

ROYAL COURT

201^A

1st December, 1989

Before: Commissioner P.R. Le Cras

Between: **Terence Allan Picot** Plaintiff

And: **Richard John Michel, Geoffrey George
Crill and Francis Charles Hamon,
exercising the professions of
solicitor and advocate under
the name and style of "Crills"** Defendants

Application by the defendants to strike out the plaintiff's Order of Justice under Rule 6/13(a) of the Royal Court Rules, 1982, viz. that it discloses no reasonable cause of action, or, alternatively, under the inherent jurisdiction of the Court - application granted - plaintiff's Order of Justice struck out - plaintiff condemned to pay defendants' taxed costs of and incidental to the application.

Advocate T.J. Le Cocq for the defendants
(applicants)

T.A. Picot appeared in person.

JUDGMENT

COMMISSIONER LE CRAS: This summons concerns an application for professional negligence arising from litigation involving two companies of which Mr. Picot was effectively at that time the sole shareholder.

In addition to the actions brought by the companies, Mr. Picot is also suing the advocates in his own name and the defendants now seek to strike out this latter action.

Mr. Picot's position is this as he puts it, that the companies have suffered loss and he has suffered loss which the companies cannot recover for him, as he has sold a considerable part of his shares - he is now effectively the half-owner only and has had to borrow to maintain even this holding - and that he and not his co-shareholder should have part of the damages personally.

There is a long line of cases and well established law as to the effect of actions by companies. I need to quote, I think, only from two of them; the first is *Saloman -v- Saloman & Co. Ltd.* (1897) A.C. 22 at p.51:

"When a memorandum is duly signed and registered there were the only seven shares taken 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 obtains maturity on its birth there is no fear of a minority, no interval of incapacity. I cannot understand how a body corporate thus made capable by a 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".

There is a further passage which is perhaps helpful in *Macaura -v- Northern Assurance Co. Ltd.* (1952) A.C. 619, by Lord Wrenbury when he said at the end of the judgment:

"This appeal may be disposed of by saying that the corporator even if he holds all the shares is not the corporation and that neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation".

In this case the question really is whether there is anything here to bring Mr. Picot outside the general rules. Here it is agreed that the companies were responsible for the defendants' fees and that these were not guaranteed by Mr. Picot personally, even though no doubt in practice he would have paid them.

I have to say that in my view it seems to me that there is nothing here which does bring you outside the general rules, Mr. Picot, and that anything personal in the way of personal action is in fact too remote and therefore there is no reason here for the Court to attempt to look through the corporate veil. Therefore, in that case in these circumstances I have to say that I strike the action out. If you, to save your next application, if you wish to appeal you may have leave to do so. I expect you are going to ask for that, aren't you?

MR. PICOT: (indistinct)

COMMISSIONER LE CRAS: You may have it if you wish, anyway. Do you ask for costs?

ADVOCATE LE COCQ: (indistinct)

COMMISSIONER LE CRAS: Taxed?

ADVOCATE LE COCQ: (indistinct)

COMMISSIONER LE CRAS: So did we get the (indistinct) there?

ADVOCATE LE COCQ: I'm not sure, ultimately (indistinct) costs would be met by the plaintiff and held by the plaintiff's solicitors on an undertaking not to

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COMMISSIONER LE CRAS: Yes, that's right. That would be fair, I think, Mr. Picot, wouldn't it?

MR. PICOT: Yes, Sir.

COMMISSIONER LE CRAS: You understand what Mr. Le Cocq is asking for? He is going to present his bill, which you must do without delay, because you mustn't hold him up. And of course he has the right to have it, well, you know all about the taxation of costs, don't you, Mr. Picot?

MR. PICOT: Yes, Sir.

COMMISSIONER LE CRAS: So you must, please, deal with that. You are not to hold him up, Mr. Le Cocq.

ADVOCATE LE COCQ: (indistinct)

COMMISSIONER LE CRAS: You'll let him know?

MR. PICOT: Yes, Sir, I shan't be appealing.

COMMISSIONER LE CRAS: Well, that solves that. We'll leave it stand. If you do change your mind and you wish to, then you must pay the costs into the hands of the Greffier, or into Mr. Le Cocq's hands against his undertaking that he won't disburse them to his clients until the appeal is settled. That's what you want, isn't it? So, if you win the appeal, you've still got the money.

Authorities, rules and texts by defendant's advocate:

Royal Court Rules 1982, Rule 6/13.

Rules of the Supreme Court 1988, Order 18/19/1, 3 and 7.

Foss -v- Harbottle (1843) 2 Ha. 461.

Saloman -v- Saloman & Co Ltd (1897) A.C. 22.

Macaura -v- Northern Assurance Co Ltd (1925) A.C. 619.

Prudential Assurance Co Ltd -v- Newman Industries Ltd and Others (No. 2)
(1982) 1 A.E.R. 354.

Electrochrome Ltd -v- Welsh Plastics Ltd (1968) 2 A.E.R. 205.

Bullen & Leake & Jacob's Precedents of Pleadings, (12th Ed.) pp.684 & 685.

Professional Negligence - Dugdale & Stanton (2nd Ed.) paras 7.30, 8.11
and 8.21.

Additional material relied on by the plaintiff:

Extracts from Chitty on Contracts reading as follows:

Para. 6. "According to Winfield or tort".

Para. 1214. "It may also be worth noting that although the Act (Civil Liability (Contribution) Act 1978) is designed to enable contribution to be obtained from any person liable in respect of the same damage, even though the liability of the parties arises from different legal sources (e.g. contract and tort)".

Report under the City News in the Sunday Times dated the 26th November, 1989, by Margaret Park on the action instituted by the Tunstan Group against the accounting firm, Arthur Young, for damages arising from alleged negligence work on the part of the latter company concerning the affairs of Sound Diffusion and also in relation to a second action ("a test case") brought by one of Sound Diffusion's 11,000 shareholders against Arthur Young.