

The Corporate Veil and its Relevance to Co-operative Societies in Nigeria

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Abstract

This article appraised the corporate veil concept as given judicial imprimatur in the pivotal case of *Salomon v A. Salomon & Co Ltd* and its relevance to co-operative societies in Nigeria by analysing relevant case law and statutes. The article posited that the rigid concept was alive and well in relation to co-operative societies in Nigeria and suggested that the uncertainty faced by most common law countries, regarding when the veil could be lifted by the court to ameliorate the rigours of the concept could be overcome if the persuasive dictum of the House of Lords in the recent case of *Prest v Pretrodell Resources* is followed by the Nigerian courts. The courts are however admonished not to exercise this power capriciously.

Key words: Company - Co-operative societies - corporate veil - lifting of veil – Legal personality - Nigeria – Registration

1.1 Introduction

A co-operative society is defined as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.¹ A co-operative society like any other form of business association in Nigeria is required to have a legal framework for its operation. Co-operative matters are on the concurrent legislative list,² which implies that both levels of government can legislate on co-operatives in Nigeria.³ The federal law on co-operatives which is our focus is the Nigeria co-operative societies Act⁴, which makes provision inter-alia for the registration of a Co-operative Society⁵ as either primary, industrial or secondary,⁶ after compliance with prescribed requirements for registration. The registration of a co-operative society renders it a body corporate by the name under which it is registered with perpetual succession and a common seal.⁷ This is often referred to as the corporate veil which makes a registered association an artificial person through the corporate personality principle given judicial imprimatur by the pivotal House of Lords case of *Salomon v. A. Salomon & Co. Ltd.*⁸

This article appraises this principle and its relevance to co-operative societies in Nigeria by analysing case law on the theory together with relevant statutory provisions as well as the intervention by equity enabling judges to look to the substance rather than the form and therefore to be ready to lift the corporate veil to meet the justice of a case when appropriate.

1.2 Theory of Corporate Personality

The most important legal feature of a body corporate is its dual nature as both an association of its members and a person separate from its members.⁹ This is often called, the artificial entity theory of corporate personality, which employs the ‘fiction’ theory to ascribe legal personality to an amorphous or incorporeal entity known as a company.¹⁰ That separate person, though artificial (that is, produced by human artifice rather than occurring, naturally), is treated by law as being, as far as possible, a person with the same capacity to engage in legal relationships as a human person. As confirmed by Karibi- Whyte, J. S. C. inter alia, “... legal personality recognised at law can only be given by the state through its laws by way of statute or other recognised law.”¹¹ In *Olaniyan & Ors. v University of Lagos*,¹² Oputa, J.S.C declared that, where a corporation is given or has acquired its powers at common law or by custom or charter, then, it is “a person at common law and may do

¹ Statement on the Co-operative Identify by the International Co-operative Alliance (1995)

² Yebisi, E.T. An Appraisal of the Legal and Regulatory framework of Co-operative Societies in Nigeria, Ph.D Thesis (unpublished), Faculty of Law, Ekiti State University, Ado-Ekiti, 2014 pp 85-89

³ Nigeria is a federation with thirty-six states.

⁴ Cap N98, Laws of the Federation of Nigeria, 2004

⁵ By section 55(4) of the Nigeria Co-Operative Society Act, the provisions of the Companies and Allied Matters Act, 2004 which regulate registered companies in Nigeria does not apply to registered co-operative societies

⁶ *Op. cit.* section 3

⁷ *Ibid.* section 6

⁸ [1897]A. C. 22

⁹ Mayson S. W., French, D & Ryan C. L (2000) *Company Law*, 19th ed. Oxford. Oxford University Press. p. 169

¹⁰ Akomolede T. I. (2008) *Fundamentals of Nigerian Company Law* Lagos: Niyak Prints & Publications p 34

¹¹ *Gani Fawehinmi v Nigeria Bar Association* (No.2) [1989] 2 NWLR (PT.105) 588 at 633

¹² [1985] AII NLR 363 at 383

anything which an ordinary person can do". The landmark case on the fundamental importance of separate personality is *Salomon v A. Salomon and Co. Ltd.*¹ Mr. Salomon had conducted his boot making business as a sole trader, and he sold it, to a company incorporated for the purpose called, A Salomon and Co. Ltd. whose only members were himself, his wife, a daughter and four sons. These seven individuals were the subscribers of the company's memorandum and took one £1 share each. The business was sold to the company for over £39,000. Part of the purchase price was used by Mr. Salomon to subscribe for a further £20,000 shares in the company, but £10,000 of the purchase price was not paid by the company, which instead issued Mr. Salomon with a series of debentures for £10,000 and gave him a floating charge on its assets as security for the debt. Unfortunately, the company's business failed and the company went into liquidation.

In an action brought by a debenture-holder on behalf of himself and all the other debenture-holders, the court of first instance, presided over by Vaughan Williams J. agreed with the liquidator that, the company was formed by Mr. Salomon and the debentures were issued in order that, he might carry on the business and take all the profits without risk to himself, that the company was the mere nominee and agent of Mr. Salomon; and that, the company or the liquidator thereof was entitled to be indemnified by Mr. Salomon against all the debts owing by the company to creditors other than Mr. Salomon.² The judgment of Vaughan Williams J. was affirmed by the Court of Appeal, which was of the opinion that, the issue of debentures to Mr. Salomon was a mere scheme to enable him to carry on business in the name of the company with limited liability, contrary to the intent and meaning of the Companies Act, 1862 and further to enable him to obtain a preference over other creditors of the company, by procuring a first charge on the assets of the company by means of such debentures and because of Mr. Salomon's fraud, a constructive trust should be imposed under which the company should be deemed to have operated the business as trustee for Mr. Salomon, who should therefore, indemnify the company for the debts incurred in carrying out the trust. Thus, the Court of Appeal, dissented from the view taken by Vaughan Williams J. that the company was to be regarded as agent of Mr. Salomon, by considering the relations between them to be that of trustee and cestui que trust; but this difference of view of course, did not affect the conclusion that the right to the indemnity claimed had been established.³ On further appeal to the House of Lords, the apex court rejected the approach of the court of first instance, when Lord Herschell said:

In a popular sense, a company may in every case be said to carry on business for and on behalf of its shareholders; but this certainly does not in point of law constitute the relations of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs.⁴

The stance of the Court of Appeal was rejected by the House of Lords which held that, there was nothing at all in the Companies Act to show that, what Mr. Salomon had done was prohibited. Indeed, Lord Macnaghten pointed out that, in an earlier case,⁵ Gifford, L. J. had said that, it was, the policy of the Companies Act to enable business people to incorporate their businesses and so avoid incurring further personal liability. Lord Macnaghten said:

When the memorandum is duly signed and registered... the subscribers are a body corporate capable forthwith to use the words of the enactment, 'of exercising all the functions of an incorporated company'. Those are strong words. The company attains maturity on its birth. There is no period of minority – no interval of incapacity. I cannot understand how a body corporate thus made 'capable by statute can lose its individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The company is at law a different person altogether from the subscribers to the memorandum; and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable in any shape or form, except to the extent and in the manner provided by the Act. That is I think, the declared intention of the enactment.⁶

¹ [1897] AC 22

² *Subnom Broderip v Salomon* [1895] 2Ch. 323

³ *Ibid* at p.333

⁴ *Salomon v Salomon*, *supra* at p.43

⁵ *Re Baglan Hall Colliery Co.* (1870) LR 5Ch. App. 346 at 356

⁶ *Salomon v Salomon supra* at p. 51. For the background to *Salomon v A. Salomon & Co Ltd* which is probably the most famous case in Company Law, see G. R. Rubin "Aron Salomon and his circle" in *Essays for Clive Schmitthoff*, ed. John Adams, Abingdon: Professional Books, 1983 pp 99 - 120

1.3 The Corporate Veil and Co-operative Societies

A co-operative society possesses most of the attributes of a company.¹ Under the co-operative societies legislation in Nigeria, it is not only a body co-operate on registration, but also enjoys perpetual succession and has a common seal.² It can enter into contract, hold movable and immovable property, invest funds and dispose of the surplus and institute and defend suits and other legal proceedings and can do all things necessary for the purpose of its constitution.³ Like a company, a co-operative society may be registered with or without limited liability⁴ and can hold and dispose of its property in the same way as a company can do.⁵ In particular, a society shares most of the characteristics of a company, with regard to allocation of shares, right of members to dividend and the appointment of a liquidator on dissolution. The administrative structure of a co-operative society is also akin to that of a company in many respects and so are many features of the two. Both a company and a co-operative society are managed by their members' general meeting and an elected body of executives called respectively "board of directors"⁶ and "governing committee."⁷

The advantages of registration are better appreciated when discussed under the following sub-heads:

1.3.1 Limited liability

A society may be registered with or without liability. The obsession for limited liability stems from the fact that, the liability of the society is different from that of the members and as such, members as individuals cannot be compelled to settle the liabilities. Conversely, the debts of the members are not the debts of the society.⁸ Where the society is limited by shares, each member is liable to contribute when called upon to do so, the full nominal value of the shares held by him, in so far as this has not already been paid by him or any prior holder of those shares. If the society is an unlimited one, their liability to contribute will be unlimited. In contrast, an unregistered society not being a legal person, cannot be liable and obligations entered into on its behalf, can bind only the actual officials who purport to act on its behalf, or the individual members, if the officials have actual or apparent authority to bind them.⁹ In either event, the persons bound will be liable to the full extent of their property, unless they expressly or impliedly restrict their responsibility to the extent of the funds of the society, as the officials may well do.¹⁰

1.3.2 The right to property

One obvious advantage of corporate personality is that, it enables the property of the society to be more clearly distinguished from that of its members. On registration, the society's property belongs to the society and members have no direct proprietary rights to it, but merely to their shares in the undertaking. As put poignantly by Evershed L. J. "Shareholders are not in the eye of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholding".¹¹ In an unincorporated society, the property of the association is the joint property of the members.¹²

1.3.3 Perpetual succession

Another obvious advantage of an artificial person is that it is not susceptible to the vicissitudes of the flesh.¹³ Once a society has been incorporated, it has acquired the attribute of having a perpetual succession. In other words, the society remains in existence until it is wound up in accordance with the provisions of the law.¹⁴ It cannot become incapacitated by illness, mental or physical and it has no or need not have an allotted span of life. This is not to say that, the death or incapacitation of its human members may not cause the society considerable embarrassment; obviously it will if all the committee members die or are jailed or if there are too few surviving members to hold a valid meeting. Otherwise, the death of a member leaves the society unmoved. Members may

¹ Eniola, A. (2005) *Corporation Law*, Ogbomoso; Emiola Publishers Ltd p.78

² Section 6 (1) (a)

³ Section 6(1) (b)

⁴ Section 2(1) (a); section 4 Co-operative Societies Law (Oyo State)

⁵ Section 42

⁶ Companies and Allied Matters Act, 2004 section 63 (1) (3)

⁷ Section 6 (2)

⁸ *Banque De L'afrique Occidentale v Habu* (1964) NNLR 30

⁹ Gower L.C.B (1979) *Gower's Principle of Modern Company Law*. 4th ed. London: Stevens & Sons p. 81

¹⁰ *Ibid*

¹¹ *Short v Treasure Commissioners* [1948] I K.B 116, 122 CA (Affd) [1948] AC 534 HL

¹² *Gower op . cit.*, p.84

¹³ *Ibid* p.85

¹⁴ *Akomolede op. cit.*, p.38

come and go, but the society can go on forever.¹ However, the disadvantage in the case of an unincorporated society can be minimized by the use of a trust. If the property of the association is vested in a small body of trustees, the death, disability or retirement of an individual member, other than one of the trustees need not cause much trouble. But of course, the trustees, if natural persons, will themselves need replacing at fairly frequent intervals and the need for constant appointment of new trustees is a nuisance if nothing worse.

1.3.4 Ability to sue and be sued

A registered society is incapable of suing and being sued in its registered name.² As a legal person imbued with the power of a natural person; it can institute an action to enforce its legal rights or be sued in its name for breach of its legal duties, without the necessity of joining any of the committee members or ordinary members of the society as parties.

1.3.5 Taxation

Registered societies are exempted from certain duties, chargeable under the Stamp Duties Act and the payment of tax under the Companies Income Tax Act.³

1.4 Analysis of the Salomon Principle in Relation to Co-operative Societies

The Salomon case was a struggle between form and substance; whether to interpret the law literally or whether to consider more its presumed spirit and intention.⁴ Was a genuine association of seven proprietors really necessary to form a company, or would six nominees holding shares for the seventh suffice? Could a paper company really transact with the beneficial owner of all its shares? The House of Lords accepted that, if the form of the company was within the letter of the law, they would not look behind it to the substance.⁵ Flowing from this decision, the most important characteristic of a registered society is that, it is both an association of its members and a person separated from its members. As explained earlier, this separate personality is a consequence of the fact that by section 6(1)(a), a registered society is defined to be a body corporate.⁶ A registered society acquires its separate personality on incorporation by registration under the Co-operative Societies Act and all that is necessary to achieve this, is to comply with the formal requirements of the Act.⁷ The motives of the persons who incorporate the society are irrelevant,⁸ so that in relation to government sponsored co-operatives, societies may be formed purposely to access for example, a poverty alleviation fund, without any genuine intentions at having an enduring society. The Salomon case showed that incorporation, separate personality and limited liability are available to all, for any legal purpose, but it has been discovered that corporations can be used as vehicles for an enormous variety of transactions and schemes.⁹ The numerous practical advantages of the existence of separate personalities have been discussed earlier, but the rigidity to which the doctrine has been subjected by the courts has elicited a measure of opposition to it.¹⁰ In a thought provoking article, Kahn-Freund described the Salomon decision as a calamitous decision,¹¹ because the courts failed to give protection to business creditors and incorporation has often been a means of evading liabilities and of concealing the real interests behind businesses.¹² Another writer refers to the jurisprudential ineptitude of the House of Lords in rejecting the clear intention of the legislature in favour of the application of the so-called literal rule of interpretation. Yet another said, the decision has done much to undermine commercial integrity.¹³ Perhaps, the most extreme illustration of the Salomon principle is afforded by *Lee v Lee's Air Farming Ltd*¹⁴.

¹ During the 1939- 1945 War, all the members of one private company, while in general meeting were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed it; Gower. *op. cit.*, p.86. See also the Australian case of *Re Noel Tedman Holding Pty Ltd.* (1967) Qd. R. 561

² *Op. cit.*, section 6 (1) (b) (iii)

³ Stamp Duties Act, section 8 LFN 2004 and the Companies Income Tax Act, Cap. C21, LFN, 2004

⁴ Hicks A & S. H. Goo (2008) *Cases and Materials on Company Law*, 6th Ed. Oxford: Oxford University Press p. 96

⁵ Per Lord Halsbury L.C. in *Salomon v Salomon & Co. Ltd supra* at pp.30-1.

⁶ See also equivalent provisions in the Co-operative Societies Law of the States. e.g Ekiti State, section 8

⁷ *Ante*, our previous discussion on the fiction theory.

⁸ Mayson, French & Ryan, *op.cit.*, p.114.

⁹ *Op. cit.*, p.148

¹⁰ Hicks, A. (1997) "Limiting the rise of limited liability", In Baldwin, R and P. Cane (eds) *Law and Uncertainty*, Kluwer, 1997. Reproduced by Hicks and Goo *op. cit.*, P.102

¹¹ Kahn-Freund, O. "Some Reflections on Company Law Reform" (1944) 7 MLR 54.

¹² *Ibid*

¹³ Hicks, A. *loc. cit.*

¹⁴ [1961] AC 12

Lee for the purpose of carrying on his business of aerial top-dressing, had formed a company of which he beneficially owned all the shares and was sole “governing director”. He was also appointed chief pilot. Pursuant to the company’s statutory obligations, he caused the company to insure against liability to pay compensation under the Workmen’s Compensation Act. He was killed in a flying accident. The Court of Appeal of New Zealand held that, his widow was not entitled to compensation from the company, since Lee could not be regarded as a “worker” within the meaning of the Act. But the Privy Council reversed the decision, holding that Lee and his company were distinct legal entities, which had entered into contractual relationships under which he became, qua Chief Pilot, a servant of the company. In his capacity of governing director he could, on behalf of the company, give himself orders in his other capacity of pilot, and hence the relationships between himself, as pilot, and the company was that of servant and master. In effect, the magic of corporate personality enabled him to be master and servant at the same time and to get all the advantages of both. Those bewailing the success of the principle of corporate personality dislike the results of confining the rights and especially the obligation of a company’s legal relationship to the company as a separate person, and they want the rights or obligations to be transferred to the members, or perhaps to directors or other persons connected with the company.¹ In effect they wanted the artificial separate personality of a company to be ignored.

1.5 Lifting the Corporate Veil

The courts responded to these concerns by treating in certain circumstances the rights or liabilities of a company as those of its shareholders or of anyone else by; “piercing the veil” to use the terminology of Staughton L. J or by “lifting the corporate veil” or looking behind it.² In the cases where the veil is lifted, the law either goes behind the corporate personality to the individual members or directors, or ignores the separate personality of each company in favour of the economic entity constituted by a group of associated companies.³ One of the earliest cases where the veil was lifted was in *Jones v Lipman*,⁴ where Lipman, having entered into a contract to sell land to Jones, attempted to defeat Jones’ right to specific performance by forming a company and conveying the land to it. Russel J. made an order for specific performance against both Lipman and the company, holding that, specific performance cannot be resisted by a vendor who has absolute ownership and control of the company in which the land is vested. In this case and many instances where the veil was lifted, there had been no clear guidance as to the principles which should guide the court in determining whether or not, to lift the veil of incorporation.⁵

Arguments over ‘lifting the veil’ have raged throughout the common law world for the whole of the 20th century and it is continuing in the 21st century.⁶ It would be impossible to reconcile the hundreds of cases thought to be relevant to the argument or the dozens of academic opinions. Cases are decided by judges who adopt different attitudes to the question and rarely, if ever state what their general theory of corporate personality is.⁷ The different judicial approaches may be illustrated by two quotations from the Presidents (as they then were) of the appeal courts in England and New Zealand. In *Littlewoods Mail Order Store Ltd v Commissioners of Inland Revenue*,⁸ Lord Denning M.R said that, the doctrine laid down in *Salomon v A. Salomon and Co. Ltd* has to be watched very carefully. In *Re Securitibank Ltd*,⁹ Richmond P. responded;

for myself, and with all respect, I would rather approach the question the other way round, that is to say on the basis that any suggested departure from the doctrine laid down in *Salomon v A Salomon and Co. Ltd* should be watched very carefully.

Sometimes, a court on being invited to disregard the separate personality of a company, enumerates circumstances in which it says this may be done and then decides that the cases before it does not fall within those circumstances.¹⁰ Unfortunately, the list of circumstances provided by courts vary considerably (probably reflecting differences of view on what constitutes lifting the veil of incorporation or disregarding separate personality) and, of course, a court arguing in this way is primarily concerned with circumstances relevant to the

¹ Mayson, French & Ryan, *op. cit.*, p.148

² *Atlas Maritime Co. SA v Avalon Maritime Ltd* (No.1) [1991] 4 All E.R. 769

³ Gower, *op. cit.*, 148.

⁴ [1962] 1 All ER 442.

⁵ Gower, *op. cit.*, 171.

⁶ Wedderburn, R. “Corporate Ombudsman” (1960)23 MLR 481; Barnes K. “Lifting the veil of corporate personality between holding and subsidiary companies” (1988) VILR 76; Akomolede I. *op. cit.*, 43

⁷ Mayson, French & Ryan, *op. cit.*, p.150

⁸ [1969]1WLR 124 at 1254

⁹ [1978] 2 NZLR 136 at 159.

¹⁰ See e.g *Pioneer Laundry and Dry Cleaner Ltd v Minister of National Revenue* [1940] AC 127; *Re Kinookimaw Beach Association* (1979) 102 DLR (3d) 333; *Pioneer Concrete Services Ltd v Yehnah Pty Ltd* [1986] 5 WWR 159; *Sharrment Pty Ltd v Official Trustee in Bankruptcy* (1988) 82 ALR 530.

case before it and not producing a general theory. In *Woolfson v Strathclyde Regional Council*,¹ Lord Keith posited that, it is appropriate to pierce the corporate veil only where special circumstances exist, indicating that it is a mere façade concealing the true facts. Although, this dictum is of undeniable high authority, his lordship did not explain what he meant by piercing the corporate veil, or consider many previous cases, so the scope of the principle enunciated by his Lordship is not clear. In *Adams v Cape Industries Plc*,² the English Court of Appeal said:

From the authorities cited to us we are left with rather sparse guidance as to the principles which should guide the court in determining whether or not the arrangements of a corporate group involve a façade within the meaning of that word as used by the House of Lords in *Woolfson v Strathclyde Regional Council*. We will not attempt a comprehensive definition of those principles.

The practical problem for a lawyer is to discover whether, what he or she wants the court to do would be regarded by the court as inconsistent with the principle of separate personality and so an attempt to disregard the corporate veil. If the court will regard it as disregarding the veil, the lawyer must then discover the conditions on which the court will disregard the veil and try to establish that his or her case satisfies those conditions. The wider the courts view of the effect of separate personality and of the occurrence of disregarding the veil, the more likely it is to accept that disregarding the veil is normal practice. A court taking a narrow view will think that, disregarding the veil hardly ever occurs and so is hardly ever justified of justice. The conundrum is still not resolved under the rubric “interest”. In both *Littlewoods Mail Order Stores Ltd v Commissioners of Inland Revenue*³ and *Wallersteiner v Moir*,⁴ Lord Denning M.R thought that disregarding the veil was required to deal with those cases, however, it is not exactly clear what his lordship’s veil disregarding was actually going to do, and in both cases the other members of the Court of Appeal said that, veil disregarding was not required. It is a mark of the change in judicial attitudes in England that in 1989, in *Adams v Cape Industries Plc*, the court of Appeal, said that Lord Denning’s dicta in *Littlewoods Mail Order Stores Ltd v Commissioners of Inland Revenue* and *Wallersteiner v Moir* could provide little support for a plaintiff’s claim to have the veil disregarded.⁵ In *Amalgamated Investment and Property Co Ltd v Texas Commerce International Bank Ltd*,⁶ Lord Denning, MR was again alone among the members of the Court of Appeal in believing that, the case before them could be solved by treating money owed to one company as being owed to its parent company, which would be regarded by anyone as ignoring corporate personality. Lord Denning’s view in the cases considered, that separate personality of a company could be ignored if it was a ‘puppet’ of another person, where puppet seems to mean no more than that, the company is under the other person’s control or its kindred epithets like controllers’ clone⁷ or that the controller is the company’s alter ego⁸ is now a dead letter, because the Court of Appeal in *Adams v Cape Industries*,⁹ rejected the view of Lord Denning that, a company’s separate personality should be ignored simply because it is controlled by another person.¹⁰

In *Adeyemi v Lan and Baker Nigeria Ltd*,¹¹ Aderemi, J. C. A., explained as follows:

“The consequence of recognising the separate personality of a company is to draw a veil of incorporation over the company and that one is generally not entitled to go behind or lift the veil. Since a limited liability company exists in the eye of the law it can only operate by means of human beings. But it is now settled in law that the directors or the managers are those whose decisions can be attributed to the legal fiction... However, there is nothing sacrosanct about the veil of incorporation... The decision in *Salomon v Salomon* must not blind one to the essential facts of dependency and neither must it compel a court to engage in an exercise of finding of fact which is contrary to the true intentions or positions voluntarily created by the parties as distinct from an artificial or fictitious one. Thus, if it is discovered from the material before the court, that a company is the creature of a biological person, be he a managing director, and it is a device or sham, masked by the eye of equity, the court must be ready and

¹ (1978) SC (HL) 90 at 96.

² [1990] Ch 433 at 543

³ *Supra*

⁴ [1974] 1 WLR 991

⁵ Mayson, French & Ryan, *op. cit.*, p.150-157

⁶ [1982] QB 84

⁷ *R v MerBan Capital Corporation Ltd*. [1985] 1CTCI at p.4

⁸ *Yukong Line Ltd v Rendsburg Investments Corporation (No.2)* [1998] 1WLR 294 at 299

⁹ *Supra*

¹⁰ *WD Latine Co. v Dison Investment Ltd* (1992) 12 OR (3rd) 415.

¹¹ [2000] 7 NWLR (pt.663) 33 at 51

willing to open the veil of incorporation to see the character behind it, if justice must be seen to be done...

Here again we are treated with the same jejune arguments regarding the courts inherent jurisdiction to lift the corporate veil in the interest of justice, without any inkling regarding the circumstances in which this power is to be exercised. The judicial conundrum is best summarized by the court in *Creasy v Breachwood Motor Ltd* as follows:

The power of the court to lift the corporate veil exists... The authorities provide little guidance as to the circumstances in which this power is to be exercised.¹

What can be gleaned from the foregoing is that, the rigid concept of separate corporate personality is still alive and well, even in relation to co-operative societies law. It is however pertinent to mention that, some statutes mention specific instances when the veil of incorporation will be lifted.²

1.6 Ray of light at the end of the tunnel

However, the House of Lords seems to have put to bed, the incoherence regarding applicable principles or defined limitations of the jurisdiction to lift the veil, when it held recently that the doctrine of piercing the corporate veil should only be invoked, where 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. In such circumstance, the court may pierce the corporate veil, but only for the purpose of depriving the company or its controllers of the advantage which would otherwise have accrued by the company's separate legal personality.³

1.5 Conclusion

The separate corporate personality concept as applied to corporations does not exempt registered co-operative societies in spite of the numerous judicial and academic assaults, which were highlighted in the article. The advantages of the corporate veil are well documented in the work and therefore the power of the courts to pierce the veil must not be exercised capriciously. The recent case of *Prest v Pretrodel Resources* gives comfort in providing a legal elixir regarding when appropriate to lift the corporate veil and the Nigerian courts should not tarry in adopting the dictum in relation to co-operatives in appropriate circumstances.

¹ [1993] BCLC 480 at 491

² For example: Companies and Allied Matters Act, Cap C20 LFN 2004, sections 93,246(3), 290, 333-338, 316, 506(1) and 548(4); Companies Income Tax Act, LFN 2004, section 85; Nigerian Co-operative Societies Act 2004, sections 34(4), 46 and 53(2); Co-operative Societies Regulations, Cap 35 (Oyo State) section 29

³ Per Lord Sumption in *Prest v Pretrodel Resources* [2013] UKSC 34; *Businessday*: www.businessdayonline.com Thursday 18 July, 2013

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