

# Research on the Applicable Standards of the System of Corporate Legal Personality Denial in the Civil Code Era

## -- From the Perspective of Labor Creditor 's Rights

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### Abstract

On the basis of Article 20 of the "Company Law", Article 83 of the "Civil Code of the People's Republic of China", which is an "encyclopedia of social life", expands the "company legal personality denial system", reflecting the the importance of the system. In order to protect workers who are an important part of society, we can follow the tone of the Civil Code of the People's Republic of China to expand the system, reasonably expand the applicable circumstances and subjects of the system, and clarify its application in the field of labor law. , and transfer the existing burden of proof to a certain extent, in line with the principle of preferential protection of laborers in labor dispute cases, and provide a powerful auxiliary means for laborer protection.

### Keywords

Denial of Corporate Legal Personality; Civil Code; Protection of Laborers.

### 1. The Formulation of the Question

The system of denial of corporate legal personality originated from the common law system, and its purpose is to exclude the limited liability of shareholders under normal circumstances. In fact, there has been controversy over whether the corporate legal personality denial system should be included in the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), because the former is an exceptional rule, while the latter is the basic law of the market economy and is the foundation of the legal system. sexual status. Now that the dust has settled, the system has been written into the Civil Code. At the same time, out of consideration for the unity of the Civil Code system, the scope of the applicable subjects of the system has been expanded, and "company" and "company shareholder" have been changed to "profit-making" respectively[1]. Legal person" and "investor of for-profit legal person", in the era of the Civil Code, the system of denying corporate legal personality has been given a greater mission. The mainstream view is that the system of corporate legal personality denial is used to protect the legitimate interests of the company's creditors, including contract claims and tort claims. However, my country's judicial practice mostly focuses on contract claims, and tort claims are rarely applied. Why there is a lack of such cases is thought-provoking : Is the system inherently inapplicable to such cases? Or is it temporarily difficult to apply based on current practice? If so, how to change this status quo, and how to play the due role of the system under the circumstance that the Civil Code attaches great importance to the system? Through literature search, the author finds that there are many precedents of applying the system of denying corporate legal personality in labor tort cases outside the country. Therefore, this paper intends to discuss the application of the system of denying corporate legal personality in labor tort cases in my country.

## 2. The Actual Situation of the Application of the System of Corporate Legal Personality Denial in Labor Tort Cases in My Country

In fact, there are many labor dispute cases in our country that can apply the company legal personality denial system, such as the mixed employment between affiliated companies to avoid the obligations under the relevant labor law; another example is some employers deliberately eliminate the huge amount of wages in arrears to the workers[2]. The company's independent legal personality status; in another example, in a husband-and-wife company and a one-person limited company, the personalities of the company and the shareholders are easily confused. However, in practice, most labor disputes are based on the attitude of "use with caution", evading the application of this system when litigating, resulting in the lack of a reasonable cause of action in the case, and the reasoning of the judgment is far-fetched. In the final analysis, it is because according to the current relevant regulations, it is difficult for the company's legal personality denial system to be perfectly adapted to labor dispute cases.

(1) The scope of the applicable subject is ambiguous. The applicable subjects include the plaintiff and the defendant. The plaintiff refers to the creditors who have the right to sue due to the abuse of the company's legal personality, including natural persons, legal persons and other organizations; the defendant is the active controlling shareholder who abused the company's independent personality and assumed limited liability. Passive shareholders are not involved, and their limited liability should still be protected, otherwise it would be unfair. Specifically, in labor dispute cases, workers who have been harmed by the abuse of the independent legal person status of the employer have the right to protect their legitimate rights and interests by filing a lawsuit for denial of the company's legal personality when there is no other remedy. Two points should be noted here: First, the claimed employer must have independent legal personality, which is not applicable to individual industrial and commercial households or sole proprietorships. At the same time, considering that there are a large number of employment problems in affiliated enterprises in labor infringement cases, shareholders need to do Expansion explanation; secondly, the author believes that laborers in such cases should be limited and narrowly explained[3]. The theory of labor stratification has certain applicable value here. If the classification standard of Professor Dong Baohua is used, the laborers are divided into ten classes, which is applicable to companies. In labor tort cases under the legal personality denial system, eligible plaintiffs should be limited to middle- and upper-class workers who have established labor relations with employers and do not have shareholder qualifications and have certain negotiating skills[4].

(2) Abuse of the company's personality behavior is concealed and difficult to distinguish. The behavioral requirements for the application of the corporate legal personality denial system refer to the abuse of corporate personality, which generally includes two situations: insufficient capital and mixed personality. First of all, undercapitalization does not refer to legal insufficiency, such as being lower than the legal minimum capital limit or insurance premium limit, but refers to economic insufficiency, that is, according to the nature of the industry the company operates in and the risk events that are likely to occur in the industry. The nature of its capital depends on whether its capital is sufficient to cover the risk loss, and should be based on the business start time rather than the time of the event. Secondly, the mixed personality means that the company has been established, but the boundaries between the company and the shareholders or the parent company and the subsidiary are unclear. The specific manifestation is that the shareholders do not follow the company procedures or the parent company has excessive control over the subsidiary. The mixed personality violates the company as an independent company[5]. The entity's legal expectation that its shareholders should be jointly and severally liable for the debt. However, the company's operation and

management matters are confidential to a certain extent, and it is difficult for ordinary people to identify the behavior of abusing the company's personality.

(3) The result requirements are difficult to prove. Consequential requirements refer to the abuse of corporate legal personality to cause harm to others or society. This requirement has three main points: first, the abuse of the corporate legal personality has caused serious damage to the creditors of the company; second, there is a direct causal relationship between the abuse of the corporate legal personality and the losses, and the injured party must prove that he has There is a causal relationship between the damage and the abuse of the company's legal personality; third, the damage cannot be compensated by the company itself[6]. This requirement is generally difficult to achieve in labor dispute cases. Although it is mentioned above that the workers who apply this system should be workers with certain negotiating ability, compared with employers, such workers are still in a disadvantageous position and are not in the company It is difficult for workers at the management level to fully prove that there is indeed an abuse of corporate legal personality, and imposing the burden of proof entirely on workers will basically lead to the falsification of the company's legal personality denial system in labor dispute cases.

### **3. The Experience of Applying the Company Legal Personality Denial System to Protect the Rights and Interests of Workers Outside the Territory**

It is difficult to protect the legitimate rights and interests of workers by applying the system of denial of corporate legal personality in labor dispute cases in my country. However, if you look outside the field, you will find that there is no room for application. Japan, the United States and other countries have relatively mature practices. The experience is worth learning from.

(1) JAPAN. In Japan, the system of corporate legal personality denial is a case law, and both theoretical and practical circles hold a positive attitude towards introducing it into labor dispute cases. Japan divides the system of corporate legal personality denial into two situations: "destruction of legal personality" and "abuse of legal personality", and there are relevant classic examples in the field of labor law. The first case is the "Kawagan Industrial Incident". In this case, the court is the first of its kind to propose that the subsidiary company is "destroyed as a legal person", which proves that the parent company has actual control over the subsidiary's business and property, and the parent company should be responsible for paying wages. obligation. In the second case, the "Tokushima Funai Electromechanical Incident" is the first case. In this case, the court found that it met the situation of "abuse of legal personality", and the parent company should inherit the labor relationship between the subsidiary company and the laborer[7].

(2) UNITED STATES. As the origin of the corporate legal personality denial system, the United States adopts the more vivid expression of "piercing the veil of the company", and the applicable rules are relatively complete. In an employment discrimination case, the US Court of Appeals for the Tenth adopted a dichotomous standard. . First, the shareholders do not respect the independence of the company to the extent that the personality of the company and the personality of the individual shareholders, the property of the company and the property of the individual shareholders are blurred; By encouraging circumvention of legal obligations, the corporate veil can be pierced. However, some scholars believe that the two-pronged standard is too complicated, and the "subject confusion" can be directly applied. Thinking from another angle, employees themselves should bear the corresponding responsibility for infringement within the scope of work. For example, the U.S. "Unemployment Relief Act" stipulates that employers who employ more than 8 workers have the obligation to provide unemployment relief funds for their employees[8]. In the case of Texas State v. Dallas No. 4 Liquor Warehouse,

in order to avoid this obligation, the defendant company divided the companies so that each company had fewer than 8 employees, and there was an obvious evasion of legal obligations. Subjective maliciousness, and finally, the court determined that the four separate companies should be regarded as a whole, and as an employer, the Unemployment Relief Law should be applied to provide employees with unemployment relief funds.

Of course, trade unions have played a very important role in relevant cases in Japan and the United States, which is different from the relatively weak strength of trade unions in my country, which also confirms the author's aforementioned point of view that laborers who are qualified plaintiffs need to make limited explanations .

#### **4. Suggestions on Applying the System of Corporate Legal Personality Denial to Protect the Rights and Interests of Workers in the Era of the Civil Code**

Whether it is the "Company Law of the People's Republic of China" (referred to as "Company Law") or the "Civil Code" or other relevant laws and regulations, the current provisions on the system of corporate legal personality denial are relatively shallow, because its essence is a case law system. In various jurisdictions, there are very few precedents to make it into a cultural regulation, and the application of this system has always adhered to a cautious attitude[9]. However, since it has been stipulated in the "Company Law" for a long time and entered the "Civil Code", it should be improved and refined according to the actual situation of our country.

##### **4.1. Enriching the Application of Legal Personality Denial System**

The current law of our country only stipulates the system of denial of corporate legal personality in a narrow sense - forward denial, that is, shareholders who abuse corporate legal personality shall be jointly and severally liable for the company's debts, but with the development of social economy, many new cases have emerged in practice, such as The regulations can no longer meet the actual needs, and its applicable situations need to be expanded.

Such as horizontal denial, that is, the active shareholder with controlling position controls other subsidiaries or affiliated companies, and the property, business and even domicile of several companies are mixed, and they are a community of mutual interests, losing their independent personality, and the company becomes a controlling shareholder to avoid debts. , illegal business operations and even criminal puppets, once the controlling shareholder maliciously abuses the company's legal personality, resulting in infringement, the creditor's request for the affiliated company or parent and subsidiary to bear joint and several liability should be supported. Introducing horizontal denial, the most common problem in the field of labor law is the mixed employment of affiliated companies, and the system can be reasonably applied. Although the "Company Law" has not been revised, the Supreme People's Court issued the Supreme People's Court Guiding Case No. 15 in 2013 and the "Minutes of the Nine Peoples" in 2019, which clearly stipulated the horizontal denial of the corporate legal personality denial system.

Another example is reverse denial, denying the company's independent personality and assuming the shareholders' debts with the company's property. According to different requests, it can be further subdivided into two situations: internal demands and external demands[10]. Internal appeal refers to the company's internal controller who wants to deny the company's independent personality status, so that he can obtain the appeal to the external third party or make the company not affected by the external third party's appeal. External appeals are creditors outside the company. On the surface, they only have the right to claim the controlling shareholders or other relevant internal personnel of the company, but by requesting to deny

the company's independent personality status, they can obtain the right to directly claim the company or place the company's assets in the company. at its own request. In the field of labor law, there is a certain space for external demands, such as a one-person limited company or a husband-and-wife company. Often the company and the shareholder have mixed personalities. Many operating procedures of the company are not carried out in accordance with the provisions of the law. In order to avoid signing labor contracts with its employees The obligations of employers stipulated by relevant laws often sign relevant employment contracts with employees in their own name or even do not sign any contracts at all; in addition, due to the relatively simple setup of such companies, it is very likely that the company's controlling shareholders personally use the company as a guise. The name has caused damage to the laborer, but the laborer is likely to have nowhere to appeal. The controlling shareholder transfers all the property to the company, and his personal property is completely unable to bear the laborer's appeal. At this time, reverse denial can be applied, requiring the company to be a shareholder. liability for infringement.

#### **4.2. Adjusting the Applicable Subject of the Legal Personality Denial System**

According to the current law, the plaintiff refers to the company's creditors. In practice, due to the careful application of the system, the creditor's rights only refer to the contractual debts with strict application conditions. This practice is suspected of giving up food because of choking. Explain that the claims arising from contracts, torts, etc. should all be included in the list. In addition, from the perspective of the degree of closeness between the creditor and the company, public interest creditors, shareholders and even the company itself have the possibility of becoming eligible plaintiffs, so it is necessary to make more specific provisions on the main element of the plaintiff. There is a labor contract between the laborer and the employer. On the surface, the relationship between the two is a contractual debt. Therefore, the laborer, as a creditor, needs to complete a higher certification task. The essence should be tort claims, and workers are passive creditors, because the real infringers are not the employers with whom they have a contractual relationship, but the shareholders who abuse the company's independent personality or the two tort jointly. From the perspective of substantial fairness, labor If the creditor is in a weak position relative to the employer, it is more appropriate to identify it as a passive creditor.

As for the defendants, it is theoretically considered that only active shareholders of LLCs are eligible defendants, but this is clearly not enough. First, it should not be limited to closed companies such as limited liability companies, and should be applicable at least in listed joint-stock companies when conditions are met. It can be seen that, at least at the legislative level, there is a tendency to expand provisions. Second, it should not be limited to active shareholders, and actual controllers, affiliated companies and other entities can also be defendants.

#### **4.3. Adjusting the Rules of Burden of Proof in Labor Dispute Cases**

At present, the company's legal personality denial system adopts the principle of "whoever claims shall give evidence". There are two main difficulties in practice: first, it is difficult for the plaintiff to obtain evidence, and second, it is difficult to define the standard of proof. The root cause of this phenomenon is that my country's corporate legal personality denial system started late and its development is not mature enough. So should this principle be abandoned for this reason? In this regard, the author agrees with Mr. Zhu Ciyun's point of view that in principle, it is not necessary to change the current proof principle, because the theoretical basis for changing the current distribution of responsibilities is not solid enough, and neither from the perspective of interpretation nor the perspective of legislation can definitely conclude that it should be The conclusion that the burden of proof shifts. However, in special cases and bankruptcy situations, it may be considered to refer to the provisions on one-person limited liability companies in the Company Law, adopting the principle of inversion of the burden of

proof, and exceptions apply. The lawsuit filed by the worker for the denial of the company's legal personality can be included in a special case, which is consistent with the general labor dispute case, and the burden of proof is reversed. If the workers in a disadvantaged position are not desperate, they will not take the road of "denial of corporate legal personality", which is directly and completely opposite to the company and its shareholders. At this time, "whoever advocates will give evidence" will undoubtedly make things worse, and it does not conform to the basic principle of my country's preferential protection of laborers, and it does not conform to substantive fairness and justice. From the perspective of practical feasibility, continuing to adhere to this principle will undoubtedly lead to the fact that the system is useless in the field of labor law and cannot be put into practical use. In labor dispute cases, the company's personality denial system is adopted. For difficult evidence, the burden of proof is reversed. The plaintiff only needs to prove that his legal labor rights and interests have been seriously infringed, and the company has unclear records in the accounting books. It is deemed that the preliminary proof obligation has been fulfilled, and the further substantial burden of proof shall be borne by the defendant. If the defendant cannot provide evidence, it shall bear the corresponding adverse consequences - the plaintiff's claim is affirmed, and the company's legal personality is denied.

## 5. Conclusion

In the era of the Civil Code, the system of corporate legal personality denial has been highly valued, and a case law rule that was originally only applied exceptionally in individual cases was made into a cultural stipulation and stipulated in the "Civil Code". Its importance is evident. Judging from the provisions of the Code, there is room to expand the scope of application of this system and introduce it into the field of labor law as an important supplementary measure to safeguard the legitimate rights and interests of workers of a certain class. It is envisaged that it can be an exception to the exception system of the system of denial of corporate legal personality, and it can provide certain help when the relevant workers cannot obtain relief through other channels.

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