IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *TR3 Geothermal Services Inc. v. Mason,* 2025 BCSC 2391

Date: 20251205
Docket: S50742
Registry: Penticton

Between:

TR3 Geothermal Services Inc. and Richard John Saari

Petitioners

And

Jacqueline Rae Mason

Respondent

Before: The Honourable Justice Maisonville

Reasons for Judgment

Counsel for the Petitioners:	E. Lund
Counsel for the Respondent:	D. Horvath
Place and Dates of Hearing:	Kelowna, B.C. October 29–30, 2025
Place and Date of Judgment:	Penticton, B.C. December 5, 2025

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INTRODUCTION

[1] The petitioners seek to set aside an order of a judge of the Provincial Court of British Columbia piercing the corporate veil and imposing personal liability on Richard Saari, one of the principles of TR3 Geothermal Services Inc. (“TR3”), in Penticton Registry S50741, pursuant to ss. 3 and 7 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*].

[2] This petition decision follows an appeal brought by Mr. Saari and TR3 in the same case. In the appeal reasons, *TR3 Geothermal Services Inc. v. Mason,* 2025 BCSC 2390, I held that the appropriate procedure for this matter was not by way of an appeal but rather by way of a petition for judicial review to the court.

BACKGROUND

[3] TR3 was incorporated in British Columbia on May 31, 2007. It is in good standing, having filed its last three annual reports.

[4] Mr. Saari is the principle of TR3 and a director and officer, as is his wife, Wanda Beswick. TR3 is in the business of installing, servicing, and designing ground source heat pumps, also known as Geothermal HVAC System Services.

[5] TR3 performed work for the respondent, Jacqueline Mason, at her residence in Princeton, British Columbia. She was dissatisfied with the work and filed a notice of claim on August 31, 2022 at the Provincial Court registry in Princeton alleging breach of contract that resulted in damages.

[6] It is not in dispute that, following the ten-day trial, held at different points in time from 2022 to 2024, the Provincial Court judge found in favour of Ms. Mason and against TR3. TR3 does not take issue with that finding. The issue before this Court pertains to the application brought after judgment to piece the corporate veil and those hearings that occurred following the trial.

[7] Judgment was pronounced on September 19, 2024 indexed at 2024 BCPC 171 (the “Trial Judgment”). The Court awarded Ms. Mason damages in the amount

of $46,345.93, which included the judgment, expenses, interest, and a penalty payment order.

[8] Ms. Mason brought three applications to pierce the corporate veil.

[9] The first was during the trial, on June 19, 2024, when Ms. Mason applied to amend the notice of claim to add Mr. Saari and Ms. Beswick as defendants on the theory that TR3's corporate veil should be pierced. The Provincial Court dismissed the first application without a hearing, holding that "the amendment of pleadings must be done before the commencement of trial, pursuant to Rule 8(1) of the *Small Claims Rules*, B.C. Reg. 261/93 and *Sampson v. Insurance Corporation of British Columbia*, 2006 BCPC 99".

[10] The respondent then brought a second application to attempt to pierce the corporate veil, again during the trial, to hold Mr. Saari personally liable for the debts of TR3. The trial judge took this application under consideration and dealt with it in the Trial Judgment. The Court specifically refused to pierce the corporate veil and impose liability on Mr. Saari:

> [59] While I find the conduct of the defendant and that of its director Mr. Saari reprehensible, I have concluded that it falls short of the standard to pierce the corporate veil at this time.
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> […]
>
> [61] […] TR3 is a legitimate company that has operated over many years and still operates today. While the mistakes Mr. Saari made resulted in damages to the claimant, I am not satisfied that the corporate veil should be lifted at this time. The claimant is now a creditor who will take steps to collect from the defendant, now debtor.
>
> [62] In addition, the claimant brought this application late in the proceedings and I did not hear or receive submissions from the defendant on this issue. It would be unfair to pierce the corporate veil at this time without giving the defendant a chance to respond. However, should the company's directors undertake wrongful acts to prevent the creditor from collecting on this judgment, a court may entertain an application of this sort.

[11] After the judgment, TR3 submitted a claim to its liability insurer. The claim was denied on October 31, 2024, the same day as a payment hearing at the Provincial Court.

[12] At the payment hearing on October 31, 2024, Mr. Saari informed the Court that the insurer's denial of its claim rendered TR3 insolvent and that he intended to initiate bankruptcy proceedings on behalf of TR3. The respondent then brought her third application to pierce the corporate veil. Both matters did not complete and were adjourned to November 12, 2024 and then again to December 16, 2024.

[13] December 16, 2024 was to be the continuation of the payment hearing and the application to pierce the corporate veil. The judge proceeded to deal with the application first. Ms. Mason did not submit an affidavit, testify, or otherwise provide evidence to support her claim but did make oral submissions that she believed Mr. Saari had a trailer and a car and that the trailer had now left his property. Her submissions suggested that Mr. Saari was trying to dispose of his personal assets in the event the application to pierce the corporate veil was allowed. An articled student attended with late filed materials to respond to the application to pierce the corporate veil. Mr. Saari attended late by Teams which was commented upon unfavorably by the judge. Mr. Saari provided an affidavit with exhibits and a supporting material binder. He also testified and was cross-examined by both Ms. Mason and questioned by the Court.

[14] Mr. Saari testified that, at the age of 67, he was in retirement and had stopped "seeking continuous work" as a geothermal and HVAC technician.

[15] Mr. Saari had begun to wind down TR3 in 2017 when he moved from Abbotsford to Princeton. At that time, Ms. Beswick was retired from her role as an office administrator at a primary school in the Abbotsford area. Following their move to Princeton, because TR3 had debts and, according to his submissions to the Provincial Court, he was paying those debts, Mr. Saari continued to take on small and a limited amount of work to wind down.

[16] Neither Mr. Saari nor Ms. Beswick have received a salary, bonus, dividend, or loan repayment since August 27, 2024. Neither Mr. Saari nor anyone else on his behalf have done anything, before or after the date of the Trial Judgment, to attempt to render TR3 insolvent or unable to pay its debts, or to avoid the Trial Judgment.

[17] Mr. Saari gave evidence before the Provincial Court judge that he had not disposed of any significant assets of TR3 or transferred any assets to himself or to Ms. Beswick “in an effort to thwart the judgment [creditor] or for any […] other purpose” since the Trial Judgment. No dividends or any form of loan repayments to himself or Ms. Beswick have been made since the Trial Judgment. Since September 19, 2024, they continued to pay TR3’s debts as they came up including payments to the company’s liability insurer and accountant for the year end.

[18] The Provincial Court judge found that “the decision to wind down the company hinged on avoiding the judgment piercing the corporate veil”.

[19] At the end of the December 16, 2024 hearing, the Court had summarized the issue as follows:

> THE COURT: I think that this case comes down to at this -- because I am being careful not to slide into a payment hearing. Okay? Because I think we're probably going there next, but what this application really turns on is whether on the basis of the evidence through the affidavit of Mr. Saari and through his testimony today and through the amended reply to the application, whether the court is convinced that the sudden decision to stop work despite the fact that right up until the end of the trial, Mr. Saari on behalf of TR3 was busy, he was working and he was doing jobs. And he told us that that's why he had to, you know, schedule the trial at certain times because he was off working and that.
>
> And whether his decision to suddenly down tool, [*sic*], if that actually is an act of -- an improper act as – as contemplated by the case law. And I think that's what I've got to really think about. And I think I'm going to give myself some time to think about that and give you a decision on a different date. I'm not dismissing this application, but I agree with Mr. Omid [Articling Student counsel for Mr. Saari] that right now, this is the issue that we're -- we're -- we're constrained in. The issue is should I pierce the corporate veil because of activities since the date of judgment. Right? Because I made a decision about up to the date of judgment.
>
> I found Mr. Saari's behaviour just reprehensible.
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> […]
>
> His -- his control -- control sheets were works of fiction. His evidence was not credible and not reliable. I said all of those things in my judgment [the Trial Judgment].

> Now, I need to decide whether, on the basis of the case law, this sudden decision to down tools and wind up the company is an improper act by a director. And I think that's where I'm left. […]

[20] On January 24, 2025, in an unreported decision, the Court granted Ms. Mason's application to pierce the corporate veil and impose personal liability on Mr. Saari for the judgment.

[21] With regard to the judge's decision to make the order not in the trial but following the trial, she held that, pursuant to *Droid Communications Inc. v. Wood*, 2024 BCPC 38, she had jurisdiction to consider this issue at this point in the proceedings. In her reasons, she referred to the Trial Judgment:

> [9] […] I decided the defendant company was a legitimate business enterprise that had engaged in business for years and was not a sham set up to perform a wrongful act. On that basis, I found there was no basis for piercing the corporate veil at that time.

[22] In her January 24, 2025 decision, the judge stated that she considered all of the evidence on this application. She held that the following are appropriate factors to consider in piercing the corporate veil of TR3:

> [11] […] I am troubled by Mr. Saari's evidence about the defendant company's finances and how he dealt with the company's assets. I concluded during the trial that Mr. Saari's evidence was unreliable in his recordkeeping was seriously deficient. […]

[23] The judge was troubled by the timeline relating to Mr. Saari's evidence that TR3's insurance claim was rejected, rendering the company insolvent. The judge quoted from the proceedings of Mr. Saari's testimony as follows:

> [15] […]
>
> Yes, Your Honour, I had asked for an extension because the liability insurer which is in London was reviewing the case and I was waiting for its reaction in order to reply from the time I made the application and I actually this morning received an email just prior to 9:15 this morning from the liability insurer. So the liability insurance for this claim they will not cover and that has now put TR3 Geothermal in a position where it cannot financially pay the debt that TR3 has or the payment order from this judgment. So this morning I -- I -- I got this information this morning. So I am at this point in time and I have

> discussed this with my lawyer and we are moving forward with bankruptcy and that's where it stands right at this time.

[24] The judge also found it to be problematic that Mr. Saari would not continue to work to generate funds to satisfy the judgment. She found this "fell short of reasonable behaviour". She found these actions to be "unusual; and aggravated circumstances" and that he had taken "wrongful and purposeful steps to ensure [Ms. Mason] cannot collect on her judgment".

[25] The judge also addressed Mr. Saari's argument that the issue was *res judicata*, given the trial decision, stating:

> [9] I have considered this argument and I disagree. Pursuant to the discussion in *Droid Communications v. Wood*, 2024 BCPC 38, I have concluded that I have the jurisdiction to consider this particular issue at this point in the proceedings. The question I am now considering is different than the issue I was deciding in the trial decision. I am now looking at the conduct of the principal of the judgment debtor after the judgment was awarded. This is a different issue than the one decided at trial.
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> […]
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> [14] In his affidavit on this application filed November 12, 2024, Mr. Saari deposed at paragraph 9, "If I choose to perform work in the future, I plan on doing so through TR3 Geothermal Services Inc." The availability of work for TR3 and Mr. Saari's admissions about future work and remaining a consultant paint his statement that he is retiring and winding up the company in dim light. The sudden shift to not accepting any new work and to take a personal trip to Japan seems irresponsible when TR3 had debts to pay and work was available. I have concluded that the decision to wind down the company hinged on avoiding the judgment.
>
> […]
>
> [19] Even if Mr. Saari meant that he had consulted counsel earlier and indicated that, should the insurance claim be denied, the company would be wound down, I have concluded that the decision to cease TR3 operations was explicitly driven by an intention to avoid TR3 paying out on the judgment. Unless insurance covered the judgment, the decision to wind down the company was final. Instead of making any attempt to satisfy the judgment, Mr. Saari had decided on behalf of the company that the judgment would not be paid by TR3. He would not work to generate funds to satisfy this judgment. He would not even try and, instead, he would walk away from his life's work and the business he ran since 2007. This conduct was deliberate action to thwart the judgment creditor.
>
> […]
>
> [22] In these unusual and aggravated circumstances, I have concluded that Ms. Mason has proven on a balance of probabilities that Mr. Saari, as the

> principal of the company, has taken wrongful and purposeful steps to ensure that she cannot collect on her judgment. For these reasons, I am piercing the corporate veil and imposing liability on Mr. Saari as an official. This is a finding of liability for engaging in wrongful conduct in order to thwart the judgment creditor.

[26] The Court issued the order piercing the corporate veil and an order for seizure and sale in favour of Ms. Mason against Mr. Saari.

ISSUES BEFORE THE COURT ON THE PETITION

[27] The parties raise a number of issues in the petition, including:

1) whether the trial court erred by considering the application and imposing liability on Mr. Saari following an application as opposed to trial or without evidence from Ms. Mason;

2) whether the trial court erred in law by adjudicating the application despite having already rendered a decision on the matter at trial, thereby, being *functus officio* and bound by the doctrines of *res judicata* and collateral estoppel;

3) whether the trial judge erred in law by failing to apply the correct legal test and analysis in determining whether to pierce the corporate veil; and

4) whether that the trial judge erred in fact and law by making certain factual findings, including that Mr. Saari had engaged in wrongful conduct in order to thwart the judgment.

[28] I find it is only necessary to determine the issues of whether the trial judge's decision to pierce the corporate veil was correct in law and whether the proper procedure was followed.

[29] Having reviewed the materials and considered the submissions, I am allowing the petition for judicial review on the basis that the Provincial Court judge's decision to pierce the corporate veil was unreasonable and must be set aside.

[30] I further find that, absent fresh pleadings and a trial or an application to reopen the trial, the judge had no jurisdiction to make a decision to pierce the corporate veil after the trial was concluded.

STANDARD OF REVIEW

[31] The standard of review on a judicial review of an order of the Provincial Court is reasonableness: *Hubbard v. Acheson*, 2009 BCCA 251 at para. 7. The issue to be determined on this judicial review is whether the Provincial Court judge's order piercing the corporate veil was reasonable.

[32] A secondary issue is whether it was appropriate for the judge to make the order not in the trial but following the trial, in accordance with *Droid Communications* at para. 25.

[33] The standard of reasonableness following the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] leaves the burden on the applicant to show a challenged decision is unreasonable. The reasonableness review is a "robust form of review": *Vavilov* at para. 13.

[34] The reviewing court is not conducting a *de novo* analysis to identify what the decision ought to have been: *Vavilov* at paras. 83–84. What is reasonable in a given situation will depend on the constraints imposed by the legal and factual context of the decision under review: *Vavilov* at para. 90.

[35] Elements that are relevant in evaluating whether a decision is reasonable include the relevant statutory or common law, the principles of statutory interpretation, the evidence before the decision maker and the facts on which the decision maker may take notice, the parties' submissions, and the potential impact of the decision on the individual to whom it applies: *Vavilov* at para. 105.

[36] The reasonableness of a decision may be jeopardized where the decision-maker fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para. 126.

THE LAW ON PIERCING THE CORPORATE VEIL

[37] In order to determine whether the judge's decision was reasonable, I will first review the law in connection with piercing the corporate veil.

[38] Ms. Mason relies on *Shen v. West Continent Development Inc*., 2020 BCSC 5, in which I was asked to pierce the corporate veil and find a contractor personally liable for damages. In *Shen*, I set out the following:

> [47] The starting position is that a corporation is a distinct legal entity separate from its shareholders: *Salomon v. Salomon & Co.* (1896), [1897] A.C. 22 (U.K.H.L.) [*Salomon*]. On rare occasions courts have seen fit to disregard the separate legal personality of a corporation by "piercing the corporate veil". Veil piercing can operate in one of two ways: either by holding shareholders liable for the corporation's obligations, or by holding the corporation responsible for a shareholder's personal obligations.
>
> […]
>
> [52] To justify lifting the corporate veil the court must be satisfied that a refusal to do so would be "flagrantly opposed to justice", either due to improper conduct or fraud, or because the corporation was formed for the express purpose of doing a wrongful or unlawful act: *Clarkson Co. v. Zhelka*, [1967] 2 O.R. 565 (H.C.) [*Clarkson*]. The Ontario Superior Court in *Chan v. City Commercial Realty Group Ltd.*, 2011 ONSC 2854, reaffirmed that the separate legal existence of a corporation will not be lightly disregarded, noting at para. 21:
>
> > Four governing statements can be drawn from the authorities:
> >
> > a) First, the separate legal personality of a corporation will not be disregarded lightly;
> >
> > b) Second, the analysis is largely fact specific;
> >
> > c) Third, typically the corporate veil is lifted when incorporation occurs for a purpose that is illegal, fraudulent or improper;
> >
> > d) Fourth, even if that is not the case, personal liability may be imposed on a person who controls a company and uses it as a shield for fraudulent or wrongful conduct provided that conduct is the reason for the complaining party's injury or loss.

> [53] In a circumstance where a plaintiff attempted to have the liability of a subsidiary corporation imposed on a parent, this Court indicated that complete control by the parent of the subsidiary is insufficient for the alter ego doctrine to apply: the corporation must have been used as a shield for fraudulent or improper conduct: *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.*, 2011 BCSC 1072 at para. 102.
>
> [54] *Clarkson* provides an example the high threshold that the plaintiff must meet to demonstrate that declining to pierce the corporate veil would be flagrantly opposed to justice. In *Clarkson*, the defendant's personal creditors sought to access property held in a corporation where the defendant was the sole shareholder. The court appears to suggest that the defendant had attempted to defraud his personal creditors, but nonetheless declined to pierce the corporate veil. While the court noted that this was a close case, the plaintiffs had failed to demonstrate that the corporation was the defendant's mere agent for the conduct of his personal business. Factors considered by the court included: that the defendant did not form his corporation while insolvent and it was thus evident that it was not formed for the sole purpose of doing a wrongful act; that there was no evidence the defendant put his personal assets into the corporation to protect them; and that there was no evidence the defendant's personal creditors had relied on the availability of assets in his corporations (at paras. 67–77).
>
> [55] In declining to pierce the corporate veil, the court in *Clarkson* demonstrates that there are strong policy reasons in favour of respecting the principle from *Salomon* that a corporation is a distinct legal entity. Notably, corporations have their own creditors who could be prejudiced by allowing the personal creditors of shareholders to go after a corporation's assets.

[39] As in *Shen*, I find here that there is no evidence that TR3 was incorporated for a fraudulent, illegal, or improper purpose. There is no evidence suggesting that TR3 was used as a shield for fraudulent or wrongful conduct.

[40] In *Price v. 481530 B.C. Ltd*., 2016 BCSC 1940, Justice Burke helpfully reviewed the caselaw concerning piercing the corporate veil. She noted:

> [253] It is trite law that a corporation is its own legal entity separate and apart from that of its shareholders: *Salomon v. A. Salomon and Co*., [1896] J.C.J. No. 5 (Privy Council). However, this rule is not without its exceptions, there are times when the courts will disregard the legal identity of a corporation. When the court will do so is dependent on the facts of each case and there is no clear test or rule: *XY, LLC v. Zhu*, 2013 BCCA 352 at para. 86 [*Zhu*].
>
> [254] In *Blackburn (Re)*, 2011 BCSC 1572, the Court held at para. 31:
>
> > [31] The grounds on which a court will consider setting aside or looking behind a company's corporate veil are numerous and varied. The corporate veil may be lifted when there has been conduct akin to

> fraud, where the company is simply acting as an agent of its owner, where there has been a breach of trust, where the shareholders or directors have made negligent misrepresentations or committed another tort, and, arguably, when the company is merely the facade for or alter ego of another entity…
>
> [255] The Ontario Court of Appeal reviewed the law surrounding the lifting of the corporate veil in *Parkland Plumbing & Heating Ltd. v. Minaki Lodge Resort 2002 Inc*., 2009 ONCA 256 at paras. 49-51:
>
> > [49] While a corporation is a legal entity distinct from its shareholders, this principle may be disregarded by 'lifting the corporate veil' and regarding the company as the agent or vehicle of its controlling shareholder or parent corporation where enforcing the 'separate entities' principle would yield a result "too flagrantly opposed to justice": …
> >
> > [50] But this does not mean that the courts enjoy '*carte blanche*' to lift the corporate veil absent fraudulent or improper conduct whenever it appears 'just and equitable' to do so. In *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co*. (1996), 28 O.R. (3d) 423(Ont. Gen. Div.), aff'd, (Ont. C.A.), Sharpe J. (as he then was) indicated at pp. 433-34:
> >
> > > [T]he courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct. The first element, "complete control", requires more than ownership. It must be shown that there is complete domination and that the subsidiary company does not, in fact, function independently... .
> > >
> > > The second element relates to the nature of the conduct: is there "conduct akin to fraud that would otherwise unjustly deprive claimants of their rights"? [Citations omitted.]
> >
> > [Burke J.'s emphasis.]

[41] In *Price*, Burke J. did pierce the corporate veil given that the personal defendants had taken and transferred assets from one company to another to deprive the plaintiff of the ability to recover the judgment.

[42] In the instant case, no such transfer is in evidence. In fact, no bad dealings are apparent at all as in the case in *Actton Petroleum Sales Ltd. v. British Columbia (Minister of Transportation & Highways)* (1998), 50 B.C.L.R. (3d) 187, 1998 CanLII 6517 (BC CA).

[43] Nor is it the case that the corporate veil should be lifted in situations which could be construed as unfair but do not rise to the level of fraud or improper conduct. In *Edgington v. Mulek Estate*, 2008 BCCA 505, Lowry J.A., writing for the Court, clearly set out that circumstances of unfairness do not permit of piercing the corporate veil:

> [24] This Court has, however, been clear that lifting the corporate veil does not extend to circumstances where declining to do so would simply be unfair. As was said in *B.G. Preeco I (Pacific Coast) Ltd. v. Bon Street Holdings Ltd.* (1989), 60 D.L.R. (4th) 30 at 37, 37 B.C.L.R. (2d) 258 (B.C.C.A.), in commenting on a principle apparently found in American law:
>
> > I do not subscribe to the "Deep Rock doctrine" that permits the corporate veil to be lifted whenever to do otherwise is not fair: see *Pepper v. Litton*, 208 U.S. 295, 84 L.Ed. 281 (1939). That doctrine and the doctrine laid down in *Salomon v. Salomon & Co., Ltd.*, [1897] A.C. 22 (H.L.), cannot co-exist. If it were possible to ignore the principles of corporate entity when a judge thought it unfair not to do so, *Salomon's* case would have afforded a good example for the application of that approach.

[44] As at the date of the hearing of this matter, there has been no formal winding up of TR3 or a formal placing of the company into bankruptcy. The question of insolvency is whether the company can pay its debts as they come due. It is a business decision for the directors of a company in such a situation to seek legal advice on how to deal with insolvency.

[45] In this case, TR3 cannot pay the judgment debt. This is not as a consequence of any wrongful act or fraudulent act such as transferring assets out of the company or wrongfully making payments to the company’s principals. The fact that Mr. Saari took the step of seeking legal advice in the face of the company’s insolvency is not evidence of fraud. Seeking advice on how to deal with insolvency is a responsible business step to take. Where a company becomes insolvent, it may be that steps must be taken to go into bankruptcy. However, that would be a business decision, not a decision to act fraudulently. Going into bankruptcy because of insolvency does not equate to fraud or improper conduct. Nor would it make it automatically unjust or unfair to a judgment creditor to not pierce the corporate veil.

[46] Additionally, it is not the responsibility of the principal to support a company personally or to take the assets of another company to pay debts of the insolvent company. That would not be a proper business decision for that other company and, in certain conditions, would itself be fraudulent, as noted in *Price*. Nor is it akin to fraud to take a vacation or want to retire at age 69.

[47] The fact that Mr. Saari was found to be an “indignant” witness does not rise to the high level required to pierce the corporate veil. There was nothing before the Court to suggest that the company was formed when it was insolvent and to do business to defeat creditors. Nothing in Mr. Saari’s actions subsequent to the trial judgment suggest fraud or improper conduct as that is set out in the case authorities. This was an ongoing business until it became insolvent. Nothing had changed in the company’s business practices up until it became insolvent and Mr. Saari sought advice on how to deal with that business fact. That he did so is not a fraudulent act and is, rather, a prudent business decision.

[48] I find that, in these circumstances, the judge’s decision to pierce the corporate veil was not reasonable.

PROCEDURE

[49] The question also arises to the fairness and proper manner of proceeding in permitting the respondent to have personal liability placed on Mr. Saari after the matter had already been argued and dismissed at trial.

[50] At the December 16, 2024 hearing, no evidence was placed before the Court by Ms. Mason except for the financial records of the company including its financial statements and credit card statements. She did not give evidence apart from the affidavit attaching the petitioners’ documents. While she accused Mr. Saari of being a fraud and lying, she did not give evidence. Rather, the articled student who was representing TR3 called Mr. Saari as a witness on the issue of piercing the corporate veil. Mr Saari was vigorously cross-examined by Ms. Mason. The judge as well asked Mr. Saari a number of questions about his inventory, whether he was going to work, and commented on his trip to Japan which she noted I her reasons as well to

pierce the corporate veil. Following the payment hearing, the judge reserved her decision and ultimately pierced the corporate veil.

[51] A claim to pierce the corporate veil is a significant matter and, in fairness, entitles those against whom the allegation is being made the right to properly defend against the allegation. This is achieved by requiring that a claim be brought with pleadings and an evidentiary hearing (i.e., a trial) on the matter. This is further supported by the fact that the onus rests with the party alleging that the corporate veil should be pierced.

[52] To properly defend an allegation that the corporate veil should be pierced as a consequence of improper conduct or fraud requires fairness. It should not be the case that a decision to pierce the corporate veil can occur by a claim merely submitted without actual evidence heard in a trial of the issue.

[53] Here, the judge had made a finding at the trial and granted judgment in favor of Ms. Mason but not as against Mr. Saari in a personal capacity. The judge held that the corporate veil should not be pierced. At trial, there had been proper pleadings and evidence. That was not the case at the payment hearing after the trial. The judge was in effect hearing an application which had the legal effect of adding a party to a concluded trial and finding liability on that party personally.

[54] Rule 8(10) of the *Small Claim Rules*, B.C. Reg. 261/93, provides:

> **When notice of claim or reply may be changed**
>
> (10) A notice of claim or reply may be changed under subrule (9) before or after a settlement conference without the permission of a judge, *but must not be changed after*
>
> (a) *judgment has been granted*,
>
> […]
>
> [Emphasis added.]

[55] No application was made to reopen the trial. It is not argued or suggested that this was anything other than an application following the trial. As such, the hearing

was an enforcement proceeding on the notice of claim as pleaded and as litigated at the trial.

[56] This exact issue was considered by Madam Justice Harris in *Jouhari-Sardasht v. Warke*, 2014 BCSC 836 [*Warke*]. She noted at the following paragraphs:

> [43] Section 12(1) of the *[Small Claims] Rules* addresses the purpose of a payment hearing, which is to "assess the debtor's ability to pay, and consider whether a payment schedule should be ordered". In this case, the debtor was the Company and, therefore, the payment hearing was to determine its ability to pay and whether a payment schedule should be ordered.
>
> [44] In my view, the trial judge did not have jurisdiction to turn the payment hearing into an inquiry as to whether the corporate veil of the company should be pierced. While the trial judge may have been justifiably concerned as to whether Mr. Jouhari might be using the Company for an improper or unlawful purpose and, therefore, wished to provide the parties with an opportunity to address the issue of whether the corporate veil should be pierced, I consider that the process she embarked upon to make this determination was flawed. For example:
>
> 1. Mr. Warke and Ms. Smith had not pled material facts to support a claim that the corporate veil should be lifted in their notice of claim. Although the standard for pleadings in small claims court is not nearly as rigorous as it is in other courts, they are required under the *Rules* and have an important function in placing the other party on notice of the claim or defence they would need to meet: see *Cappos v. Zurich Canada*, [1996] B.C.J. No. 2552 at paras. 15-16 (Prov. Ct.); *Port Moody Timber Ltd. v. Paul (c.o.b. Devbek Mill wrighting Services/Fabrication)*, 2009 BCSC 1957 at para. 14.
> 2. The hearing on the issue of whether to pierce the corporate veil was held after the trial judge had rendered judgment against the Company based upon the evidence introduced at trial. While a trial judge has the discretion to re-open a trial in certain circumstances (see *Bryfogle v. Smit*, 2005 BCSC 882, aff'd 2005 BCCA 547), it is not evident from the transcript of these proceedings that the trial judge intended to re-open the trial or that there was a legal basis to do so.
> 3. There was no separation between the payment hearing and the consideration by the trial judge as to whether judgment should also be awarded against Mr. Jouhari personally. As noted above, a payment hearing is restricted to the purposes set out in the Rules.
> 4. The hearing on the issue of whether to pierce the corporate veil was conducted by the trial judge asking questions of the parties. There was no one who gave evidence under oath and there was no examination or cross examination of witnesses in the

> traditional sense. Certain documents were presented by the respondents as "evidence" but the documents were not formally entered and marked as exhibits. There was no real opportunity provided to Mr. Jouhari or his counsel to challenge the evidence submitted by Mr. Warke and Ms. Smith.
>
> [45] I do not mean to suggest that the trial judge could not have addressed the issue of the personal liability of Mr. Jouhari. However, in my view, this should have been done in a manner which complied with the *Rules* and which was otherwise in keeping with the import of a decision to pierce the corporate veil.
>
> […]
>
> [56] In the instant case, I find there was no trial on the issue of whether the corporate veil should be pierced. A payment hearing was not the proper forum for this determination. Further, even if there had been a clear separation between the payment hearing and the hearing conducted with regard to Mr. Jouhari's personal liability, the hearing was not held in a manner which ensured a fair and just result. It was not conducted as a trial, nor did it bear the hallmarks of a trial as envisioned under the *Rules*.
>
> [57] In my view, the trial judge erred in law in concluding that judgment should be awarded against Mr. Jouhari without a trial on that issue having been conducted. Where a personal judgment is being sought against an individual director or shareholder of a corporation, a trial on the issue of whether to pierce the corporate veil is generally the proper manner of proceeding.

[57] I further disagree with the Provincial Court judge insofar as she found the fact that Mr. Saari took a vacation and did not continue to work (and not be paid a salary) only to satisfy his creditors, amounted to improper conduct warranting piercing the corporate veil. I also find that Mr. Saari is not required to take assets out of the company, Wild West Drilling Equipment, to satisfy the judgment of another company.

[58] Furthermore, it was unfair to the petitioners to pierce the corporate veil by an application. To have properly made this order, the Court should have required a proper claim on fresh pleadings and supported by evidence or, alternatively, an application to reopen the trial if the formal order arising from the reasons for judgment had not yet been entered. A discretion exists with the trial judge to reopen a trial to avoid any injustice: *Clayton v. British American Securities Ltd.*, [1934] 3 W.W.R. 257 (B.C.C.A.). See also *Tyerman v. Bruce*, 2023 BCSC 1193 and see *Bryfogle v. Smit,* 2005 BCSC 882, aff'd 2005 BCCA 547.

[59] This is not a situation similar to the scenario noted by Judge Mrozinski in *Droid Communications* where various transfers were alleged to ensure a company is judgment proof but which did not require a ruling as she did not find fraud or improper conduct. In that case, in *obiter dicta*, Judge Mrozinski found that a Provincial Court judge may, in an appropriate case, find a company official liable for engaging in wrongful conduct taken in order to thwart a judgment creditor. I note further that in earlier reasons in *Droid Media Communications Inc. v. QMI Manufacturing Inc*., 2022 BCPC 280, wherein Judge Mrozinski reviewed *Warke* and stated:

> [16] *Warke* is clear authority for the proposition that this court has no jurisdiction to embark on a hearing to pierce the corporate veil in a payment hearing. This is particularly apt in cases where the pleadings disclose no basis for the embarkation of such an inquiry.

[60] I find, given issues of fairness, any such finding must be brought on the basis of fresh pleadings and a trial or, in appropriate cases, an application to reopen the trial.

DISPOSITION

[61] In summary, the petitioners have established that the order piercing the corporate veil and imposing personal liability on Mr. Saari was unreasonable.

[62] The Provincial Court also was precluded from making this determination on an application and at a payment hearing. Any such application should be made following an application to reopen the trial in appropriate circumstances or on fresh pleadings and evidence in a trial.

[63] The petition for judicial review is allowed. I find the decision of the judge was unreasonable.

[64] If the parties are unable to agree on costs, they may speak to the issue, by filing with Scheduling within 60 days of the date of these Reasons for Judgment.

"Maisonville J."