

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**  
**IN THE CENTRAL DIVISION**

Civil Action No: HBC 289 OF 2022

**BETWEEN:**            **FOOD FOR LESS (FIJI) PTE LIMITED**

**PLAINTIFF**

**AND:**                    **BOB RAJENDRA PRASAD**

**1ST DEFENDANT**

**AND:**                    **ALLEN NAVEENDRA PRASAD**

**2<sup>ND</sup> DEFENDANT**

**AND:**                    **ALLEN INVESTMENT PTE LIMITED**

**3<sup>RD</sup> DEFENDANT**

For the Plaintiff                    : Mr Naidu R.  
For the 1<sup>st</sup> Defendant                : No Appearance  
For the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant        : Mr Reddy J.  
Date of Trial                            : 18 September 2024  
Before                                    : Waqainabete-Levaci, S.L.T.T, Puisne Judge  
Date of Judgment                    : 18 July 2025

**J U D G E M E N T**

## **INTRODUCTION**

- 1.0 The Plaintiff supplied goods to the 1<sup>st</sup> Defendant from 12 July 2018 to 15 August 2018 where the 1<sup>st</sup> Defendant operated a grocery shop at Vuci Road, Nausori as Bob's store. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are father and son and the 2<sup>nd</sup> Defendant is a shareholder of the 3<sup>rd</sup> Defendant.
- 2.0 The 1<sup>st</sup> Defendant had unfortunately passed away prior to trial and Counsel sort to withdraw appearances on the basis of no instructions, which the Court granted.
- 3.0 The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had failed to file their Statement of Defence but appeared with Counsel on trial day seeking for adjournment.
- 4.0 The Court refused to grant and further adjournments and proceeded to trial. Given that the Defendants had failed to file their Statement of Defence, any cross-examination was only on the veracity of the evidences of the Plaintiff.
- 5.0 The Plaintiff company supplied goods to the Defendant to the total of \$38,770.04. A notice of demand was served and although they promised to make payments, no payments were made. The Defendant had then transferred the property his company, 2<sup>nd</sup> Defendant and obtained a mortgage for the lease. When default judgment had been entered and enforcement of the Judgment was made, the bailiff was unable to make payments as the properties owned by the Defendant had been transferred.

## **EVIDENCES**

- 6.0 At trial, the Plaintiff called its witness who gave evidence that he was working for the Plaintiff company. Invoices were issued amounting to \$38,770.04 for monies owing Defendant issued a cheque that was later dishonored. A notice of demand was made to the Defendant by the solicitors dated 11 February 2021 for the said sum and no payment was forthcoming despite promises by the 2<sup>nd</sup> Defendants on 22<sup>nd</sup> February 2021 to pay the debt and a letter on 23<sup>rd</sup> February 2021 seeking to pay by instalments which was accepted on 30<sup>th</sup> March 2021. Despite further emails no payments were made. The 1<sup>st</sup> Defendant then transferred a property to 2<sup>nd</sup> Defendant when payments were still pending on 1 September 2021. A mortgage was obtained by HFC with mortgage number 565622 for the lease. The Plaintiff filed a claim and obtained default judgment in the Magistrates Court against the Defendant. A letter was sent by the Plaintiff's Counsel in December of 2021 informing the Defendant

of Court orders, but no payment was issued. A Writ of Fifa was issued on 27 May 2022. Court sheriff could not serve the Writ of Fifa as the shop was now owned by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and a report was filed into the Magistrates Court. On 19 April 2021 an online registration was made for the 3<sup>rd</sup> Defendant which was owned by the 2<sup>nd</sup> Defendant. That on search of the 1<sup>st</sup> Defendants store, the Companies registration showed that the Store had ceased operation. Plaintiff was unable to recover the monies nor seize the goods and assets as it was sold under the name of the second Defendant. This has also caused the Plaintiff to be unable to register a Charge on the property because of change in ownership. Another invoice was issued by the Counsel to the Plaintiff for Counsels costs amounting to \$3886.43. Inclusive of costs in Magistrates Court amounting to \$72.25 the total sum owing is \$42,729.82 in total sum from the Defendants. The He tendered the following documents:

- (i) Certificate of registration of business for the Defendant - PEX-1;
- (ii) Invoices of goods supplied to Defendants from 12 July 2018 to 15 August 2018 – Pexh 2;
- (iii) Cheque dishonored – PEX – 3;
- (iv) Notice of Demand on 11 February 2021 – PEX -4;
- (v) Letter of 23 February 2021 by Defendants lawyers – PEX-5;
- (vi) Emails between Counsels – PEX – 6;
- (vii) Lease registered for 1<sup>st</sup> Defendant– PEX-7;
- (viii) Mortgage Document No 565622 – PEX – 8;
- (ix) Property transfer to 2<sup>nd</sup> Defendant by 1<sup>st</sup> Defendant for love and affection on 13 April 2021– PEX – 9;
- (x) CA 85 of 2021 Writ of Summons - PEX-10;
- (xi) Judgment in the Magistrates Court – PEX-11;
- (xii) A letter was sent in December 2021 – PEX -12;
- (xiii) Writ of fifa - PEX- 13;
- (xiv) Court Sheriff report – PEX -14;
- (xv) Registration by Companies office – PEX – 15;
- (xvi) Cease of business name – PEX – 16;
- (xvii) Invoice for Counsels costs – PEX – 17;

7.0 In cross-examination he admitted that the goods were supplied between July to October 2018 but after 3 years then they issued a Notice to the First Defendant which was accepted by the Counsel for the First Defendant. There was a proposed payment schedule and email correspondences. They had known the Defendants for sometime the reason why they visited the Defendant personally to request verbally for payment or visited the shop. The Defendant admitted issues with FIRCA and asked for Plaintiff to wait. The goods were obtained by Bob Store, but run by a manager, not the 1<sup>st</sup> Defendant himself. The 1<sup>st</sup> Defendant lived upstairs and was friend of the Plaintiff and the Plaintiff

visited the 2<sup>nd</sup> Defendant who resided downstairs. He admitted that the claim was instituted on 27 September 2021, after the transfer was signed on 13 April 2021.

### **SUBMISSIONS BY PARTIES**

- 8.0 The Defendant filed submissions pertaining to the evidence of the Plaintiff arguing that the Plaintiff was unable, on a balance of probability, to establish fraud and that the evidences by the Plaintiff confirmed that the property of the Defendant was transferred to Bobs Store prior to the commencement of civil proceedings.
- 9.0 The Defendant also argued that the Claim was a duplicity of the same proceedings in the Magistrates Court for which a judgment was entered against the Defendants. However because the Defendants had started their own company, the Plaintiff was unable to enforce judgment.
- 10.0 The Plaintiff alleges that on enforcement of judgment, the bailiff was unable to serve the orders as the Plaintiff had transferred the property to the 2<sup>nd</sup> Defendant, a proprietor.
- 11.0 The Plaintiff therefore argued that there was fraudulent misrepresentation. That despite assurances from the Defendant that he would make instalment payments for the monies owed, he transferred his properties to the second Defendant and his shop stock and management to the third defendants to avoid any form of enforcement against him.
- 12.0 The particulars of fraud against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as follows:
  - (a) The Defendants did not pay the plaintiff monies he owed the plaintiff for goods which he purchased from the plaintiff to value of \$38,770.84.
  - (b) In or around April 2021 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants conceived the idea of forming a company to be named 'Allen Investment Pte Ltd 'which they would convey the business of Bob's store and the essential assets, carried on by the 1<sup>st</sup> defendant with the intent to keep them from his creditors.
  - (c) The 1<sup>st</sup> and 2<sup>nd</sup> defendants accordingly registered a copy with the name Allen Investment Pte Limited (the 3<sup>rd</sup> Defendant) on 22 April 2021.
  - (d) Sometime around or after 22 April 2021, the 1 defendant gave ownership of Bob's store and goods, stocks and essential assets of

Bob's store to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by making a general conveyance of all his goods, stock and essential assets used in the business of Bob's store to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for use by the 3<sup>rd</sup> Defendant as its proper stock and assets.

- (e) The 1<sup>st</sup> defendant made the conveyance with the knowledge of a pending claim for debt against him.
- (f) The conveyance was done dishonestly with intent to defraud creditors, in this instance, the plaintiff.
- (g) The 2<sup>nd</sup> Defendant accepted from the 1<sup>st</sup> defendant a transfer of Native Lease No. 27379 by way of natural love and affection in order to avoid the assets of the plaintiff being seized by the plaintiff.

13.0 The evidence of the Plaintiff was that after default judgment were obtained from the Magistrates Court and on having served the Orders of Writ of *feri facias* it was apparent that the 1<sup>st</sup> Defendant was no longer operating nor owned the store, although he resided there. The evidence was that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants opened the 3<sup>rd</sup> Defendant company which now operated the shop previously owned by the 1<sup>st</sup> Defendant.

14.0 The Plaintiff tendered the company registration of the 3<sup>rd</sup> Defendant and the ceasing of operation of the 2<sup>nd</sup> Defendant. The Plaintiff also tendered the invoices to confirm the monies owing and the orders of the Magistrates Court for default judgment.

15.0 The Plaintiff argued that the Court could, by circumstantial evidence, assess Plaintiffs evidence and determine that they had proven the allegations of fraud by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

## **LAW ON FRAUD**

### **PIERCING THE CORPORATE VEIL**

16.0 It is a well-established principle that a company has a separate and legal personality and is a legal entity that can sue and be sued - Salomon v A. Salomon & Sons [1897] AC 22.

17.0 The principles of piercing the corporate veil was discussed in Kento (Fiji) Limited -v- Naobeka Investment Limited [2016] FJHC 148; HBC100.2012 (4 March 2016) Nanyakarra, Master, held:

“Where the medium of a company has been used for committing fraud or improper conduct, courts have lifted the veil and looked at the reality of the situation. The two classic cases of the fraud exception are Gilford Motor Company Ltd v Horne (1933) Ch. 935 CA. and Jone v Lipman (1962) (1) WLR 832. In the first case, Mr. Horne was an ex-employee of the Gilford motor company and his employment contract provided that he could not solicit the customers of the company. In order to defeat this he incorporated a limited company in his wife’s name and solicited the customers of the company. The company brought an action against him. The Court of appeal was of the view that “the company was formed as a device, a stratagem, in order to mask the effective carrying on of business of Mr. Home. In this case it was clear that the main purpose of incorporating the new company was to perpetrate fraud.” Thus the court of appeal regarded it as a mere sham to cloak his wrongdoings. In the second case of Jones v Lipman a man contracted to sell his land and thereafter changed his mind in order to avoid an order of specific performance. He transferred his property to a company. Russel J specifically referred to the judgment in Gilford v. Horne and held that the company here was “a mask which (Mr. Lipman) holds before his face in an attempt to avoid recognition by the eye of equity”. His Lordship awarded specific performance both against Mr. Lipman and the Company.

Perhaps it is splitting hairs, but to my mind, it is an explicit recognition that some improper conduct must have occurred, establishing that the corporation was controlled and dominated.

Control and domination part of the test determines the relationship between the shareholder and the corporation. Generally, mere majority stock ownership will be insufficient to satisfy this element. Instead, one must show “complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction has no separate mind, will or existence of its own.” To determine the existence of “complete domination”, courts usually require the Defendant to produce evidence of inadequate capitalization or undercapitalization, failure to follow corporate formalities, commingling of funds, diversion of funds or assets for non-corporate purposes.

- 18.0 There are a plethora of principles that establish when the Court can pierce the corporate veil, one of the grounds being actual fraud.

19.0 It has been held that actual fraud is to be proven on a higher probability or where there is an improper purpose or illegal use of the company established – a sham.

20.0 In Midland Beach Estate Ltd -v- Balgovind [2012] FJHC 1043; HBC377.2006L (1 May 2012), Dias J, having analysed a number of cases on piercing the corporate veil and determined:

[59] However, I find that the judicial dicta resonates minimum two instances where the courts have not been hesitant to pierce the corporate veil. i.e., fraud or using the alter ego doctrine. If the corporate is used as a facade or a vehicle to defraud, then the courts have not been hesitance to lift the corporate veil. So as when the corporate is the alter ego of the fraudster then the courts have pierced or lifted the corporate veil to look beyond the legal fiction and consider the reality of the situation.

[60] The equitable remedy of piercing the corporate veil is fluid. Therefore, in my view the court must examine the evidence in totality before piercing the corporate veil.”

21.0 The Plaintiff’s Counsel has drawn this court’s attention to the case of Creasey -v- Breachwood Motors Ltd [1992] BCC 638, that where a company transfers its property, assets and stock to another company with intention to evade owing a debt of salaries owing to the griever, the new company was liable for the original contract. The Counsel for the Plaintiff referred Linsen International Ltd & Ors -v- Humpuss Sea Transport Pte Ltd [2011] EWHC 2399 (Comm) (14 September 2011, 107-108) which cited the previous authority of Creasey -v- Breachwood Motors Ltd (Supra) by Deputy Judge of High Court of Chancery Division, Mr Richard Southwell QC (cited with approval in The Tjaskemolen (No. 1) [1997] 2 Lloyds Rep 465) who held that where the two companies, Welwyn and Motors both shared the same shareholders, where the claimant succeeded in seeking for damages for summary dismissal, thereafter Welwyn ceased trading and the next day Motors took over the business and traded under the same trading name, Motors paid all the creditors of Welwyn but not for the claimant, it was held that there was justification for lifting the corporate veil.

22.0 However this authority, Creasey -v- Breachwood Motors Ltd (Supra) was overturned by the Court of Appeal in the subsequent case of Ord -v- Belhaven Pubs Ltd [1998] 2 BCLC 447 in which Hobhouse LJ had stated:

But it seems to be inescapable in the case of Creasey -v- Breachwood as it appears to the Court cannot be sustained. It *represents a wrong*

*adoption of the principles of piercing the corporate veil and a misuse of the power granted by the rules to substitute one party for the other following death or succession. Therefore in my judgment the case of Creasey -v- Breachwood should no longer be authoritative.”*

- 23.0 The Court in Linsen International Ltd & Ors -v- Humpuss Sea Transport Pte Ltd & Ors (Supra) therefore concluded that in accordance with the reasoning of Toulson J in Yukong Line Investment Corporation [1988] 1 WLR 294 and Hobhouse LJ reasoning in Ord (Supra) it was held that there was a strong support to the proposition by Creasey to an extent, suggests, that:

“[w]here it is appropriate to pierce the corporate veil, the entity which assets have been improperly transferred can be made liable under the original contract even if the contract was not [improperly] procured pursuant to a device or sham”. (my inclusion in brackets)

## FRAUD

- 24.0 The Court must therefore consider and weigh out evidences to determine if, when taken in its totality establishes the elements of civil fraud, which when creating the company, was done so for an illegal or improper purpose, to enable the Court to wield its powers to pierce the corporate veil.
- 25.0 In the case of Naidiri -v- Taleniwesi FJSC [2025] 7;CBN022;2023 (30 April 2025) the full bench of the Supreme Court, discussed in great length the elements to be proven for (common law) fraud in civil cases. Gates J.A stated:

64] From time to time this issue comes up in appeals to the Supreme Court. Much has already been said on the matter. The two leading cases are **Derry and Peek [1889] 14 App Cas 337** and **Bradford Third Equitable Benefit Building Society v Bolders [1941] 2 All ER 205**. In Fiji see **Ali’s Civil Engineering Limited v Habib Bank Ltd** [2019] FJSC 30; CABV00016.2018 (1 November 2019) and **Kuar v Singh** [2022] FJSC 19; CBV0017.2018 (29 April 2022).

[65] In the **Bradford** case Viscount Maugham at page 211A set out the requirements of proof:

“My Lords, we are dealing here with a common law action of deceit, which requires four things to be established. First, there must be a representation of fact made by words, or, it may be, by conduct. The phrase will include a case where the defendant has

manifestly approved and adopted a representation made by some third person. On the other hand, mere silence, however morally wrong, will not support an action of deceit: Peek v. Gurney (2), at p.390 per Lord Chelmsford, and at p.403, per Lord Cairns, and Arkwright v. Newbold (3), at p.318. Secondly, the representation must be made with a knowledge that it is false. It must be wilfully false, or at least made in the absence of any genuine belief that it is true: Derry v. Peek (4) and Nocton v. Ashburton (Lord) (5). Thirdly, it must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him: Peek v. Gurney (2) and Smith v. Chadwick (6), at p.201. If, however, fraud be established, it is immaterial that there was no intention to cheat or injure the person to whom the false statement was made: Derry v. Peek (4), at p.374, and Peek v. Gurney (2), at p. 409. Fourthly, it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing: Clarke v. Dickson (7). I am not of course, attempting to make a complete statement of the law of deceit, but only to state the main facts which a plaintiff must establish.

[66] In the ***Derry*** case the defendants, Directors of a company, had stated in their prospectus that their Tramway Company had obtained the consent of the Board of Trade to use steam for their carriages as opposed to horses. The question was, though the defendants knew that their statement was not strictly accurate, did they intend to deceive? They honestly thought that their statement conveyed a substantially accurate representation of fact. There are several similarities with the instant case.”

67].....

.....

[[73] Lord Herschell summarised the basis for holding that civil liability had not been made out [paragraph 379]:

“I think they were mistaken in supposing that the consent of the Board of Trade would follow as a matter of course because they had obtained their Act. It was absolutely in the discretion of the Board whether such consent should be given. The prospectus was therefore inaccurate. But that is not the question. If they believed that the consent of the Board of Trade was practically concluded by the passing of the Act, has the plaintiff made out, which it was for him to do, that they have been guilty of a fraudulent **misrepresentation**? I think not. I cannot hold it proved as to anyone of them that he knowingly made a false statement, or one which he did not believe to be true, or was careless whether

what he stated was true or false. In short, I think they honestly believed that what they asserted was true, and I am of opinion that the charge of fraud made against them has not been established.”

26.0 Bearing in mind the elements to establish fraud, I adopt these principles and follow them accordingly.

### **ELEMENTS OF FRAUD**

***(i)there must be a representation of fact made by words, or, it may be, by conduct.***

27.0 The particulars of fraud which the Court must consider in light of the evidences are as follows:

- (i) The Defendants did not pay the plaintiff monies he owed the plaintiff for goods which he purchased from the plaintiff to value of \$38,770.84.
- (ii) In or around April 2021 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants conceived the idea of forming a company to be named ‘Allen Investment Pte Ltd ‘which they would convey the business of Bob’s store and the essential assets, carried on by the 1<sup>st</sup> defendant with the intent to keep them from his creditors.
- (iii) The 1<sup>st</sup> and 2<sup>nd</sup> defendants accordingly registered a company with the name Allen Investment Pte Limited (the 3<sup>rd</sup> Defendant) on 22 April 2021.
- (iv) Sometime around or after 22 April 2021, the 1 defendant gave ownership of Bob’s store and goods, stocks and essential assets of Bob’s store to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by making a general conveyance of all his goods, stock and essential assets used in the business of Bob’s store to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for use by the 3<sup>rd</sup> Defendant as its proper stock and assets.
- (v) The 1<sup>st</sup> defendant made the conveyance with the knowledge of a pending claim for debt against him.
- (vi) The conveyance was done dishonestly with intent to defraud creditors, in this instance, the plaintiff.

- (vii) The 2<sup>nd</sup> Defendant accepted from the 1<sup>st</sup> defendant a transfer of Native Lease No. 27379 by way of natural love and affection in order to avoid the assets of the plaintiff being seized by the plaintiff.
- 28.0 The Plaintiff evidences is that the 1<sup>st</sup> Defendant executed a transfer of his property known as Mataibai No 3 Subdivision Lot 2 as shown as Lot 1 on SO 5194 in Nausori in Tailevu to his Son, the second defendant in April 2021 which was later registered in September of 2021. This evidence was not contested by parties.
- 29.0 The property transfer made to the 2<sup>nd</sup> Defendant is the property in which the 1<sup>st</sup> Defendant's shop operates from. This evidence is not contested by parties.
- 30.0 That when the transfer was effected in September 2021, the 1<sup>st</sup> Defendant knew he owed a debt to the Plaintiffs. This evidence was not contested to by the Defendants.
- 31.0 The Plaintiffs evidences was that the 2<sup>nd</sup> Defendant registered the incorporation documentations for the 3<sup>rd</sup> Defendant in April of 2021. This was also not contested to by the Defendants.
- 32.0 The Plaintiff also tendered evidence that the registration of the business name owned by the 1<sup>st</sup> Defendant, was renewed from March of 2021 and ceased registration in February of 2022. This was not contested to by the Defendants.
- 33.0 The Plaintiffs evidence, through the testimony of the witness, was that the both Defendants effected or enabled the transfer of business stock and assets to the 3<sup>rd</sup> Defendant on or after April of 2021 when the 1<sup>st</sup> Defendant was still owing monies to the Plaintiffs in order for the 1<sup>st</sup> Defendant not to pay its debt.
- 34.0 The Plaintiffs therefore submit that the Defendants incorporation and operation of the 3<sup>rd</sup> Defendant at the same premises as the 1<sup>st</sup> Defendant's business was for improper purposes, to evade the payment of the debt owing to the 1<sup>st</sup> Defendant.
- 35.0 The Defendants failed to contest these evidences by proving there was no improper purpose of the creation of the 3<sup>rd</sup> Defendant.
- 36.0 That despite the renewal of registration of the business name of the 1<sup>st</sup> Defendant's business in March of 2021, the business cease operating its name in February 2022.

37.0 By the time the business cease registration of its name in February of 2022, the business was no longer operating within the same premises and was now operated by the 3<sup>rd</sup> Defendants, as separate legal entities.

38.0 Having considered the circumstantial evidences, the Court finds that, on a balance of probabilities, there were representations by the 1<sup>st</sup> Defendant that their business would pay its debts which was relied upon by the Plaintiff when they agreed to the Agreement for the Defendants to pay in instalments.

**(2) Whether the representation was made with a knowledge that it was false. It must be willfully false, or at least made in the absence of any genuine belief that it is true**

39.0 The Plaintiff's evidence was that at the time the 1<sup>st</sup> Defendant had entered into an Agreement to make payments by instalments, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants conspired that the 1<sup>st</sup> Defendant and/or his business transfer his property known as Mataibai No 3 Subdivision Lot 2 as shown as Lot 1 on SO 5194 in Nausori in Tailevu on which the 1<sup>st</sup> Defendants shop operates to the 2<sup>nd</sup> Defendant on 13 April 2021. This was later registered with the Registrar of Titles on 1<sup>st</sup> September 2021 by way of love and affection.

40.0 The Plaintiff's evidence was that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants knew that the 1<sup>st</sup> Defendant and/or his business continued to operate the shop before and until March of 2022 whilst his business owed that debt to the Plaintiff. The evidence of the Plaintiff is that since the business name ceased in March of 2022, the Defendants have failed/refused to make payments for the debt owing to the Plaintiff to date.

41.0 The Plaintiff argues that the transfer of property as a gift without any value to the 2<sup>nd</sup> Defendant, restructuring of business with the presumption that the 3<sup>rd</sup> Defendant would take over the business stock and assets and operate from the same business premises were sufficient circumstantial evidences to establish that the representation was false because the Defendants intended for the 1<sup>st</sup> Defendant not to pay the debt by restructuring as a company

42.0 When analyzing the evidence, the Court found there was insufficient evidence to establish that the 1<sup>st</sup> Defendant's business was not operating as a shop at the same location until March 2022 when it ceased its name.

43.0 The Court found that despite the Plaintiff providing transfer documents by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant of the property for which the business was operating from and around the same month, incorporation of the company, ,

was not sufficient to establish as circumstantial evidence that the Defendants intended to evade liability by restricting their business as a company.

- 44.0 There must be evidences of business operations in which the Defendants are all involved in, evidences of control of the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Defendant and at least financials or invoices or bank statements to show that the management and ownership of the 3<sup>rd</sup> Defendant was indirectly controlled or dominated by the 1<sup>st</sup> Defendant.
- 45.0 In Creasely -v-Breachwood (Supra) the company was incorporated when the Writ was served. Although other creditors were paid, the plaintiff was not paid for his grievance for unlawful dismissal from the firm. In the Court of first instance, the Court found the corporate veil could be pierced.
- 46.0 The Court of Appeal determined that it was incorrect to adopt the principles of piercing the veil in such a case.
- 47.0 The Court however considered whether to analyze the third and fourth elements and found since the Plaintiff was unable to prove that the misrepresentation was false, the third and fourth elements need not be analyzed.
- 48.0 The Court therefore finds that the Plaintiff was unable to make out a claim for fraud.
- 49.0 Therefore the statement of claim will be dismissed.
- 50.0 The case took only ½ a day with one witness. Both Counsels were present to argue their case.
- 51.0 However the manner in which the Counsel for the Defendant has failed to properly file their Defence, although he appeared to cross-examine the evidence on its veracity, the Court will not award any costs.

## **ORDERS**

52.0 The Court will order as follows:

- (i) The Writ of Summons and Statement of Claim is dismissed;

(ii) There are no orders as to costs.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Justice Senileba L. TT Waqainabete-Levaci  
Puisne Judge of the High Court of Fiji