

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

COMMERCIAL DIVISION

In the matter of an Opposition to the passing of a mortgage advertised in the Official Gazette of the 14th November, 2015- NO.28 for the county of Demerara.

BETWEEN:

MOHAMED A. HAKIM, represented herein by his duly constituted Attorney, Moeenul Hack, agreeably with Power of Attorney executed and registered on the 8th April, 2003 in the Deeds Registry, Georgetown NO. 1795.

Plaintiff

-and-

1. MAHADEO PANCHU and
2. KHANWATTIE PANCHU individually and as guardians of Seukumar Vickram Panchu, minor.
3. TROPICAL INVESTMENTS AND TRADING INC.
4. REGISTRAR OF DEEDS

Defendants

Jointly and severally

The Plaintiff claims against the Defendants:

- i. An Order that the first, second and third named Defendants be declared liable for the debt of the third named Defendant pursuant to Order of Court dated 16th May 2013 by George J in the sum of \$14,896,950 (fourteen million eight hundred and ninety six thousand nine hundred and fifty dollars) plus interest at the rate of 6% (six percent) per annum from the 8th May 2003 to the 16th May 2013 and thereafter at the rate of 4% (four percent) per annum until fully paid and costs in the sum of

- \$200,000 (two hundred thousand) amounting to a total of approximately \$25,716,638 and continuing;
- ii. A declaration that the Opposition entered by the Plaintiff on the 27th November 2015 to the passing of a First Mortgage in favor of the first and second named Defendants by the Bank of Nova Scotia, in the words and figures as stated in the said Notice of Opposition with reasons, is just legal and well founded;
 - iii. An injunction restraining the Defendants whether by themselves, their servants, agents or otherwise howsoever from encumbering by way of First Mortgage the property at Lot 8 Good Hope, East Coast Demerara as fully described in the Transport No. 1659 of 2015 dated 5th November 2015 to BANK OF NOVA SCOTIA;
 - iv. An Order to lift the veil of the corporate shell of the third Defendant Tropical Investments and Trading Inc. and make the first and second named Defendants Incorporator/Director Mahadeo Panchu and Khanwattie Panchu personally liable to the Plaintiff for the judgement debt pursuant to Order of Court dated 16th May 2013 by George J. In the sum of \$14,896,950. (fourteen million eight hundred and ninety six thousand nine hundred and fifty dollars) plus interest at the rate of 6% (six percent) per annum from the 8th May 2003 to the 16th May 2013 and thereafter at the rate of 4% (four percent) per annum until fully paid and costs in the sum of \$200,000 (two hundred thousand dollars);
 - v. Such further and other reliefs as may be just;
 - vi. Interest;
 - vii. Costs.

The first and second named Defendants filed a Summons for the following orders:-

- (a) An order that the Statement of Claim herein be struck out on the ground that it discloses no reasonable cause of action.
- (b) An order dismissing the action herein on the ground that it is frivolous and vexatious and is an abuse of the process of the Court.
- (c) An order condemning the Plaintiff in the costs herein.

The Court dealt with the Summons dated 25/01/2016 to strike out the Statement of Claim first and after ruling against the Defendants, then proceeded to deal with whether the Opposition was just , legal and well founded.

For reasons given, which was appealed, the Court found that the Opposition filed by the Plaintiff is deemed unjust and unfounded and not legal and the Opposition was therefore dismissed.

As to the other aspects of the Plaintiff's claim the Court ruled that there is a good and valid cause of action in seeking the Court's intervention in lifting the corporate veil.

The Court also believed that evidence would have to be adduced before the Court can make such a determination.

From a perusal of the facts the Plaintiff has a debt owing by the Company the third Defendant which has not been honoured by the Company. The law provides for the lifting of the Corporate veil to determine whether the Directors should be held personally responsible for the Company's debt.

2015- HC- DEM- CIV- CD- 525

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

COMMERCIAL DIVISION

In the matter of the Opposition to the passing of the conveyance by the way of Surrender of Lease Advertised in the Official Gazette of the 4th April 2015, NO. 27 for the county of Demerara.

BETWEEN:

MOHAMED A. HAKIM, represented herein by his duly constituted attorney, Moeenul Hack, agreeably with power of attorney executed and registered on the 8th April, 2003 in the Deeds Registry, Georgetown No. 1795.

Plaintiff

-and-

1. MAHADEO PANCHU and
2. KHANWATTIE PANCHU
3. TROPICAL INVESTMENTS AND TRADING INC.
4. PREMIUM PACKAGES INC.
5. REGISTRAR OF DEEDS

Defendants
Jointly and Severally

The Plaintiff claims against the Defendants:

- i. An order that the first, second, third and fourth named Defendants be declared liable for the debt of the third named Defendant pursuant to order of Court dated 16th May 2013 by George J in the sum of \$14,896,950 (fourteen million eight hundred and ninety six thousand nine hundred and fifty dollars) plus Interest at the rate of 6% (six percent) per annum from the 8th May 2003 to the 16th May 2013 and thereafter at the rate of 4% (four percent) per annum until fully paid and costs in the sum of \$200,000 (two hundred thousand dollars) amounting to a total of \$25,229,325 to date and continuing;
- ii. A declaration that the Opposition entered by the Plaintiff on the 17th April 2015 to the passing of Surrender of Lease by the first named Defendant Mahadeo Panchu of Plots 33 & 40 Block DD Eccles, East Bank Demerara, to National Industrial and Commercial Investments Limited, in the words and figures as stated in the said Notice of Opposition with reasons, is just legal and well founded;
- iii. An injunction restraining the Defendants whether by themselves, their servants, agents or otherwise howsoever from conveying, passing or otherwise alienating by way of Surrender of Lease or otherwise Plots 33 and 40 Block DD Eccles, East Bank Demerara as fully described in Lease No. 101 of 2006 and Transport No. 640 of 2002 to NATIONAL INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED or to Premuim Packages Inc;
- iv. An order to lift the veil of the corporate shell Tropical Investments and Trading Inc. And make the first and second named Defendants Incorporator/Director Mahadeo Panchu and Khainwattie Panchu personally liable for the judgment debt pursuant to order of Court dated 16th May 2013 by George J with interest and costs in the total sum of \$25,229,325 and continuing;

- v. An order to lift the veil of the corporate shell Premium Packages Inc. And make the first named Defendant Incorporator/Director Mahadeo Panchu personally liable for the judgment debt pursuant to order of Court dated 16th May 2013 by George J with interest and costs in the total sum of \$25,229,325 and continuing;
- vi. Such further and other relief as may be just;
- vii. Interest;
- viii. Costs.

A Summons dated 3/08/2015 was filed in the following terms :-

(a) An order that the Statement of Claim herein be struck out on ground that it discloses no reasonable cause of action.

(b) An order dismissing the action herein on the ground that it is frivolous and vexatious and is an abuse of the process of the Court.

(c) An order condemning the Plaintiff in the costs herein.

In Action 525/2015-CD the Court heard the application for Injunction and for the same reasons given in Action 1400-CD/2015 dismissed the application herein.

For the same reasons given in Action 1400/CD- 2015 the Summons to strike out the Statement of Claim dated 3/08/2015 was also dismissed.

For the same reasons the Substantive Claim was found to have a good cause of action.

Finally Actions 525/CD-2015 and 1400/CD-2015 were consolidated to be heard together on the substantive claim.

The Plaintiff led the following evidence in Court:-

- a) That Mahadeo Panchu is the sole Incorporator, a Director, Managing Director, President and Contact person of Tropical Investments and Trading Inc.
- b) Tropical Investments and Trading Inc. was incorporated in January 2000 and that Mahadeo Panchu was the sole Incorporator.
- c) The secretary was Khainwattie Panchu, wife of Mahadeo Panchu.
- d) That on the 7th March 2001, Mahadeo Panchu being named as the Contact Person and as President of the Company, entered into two contracts with the Plaintiff. Both contracts were signed by Mahadeo Panchu.
- e) That as the Director, Mahadeo Panchu would have authorised the contracts in the name of the Company.
- f) In Action No. 506-S of 2003, that Mahadeo Panchu swore to an Affidavit of Defence as Managing Director.
- g) Mahadeo Panchu was the sole Incorporator and Director of the Company and contrary to section 63 of the Companies Act, he failed to call a meeting of Directors to authorise the issue of shares and other matters to transact the business of the Company.
- h) That despite failing to hold the organisational meeting and there being no issue of shares, Mahadeo Panchu traded under the name of the Company to conduct business.
- i) That the registered address of Tropical do not exist. In July 2013, when the Marshall of the Supreme Court went to serve the said Order of Court at the registered address of the Company at 255 Campbell Street, Newtown Kitty, he testified that the owner of the property told him that the Defendant was a tenant and moved out about 12 years ago. That failing to have a registered address is a breach of section 187 of the Companies Act. The Registrar of Companies has no record of notice of change of address. There is also a Breach of sections 189, 191 and 194 to keep records at the registered address and access thereof.
- j) Renee Anderson, Registry Supervisor from the Commercial Registry confirmed that there is no Notice of Director document on record at the Registry. No bye laws were produced and no annual returns as required by Companies Act Cap. 89:01. Declaration of compliance signed by lawyer also missing. The Company was struck off.

The Plaintiff contends:

- i) Tropical Investments and Trading Inc. and Mahadeo Panchu are one and the same and Mahadeo Panchu is the owner of the Company. The Company is the alter ego of Mahadeo Panchu.
- ii) That in effect Mahadeo Panchu was using the company as a device, a sham and a mask for carrying on his personal business so as to avoid payment and enforcement of debts incurred.

The Plaintiff also led the following evidence:-

- a) Premium Packages Inc. was incorporated on 7th October 2013. Mahadeo Panchu is the sole Director, Secretary and Incorporator.
- b) The Articles of Incorporation of the Fourth Defendant Premium Packages Inc. reveal under the description “Restriction if any on shares transfers: MAHADEO PANCHU 100%”.
- c) Premium Packages Inc. is authorised to issue 100,000 shares ordinary shares at \$1.00 each. No shares were issued.
- d) The First named Defendant Mahadeo Panchu signed a resolution of the said company to accept the Lease from himself, Mahadeo Panchu, which stated, inter alia, “Company limited by shares, at a meeting of the Boards of Directors” when he Mahadeo Panchu, the said First named Defendant is the only Director and owner of the company.
- e) Mahadeo Panchu surrendered the Lease referred to herein to NICIL who then simultaneously transferred the same Lease to Premium Packages Inc. whose sole Director and Secretary is the said Mahadeo Panchu. Further the registered address of the said Premium Packages Inc. is the subject matter herein, namely, Plots 33 & 40 Eccles, East Bank Demerara.
- f) The resolution for Premium Packages Inc. to accept the Lease from Mahadeo Panchu was signed by Mahadeo Panchu, who is the sole Board of Directors.
- g) The Affidavit of Lessor was signed by Mahadeo Panchu and the Affidavit of Lessee was also signed by Mahadeo Panchu as Lessee as Company Secretary for Premium Packages Inc.
- h) No annual returns were filed since company was registered.

The Plaintiff contends:-

- a) Like Tropical Investments and Trading Inc., Mahadeo Panchu, the First Named Defendant is also using the Fourth Named Defendant company as a device, a sham, a mask and a cloak for carrying on his personal business so as to avoid payment and enforcement of debts incurred by him.
- b) The First Named Defendant Mahadeo Panchu is attempting to divest assets from his name to the Fourth Named Defendant, another shell company to avoid paying debts.
- c) The Third and Fourth Named Defendants are just instrumentalities of the First and Second Named Defendants to avoid paying debts incurred.
- d) Both the Third and Fourth Named Defendant companies are the alter ego of the First Named Defendant Mahadeo Panchu.

LAW

(A) One person Company

Incorporation of a Company by registration was introduced in 1844 and the doctrine of limited liability of a company followed in 1855. Subsequently in 1897 in *Salomon v Salomon and Company*, the House of Lords effected these enactments and cemented into English Law the twin concepts of corporate entity and limited liability. In that Court the apex Court laid down the principle that a company is a distinct Legal person entirely different from the members of the Company. This principle is referred to as the 'veil of incorporation'.

The Companies Act 2013 of India introduced a new concept of "One person Company". This is the first time such a concept is being introduced in India. Basically it is giving Legal Corporate Status of Proprietorship form of doing business.

Definition:

Section 2 (62) defines a "One Person Company" means a Company which has only one person as a member.

Incorporation:

Section 3 (1) (c) – One Person Company can be formed only as a private Company. In the Subscription clause of the memorandum of association of an One Person Company, the member will state that he is subscribing to all the shares in the capital of the Company.

"One Person Company means a company which has only one member". It shall also be important to note that section 3 classifies One Person Company as a Private Company for all the legal purposes with only one member. All the provisions related to the Private Company are applicable to an One Person Company, unless otherwise expressly excluded.

The Companies Act Guyana states "A company must have at least one director, but a public company must have a minimum of two directors."

(B) "The difference between directors and shareholders.

A limited company shareholder is an owner of a company. A limited company director is appointed by shareholders to manage the business on their behalf. Although the roles are completely different and separate, one person can assume both positions.

The sole director and member of a company is responsible for managing the company's business and may exercise all of the Company's powers".

A limited company has separate Legal personality and it is possible for one person to be the only director and shareholder of the Company. It is also now common for companies to no longer appoint a separate individual as company secretary or indeed to have one at all.

This means that all the powers and legal authority to make decisions for the company rests with one individual.

(C) The principle of separate legal personality

Saloman v Saloman established the principle that a limited company has a separate legal personality from its members.

In Salomon a sole trader incorporated his business into a limited Company when the Company failed, the liquidators argued that Salomon and the Company were effectively one and the same.

However, the House of Lords said that the Company was a Legal entity distinct from its members. Therefore Salomon himself was not liable for the Company's debts. This separation between members and Company is called the 'corporate veil'. The Salomon principle remains an important part of corporate law today.

However, there are several exceptions to this principle. In these cases Courts 'lift the corporate veil' to make members liable for the actions of the company.

- (D) "Piercing the corporate veil" refers to a situation in which Courts put aside limited liability and hold a corporation's shareholders or directors personally liable for the corporation's actions or debts. The veil of incorporation limits the personal liability of corporate directors, officers and employees for actions taken by the business. However, business owners can still be liable for business activities if they failed to follow corporate guidelines, commingled assets or acted recklessly.

"Piercing the corporate veil or lifting the corporate veil is a legal decision to treat the rights or duties of a corporation as the rights or liabilities of its shareholders."

"A company is a distinct legal person entirely different from the members of that company. This principle is referred to as the "veil of incorporation". The chief advantage of incorporation from which all others follow is the separate entity of the company."

(E) FRAUD OR IMPROPER CONDUCT

The Courts have been more than prepared to pierce the corporate veil when it feels that fraud is or could be perpetrated behind the veil. The Courts will not allow the Salomon principle to be used as an engine of fraud. The two classic cases of the fraud exceptions are Gilford Motor Company Ltd v Horne and Jones v Lipman.

In the case of Gilford Motor Co. v Horne 1933 Ch 935, the Company was described as “a device, a stratagem,” and a “mere cloak or sham. A former employee of the company covenanted not to solicit its customers. He attempted to evade this obligation by forming a company which undertook the soliciting. An injunction was granted both against him and the company

In the second case of Jones v Lipman a man contracted to sell his land and thereafter changed his mind in order to avoid an order of specific performance he transferred his property to a company. Russel J, specifically referred to the judgment in Gilford v Horne and held that the company here was “ a mark which MR Lipman holds before his face in an attempt to avoid recognition by the eye of equity. Therefore he awarded specific performance both against MR Lipman and the company.

The following are examples of exceptions that would allow the veil to be pierced.

Exceptions

1. Statute
Insolvency Act
2. War
3. Sham
4. Agency
5. Trusts
6. Groups

Sham (one of the exceptions).

Courts have ignored the corporate veil where a company is a sham designed to commit fraud or avoid an existing contractual obligation. For instance in Gilford Motor W v Horne (supra) the Defendant was a former director of a company who signed an agreement that he would

not solicit his former employer's customers. Instead he and his wife incorporated another company which he used to breach the agreement. The Court held that the second company was simply 'a cloak, or a sham' and held the Defendant liable.

However, the Court will not lift the veil if the company is set up to avoid future liabilities.

Fraud, Sham or Façade: case material

Gilford Motor Co. V Heine (1993) Ch. 935

Jones v Lipman (1962) 1 WLR 832

Inestor AB v Smallbone (2001) 1 WLR 1177

Adams v Cape (1990) Ch 433

Wallesteiner v Moir (1974) 3 All ER 217

Prest v Petrodel Resources Ltd. (2013) UKSC 34 is currently the teaching case on lifting the corporate veil.

- (A) In Adams v Cape Dignam says " gone are the wild and crazy days when the Court of Appeal would lift the veil to achieve justice irrespective of the legal efficiency of the corporate structure'. Therefore Adams restores the primacy of Salomon v Salomon.

This is supported by the recent Supreme Court decision in Prest v Petrodel Resources Ltd. where a divorced wife claimed shares in houses owned by companies in which her ex-husband was the controlling shareholder. She asked the Court to lift the corporate veil and treat her ex-husband and the companies as being effectively the same. However, the Court held that the veil could not be lifted without evidence of impropriety. The setting up of the Companies had nothing to do with the marriage breakdown. Therefore, the Court refused to lift the veil.

Lord Sumption stated that the veil could only be lifted if there was a legal right against the controller of a company and the company's separate legal personality frustrated that right.

Reasons for lifting the veil of incorporation

Circumstances when the veil is lifted are haphazard and difficult to categorize. There is a great reluctance by the Courts to depart from the Salomon principle. Hicks and Goo provides an insightful quotation by Professor Sealy (1994) at page 103.

“... one will search the reports in vain for a single English case where the principle of limited liability as distinct from that of corporate personality, has not been respected – statute apart. This is true of cases brought against directors and dominant shareholders alike. These cases where the corporate veil has been pierced on the basis that the company was a facade or sham, or was the agent of its controllers, turn out on examination to have been concerned with the evasion of statutory provision or a contractual obligation, or some similar issue, and not with imposing personal liability on the directors or shareholders for the company’s debts.”

There are some occasions where it is clear that the Courts will remove the veil, yet the important thing to remember is that this list is not exhaustive and it is not known where the boundary lies between a Court removing a veil of incorporation and having it intact.

Broadly there are two types of provisions for the lifting of the corporate veil- Judicial provisions and Statutory provisions. Judicial provisions include fraud, character of company, protection of Revenue, single economic entity while Statutory provisions include reduction in membership, misdescription of name, fraudulent conduct of business, failure to refund application money.

Some of the events that may convince a Court to pierce the corporate veil includes :-

- Mingling business and personal assets for eg. Paying for your personal expenses out of the Corporate checking Account.
- Not capitalizing the corporation: in other words, no investing sufficient funds for the corporation to do business.
- Not following the corporate formalities such as hosting Board of Directors meeting, keeping meeting minutes and ensuring company representatives abide by corporate bylaws.
- Acting recklessly or fraudulently! For example, making business deals on behalf of the corporation that you know the business can’t pay for.
- If you personally guarantee a loan or debt

E. FRAUD generally

In the case of Wallingford v Mutual Society (1880) 5 App Cas 685, (1880) 43 LT 258., Lord Blackburn noted:

“I think that when the Affidavits are brought forward to raise that defence they must, if I may use the expression, condescend upon particulars. It is not enough to swear, “I say I owe the man nothing”. Doubtless, if it was true, that would be a good defence; but it is not enough. You must satisfy the Judge that there is reasonable ground for saying so. So, again, if you swear that there was fraud, that will not do. It is difficult to define it, but you must give such an

extent of definite facts pointing to the fraud as to satisfy the Judge that those are facts which make it reasonable that you should be allowed to raise that defence. And in like manner as to illegality, and every other defence that might be mentioned. So, looking at the Affidavits which were used before Manisty, J, I think that in none of those particulars did the Appellant satisfy the burden that was cast upon him. He makes general statements of fraud, but nowhere does he condescend upon any particular fraud, such as in my mind, if I had been in the place of Manisty, J, would have made me think that all fit that he should be allowed to defend upon that ground.” (Emphasis added)

It has been considered settled that any charge of fraud must be distinctly pleaded, distinctly proved and sufficiently particularized. The principle was expressed by Thesiger, I.J. in Davy v. Garret (1877) 7 Ch. D. 473 at 489 in the following words:

“In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts”.

A claimant is required to set out the facts and the circumstances that are being relied on to prove that a Defendant had or was motivated by a fraudulent intention.

As noted by Simmons J.: at paragraphs 72 and 73 in the case of Douglas Et Al v. Barclays Bank Plc and National Commercial Bank Jamaica Limited JM 2013 SC 58.

[72] In Re Rica Gold Washing Co. 11 Ch. D. 36, it was held that it is not sufficient for a party to make a vague allegation of fraud and that the facts which constitute the fraud must be stated. The Court was also of the view that where only a vague general allegation of fraud is made, evidence of the acts which allegedly constitute such fraud is not admissible.

[73] Similarly, in Lawrance v Lord Norreys and others [1880-90] ALL ER Rep 858 at 864, Lord Watson stated:

“ In my opinion, a Plaintiff, who desires to avail himself of the provisions of s 26, is not released from the ordinary rule of pleading applicable to cases of fraud, which was thus expressed by LORD SELBORNE, LC, in Wallingford v Mutual Society (1) (5 App Cas at p 697): “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice.”

It is not a sufficient compliance with the rule to state facts and circumstances which merely imply that the Defendant, or someone for whose action he is responsible, did commit a fraud of some kind. There must be a probable, if not necessary, connection between the fraud averred and the injurious consequence which the Plaintiff attributes to it; and if that connection is not

sufficiently apparent from the particulars stated, it cannot be supplied by general averments. Facts and circumstances must in that case be set forth, and in every genuine claim are capable of being stated, leading to a reasonable inference that the fraud and the injuries complained of stood to each other in the relation of cause and effect.

Conclusion

Taken in isolation the breaches by the Defendant of the Company's Act are procedural breaches and do not constitute fraud.

Fraud cannot be inferred from the fact that the Defendant is the sole Director and Shareholder, or from the fact that his wife is the Company Secretary since in law both of these are allowed.

“The Court is careful not to find fraud unless it is distinctly pleaded and proved.” (Per Lord Sumption (2013) 4 AER p. 686 Letter d.)

In Prest v Prest (supra) the Learned Judges of the UK made the following observation:-

“I conclude that there is a limited principle of English Law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.” (per Lord Sumption) (2013) 4 AER at p. 694 Letter d.

“ The Court is not free to disregard the Salomon principle merely because it considers that justice so requires.” (per Lord Sumption), 2013 4 AER p. 687 Letter d.

It is apparent that a single criterion by itself, without more, cannot lead to the conclusion that a Company was formed to commit fraudulent Acts or is a fake or false company.

For example, if a Company is a sole directorship then such a company cannot without more be deemed a fake company.

If a Company fails to file annual returns or fails to hold meetings or keep records, the company cannot without more be said to be a false company set up to defraud members, or avoid contractual obligations or offend against public policy.

The most that can be concluded is that the company committed breaches of the Company Rules and Regulations.

If those breaches can result in the Company being deemed a fake or false company, then every Company that commits a breach of the Company's Act and Regulations would have to be deemed a fake company set up to defraud others.

The Plaintiff has led evidence from the Office of the Registrar of Companies to show that the Defendant companies were a sole directorship company, that the sole director and shareholder is the Defendant, that the company was struck off because Annual Returns were not filed, that the company failed to hold meetings, and that the Company was struck off the Companies Register.

I accept the evidence of the witnesses, that is, the Marshall and the officer of the Registry and this evidence remains uncontradicted.

I now turn to look at the principle of acting recklessly or fraudulently.

“Acting recklessly or fraudulently” is one of the events mentioned previously that may convince a court to pierce the Corporate veil. The example given was making business deals on behalf of the Corporation that you know the business can't pay for, and

“Not following the corporate formalities such as hosting Board of Directors meeting, keeping meeting minutes and ensuring company representatives abide by corporate bylaws” is another set of actions that can be looked at determine whether the Director acted recklessly or fraudulently.

The question to ask is did the defendant act recklessly when as Director of Tropical Investments he entered into the contracts with the plaintiff on 7th March 2001?

The court can look at the officers of the company, what shares they hold or as in this case, where no shares were issued, status of registered address, non existent in this case, breaches of Companies Act by Director, such as non filing of annual returns and accounts, failure to hold meetings, the capacities in which the director has acted and find that the director, incorporator, Managing Director, President, Signer of rice contracts and signing of Court proceedings is one and same as Company and that the registering of the company was a device to avoid debts incurred.

It appears from the evidence led by the plaintiff that the defendant set up the company and failed to carry out the duties of Director, and also failed to have a valid Company's address, did not issue any shares and yet conducted business on behalf of the Company, did not file returns and allowed the Company to be struck off the Register of Companies, that there seems to be some suspicion or at least recklessness on behalf of the Defendant as to the consequences of his actions.

An order of court was made against the Company directing the Company to pay the judgment which has not been honoured to date and the Company has been struck off the register of companies for non filing of Returns. It seems to me that the defendant either deliberately or recklessly allowed this to happen to avoid paying the debt which he knew the Company could not pay, and at the time of entering the contracts had no financial resources to pay the plaintiff. The fact that no annual returns had been filed suggests that either

the company was not doing well or had failed completely. The defendant would have known the financial status of the Company when he entered the agreements on behalf of the Company.

The second Company Premium packages was formed and the deft sought to transfer the lease to this Company through NICIL. It appears that the defendant is attempting to put his assets out of the reach of creditors.

It therefore appears that the first named defendant conducted business under Tropical Investments in a manner that was in disregard of the consequences of his actions, and is also using the fourth named defendant as a sham to carry on his personal business so as to avoid payment and enforcement of the debt incurred by him.

Taking all the factors in this matter into consideration seems to lead to the conclusion that the defendant was not totally honest in his dealings.

The phrase “alter ego” was described in the case of *Willis v Assn of Universities of the British Commonwealth* 1965 1QB 140 at 151 as the landlords in their new guise of the chartered corporation as successors of the landlords in their old guise of the limited company.

In this case the defendant, Mahadeo Panchu was in control of Tropical Investments and Trading Inc. and Premium Packages Inc. and profited either by receiving rice and not paying for same and aslo by accepting property in the name of Premium Packages Inc. and therefore both companies should be held responsible for the judgment of Tropical Investments and Trading Inc.

The decision in this matter is confined to the facts herein and by no means intends to imply that a company that breaches the Companies’ act is to be deemed a sham. The Cumulative effect in this case has to be taken into account in arriving at this conclusion.

And it is only on this basis that the court has come to the conclusion that the veil should be lifted and the first named defendant be made personally liable for the debts of the company Tropical Investments.

In the circumstances judgment is granted for the plaintiff.

Costs \$50,000

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Diana F. Insanally

Puisne Judge

Dated 11th July 2018

