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Piercing the Corporate Veil in Brazil: A Decade of Decisions by the Superior Court of Justice

30.06.2025 4 min read

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In BMA Review no. 37, issued in June 2012, we looked at how Brazil's Superior Court of Justice (*STJ – Superior Tribunal de Justiça*, the country's highest court in non-constitutional matters) was applying the "theory on disregarding legal personality" – the Brazilian version of piercing the corporate veil, a doctrine that allows courts to hold shareholders or members of management personally liable for corporate debts when certain legal requirements are met.

At the time, the STJ had already begun expanding the doctrine's reach, finding that the corporate veil could be pierced in scenarios such as:

- **Reverse piercing**, where company assets are made available to satisfy a shareholder's debt;
- **Cross piercing**, between companies under common control (in a kind of inverted "V" structure);
- **Successive piercing**, up or down chains of corporate ownership;
- **And de facto group piercing**, involving companies with factual, though not formal, ties.

Since then, the STJ has not only confirmed these applications of the doctrine but has introduced new developments in its case law.

In November 2017 and August 2018, the Court's 3rd and 4th Panels dealt with cases where the corporate veil was pierced to reach the personal assets of members of management. The STJ held that piercing the corporate veil is justified when the evidence shows that the individuals have acted as figureheads, and have exceeded their authority or abused the company's legal personality.[1]

In April 2022, the 3rd Panel held that although investment funds do not have legal personality, their assets may be made available to satisfy a fund shareholder's debts, through reverse piercing.[2]

Then in September 2023, the same panel held that civil associations may also be subject to piercing, though liability should be limited to those members who actively manage the organization.[3]

These developments have been accompanied by important legislative changes. The 2015 Code of Civil Procedure (CPC) introduced a formal procedure for applications to pierce the corporate veil which gives the parties involved the opportunity to be heard. In a 2017 decision, the STJ's 3rd Panel emphasized that, under the new CPC, courts must respect the right to be heard *before* any decision to pierce the corporate veil, with an exception for truly urgent cases.[4]

In 2019, Article 50 of the Civil Code was amended to provide clearer definitions of the two main grounds for piercing the corporate veil: abuse of legal personality (using the company to harm creditors or commit unlawful acts) and asset commingling (failing to maintain a clear separation between personal and corporate assets).[5] The STJ's 3rd Panel welcomed this reform as a step toward greater legal certainty in business relationships in a decision issued in November of that year.[6]

Signs of same more restrained approach can be seen the proposal made in August 2023 by the STJ's 2nd Section to issue a binding ruling on the question of whether the corporate veil can be pierced simply because a company has no assets that can be attached and/or it has ceased operations without formal dissolution.[7] Although the 2nd Section has selected the appeals that it considers representative of the question, it has not yet issued a ruling. Nonetheless, the STJ's decisions in recent years suggest that it will likely take the view that such circumstances, on their own, are not sufficient grounds for piercing the corporate veil.

If confirmed, such a ruling would mark another important step in the STJ's evolving case law regarding piercing the corporate veil.

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NOTES

1. Appeal REsp 1.658.648/SP and Appeal REsp 1.698.102/SP.

2. Appeal REsp 1.965.982/SP.

3. Appeal REsp 1.812.929/DF.

4. Appeal REsp 1.647.362/SP.

5. Art. 50. In cases of abuse of legal personality, evidenced by a departure from the purpose of the legal person or by commingling of property, the judge may decide, on application by the party or by the Public Prosecution Service, when that service has the power or duty to intervene in the proceeding, to disregard legal personality so that that the effects of certain defined obligations extend to the private property of the members of management or shareholders of the legal person who were benefited directly or indirectly by the abuse.

§1. For the purposes of this article, a departure from the purpose of a legal person is use of the legal person with the intention to injure creditors or to commit illicit acts of any kind.

§2. Commingling of property means a lack of separation in fact between the property of the legal person and that of its shareholders, partners, or members of management, evidenced by:

I – repeated performance by the company of obligations of its partners, shareholders or members of management, or vice-versa;

II – transfer of assets or liabilities without an effective counterpart other than those of a value that is proportionately insignificant; or

III – other acts that violate [the company's] independent [ownership and management of its] property. (As amended by Law 13.874/2019)

6. Appeal REsp 1.838.009/RJ.

7. Repetitive Appeal Issue (Tema) 1210.

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