



### Prest v Petrodel: How company assets are treated on divorce

On 12 June 2013, seven of the most senior judges in England and Wales gave a unanimous judgment which has important implications for the way in which company assets are treated in financial settlements arising from divorce or dissolution of a civil partnership.

Giving judgment in the case of *Prest v Petrodel* the Supreme Court made it clear that any financial settlement on divorce must comply with the long-standing principles of company law. However, in certain circumstances it will be possible for the courts to make an order over company assets where it can be shown that they are held on trust for one of the parties.

The Supreme Court was asked to resolve the financial settlement between Michael and Yasmin Prest, a case which had been running for more than five years. Mr and Mrs Prest were extremely wealthy, but the principles that apply to the judgment in their case may now be applied to anyone who is going through a divorce where there are company assets.

Mr Prest owned and controlled a number of companies belonging to the Petrodel Group. Two of the companies owned seven properties in which Mrs Prest sought an interest. At first instance, the court decided that there was sufficient authority for the court to “pierce the corporate veil” and make an order over the company assets. This was criticised on appeal and it fell to the Supreme Court to decide the extent of the court’s authority. Specifically, they considered whether or not they had the power to order the transfer of those seven properties to Mrs Prest, even though they were legally owned by the companies, not Mr Prest himself.

It is a fundamental legal principle that a company is a separate legal entity. In financial settlements on divorce, the court only has power to make an order over assets which are owned legally or beneficially by one of the parties to the marriage. However, family courts in England and Wales have always had the benefit of wide-ranging powers and significant discretion to make orders that they have found necessary to achieve a fair outcome; the argument in this case was that the court had gone too far by breaching such a well-established legal maxim.

Having considered all of the evidence, including from the companies, the Supreme Court found that:

- the well-established principles of company law cannot be brushed aside by the family courts, despite the wide discretion they enjoy;

- in very limited circumstances, it remains possible to pierce the corporate veil. This will only be where someone has tried to evade or frustrate the law and it did not apply in this case as Mr Prest had acted purely to minimise tax, not to deny Mrs Prest’s claims; and
- on the very specific facts of this case, the companies were found to be holding the various properties on trust for Mr Prest. As such, because he had a beneficial interest in those assets, the court did have the power to transfer them to Mrs Prest.

This case provides helpful guidance on the extent to which people can look to protect their assets from a future divorce. It is clear that steps can still be taken to protect assets, but these will be specific to an individual’s circumstances. It also shows how a financially weaker party might argue to include wider assets in a settlement. However, in this case the court clearly attached some weight to the way in which Mr Prest and the companies conducted themselves prior to the proceedings as well as during them. It is therefore important for anyone for whom these issues are likely to be relevant to take advice about asset protection when companies are acquired or established.

Please be aware that although this note refers to marriage and divorce, the same principles will apply to civil partners.

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