

Neutral Citation : [2023] NIMaster 3

Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 15/3/23

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

The Sofa & Chair Company Ltd

Plaintiff

and

LB & JK Ltd

First defendant

Orenda Living (Derry) Ltd

Second defendant

Master Bell

[1] I understand from the plaintiff's solicitor that the FTR audio recording system, although turned on by me on 24 October 2022, malfunctioned and failed to record the Assessment of Damages hearing held on that day and that it was suggested to the Lady Chief Justice that it might be helpful, in the absence of a recording, if I issued a short judgment setting out what had happened at the hearing. I therefore now do so for the assistance of the parties and the Court of Appeal.

[2] At the hearing the plaintiff was represented by Mr Boyle of counsel. I first satisfied myself, on the basis of oral evidence given by the plaintiff's solicitor, Ashley Black, that a Notice of Appointment and trial bundle had been served on the first named defendant, LB & JK Ltd ("the company"), at the company's registered address in accordance with the court's previous directions. There was, nevertheless, no appearance by the first named defendant. As is usual in such circumstances, the hearing continued in the defendant's absence. The second named defendant, Orenda Living (Derry) Ltd, had not been served as the company had been dissolved and the plaintiff was no longer proceeding against it.

[3] I then heard evidence from Fayez Nadem, the Head of Legal and Client Services of the company via Webex. In his evidence he explained to the court the agreements which had been entered into between the plaintiff and the second named defendant in respect of the supply of luxury furniture and how, subsequent to those agreements, unapproved discounts were sought and obtained from the plaintiff by dishonest means. The second named defendant was then dissolved and its assets transferred to a newly incorporated entity, the first named defendant. Mr Nadem believed this to be an attempt to avoid liability. The amount of improperly obtained discounts was in the region of some £100,000. The first named defendant had made repayments of some £17,000. Proposals were made to the plaintiff that the balance would be repaid once a VAT refund had been obtained from HMRC but no further repayments were in fact made to the plaintiff. As a result, the plaintiff had issued a writ against both defendant companies, to which no appearance had been entered, and had then marked default judgment. The plaintiff now sought the assessment of damages against the first named defendant. On the basis of Mr Nadem's unopposed evidence, I assessed the damages in the sum of £83,088.85.

[4] The witness then brought up a further issue in his evidence, explaining that he was concerned that his employer would not be able to recover the damages which I had assessed because there had been another change of the corporate vehicle through which the individual behind the company had carried on the business. The multiple changes of the corporate vehicle in which the business assets were held was, in the opinion of the witness, carried out solely to avoid having to satisfy any judgment by a court.

[5] I enquired whether the witness knew the name of the corporate entity in which the assets of the luxury furniture business were currently resting. The evidence given to the court by Mr Nadem was that the assets had now been transferred to a company entitled "No 4 Victoria Limited". I enquired of Mr Boyle whether he was making an application for me to lift the corporate veil as the individual operating the furniture business was now doing so by means of a different corporate entity. Mr Boyle confirmed that he was making such an application.

[6] I concluded that the evidence before me justified granting the application and making an order under Order 15 rule 6 that "No. 4 Victoria Limited" be substituted as the second named defendant in place of "Orenda Living (Derry) Ltd". In so doing, I took into account that:

- (i) A company can only act by its human agents.
- (ii) The authorities show that there can be exceptional cases in which the court will regard it as appropriate to pierce the corporate veil and thereby identify the company with those in control of it. In cases in which that is done, the authorities show that it will or may lead to the granting of remedies against the company which, veil-piercing apart, might appear in principle to be available only against those controlling it; and, equally, against the controllers when they might appear in

principle to be available only against the company. *VTB Capital plc v Nutritek International Corp and others* [2012] EWCA Civ 808 is an example of such an authority.

- (iii) It is appropriate to pierce the corporate veil only where special circumstances exist indicating that the corporate structure exists as a mere façade concealing the true facts.
 - (iv) That the evidence before me, unopposed because the defendants had chosen not to engage in the proceedings even though served with the application papers, was that an ultimate beneficial owner of a company had committed fraud against the plaintiff and that the assets had then been serially transferred to other corporate entities to protect either the proceeds of that fraud or assets which might be used to compensate the defrauded plaintiff from being recovered by the plaintiff.
 - (v) There was no evidence given to me that there might be other innocent shareholders in No. 4 Victoria Limited whose rights might be affected by such an order of the court.
 - (vi) The granting of such relief was consistent with the application of the overriding objective in Order 1 rule 1A of the Rules of the Court of Judicature (Northern Ireland) 1980.
- [7] I therefore exercised my discretion to grant the relief applied for.