sole shareholder's power over the assets of the company he owns is equal to property. It was his view that if (as in every case he will) a sole ultimate shareholder of a group of companies is in a position to procure the transfer to himself of any asset held by any of the companies, then, in 'the absence of any third party interests', any such asset is property to which the sole shareholder is 'entitled' within the meaning of section 24(1)(a). The corollary must be that it is not property to which the company is entitled or in which the company has any beneficial interest: the company is, in such a case, merely holding its assets as the nominee of its 100% controller.

95. The judge summarised his findings in paragraph 226. His conclusion was that the controller of a company who has the 'right and ability' to transfer its assets to himself for his own use is 'entitled in possession' to the asset. That does, the judge recognised, amount to treating the company's assets as the controller's rather than the company's. But he did not regard it as amounting to a departure from the principles of *Salomon* since section 24(1)(a) authorised such an inroad into the *Salomon* principles. That last observation is a difficult one. If, as the judge appears to have considered, section 24(1)(a) is to be interpreted as meaning that, in the case of a company in the sole ownership of a single individual, all the assets of the company are 'property to which [that individual] is entitled,' that logically involves no inroad into the *Salomon* principles at all: it simply means that the effect of section 24(1)(a) is that such a company owns beneficially none of the assets it holds, which instead all belong beneficially to its 100% owner. Such an interpretation, however, involves a misunderstanding of section 24(1)(a) and is wrong.

96. In particular, if the judge regarded anything in *Nicholas* and *Mubarak* as supporting his conclusion, he misunderstood them. Those cases had nothing to say about the ordinary meaning of section 24(1)(a) and neither suggested that it means anything other than I have indicated it means. The relevant statements in *Nicholas* and *Mubarak* were directed to a consideration of the circumstances in which it might be appropriate for the court to 'pierce the corporate veil' of a company and then to *treat* its assets as those of the husband for the purposes of section 24(1)(a). In the present case, however, the judge appears to have regarded the guidance in *Ben Hashem* as to

when the corporate veil might be pierced as the applicable guidance and held, in paragraphs 218 and 219, that there was no basis for piercing the veil. Such guidance differs from that in *Nicholas* and *Mubarak.*

97. I respectfully disagree with the judge's reasoning and conclusion. Once he had rejected the submission that he could pierce the corporate veils of the companies in the Petrodel group, he had no choice but to find that assets of PRL and Vermont, including the London properties the subject of the appeals, belonged beneficially to PRL and/or Vermont respectively, and that none of such assets belonged beneficially to the husband. The judge's different conclusion that such properties were, or were 'effectively', the husband's property was based on reasoning that was internally inconsistent, contrary to principle and wrong. I shall now explain why in fuller detail.

Basic principles

98. First, the appeals concern companies all incorporated in jurisdictions other than England and Wales. There was, however, no expert evidence as to any foreign law governing the operations of any of the companies and the appeals were argued on the basis that English law applied to their operations.

99. Second, *Salomon v. A. Salomon and Company, Limited* [1897] AC 22 provides the highest authority for the principle that a duly incorporated company is a legal entity wholly separate from those who incorporate it, with rights and liabilities of its own; and there was here no suggestion that any of the group companies was other than duly incorporated. The principle established by *Salomon* is too well known to require elaboration. I shall cite just two short passages. Lord Halsbury LC said, at 31:

> 'Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr Salomon. If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.'

Lord Macnaghten said, at 53:

> 'It has become the fashion to call companies of this class "one-man companies." That is a taking nickname, but it does not help one much in the way of argument. If it is intended to convey the meaning that a company which is under the absolute control of one person is not a company legally incorporated, although the requirements of the Act of 1862 may have been complied with, it is inaccurate and misleading: if it merely means that there is a predominant partner possessing an overwhelming influence and entitled practically to the whole of the profits, there is nothing in that that I can see contrary to the true intention of the Act of 1862, or against public policy, or detrimental to the interests of creditors.'

100. Third, as appears from the latter quotation, it makes no difference to the fact of a company's separate entity that a single individual controls all its shares. That is, and always has been, a commonplace circumstance. Companies can now be, and often are, incorporated with a single member. At the time of *Salomon's* case, the minimum number was seven and the *Salomon* company was incorporated with seven members, but the House made plain that it makes no difference to the separate existence of the company that all the shares are held in trust for one person who has full control over it

(see again per Lord Macnaghten, and also per Lord Herschell, at 45, and per Lord Davey, at 54).

101. Fourth, it follows from the fact of the company's separate identity that its property belongs beneficially to the company itself and in no sense belongs, either at law or in equity, to its shareholders, who have no interest of any nature, whether proprietary or otherwise, in its assets. If they are working members and are remunerated by the companies for their efforts, the money so paid to them will cease to be the company's money and become theirs; likewise if a dividend is lawfully declared and paid to them; and likewise again if, upon liquidation, the surplus assets after paying the creditors are divided between them. Until, however, any of such events occurs, the money or property hitherto held by the company does not belong to the shareholders but to the company. If authoritative support is required for that, see *Macaura v, Northern Assurance Company, Limited, and Others* [1925] AC 610, where Lord Buckmaster said, at 626:

> '… Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein.'

He might equally have said '… no shareholder is *entitled* to any item of property …'. And Lord Wrenbury said, at 633:

> '… the corporator *even if he holds all the shares* is not the corporation, and … neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation.' [Emphasis supplied]

The latter quotation has a particular resonance for present purposes. That a shareholder of company A, which in turns wholly owns company B, owns none of the assets of either company was also recognised by the House of Lords in *British American Tobacco Company, Limited v. Inland Revenue Commissioners* [1943] AC 335 (see per Viscount Simon L.C., at 339). A company's beneficial ownership of its assets was similarly recognised by both Lords Justices in *Nicholas* (the relevant dicta in that case, to which I shall return, are as to when it may be appropriate to pierce a company's veil and to *treat* the assets as instead belonging to its controller) and was again recognised by the same two judges in *Crittenden v. Crittenden* [1990] 2 FLR 361**.** For a recent recognition of the same principle, see *McKillen v. Misland (Cyprus) Investments Limited and Another* [2012] EWCA Civ 179, at paragraphs 50 to 52 in a judgment of mine with which Tomlinson and Lloyd LJJ agreed.

102. The judge noted in paragraph 220 that 'a lay person' might think that a husband 'was entitled' to a house owned by a company that he owned. A lay person might so think but he would be wrong. If the same lay person carried on a business through a company of which he was the sole owner, and caused the company to incur liabilities that it could not meet, he would have no hesitation in asserting that the liabilities must be met exclusively by the company (by recourse exclusively to *its* assets) and (provided his shares were fully paid) had nothing to do with him personally. That is what limited liability is about.

103. Fifth, whilst in the second sentence of paragraph 224 the judge appears rightly to have recognised that a shareholder has no interest in his company's assets, he went on to hold that this principle is trumped if the shareholder's total control of the group

empowers him to procure the transfer to himself of a 'particular item of property'. The judge found that the husband held such power, which meant, as the judge further held, that such item therefore belonged to him not to the company. It was not even necessary for the husband first to procure the *exercise* of the power: its mere existence meant that the property belonged beneficially not to the company, but to the husband.

104. With respect to the judge, his 'power equals property' reasoning is wrong. It is heretical to suggest that the total control that a single individual is (and will *always* be) entitled to exercise over the affairs of his one-man company is a feature resulting in the company's assets becoming assets to which he is 'entitled' and, therefore, to which the company is not entitled. 'Entitlement' within the meaning of section 24(1)(a) can, as I have said, only mean beneficially entitled (the paragraph cannot, for example, extend to property vested in a spouse on trust for a third party). The logic of the judge's reasoning appears, therefore, to be that a one-man company can never own assets beneficially but can only ever hold its assets as the nominee of its sole controller. That is what Lord Wrenbury said is not the law.

105. The flaw in the 'power equals property' approach is that it ignores the fundamental principle that the only entity with the power to deal with assets held by it is the *company*. Those who control its affairs – even if the control is in a single individual – act merely as the company's agents. Their agency will include the authority to procure an exercise by the company of its dispositive powers in respect of its property, but those powers are still exclusively the company's own: they are not the agents' powers. When and if the agents act as such, and procure a corporate disposition, the property which immediately before the disposition belonged to the company will become the property of the disponee. Until then, it remains the property of the company and belongs beneficially to no-one else. The judge's point that the agent is automatically the owner of all the company's assets by the mere fact of his authority to procure the company to dispose of them to himself is astonishing and does not begin to pass muster. And why should it? The proposition was simply the fruit of a judicial attempt to shoehorn into section 24(1)(a) assets which manifestly do not fit there. The judge's finding that the husband's mastery of the companies meant that they and their assets were his, and that they were the equivalent of mere nominees or agents for him (see, for example, his paragraph 225), could have been lifted directly from the argument of counsel for the respondents that was rejected in *Salomon* (see [1897] AC 22, at 28, 29).

106. That is probably all that needs to be said about the judge's 'power equals property' theory. I shall, however, add a little more. A further reason why the theory does not work is that the judge overlooked that even the one-man in such a company does not have unlimited power to procure the company to deal as he would wish with the company's assets. He may in practice be able to do so, by procuring the payment of its money and the execution of corporate dispositions right, left and centre, all perhaps for nothing in return. But he will not be able to do so lawfully. Even he will be constrained by the capital maintenance provisions which limit such wholesale disposals. He cannot, for example, lawfully procure the making of distributions by the company save out of its distributable profits and, if he does, the distribution will be unlawful and void. I discussed such problems in *Inn Spirit Ltd v. Burns and Another* [2002] 2 BCLC 780, which concerned a one-man corporate group, in which the one-man purported to pay himself a dividend. The one-man is not in a position lawfully to

distribute to himself the entirety of his company's assets at any time. To revert to the judge's paragraph 225, there *is* a 'legal impediment' to wholesale transfers by a company in favour of its one-man controller. Only when the one-man lawfully procures the exercise of the corporate power of disposition in his own favour is it possible to identify which property has ceased to belong to the company and has become his.

107. Further, the judge ignored that the companies he was dealing with (at any rate PRL and Vermont) were trading companies. They became the wealthy entities they did through commercial dealings with third parties, and were apparently financed by third party banks who took security for their loans over the group assets. In the course of creating their corporate wealth, the companies will have incurred liabilities to such third parties as creditors. Taking PRL as an example, if the judge's theory that 'power equals property' is right, and all PRL's apparent assets in fact belonged beneficially to the husband, it would follow that during its trading operations PRL would logically have been meeting its liabilities with the husband's money; and, if it ceased to do so and was put into creditors' liquidation by a dissatisfied creditor, the husband would be entitled to assert that none of its apparent remaining assets belonged to it, that they all belonged to him and that there was therefore nothing available for the creditors in the liquidation. Such a potential outcome is another absurd consequence of the judge's approach. If the judge was right, third parties would be unlikely ever to be willing to trade with one-man companies, since such companies could never be more than mere nominees for the individual who controls them, whoever that might be. The third parties would, however, also face the problem that they would often not know whether any particular company was or was not a one-man company, since they might not know whether its control was enjoyed by a single individual.

108. How does the judge's approach square with these considerations? With whom did the judge consider the companies' trading counterparties were dealing? The companies? The husband? We were told at the hearing of the appeals that separate judgment creditors' petitions had been presented in the Isle of Man against PRL by Mr Le Breton and Munin Navigation Company Limited (see *Munin Navigation Company Limited v. Petrodel Resources Ltd* [2012] EWCA Civ 136 for an account of Munin's claim). As matters stand, the judge has made a finding of fact, binding on PRL, to the effect that none of the assets apparently held by PRL belongs to it beneficially. To what assets did he consider its creditors would be entitled to look for repayment of their debts?

109. For these reasons, I conclude that the judge was wrong to hold that the properties the subject of the paragraph 5 orders belonged beneficially other than to PRL and Vermont respectively. He should have held that the husband had no beneficial interest in them and that they were therefore not 'property to which [he was] entitled' for the purposes of section 24(1)(a).

110. I turn to the family proceedings authorities. Some support for the judge's decision might be said to be found in certain of them, although the judge did not deploy such support in the way he might have done. In my judgment, however, properly analysed, they provide no legitimate support. Certain of them contain dicta that I would regard as incorrect and which should not in future be followed or applied.

The family authorities

111. Perhaps the best support for the judge's decision (but not his reasoning) is in certain dicta in the judgments of this court in *Nicholas v. Nicholas* [1984] FLR 285 (Cumming-Bruce and Dillon L.JJ). The husband was the 71% shareholder in two companies, with the other 29% held by his business associates. The wife sought a property adjustment order. One of the companies owned a property, Elmwood, which had been used in part as the matrimonial home and in part for commercial purposes. The judge ordered the husband to undertake to procure the sale by the company of Elmwood to the wife for approximately £105,000 and to pay £105,000 to the wife to enable her to buy it. The husband declined to give the undertaking and appealed against the order.

112. In contrast to the orders made by the judge in this case, the *Nicholas* order did not, therefore, seek simply to divert a company's property to the wife for a nil return and so purport to confiscate its assets for her benefit. The judge instead fashioned an order whose substance was that the husband was to buy Elmwood from the company at full value for her benefit. The husband's point on his appeal was that the judge had no jurisdiction to make such an order. In giving the first judgment, Cumming-Bruce LJ accepted that there was no jurisdiction to order the husband to give the undertaking but said that deficiency in the order could be overcome by simply ordering the husband to use his controlling vote in the company to achieve the sale. I do not understand on what basis it was thought that the court could have so ordered (and it turned out that there was none) but Cumming-Bruce LJ also explained how there was anyway a further problem. He referred to section 24, the property adjustment order section, and cited section 24(1)(a). He continued, so far as material, at 287:

> 'On the facts of the instant case, the property known as Elmwood … is vested in the company which owns it, and a question arises whether, having regard to the shareholdings in the two relevant companies …, it is proper for the court to pierce the corporate veil with the effect that though the company is the legal owner of the realty the court would disregarded [sic] the corporate ownership and make an order which, in effect, is an order against the husband, the individual shareholder. Of course it is quite clear, and there is abundant authority, that where the shareholding is such that the minority interests can for practical purposes be disregarded, the court does and will pierce the corporate veil and make an order which has the same effect as an order that would be made if the property was vested in the majority shareholder. But in the instant case it is not possible to take the view that the minority interests in either company can be thus disregarded. The shareholdings … are of such a character that the minority interests are real interests and it would not be an appropriate case in which the court should exercise its power to pierce the corporate veil. That being so, as … Elmwood is vested in the company and the company's ownership has to be respected, is it an appropriate use of the power to order a lump sum under s.23 to add to the order for a lump sum an obligation imposed upon the husband to procure the transfer by the company of the company's property to the wife by way of sale, the purchase money being the sum ordered by way of lump sum?
>
> I am satisfied that, although I perfectly understand the reasons that led the judge to take the view that such an order, made as he thought by way of undertaking, should be made, having regard to the terms of s. 24 when read with the terms of s. 23(1)(c) [which empowers the court to order the payment of a lump sum], it is not

> open to the court to supplement the express powers specified in s. 23(1)(c) and s.24(1) in such a way as to exercise an inherent power, the effect of which will be to force a third party, to wit the company, to sell property vested in the company by way of sale to the petitioner. The difficulty, I feel, is that Parliament has in s. 24(1)(a) specifically limited the property that shall be the subject of a property adjustment order and has limited it to property which is property to which the first-mentioned party is entitled in possession or reversion. Clearly, no order could be made in respect of Elmwood, the company's property, pursuant to s.24. Section 23 is in terms drafted in such a way as to limit it simply to the obligation to pay a lump sum. I am unable to hold that I can collect from s.23, when read with s. 24, any power to order, as ancillary to an order for a lump sum, an order imposing an obligation upon a respondent to procure that a third party in whom the property is beneficially vested to divest itself of that property by way of sale to a petitioning wife, whether the machinery be by exercise of the majority shareholder's voting power or otherwise.
>
> For those reasons, though with reluctance, I take the view that there was no power to make the order that the judge made in respect of the transfer of Elmwood, whether by way of undertaking which, as I have already explained, was not an appropriate form of order, or by way of a direct order ordering the respondent to use his controlling vote in [the relevant company] to cause the sale of the company's property to the petitioner. For those reasons I would hold that that very important feature of the judge's order should be varied.'

113. Cumming-Bruce LJ then engaged in a discussion as to whether the court should vary the lump sum order of £105,000, none of which is material. Dillon LJ said, at 292, that he entirely agreed and, so far as material, continued:

> '… the case as presented in this court is presented on a significantly different basis from the case as understood by the judge. He plainly understood, as did counsel for the wife, that the husband was prepared to undertake, if the judge took the view that Elmwood should be transferred to the wife, that the husband would use his controlling interest in [the relevant company], to achieve such a transfer against payment by the wife of the sum which the husband would provide by way of lump sum payment. On that understanding it is not surprising that he made the order he did. But it is now clear that there was no authority in counsel to offer any undertaking to the court and no undertaking has been given. Therefore, it is a question whether the court has power to order the husband to transfer the property to the wife against the payment of £105,000, the property being vested in the company and not in the husband himself. If the company was a one-man company and the *alter ego* of the husband, I would have no difficulty in holding that there was power to order a transfer of the property, but that is not this case. The evidence shows that the husband only has a 71% interest in the company. The remaining 29% is held by individuals who … are not nominees but business associates of the husband. … I find it quite impossible, therefore, to ignore the corporate entity of [the company]. Therefore the order the judge made cannot stand.'

114. Both judgments in *Nicholas* correctly recognised the existence of the separate legal personalities of the company that owned Elmwood and the husband and, therefore, that Elmwood was not the latter's property which could be the subject of an order

under section 24(1)(a). For reasons that Cumming-Bruce LJ explained, with which Dillon LJ agreed, there was no jurisdiction in the court to make either the order the judge had made or a modified order to like effect requiring the husband to procure the sale of Elmwood to the wife. The present importance of the case lies, however, in the indication by both judges that: (i) (per Cumming-Bruce LJ) in a case in which the husband is the majority shareholder in the company holding the relevant asset, and:

> 'the minority interests in the company can for practical purposes be disregarded, the court does and will pierce the corporate veil and make an order which has the same effect as an order that would be made if the property was vested in the majority shareholder';

and (ii) (per Dillon LJ):

> 'if the company was a one-man company and the *alter ego* of the husband, I would have no difficulty in holding that there was power to order a transfer of the property, but that is not this case.'

Cumming-Bruce LJ asserted that there was 'abundant authority' for his proposition. He did not, however, refer to any, the report recorded none as cited and during the overnight adjournment of the hearing of this appeal counsel identified no reported authority to which they considered he might have been referring.

115. The judge took the view (paragraph 219) that the observations by Cumming-Bruce and Dillon LJJ to which I have just referred were obiter and I agree with him. In *Hope v. Krejci and Others* [2012] EWHC 1780 (Fam), at paragraph 27, Mostyn J said he was not so sure, expressing the view that 'the reasoning went to the very core of the decision not to pierce the corporate veil.' I recognise that the opening words of my quotation from Cumming-Bruce LJ's judgment ('a question arises …') might suggest that there was an issue in the appeal as to whether or not the veil could be pierced. I do not, however, understand that there was. The order under appeal was not a 'veil piercing' order: it was not premised on any basis other than that Elmwood was an asset beneficially owned by the company. The order was directed at achieving its sale to the wife for full value and the issue on the appeal was whether there was jurisdiction to make such an order. There is no suggestion that it became part of the wife's case in the Court of Appeal by a cross appeal that the court could achieve a like result as that intended by the judge's order by piercing the corporate veil and making a direct transfer order, and such a case would, on the facts, have been hopeless. The court's decision was simply that there was no jurisdiction to make the type of order the judge had made and it had nothing to do with the circumstances in which the court can 'pierce the veil'. In my view, the observations (per Cumming-Bruce LJ) as to 'veil piercing' or (per Dillon LJ) as to the company being the husband's *alter ego* were obiter.

116. I interpret those observations as simply indicating the Lords Justices' views that, in a case in which the husband is, either actually or in substance, the 100% owner of a company that owns an asset that might usefully be applied in or towards satisfaction of a wife's ancillary relief claim, it will or may be open to the court to pierce the company's corporate veil and then *treat* that asset as property of the husband so as to enable it to be the subject of a section 24(1)(a) order. Mr Todd, for the wife, disagreed with that analysis and submitted that it was not what the Lords Justices were saying.

Despite Cumming-Bruce LJ's express reference to 'veil piercing' (which Mr Todd invited us to disregard), he said that both Lords Justices' respective observations were directed simply at applying a broad interpretation to the relevant language of section 24(1)(a), and that submission perhaps reflected the judge's own understanding of them. They were, Mr Todd said, saying that property owned by a company of which the husband is, actually or in substance, the 100% owner is property to which the husband is 'entitled' within the meaning of section 24(1)(a), whereas property owned by a company in which the husband has less than a 100% interest, and in which other shareholders have material shareholdings of their own, is not property to which the husband is so 'entitled'.

117. I respectfully reject that submission. There is no support for it in either judgment in *Nicholas,* nor does it bear any sort of reasoned analysis. In essence, it amounts to an attribution to the Lords Justices in *Nicholas* of an adoption of Moylan J's approach that the 100% controller of a company is beneficially entitled to property held by it, whereas a company whose control is split between two or more shareholders with independent interests will itself be the beneficial owner of such property. The suggestion that the beneficial entitlement to property held by a company will vary according to the number of controllers of its shares is absurd and neither Lord Justice in *Nicholas* was saying anything of the sort. All that they were saying – and Cumming-Bruce LJ used the very phrase - was that in a case in which a company is wholly owned by a husband, it will or may be open to the court to 'pierce the corporate veil'; and, having done so, by inference then to *treat* the property held by the company as belonging to him so as to enable it to be subjected to a section 24(1)(a) order. I say 'by inference', because neither judge so spelt it out. But the inference must be right because the whole point of 'veil piercing' is to identify the company with its controller. That is manifestly what Cumming-Bruce LJ was saying; and, although Dillon LJ did not also expressly refer to 'veil piercing', he did refer to the company as an *alter ego* of the husband, another traditional way of referring to the same concept.

118. I therefore reject Mr Todd's submission as to the sense of the dicta in *Nicholas.* Section 24(1)(a) cannot bite on a company's property, it can only bite on the husband's, and both Lords Justices recognised that. The critical question raised by *Nicholas* is, however, whether they were right in their respective dicta as to how recourse to 'veil piercing' might enable the circumnavigation of that obstacle in the path of a wife whose ancillary relief sights are set on an asset held by a company. That is a central question raised by these appeals and I shall shortly return to it.

119. We were also referred to *Crittenden v. Crittenden* [1990] 2 FLR 361, also a decision of this court (by coincidence, also of Dillon LJ and Sir Roualeyn Cumming-Bruce). It is necessary only to cite from Dillon LJ's judgment, with which Sir Roualeyn Cumming-Bruce agreed. Dillon LJ said, at 364F:

> 'The sections relied on by Mr Turner for the imposition of such a restriction are ss.24A and 37 of the Matrimonial Causes Act 1973. Section 24A is concerned with the position where the court is considering ordering a sale of property. Subsection (1) provides:
>
> > "Where the court makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a

> property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion."
>
> That wording can relate to the shares in the company, Somerton Marine Ltd, which are owned in their own right by Mr or Mrs Crittenden, but it cannot relate to the assets of Somerton Marine Ltd.'

120. The point that Dillon LJ was making was that whilst the shares in the company owned respectively by Mr and Mrs Crittenden were 'property' in which they had a beneficial interest, they had no such interest in the assets of the company and therefore no sale order in respect of such assets could be made. Dillon LJ was simply recognising the trite principle that a company's assets belong beneficially to the company and not to its shareholders. It was suggested to us in argument that Dillon LJ was there departing from his obiter remarks in *Nicholas* and that, in agreeing with him, Sir Roualeyn Cumming-Bruce was departing from his own obiter remarks in *Nicholas.* I disagree. In *Nicholas,* Cumming-Bruce LJ made clear that the core principle is that a section 24(1)(a) order cannot be made in respect of a company's property and Dillon LJ agreed. Both Lords Justices, albeit expressing themselves differently, also uttered the dicta to the effect that, in a one-man company case, recourse to 'veil piercing' may enable a departure from the core principle that ordinarily applies. The court in *Crittenden* was not implicitly asserting that there was no scope for any 'veil piercing' exception to the core principle. All it was doing was to refer to that principle without also referring to any exception to it. We are still left with the question of the correctness of the dicta in *Nicholas.* I turn to that question.

121. The difficulty that the dicta pose is this. *Salomon's* case shows that a duly incorporated company (including a 'one-man company') is a legal entity separate from its members, with rights and liabilities of its own. Its assets belong beneficially to it, and it alone, and its members have no interest in them. This follows from the formal distinction between a company and its members, a distinction that applies equally to a one-man company and its controller. The first problem with the *Nicholas* dicta is that the court was saying that, in the case of a one-man company, its corporate identity can be ignored and its assets treated as belonging not to it but to the one man. That was apparently a heretical departure from the *Salomon* principle. On what basis could *Nicholas* endorse it?

122. As to that, it has also long been recognised that there may be circumstances in which it will be legitimate for the court to 'pierce the corporate veil' of a company, as it has come to be called, thereby identify the company with those in control of it and, in its discretion, then to depart from the separate identity principle established in *Salomon.* In such a case, the court may then be prepared to grant remedies against the company which, apart from any such veil piercing, might otherwise appear to be available only against those controlling it; or to grant remedies against the controllers which might otherwise appear to be available only against the company.

123. In my preceding sentence, I was substantially quoting from paragraph 47 of the judgment of the court delivered by Lloyd LJ in the Court of Appeal's decision earlier this year in *VTB Capital PLC v. Nutritek International Corp* [2012] EWCA 808 (the

court also comprising Aikens LJ and myself). That case concerned a commercial dispute that raised several issues, one of which related to the court's jurisdiction to pierce the corporate veil and the effect and consequences of doing so. The issues were far removed from those of the present case but the importance of the judgment in *VTB* is that it recognised and affirmed the strict limitations identified in prior authority as to the only factual circumstances in which it will be open to the court to 'pierce the veil'. Thus it noted (paragraph 48) the unanimous (albeit obiter) view of the House of Lords in *Woolfson v. Strathclyde Regional Council* 1978 SLT 159, at 161, that 'it is appropriate to pierce the veil *only* where special circumstances exist indicating that it is a mere façade concealing the true facts' (emphasis supplied). That limitation was expressly recognised by the judgment of this court in *Adams and Others v. Cape Industries Plc and Another* [1990] Ch 433, at 539D to E, and the court had there also earlier said, at 536G:

> '… save in cases which turn on the wording of particular statutes or contracts, the court is not free to disregard the principle of *Salomon v. A. Salomon & Co Ltd* [1897] AC 22 merely because it considers that justice so requires.'

124. A decision not referred to in *VTB*, but to which we were and which it is convenient to notice, is that of this court in *Ord and another v. Bellhaven Pubs Ltd* [1998] 2 BCLC 447. That was a commercial case in which the issue was whether, in a case in which the defendant company was perceived as having insufficient assets to meet the claim, it was open to the court to substitute as defendants its parent company and another subsidiary which had taken over its trading operations. The judge had held that it was, relying in part on the view that it was open to her to lift the defendant's corporate veil and so enable the claim to be directed against the proposed new defendants. Hobhouse LJ, in a judgment with which Brooke LJ and Sir John Balcombe agreed, held that the judge was wrong. He said (at 457e) that she had approached the case on the basis that it was open to her to regard the companies as one economic unit and to disregard the distinction between them and then to say:

> '… since the company cannot pay, the shareholders who are the people financially interested should be made to pay instead. That of course is radically at odds with the whole concept of corporate personality and limited liability and the decision of the House of Lords in *Salomon v. A Salomon & Co Ltd* [1897] AC 22.'

Hobhouse LJ then referred to *Woolfson* in the House of Lords and quoted, as I have, from Lord Keith (in [1998] 2 BCLC, the quotation is erroneously included as part of Hobhouse LJ's own words); and he referred to the Court of Appeal's decision in *Adams* as showing that 'there must be some impropriety before the corporate veil can be pierced.' He held that as the plaintiffs could not show the establishment of a façade concealing the true facts, or any other relevant impropriety, they could not satisfy the conditions for piercing the veil and the judge had been wrong to pierce it. That reasoning was, I consider, part of the ratio of the court's decision as to why the judge had been wrong to make the decision she did. Sir John Balcombe, with his experience of both commercial and family law, did not qualify his agreement with Hobhouse LJ by indicating that different principles applied in family cases.

125. Having digressed to *Ord*, I return to the cases referred to in *VTB* as identifying the limitations upon the exercise of the veil piercing jurisdiction. *Trustor AB v. Smallbone*

and others (No 2) [2001] 1 WLR 117 was a case in which, after referring to (amongst other cases) *Woolfson* and *Adams,* Sir Andrew Morritt V-C said, at paragraph 23, that 'the court is entitled to "pierce the corporate veil" and recognise the receipt of the company as that of the individual(s) in control of it if the company was used as a device or façade to conceal the true facts thereby avoiding or concealing any liability of those individual(s)).' I shall now set out the material parts of what the court in *VTB* said about the next key authority, a decision in family proceedings:

> '78. *Faiza Ben Hashem v. Shayif and Another* [2008] EWHC 2380 (Fam) is a judgment of Munby J that includes between paragraphs 144 and 221 a comprehensive discussion of the principles by reference to which the court may pierce the veil of incorporation. Between paragraphs 159 and 164 Munby J re-stated the principles, which he summarised as follows. First, ownership and control of a company are not themselves sufficient to justify piercing the veil. Second, the court cannot pierce the veil, even when no unconnected third party is involved, merely because it is perceived that to do so is necessary in the interests of justice. Third, the corporate veil can only be pierced when there is some impropriety. Fourth, the company's involvement in an impropriety will not by itself justify a piercing of its veil: the impropriety "must be linked to use of the company structure to avoid or conceal liability" (a principle derived from *Trustor*). Fifth, it follows that if the court is to pierce the veil, it is necessary to show both control of the company by the wrongdoer *and* impropriety in the sense of a misuse of the company as a device or façade to conceal wrongdoing. Sixth, a company can be a façade for such purposes even though not incorporated with deceptive intent:
>
> > "164 … 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."
>
> 79. Mr Snowden accepted that summary as a correct statement of the principles save that he questioned the correctness of the final principle, as to a requirement of necessity, as he also questioned the correctness of Warren J's like point in [*Dadourian Group International Inc and Others v. Simms and Others* [2006] EWHC 2973 (Ch)]. He said that it does not follow that a piercing of the veil will be available only if there is no other remedy available against the wrongdoers for the wrong they have committed. In principle, we agree with Mr Snowden's suggested qualification. … With that qualification, we would, however, respectfully agree with Munby J's summary of the principles.
>
> 80. Mr Snowden also submitted, in expansion of Munby J's fourth principle (and reliance on what Munby J said at paragraph 199) that it is not sufficient for veil piercing purposes merely to show that the company is involved in wrongdoing, for example that it is carrying out a fraud: there will be no question in such a case of the company being used as a façade. The relevant wrongdoing must be in the nature of an independent wrong that involves the fraudulent or dishonest misuse of the corporate personality of the company for the purpose of concealing the true facts. In principle, we agree with that too. …'

126. *VTB* thus provided this court's affirmation, drawing on earlier judgments of the House of Lords, the Court of Appeal (to which it could usefully have included a reference to *Ord*), the Chancery Division and the Family Division, of the strict limits as to the exercise of the court's jurisdiction to pierce a company's corporate veil so as to enable it to disregard the separate corporate identity of a company and, instead, to identify it with its controllers. The decision showed that what is required is nothing less than proof of impropriety directed at the misuse of the corporate structure for the purpose of concealing wrongdoing. The judge in the present case did not have the advantage of the decision in *VTB* (either at first instance, per Arnold J, see [2011] EWHC 3107 (Ch), or in the Court of Appeal). He did, however, have the benefit of Munby J's decision in *Ben Hashem*, which was in all material respects approved by this court in *VTB*, and, in paragraph 217, he referred, as I have said, to the submissions made to him that he could not make orders against the shares or properties 'unless I find the requisite impropriety as set out in *Ben Hashem.*' He therefore directed himself correctly as to the conditions that must be satisfied before the court could pierce the veil of the Petrodel group companies and he rejected the submission that there had been any relevant impropriety. He found, therefore, that there was, for example, no question of the relevant properties having originally been beneficially owned by the husband and put into corporate names for the improper purpose of defeating the wife's claims in her financial provision application. He found, by the application of criteria since affirmed in this court, that there was no factual basis upon which it was open to the court to pierce the corporate veil of any of the Petrodel companies.

127. With that discussion of the criteria for a judicial piercing of a corporate veil, I return to the dicta in *Nicholas.* Both Lords Justices indicated their views that, if the respondent to an application for a property adjustment order is a husband with sole control of a one-man company, there is no difficulty in treating the company's assets as *his* property for the purpose of meeting any such application. They were apparently saying that the total control of a company in the husband is *by itself* enough to entitle the court to pierce its veil and treat its assets as the husband's.

128. The legal basis for those assertions is unclear. There was an assumption in the argument before us that the 'abundant authority' to which Cumming-Bruce LJ was referring was unreported authority in the Family Division, although he did not say so and unreported authority is anyway hardly authority. It is also improbable that Dillon LJ would have been so basing his own dicta: he had, by September 1983, been a Lord Justice for a year and before that his experience was made up of 31 years as a practitioner at the Chancery Bar and three years as a judge of the Chancery Division.

129. Whilst neither side suggested it to us, I regard it as probable that Cumming-Bruce LJ, and also Dillon LJ, were basing themselves on (inter alia) dicta falling from Lord Denning MR in *Wallersteiner v. Moir* [1974] 1 WLR 991. Cumming-Bruce LJ was later to refer to them in *Re a Company* [1985] BCLC 333, when delivering the judgment of this court (himself and Hollings J). He said, at 337, 338:

> 'In our view the cases before and after *Wallersteiner v. Moir* [1974] 3 All ER 217, [1974] 1 WLR 991 show that the court will use its powers to pierce the corporate veil if it is necessary to achieve justice irrespective of the legal efficacy of the corporate structure under consideration. As Lord Denning MR said ([1974] 3 All ER 217 at 238, [1974] 1 WLR 991 at 1013) the companies identified were distinct legal entities and the principles of *Salomon v. Salomon & Co Ltd* [1897]

> AC 22 prima facie applied. But only prima facie. On the facts of the *Wallersteiner* case, the companies danced to Dr Wallersteiner's bidding. Buckley LJ disagreed on the facts about the position of IFT, but Scarman LJ held that the evidence disclosed liability in Wallersteiner on the ground that he instigated the loan of £50,000.'

130. The difficulty with that, however, is that Lord Denning's dicta in relation to veil piercing (as similarly also advanced by him in *Littlewoods Mail Order Stores Ltd v. Inland Revenue Commissioners* [1969] 1 WLR, 1241, at 1254) were the subject of consideration by this court in the later decision of *Adams,* at [1990] 1 Ch 433, at 543, where the court said that:

> '… in *Wallersteiner v. Moir* [1974] 1 WLR 991 Buckley LJ, at p. 1027, and Scarman LJ, at p. 1032, expressly declined to tear away the corporate veil. In the *Littlewoods* case [1969] 1 WLR 1241, 1255, Sachs LJ expressly disassociated himself from the suggestion that the subsidiary was not a separate legal entity and Karminiski LJ refrained from associating himself with it. We therefore think that the plaintiffs can derive little support from those dicta of Lord Denning MR.'

131. *Re a Company* was not apparently referred to in *Adams,* but following *Woolfson, Adams* and *VTB,* it is, I consider, clear, as Mr Amos submitted, that the opening sentence of the quoted statement in *Re a Company* cannot be regarded as the law. Nor does the mere fact that a company dances to its sole controller's bidding entitle the court, without more, to equate the company with that controller (Moylan J also referred, at paragraph 221, to Lord Denning's dicta in *Wallersteiner* as if it provided a key to the case). Mr Todd advanced no argument in support of the approach adopted by the court in *Re a Company* and the tide of authority is now solidly against it.

132. In my judgment, the dicta in *Nicholas* cannot stand with: (i) the prior House of Lords guidance in *Woolfson* as to the *only* circumstance in which a judicial piercing of the corporate veil is appropriate, or (ii) with the subsequent adoption of that approach by the Court of Appeal in *Adams* and *Ord,* or (iii) with the first three principles identified by Munby J in *Ben Hashem,* and accepted as correct by this court in *VTB,* as to the pre-conditions of a veil-piercing exercise. Whilst *Nicholas* was not cited in *Adams* or *VTB,* there is no basis on which its dicta can be defended as establishing a separate, free-standing, legitimate principle of English law. They involve a head-on disregard of *Salomon.* They were not advanced on the basis that they were directed at a special type of case justifying special treatment. In any particular case, an inability on the part of the court to make a property adjustment order in relation to property held by the husband's company rather than by the husband himself may be perceived as producing the potential for injustice; but *Adams* made clear that, by itself, such a consideration is no basis for assuming a jurisdiction to pierce the corporate veil: the court cannot disregard *Salomon* 'merely because it considers that justice so requires.' The husband and his company are separate legal persons and each owns his and its separate assets. Those differences must be respected and cannot be ignored merely because it is perceived as convenient to do so. A condition of the accepted basis for a piercing of the corporate veil is that the controller of the company has misused the fact of its separate corporate identify for the purpose of hiding facts or concealing wrongdoing. The rationale is that a wrongdoer cannot benefit from his dishonest misuse of a corporate structure for improper purposes. There was no suggestion in

Nicholas that any such condition must be met before the veil could be pierced. The dicta were, in my judgment, wrong and should not be followed.

133. In fact, they have been followed. In *Green v. Green* [1993] 1 FLR 326, Connell J considered (I do not understand why) that there was a conflict between the dicta in *Nicholas* and the decision in *Crittenden* but regarded the former as providing the key to his case and decided it on the basis that the husband was to be equated with the company of which he was the 100% owner so that an order for sale could be made of its land. Connell J's reasoning does not further the discussion. He just took the *Nicholas* dicta at face value and applied them. He did, however, note, at [1993] 1 FLR 326, 340D, that the dicta reflected a practice that his own experience told him had been followed for some time (without, though, referring to any reported authority reflecting it).

134. In *Wicks v. Wicks* [1999] Fam 65, this court overruled *Green* on the basis that the court had no jurisdiction to make the order it did. The ratio of the decision did not, however, turn on Connell J's decision that, following *Nicholas* (to which the court did not refer), he could 'pierce the corporate veil'; and only Peter Gibson LJ referred to that. He said, at 89:

> '… I find it difficult to see how the application for ancillary relief in *Green v. Green* [1993] 1 FLR 326 could have been said to relate to land when the husband merely owned shares in the two companies which owned land. I can well understand Connell J's desire to find a solution so that the petitioner and her child could be provided with a home, but I do not think that the court had power in that case to order a sale of the land.'

135. *W v. H (Family Division: without notice orders)* [2001] 1 All ER 300 was a decision of Munby J. The wife obtained an *ex parte* injunction against B Co and X restraining the disposition of a property owned by B Co, the shares of which were said to have been held on trust for the wife, husband and children. X claimed to have bought the shares from the husband but the wife asserted that the sale had been a sham. The report is about the *inter partes* hearing at which X and B Co sought the setting aside of the injunction. Munby J held that it should be continued. The importance of the decision lies in his observations at 310 to 311:

> '… I ought to deal with a wider question canvassed by Mr Everall [counsel for the wife]. This relates to the approach to be adopted in the Family Division in cases where assets which a wife says belong in truth and reality to her husband are, or appear to be, vested in some other person, or in some corporate or trust entity.
>
> Mr Everall, referring me to *Nicholas v. Nicholas* [1984] FLR 285, *Green v. Green* [1993] 1 FLR 326, *Purba v. Purba* [2000] 1 FCR 652 and *Khreino v. Khreino (No 2) (court's power to grant injunctions)* [2000] 1 FCR 80, submits that the court adopts a robust approach in such cases and does not allow itself to be, to use Thorpe LJ's words in *Khreino's* case (at 85), emasculated by over-refined or technical arguments based on strict principles of property law.
>
> I readily accept that there is much force in Mr Everall's submission. Thus, as can be seen from *Nicholas's* case (at 287, 292), where property is vested in a one-man

company which is the alter ego of the husband, the Family Division will pierce the corporate veil, disregard the corporate ownership and, without requiring the company to be joined as a party, make an order which has the same effect as the order that would be made if the property was vested in the husband. Indeed, the court can and will adopt this approach even where there are minority interests involved if they are such that they can for practical purposes be disregarded.

Moreover, as Thorpe LJ's forthright observations in *Purba's* case (at 654-655), and *Khreino's* case (at 85), show, the court will not allow itself to be bamboozled by husbands who put their property in the names of close relations in circumstances where, taking a realistic and fair view, it is apparent that the recipient is a bare trustee and where the answer to the real question – Whose property is it? – is that it remains the husband's property. Again, in such cases there is no need for the third party to be joined. As *Purba's* case shows, where a transfer has been made post-separation to a close relative in order to defeat a wife's claims, the court can and will act without going through the formality of joining the third party or making setting aside orders under s.37. And as *Khreino's* case shows, the court can and in appropriate cases will grant Mareva injunctions against both the husband and his offshore company and the relative who holds the bearer shares in the company without requiring either the company or the relative to be joined as parties.

Nothing that I say should be taken as intended to water down in any way the robustness with which the Family Division ought to deal in appropriate cases with husbands who seek to obfuscate or to hide or mask the reality behind shams, artificial devices and similar contrivances. Nor do I doubt for a moment the propriety and utility of treating as one and the same a husband and some corporate or trust structure which it is apparent is simply the alter ego or the creature of the husband. On the other hand, and as *Nicholas'* case itself demonstrates, the court does not – in my judgment cannot properly – adopt this robust approach where, for example, property is held by a company in which, although the husband has a majority shareholding, the minority shareholdings are what Cumming-Bruce LJ ([1984] FLR 285 at 287) called "real interests" held by individuals who, as Dillon LJ (at 292) put it, are not nominees but business associates of the husband.'

136. I have no difficulty with much of that. If property held by a husband has been put into the name of someone who, on the evidence, is obviously a bare trustee for him, there will be no problem in holding that the beneficial ownership has not changed. As explained in the first sentence of the last quoted paragraph, the court will also not be bamboozled by the use by husbands to a like end of 'shams, artificial devices and similar contrivances.' The more difficult part of the quotation is in its third paragraph and the remainder of the last paragraph, which reflect unqualified acceptance of the proposition, drawn from *Nicholas,* of the court's jurisdiction – in the absence of any relevant impropriety - to equate a one-man company with the one-man and treat its assets as his. No reasoned justification for doing so was advanced, any more than in *Nicholas.* The only implicit justification is that family justice requires it. That, without more, is no justification. Why should family justice be regarded as different from any other sort of justice? No-one would suggest that an unsatisfied creditor of the owner of a one-man company could look to the assets of the company to meet his debt, even

though he might be able to look to the owner's shares in the company (as a wife can on her ancillary relief application). Since I consider that the dicta in *Nicholas* were wrong, I also consider, with respect, that Munby J's acceptance of them as correct was wrong. He was not, however, apparently referred to the authorities as to the limitations upon the court's ability to pierce the corporate veil.

137. The next authority, decided shortly after *W v H*, is Bodey J's decision in *Mubarak v. Mubarak* [2001] 1 FLR 673. The question was whether the wife was entitled to enforce a lump sum payment order by recourse to assets held by one or other company in the ultimate control of the husband. The companies opposed the order. Bodey J said there were two strands of authority: those decided in the company/commercial sphere and those decided in the family sphere. The former strand, upon which the companies relied, was based on the recognition of a company as a separate legal entity, distinct from its shareholders, with assets belonging to it alone, a strand based on *Salomon.* Whilst it admitted of circumstances in which the veil could be pierced, the principle of most general application was that a company will be not allowed to be used as a device or sham to evade obligations and Bodey J referred to *Gilford Motor Company, Limited v. Horne* [1933] Ch 935 and *Jones and Another v. Lipman and Another* [1962] 1 WLR 832, which provide good examples of the sort of impropriety that is required. The companies' counsel submitted that there was no suggestion of any misuse of them in the instant case and that *Adams* showed that 'no principle exists where, if reliance on the strict technicalities would produce injustice, then the veil of incorporation can, without more, be lifted.'

138. Turning to the family cases, Bodey J referred to *Nicholas, Crittenden, Green* and *Wicks.* He then said, at 681G:

> 'Drawing all these authorities together, the precise extent of the Family Division's power to go directly against the property of a company owned or controlled by one of the spouses appears less than clear. In both the Court of Appeal decisions disowning the power (*Crittenden v. Crittenden* [1990] 2 FLR 361 and *Wicks v. Wicks* [1999] Fam 65, [1998] 1 FLR 470) no reference was seemingly made to *Nicholas v. Nicholas* [1984] FLR 285, which contained strong Court of Appeal observations that the power exists when the circumstances there specified pertain. The one reported case to which I have been referred where the veil was actually lifted (*Green v. Green* [1993] 1 FLR 326) has been disapproved by one of the judgments of the Court of Appeal in *Wicks v. Wicks* [1999] Fam 65, [1998] 1 FLR 470, but the disapproval was not the ratio of the decision: neither were *Crittenden v. Crittenden* [1990] 2 FLR 361 nor *Nicholas v. Nicholas* [1984] FLR 285 seemingly cited to the Court of Appeal in *Wicks.*
>
> Further, it is quite certain that company law does not recognise any exception to the separate entity principle based simply on a spouse's having sole ownership and control.
>
> *Rationalisation of approach*
>
> Ideally the Family Division and the Chancery Division should plainly apply a common approach. However, the fact remains that different considerations do frequently pertain: the company approach, on the one hand, being predominantly concerned with parties at arm's length in a contractual or similar relationship; the

family approach, on the other hand, being concerned with the distributive powers of the court as between husband and wife applying discretionary considerations to what will often be a mainly, if not entirely, family situation.

I would echo the experience referred to by both Cumming-Bruce LJ and Connell J (above) as regards lifting the veil in the Family Division when it is just and necessary. In practice, especially in "big money" cases, the husband (as I will assume) will often make a concession that company/trust assets can be treated as his, whereafter the case proceeds conveniently on that basis. It is pragmatic, saves expense and usually works. Problems such as have arisen in this case are rare and anyway can be avoided where there are other assets against which the lump sum order can be enforced.

The difficulty remains in defining those situations when lifting the veil is appropriate by way of enforcement following such a concession in ancillary relief proceedings. I would suggest that the Family Division can make orders directly or indirectly regarding a company's assets where (a) the husband (as I am assuming) is the owner or controller of the company concerned and (b) where there are no adverse third parties whose position or interests would be likely to be prejudiced by such an order being made. I include as third parties those with real minority interests in the company and (where relevant on the facts) creditors and directors. The reason for my including the latter two categories will become apparent later in this judgment.

I adopt the rationalisation of this offered by Mr Hunter, that it would amount merely to a short-circuiting of the full company law route, namely the declaration of a dividend to the husband comprising the company asset concerned (eg the matrimonial home) enabling him and/or the court then to transfer it onwards to the wife. It would amount to his property for the purposes of s.24 in the same sense that the law may look on that as done as ought to be done; whilst the mechanics of the order would be along the lines adopted by Connell J in *Green v. Green* [1993] 1 FLR 326 at 341G: "… the respondent do sell, or cause G Ltd to sell, four plots of the blue land to …".

I would add that lifting the veil is most likely to be acceptable where the asset concerned (being the property of an effectively one-man company) is the parties' former matrimonial home, or other such asset owned by the company other than for day-to-day trading purposes.'

139. After considering the evidence, Bodey J held that the case was not one in which he should lift the veil. His reasons were these, at 685, 686:

'… both companies are bona fide trading companies incorporated well before the matrimonial difficulties of the husband and wife. DIL is incorporated outside the jurisdiction and the husband is not a director. It is not suggested that they are as such being used as a sham or device, albeit that their existence is very convenient to the husband. In my judgment, there do exist genuine third party rights and interests which ought to be respected, namely the interests of bona fide commercial creditors (one of them secured on the jewellery) and the position of directors who have fiduciary duties and who oppose the seizure of stock in trade.

> The facts of the case are far away from those of *Green v. Green* [1993] 1 FLR 326 which Mr Pointer asks me to follow.
>
> Applying the above proposed approach as regards lifting the corporate veil to the evidence now before me and having heard full legal argument, I come to the conclusion that this case does not fall within the necessarily circumscribed circumstances in which lifting the veil would be acceptable. However much the court may wish to assist a wife and children where a lump sum has not been paid, I am satisfied that doing so here, whensoever it may be permissible, would be a step too far in the all the circumstances. This is a conclusion strengthened by Art 1 of the first protocol [to the Convention for the Protection of Human Rights and Fundamental Freedoms] that every natural and legal person is to be entitled, subject to specified exceptions, to the peaceful possession of their possessions.'

140. I do not, with respect, find Bodey J's 'rationalisation of approach' convincing. Different considerations obviously arise in commercial and family cases but I cannot see why they can justify a difference of approach as regards lifting the veil. In all situations, the company is a separate legal entity. A commercial creditor of the present husband, if unable to obtain satisfaction from him, might well wish to attach assets of PRL and/or Vermont as an alternative means of satisfaction. Absent an ability to lift the corporate veil by first satisfying the *VTB* conditions, his claim would fail: the companies assumed and owed him no relevant obligations. I fail to understand the principle by which the wife's ancillary relief claim is said to be enforceable against such companies without any need first to be able to satisfy the *VTB* conditions. Why should wives (or husbands) be entitled to a preferential exemption from what *Salomon* decided?

141. Bodey J's further discussion as to when it may be appropriate to lift the veil in order to satisfy a wife's claim appears to have been premised on the basis that the husband has conceded that the company's assets can be regarded as his, which is not this case. Thorpe LJ, in argument, observed that in his own experience such concessions are rare. I anyway cannot see that such a concession can take the matter very far. As Bodey J noted, it will still be necessary for the court to consider whether the veil should be lifted. His approach was that the lifting (or not) of the veil in family proceedings in relation to a company wholly or substantially owned by the husband is a discretionary exercise dependent on a consideration of whether to award the relevant asset to the wife would prejudice any minority interests in the company and/or the interests of its directors and creditors. He therefore favoured a balancing exercise directed to the consideration of whether the diversion of a company asset to the wife would prejudice interests other than those of the husband. If it would not, such diversion could be rationalised (and given legitimacy) on the basis that the husband could be regarded as under a duty to declare a dividend in his own favour of the asset, which would then be his property; and 'the law may look on that as done which ought to be done.'

142. With respect, I neither follow nor agree with Bodey J's reasoning. First, the husband is under no obligation to declare such a dividend even if it is lawfully open to him to do so. Second, the court has no jurisdiction of which I am aware to compel him to do so. Third, whether or not he ought to do so (is that a reference to his moral obligations?), the law does not look on as done that which ought to be done, even if equity sometimes does, although it ordinarily does so only in respect of unperformed

legal obligations. Bodey J's approach does not appear to me to have much to do with any true 'lifting of the veil'. It proceeds instead on the basis that the relevant assets are the company's, as they are, which has not come by them in circumstances involving any sort of relevant impropriety, but that the family courts have a paternalistic jurisdiction to distribute them to a claimant with no title to them provided that to do so will not prejudicially affect anyone with a real interest in their being preserved within the company.

143. That approach is wrong. If, as it is, the question is whether or not assets held by the company are (i) assets to which the husband is 'entitled' within the meaning of section 24(1)(a), or (ii) assets to which he is to be *treated* as so entitled, the answer to (i) is that he is not so entitled. As for (ii), the only circumstance in which it might, as a matter of discretion, be appropriate to *treat* him as so entitled is if there are legitimate grounds for lifting the corporate veil, for which purpose nothing less than compliance with the *VTB* conditions will do. Those conditions did not feature in Bodey J's rationalisation, even though he had been referred to this court's decision in *Adams* as identifying the limitations constraining an ability to lift the veil. His suggestion that different principles apply – and, by inference, should continue to apply in two divisions of the High Court - is one with which I disagree. There is, as Mr Amos put it, but one law and but one High Court and all its divisions must apply the same law.

144. *A v. A* [2007] 2 FLR 467 is a decision of Munby J. It did not turn on the piercing of any corporate veil, although in paragraphs 18 and 19 he referred to, and affirmed, his own observations in *W v. H*, on which I have earlier commented, in part negatively. He also made the point, at paragraph 95, that:

> '… only property owned by a party to the marriage can be the subject of a property adjustment or other order under the Matrimonial Causes Act 1973. Thus, to take a specific example, there is no power in the court … to order the transfer to the wife of the Antigua property, which is owned by HDC [a company in which the shares were held by the husband, the wife and a trust].'

As to that, I agree.

145. I come back to *Ben Hashem* [2009] 1 FLR 115. Its importance is that it reflected Munby J's exposition, approved by the Court of Appeal in *VTB* in all respects save one (immaterial for present purposes), as to the conditions that must be satisfied before it is open to the court to pierce the corporate veil and ignore the separate identities of the company and its corporators. What is essential is the proof of relevant impropriety. There are, however, perhaps two slightly odd features about Munby J's reasoning.

146. First, he listed several reported authorities as the source of the conditions that he summarised, and his list (at paragraph 157) includes *Nicholas.* Neither the decision nor the dicta in *Nicholas,* however, support the existence of such conditions. The decision had nothing to do with veil piercing and the dicta are inconsistent with the principles that Munby J identified. Moreover, Munby J criticised Connell J's decision to pierce the corporate veil in *Green,* for which Connell J had relied simply on the fact of the husband's ownership and control of the companies, having drawn his inspiration from the dicta in *Nicholas.* If *Green* was in this respect wrong, it ought to have followed in Munby J's view that the dicta in *Nicholas* were also wrong. Munby J

also pointed out, at paragraph 173, that Bodey J had been correct in *Mubarak* to recognise that the fact that one spouse has sole ownership and control of a company is not enough to justify a piercing of the company's corporate veil. All that Munby J actually said about *Nicholas,* at paragraph 176, was that the veil piercing claim failed because the minority interests in the company could not be ignored. But (i) as I have said, I do not consider that there was a 'veil piercing' claim in *Nicholas,* and (ii) the suggestion by both Lords Justices that, but for the minority interests, such a claim could without more have succeeded cannot stand with Munby J's own explanation of the conditions that must be satisfied before such a claim can succeed. As for Cumming-Bruce LJ's reference to the 'abundant authority' in the Family Division as to the court's willingness and ability to pierce the veil in a 'total control' case, Munby J noted at paragraph 221 that counsel had been able to identify only one Family Division case to date in which the court had 'pierced the veil' on that ground, namely *Green.*

147. The second odd feature is that, in *Ben Hashem,* Munby J implicitly endorsed his own earlier agreement with the *Nicholas* dicta in *W v. H,* from which he cited without critical comment at paragraph 94. As his own summary of the basis upon which a company's veil may be pierced showed that the *Nicholas* dicta were wrong, so must it have followed that his earlier endorsement of the dicta was wrong. Munby J was not entitled to have it both ways.

148. *Kremen v. Agrest (No 2)* [2010] EWHC 3091 (Fam); [2011] 2 FLR 490 is a decision of Mostyn J. The case concerned the wife's claim to unscramble successive transfers of a single share in a BVI company that owned an English property occupied by the husband. The judge set the transfers aside and declared that the company held the property beneficially for the husband. In making that declaration, the judge pierced the company's corporate veil. At paragraph 43, he said that counsel had asked him to make explicit that, given the terms of Munby J's judgment in *Ben Hashem,* he had found actual impropriety on the part of the husband entitling him to pierce the veil. Mostyn J summarised *Ben Hashem* and said at paragraph 44 that the decision had surprised practitioners in ancillary relief proceedings, whose understanding for years had been conditioned by the dicta in *Nicholas.* Nor did Mostyn J share Munby J's expressed difficulty with *Green.* He then referred to Bodey J's judgment in *Mubarak,* saying, at paragraph 46:

> 'There is a strong practical reason why the cloak should be penetrable even absent a finding of wrongdoing. In *Mubarak v. Mubarak* [2001] 1 FLR 673, Bodey J pointed out that the same end of putting the underlying asset into the hands of the claimant could be achieved by going down a pure company law route rather than violating the sanctity of the corporate veil.'

Mostyn J then quoted the same passages from *Mubarak* that I have.

149. I do not understand what Mostyn J meant by 'going down a pure company law route rather than violating the sanctity of the corporate veil.' I am not clear that Bodey J had in mind that the court could order the husband to declare an appropriate dividend and then release it to the wife. If so, it would amount to an order requiring the husband to take steps to achieve the holding by him of an asset he did not currently own and to which he had no present entitlement. I do not know what jurisdiction there is to make such an order. If, as I consider, Bodey J's dicta were directed at making an order

directly regarding a company's assets, that does violate the sanctity to which Mostyn J referred. I add that if, contrary to Mostyn J's view, impropriety needed to be shown before the veil could be pierced, Mostyn J explained that there was abundant evidence of it in the case before him. But the thrust of *Kremen* was, however, that the *Nicholas* dicta should be preferred to the *Ben Hashem* principles.

150. I come finally to *Hope v. Krejci and Others* [2012] EWHC 1780 (Fam), another decision of Mostyn J, to which I have already referred. I shall not discuss the judgment in at any length. Mostyn J cited from, and discussed, various authorities to which I have referred, including his own judgment in *Kremen*. At paragraph 27, he endorsed his view as to the supremacy and binding nature of the dicta in *Nicholas* and said that he did not regard *VTB,* in which *Nicholas* was not referred to, as requiring it to be altered. I read Mostyn J's discussion of these matters in *Hope* (although not his decision in *Kremen*) as obiter, but there is no doubt as to his view of the law that is or should be applied in family proceedings.

The respondent's notice

151. By a respondent's notice, and if wrong on her primary submissions in support of the judge's reasoning, the wife sought to overturn the judge's findings in paragraph 218 that there was no relevant impropriety in relation to the establishment of the Petrodel group structure. The wife also challenged the finding in paragraph 219 that the husband's conduct of the litigation did not amount to relevant impropriety sufficient to justify the court in piercing the companies' corporate veil.

152. This aspect of the wife's case was barely developed by Mr Todd in his oral submissions, who acknowledged that, given the judge's findings, it was a difficult argument. I consider that it was not only difficult but impossible. There is no factual basis upon which this court can conclude that these long-established companies were incorporated, or were used, as a cloak or mask to hide the PRL and Vermont properties from the court's gaze; or, more particularly, as part of an attempt to hoodwink the court into believing that assets that belonged beneficially to the husband were now the companies' assets and so escaped the wife's reach. The wife's case to such end was not improved by pointing, as she did - indeed it formed the main part of Mr Todd's submission - to the husband's uncooperative stance in the litigation. In my judgment, there is no substance to this part of the wife's case and I shall devote no more space to it.

153. The wife also contended that the judge was wrong not to find that the relevant PRL and Vermont properties were held by those companies as nominees or trustees for the husband. To that end, Mr Todd referred us to several paragraphs of the judge's judgment that he said supported such a finding. These were, in the main, paragraphs in which the judge discussed whether the assets of the Petrodel companies belonged to the husband rather than the companies and concluded that they did. I have explained why I consider that the judge was wrong in that conclusion. If my criticism of his judgment in that respect is justified, there is, I consider, nothing in his judgment that could enable this court to find that he ought nonetheless to have found that the specific properties held by PRL and Vermont that are the subject of paragraph 5 of his order belonged beneficially to the husband. I would also reject this argument advanced by the wife.

Conclusion

154. I have made clear my views on the 'veil piercing' issue, but shall summarise them. *Salomon* is House of Lords authority affirming the distinction between the separate legal personalities of a company and its corporators. It makes no difference to such distinction that the company has a single corporator with total control over its affairs. It is a feature of the principle that a company's assets belong beneficially to the company and that its corporators have no interest in, or entitlement to, them. It is a further feature of it that such assets cannot be looked to in order to satisfy the personal obligations of the corporators, any more than the latters' personal assets can be looked to in order to satisfy the obligations of the company. In special circumstances, in particular in the winding up of an insolvent company, there may be a statutory basis for requiring the corporators to contribute personally to the company's assets, for example if they have misapplied its assets or engaged in wrongful or fraudulent trading (see sections 212 to 214 of the Insolvency Act 1986). Exceptions of that nature are, however, irrelevant for present purposes.

155. Subject to exceptions such as those, and to cases in which it is legitimate to pierce the corporate veil, the separate corporate identity of a company is a fact of legal life that all courts are required to recognise and respect, whatever jurisdiction they are exercising. It is not open to a court, simply because it regards it as just and convenient, to disregard such separate identity and to appropriate the assets of a company in satisfaction either of the monetary claims of its corporator's creditors or of the monetary ancillary relief claims of its corporator's spouse. *Salomon* precludes any such approach; and the same was made clear by the House of Lords in *Woolfson* and by the Court of Appeal in *Adams, Ord* and *VTB.* The obiter dicta in *Nicholas* to different effect are inconsistent with *Salomon, Woolfson, Adams, Ord* and *VTB* and advance no reasoning why a different principle should apply in the family jurisdiction as compared with other jurisdictions. The *Salomon* principle must apply equally to all jurisdictions. A one-man company does not metamorphose into the one-man simply because the person with a wish to abstract its assets is his wife.

156. *Woolfson, Adams, Ord, Ben Hashem* and *VTB* show that there may be factual circumstances in which it will be legitimate for the court to pierce a company's corporate veil and, to an appropriate extent, disregard the fact of its separate identity from that of its corporators. They all, however, affirm that that can only be done in limited circumstances, central to which is the demonstration of relevant impropriety in the corporators' use of the company. The rationale for such an exceptional jurisdiction is that the controllers of the company have so used the fact of its separate identity for improper purposes that it may be appropriate for the court disregard its separate identity in order that its controllers may not derive the advantage from such abuse that they intended to achieve. It is perhaps a relative of the principle that a wrongdoer cannot ordinarily be allowed to profit from his own wrong. The jurisdiction, whilst of interest to legal theorists, is an exceptional one and there are few reported decisions where it has been applied (including, in particular, in family proceedings). Just as there is no rational ground for regarding the family courts as exempt from *Salomon,* so is there is no rational ground for regarding them as exempt from the need to be satisfied as to the conditions affirmed in *VTB* before piercing of a corporate veil. The dicta in *Nicholas* cannot stand with the principles explained in *Woolfson, Adams, Ord, Ben Hashem* and *VTB* and they should no longer be regarded as of any authority.

Insofar as Mostyn J has, in *Kremen* and *Hope*, treated those principles as inapplicable in family cases and instead supported the *Nicholas* dicta, I would respectfully disagree with him.

157. In this case, once the judge had rejected the impropriety assertion, he had no choice but to reject the claim that PRL and Vermont's London properties were or could be regarded as properties to which the husband had any entitlement. He had no jurisdiction under section 24(1)(a) to make the orders he did in relation to them. Insofar as he was suggesting that section 24(1)(a) enabled the court to treat a company's property as belonging to its 100% owner, he was wrong. Section 24(1)(a) confers no such jurisdiction. It does no more than confer a jurisdiction to make a transfer order in respect of property to which the respondent spouse is beneficially entitled. Whether such spouse is or is not so entitled to the particular item of property in issue will be a question of fact, to be answered in the same way as it would regardless of the making of any application under section 24(1)(a).

158. I would allow the appeals by PRL and Vermont against the judge's paragraph 5 orders.

Lord Justice Patten

159. I agree that the appeal should be allowed for the reasons contained in the judgment of Rimer LJ and I fully endorse his treatment of the issues of beneficial ownership and the limited circumstances in which it may be appropriate to pierce the veil of incorporation.

160. What needs to be emphasised is that the provisions of s.24(1)(a) of the Matrimonial Causes Act 1973 do not give the court power to disapply the established principles of legal and beneficial ownership or of company law. On the contrary, those principles were plainly intended to define the limits of the court's jurisdiction under the statute and Moylan J was wrong to give the words "entitled, either in possession or reversion" any wider meaning. Married couples who choose to vest assets beneficially in a company for what the judge described as conventional reasons including wealth protection and the avoidance of tax cannot ignore the legal consequences of their actions in less happy times.

161. I wish particularly to support Rimer LJ's criticism of the *dicta* in *Nicholas* and his view that these cannot be relied upon as a correct statement of the law following the decision of this court in *Adams v. Cape Industries plc.* They have led judges of the Family Division to adopt and develop an approach to company owned assets in ancillary relief applications which amounts almost to a separate system of legal rules unaffected by the relevant principles of English property and company law. That must now cease.