

The second is the impact on the concept of 'telescoping' – so labelled by Mostyn J in *Hope v Krejci*;<sup>5</sup> where a nuptial settlement is varied and the judge orders the underlying property owned by an offshore trust via an offshore company to be transferred to a spouse. Given the Supreme Court's insistence on the sanctity of the separate legal personality of companies, telescoping must now be bad law.

This is strengthened by the fact that Mostyn J in *Hope* referred to 'the form of piercing of the veil that is the telescoping order'.<sup>6</sup>

Lord Sumption concluded in relation to the principle of piercing the corporate veil:<sup>7</sup>

'There is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil.'

*Prest* confirms that the power to pierce the corporate veil does exist in very limited circumstances, but there is no special power to do so in the Family Division, whether generally or under MCA 1973, s 24.

Therefore the most the Family Division can do is order the trustees to transfer the shares in the intermediate company to the other spouse. That order will then need to be recognised and enforced, if possible, in the offshore company jurisdiction.

The judgment also emphasises the importance of properly created, documented and run structures. The fact that Mr Prest failed to properly document loans or capital subscription and drew funds from the companies at will and without proper authority acted against him enabling the Supreme Court (in the absence of any evidence from Petrodel supporting its claim to be beneficially entitled to the properties) to conclude that Mr Prest had funded the purchase of the properties. Accordingly, the properties were held on resulting trust by Petrodel for Mr Prest and so available to be transferred to Mrs Prest.

<sup>5</sup> [2013] 1 FLR 182.

<sup>6</sup> Paragraph 22.

<sup>7</sup> Paragraph 35.

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