IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Cornell v. E.A. Farren Limited*, 2021 NSSM 67

Claim: SCAR No. 506318
Registry: Annapolis Royal Between:

Kate Shropshre Cornell

Claimant

E.A. Farren Limited and Edward Farr

Defendants

Adjudicator: Andrew S. Nickerson, Q.C.

Heard: September 22, 2021

Decision: September 27, 2021

Appearances: The Claimant, self-represented
The Defendant, self-represented

DECISION

Facts

[1] The facts of this case are essentially not in dispute. Because of this, I will set out my findings of fact without an extensive review of the evidence given by each party. I also advise the parties that if there is some piece of evidence that I do not mention, it is not because I have not considered it, but it is because it is not central to the decision that I am about to make.

[2] The Claimant was engaged to provide various services in relation to the establishment of a private school. The Defendant, Edward Farren, acknowledges that the invoices totaling

[3] $13,217.70 are in fact representative of the services provided, but takes the position that corporate defendant E.A. Farren Limited (of which he is a shareholder and an officer) is the party which is liable for the payment of them. He consents to judgement on behalf of E.A. Farren Limited, but contests that he should be held personally liable.

[4] The Claimant is a qualified and experienced educator. She knew was dealing with E. A Farren Limited, but only dealt with Mr. Edward Farren. This was quite different than companies she had worked for before. There was no HR department, there were none of the usual assistants and employees that she would have expected. She only dealt with Mr. Farren. This led her to the belief that E.A. Farren Limited and Mr. Farren were essentially one and the same.

[5] Mr. Farren in his evidence, which is not contradicted, stated that there are multiple shareholders of E.A. Farren Limited and there are other directors and officers of the company. Also not contested, is Mr. Farren's evidence that there was some sort of agreement between E.A. Farren Limited and the Municipality of Annapolis, whereby it was anticipated that the funds to pay for the services provided by the Claimant would be forthcoming from the Municipality. Regrettably there has been controversy over that agreement and funds have not been forthcoming. The issue between E.A. Farren Limited and the Municipality is under litigation and is expected to go to trial shortly. Mr. Farren says that if that litigation is successful there will be funds to pay he Claimant.

[6] I have examined the invoices which the Claimant rendered and they were all issued to E.A. Farren Limited alone.

[7] The Claimant urges me to "pierce the corporate veil" and hold Mr. Farren personally responsible for the payment of her invoices. Her argument is that E.A. Farren Limited is essentially the Defendant, Mr. Farren. She does not allege fraud or deceit but suggests that the course of conduct indicates that E.A. Farren Limited and Mr. Farren are in effect one and the same.

Analysis

[8] As indicated, the facts are essentially not in dispute, and therefore this case turns on my interpretation of the law. The starting point with respect to this issue, which has long been held

to be the law in Canada, is the decision of the House of Lords in Salomon v. Salomon & Co., [1897] A.C. 22 (H.L.). An examination of the facts of that case reveals that it was a very closely held company, in effect controlled by a single person, that was the subject matter of that litigation. The clear and unanimous conclusion of the House of Lords was th9t a corporate entity is a distinct and separate legal entity, and that its shareholders are shielded by the limited liability provisions of the statute under which the company was incorporated.

[9] There are a large number of cases in Canada that have considered the Salomon doctrine. My review of that jurisprudence suggests that the case with the highest authority that is most applicable to this case is the Supreme Court of Canada's decision in Kosmopoulos v.

[10] Constitution Insurance co., 1987 Cant-Il 75 (SCC), [19871 1 SCR 2. The decision was written by Justice Wilson. When addressing this issue, she says:

> (15)"Lifting the Corporate Veil"
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> 12. As a general rule a corporation is a legal entity distinct from its shareholders: Salomon v. Salomon & Co., [1897] A.C. 22 (H.L.) The law on when a court may disregard this principle by "lifting the corporate veil" and regarding the company as a mere "agent" or "puppet" of its controlling shareholder or parent corporation follows no consistent principle. The best that can be said is that the "separate entities" principle is not enforced when it would yield a result "too flagrantly opposed to justice, convenience or the interests of the Revenue": L. C. B. Gower, Modern Company Law (4th ed. 1979), at p. 112. I have no doubt that theoretically the veil could be lifted in this case to do justice, as was done in American Indemnity Co. v. Southern Missionary College, supra, cited by the Court of Appeal of Ontario. But a number of factors lead me to think it would be unwise to do so.
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> 13. There is a persuasive argument that "those who have chosen the benefits of incorporation must bear the corresponding burdens, so that if the veil is to be lifted at all that should only be done in the interests of third parties who would otherwise suffer as a result of that choice": Gower, supra, at p. 138. Mr. Kosmopoulos was advised by a competent solicitor to incorporate his business in order to protect his personal assets and there is nothing in the evidence to indicate that his decision to secure the benefits of incorporation was not a genuine one. Having chosen to receive the benefits of incorporation, he should not be allowed to escape its burdens. He should not be permitted to "blow hot and cold" at the same time.
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> 14. I am mindful too of this Court's decision in the Aqua-Land Exploration Ltd. case, supra, in which the Court did not "lift the veil" in order to find that one of three shareholders in a corporation had an insurable interest in its asset. So also in the Wandlyn Motels Ltd. case, supra, the Court refused to regard a motel owned by a man who held all but two of the shares of the insured, Wandlyn Motels Ltd., as the property of that corporation. If the corporate veil were to be lifted in this case, then a very arbitrary and, in my view, indefensible distinction might emerge between companies with more than one shareholder and companies with only one

> shareholder: for a recent comment on the arbitrary and technical distinctions that would be created by lifting the corporate veil in this case, see Jacob S. Ziegel, "Shareholder's Insurable Interest-—Another Attempt to Scuttle the Macaura v. Northern Assurance Co. Doctrine: Kosmopoulos v. Constitution Insurance Co." (1984), 62 Can. Bar Rev. 95, at pp. 102-03. In addition, it is my view that if the application of a rule leads to harsh justice, the proper course to follow is to examine the rule itself rather than affirm it and attempt to ameliorate its ill effects on a case-by-case basis.
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> 15. For all these reasons, I would not lift the corporate veil in this case. The company was a legal entity distinct from Mr. Kosmopoulos. It, and not Mr. Kosmopoulos, legally owned the assets of the business.

[11] In the case before me, I find no evidence of fraud, deceit or misleading statements. It is clear that the Claimant issued her invoices to the corporate entity. It is quite common in commercial transactions that if a creditor expects a shareholder, director or officer of a corporate entity to be liable for the company's debts, that they will not undertake the transaction if a personal guarantee is not forthcoming. This is done regularly by banks, suppliers extending commercial credit, and in many other situations. In this case there is no evidence that a guarantee was sought or given, explicitly or implicitly, in any of the dealings between these parties.

[12] My overall conclusion as to the law in Canada is that the "corporate veil" will only be lifted in rare cases, and only when it is necessary to remedy an unconscionable injustice. I am unable to conclude that this is such a case.

[13] I will grant judgement against the corporate entity E.A. Farren Limited and I will dismiss this case as against Mr. Edward Farren personally.

Dated at Annapolis Royal this 27th day of September, 2021.

Andrew S. Nickerson Q.C., Adjudicator