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THE PIERCING OF THE CORPORATE VEIL INVERSE LINKED TO THE BANKRUPTCY PROCEEDING

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ABSTRACT

This article analyzes the possibility of applying the reverse piercing of the corporate veil in bankruptcy proceedings, with emphasis on situations in which partners transfer personal assets to the business company to hide them from private creditors. Using a legal-dogmatic methodology, the work distinguishes obligation and responsibility to carry out the investigation on the basis that the credit does not originate from the bankrupt company, but from an unlawful act of the partner. The proposal aims to contribute to the doctrinal construction on the subject, reinforcing the protection of creditors in the face of corporate abuses and promoting the coherence of the bankruptcy system with the principles of good faith, the company's social function and *par conditio creditorum*.

Keywords: Inverse piercing of the corporate veil. Bankruptcy. Credit rating.

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INTRODUCTION

Imagine a married individual, partner of a sole proprietorship company, who, over the years, makes a series of transfers of his personal assets to the legal entity, in order to shield his assets and hide part of the common assets of the marriage. Over time, the business company experiences a process of financial deterioration, aggravated by an irreversible economic crisis, leading to the decree of its bankruptcy.

However, in addition to the difficulties faced by the legal entity, the entrepreneur starts to experience a crisis in the family environment, resulting in divorce. At the time of the division of assets, the ex-spouse is faced with the discovery that the personal assets were emptied and improperly transferred to the legal entity, which, in turn, is in bankruptcy proceedings.

This hypothetical situation raises a question: would it be legally possible, in the context of the bankruptcy proceeding, that the ex-spouse, upon discovering the misappropriation of assets carried out by the ex-husband aiming at the patrimonial shielding of the couple's common property, would cause an incident of piercing of the reverse legal veil, in order to reverse the emptying of her personal assets and ensure the satisfaction of her share in the bankruptcy court?

The application of reverse disregard, although recognized in some contexts as a mechanism to combat property fraud, requires an in-depth analysis in the context of bankruptcy, especially when it involves issues related to the marital property regime and the rights of the spouse.

This problem will be addressed and answered throughout this work, as the interaction between Family Law and Bankruptcy and Reorganization Law is analyzed, in the light of the principles that guide the piercing of the corporate veil.

To this end, this essay will answer two questions: first, whether it is possible to use the reverse piercing of the corporate veil when an entrepreneur has already declared bankruptcy; Second, if it is possible to disregard the inverse of the legal personality in relation to an entrepreneur who had his bankruptcy decreed, how to identify the appropriate class for the insertion of this creditor that becomes the responsibility of the bankruptcy estate?

In order to try to answer the questions raised above, an analysis between the social function of the company and bankruptcy will be made at the beginning of this work. Then, care will be taken to deal with the piercing of the corporate veil and the reverse form of such institute. In the end, an attempt will be made to demonstrate the order in which the claims resulting from such asset redirection must be satisfied during the bankruptcy proceedings.

One last observation should be made before starting the discussion proposed here: it is not intended to provide any solution that is intended to be definitive, nor revolutionary. What is sought is only to promote reflection on a point that, even with more than twenty years of validity of the Bankruptcy and Corporate Recovery Law, has not been debated in the academic scenario.

BANKRUPTCY AND THE SOCIAL FUNCTION OF THE COMPANY

The way in which people who engage in economic activity should be treated is, without a doubt, one of the issues that most deserve the attention of private law. The way in which the person who carried out the commercial activity and was unable to honor his obligations has been treated throughout history[3], demonstrates well the relevance of the subject.

Currently, in Brazil, the matter is regulated by Law No. 11,101/05, known as the Bankruptcy and Corporate Recovery Law. This law began to deal with the subject referred to herein, using the expression "state of economic and financial crisis" and, therefore, it is also called the Law of Crises.

Guided by the principle of preservation of the company, Law No. 11,101/05 seeks to deal with the delinquent entrepreneur in crisis, focusing on maintaining the viable business activity, due to the importance that such activity has for the entire community[4]; It also seeks, if the entrepreneur is really in an irreversible crisis, to encourage people to acquire the assets in order to maintain the business activity under new management[5]. In other words, its purpose is not necessarily to cease the company, but rather to remove the insolvent debtor and preserve the viable company[6].

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[3] Proof of this is that, initially, the debtor was treated as a criminal, a thief, who could be enslaved and killed as punishment for his default.

[4] Such objective is evident in article 47 of Law 11,101/2005, *in verbis*: "Article 47. The purpose of judicial reorganization is to make it possible to overcome the debtor's economic and financial crisis, in order to allow the maintenance of the production source, the employment of workers and the interests of creditors, thus promoting the preservation of the company, its social function and the stimulation of economic activity". (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025).

[5] Article 140 of Law 11.101/05 brings the sequence for the sale of all the assets of the bankrupt entrepreneur, demonstrating that the first attempts are aimed at the purchase of the assets by people who will have all the structure organized for the maintenance of the business activity, see: "Article 140. The sale of assets will be carried out in one of the following ways, observing the following order of preference: I – sale of the company, with the sale of its establishments en bloc; II – sale of the company, with the sale of its subsidiaries or production units separately; III – sale en bloc of the assets that make up each of the debtor's establishments;". (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025).

[6] MAMEDE, Gladston. Direito **Empresarial Brasileiro: falência e recuperação de empresas.** 13. ed. Rio de Janeiro: Atlas, 2022. E-book. Available at: https://integrada.minhabiblioteca.com.br/reader/books/9786559771707/. Accessed on: 06 Apr. 2025.

This is because

> Business activity should be preserved whenever possible due to its social function. The company generates economic wealth, ensures jobs and income and contributes to the growth and social development of the country, and should be, therefore, whenever possible, preserved[7].

Thus, business activity should be maintained only as long as it fulfills its social function; otherwise, there is no need to talk about its preservation. Now, business activity is not only important for entrepreneurs or partners of the business company,

> The company is a legal asset whose protection is justified not only due to the interests of its partners, but also of its employees, suppliers, consumers, investors, the State itself and, finally, the society that, even indirectly, benefits from its activities. These particularities justify the provision of an alternative regime to bankruptcy, which is the recovery of companies, which will also be the subject of analysis[8].

In this sense, the Bankruptcy and Corporate Recovery Law presents itself as an important instrument for the realization of the values provided for in article 170 of the Brazilian Federal Constitution when it states that the economic order "aims to ensure everyone a dignified existence, in accordance with the dictates of social justice".[9]

In the sense mentioned above, the lesson of Manoel Pereira Calças deserves transcription:

> The principle of preservation of the company, which has been applied for a long time by the jurisprudence of our courts, has a constitutional basis, given that our Federal Constitution, by regulating the economic order, imposes the observance of the postulates of the social function of property (art. 170, III), that is, of the means of production or, in other words: the social function of the company. The same constitutional provision establishes the principle of the search for full employment (item VIII), which can only be achieved if the companies are preserved[10].

The relationship of Law No. 11,101/2005 with the social function of the company is patent, since the concept of such social function is formed not only to prevent the antisocial exercise of the business activity, but to direct it to the achievement of social purposes, imposing, for this purpose, duties linked to the exercise of the company[11]. Thus, the social

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[7] SACRAMONE, Marcelo Barbosa. **Comentários à Lei de Recuperação de Empresa e Falência**. 6. ed. Rio de Janeiro: SRV, 2025. E-book. pág.3. ISBN 9788553627196. Available at: https://integrada.minhabiblioteca.com.br/reader/books/9788553627196/. Accessed on: 06 Apr. 2025.

[8] [8] MAMEDE, Gladston. **Direito Empresarial Brasileiro**: falência e recuperação de empresas. 13. ed. Rio de Janeiro: Atlas, 2022. E-book. p. 8. ISBN 9786559771707. Available at: https://integrada.minhabiblioteca.com.br/reader/books/9786559771707/. Accessed on: 06 Apr. 2025.

[9] BRASIL. Constituição da República Federativa do Brasil de 1988. **Planalto.** Disponível em: https://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Accessed on: 06 Apr. 2025.

[10] CALÇAS, Manoel de Queiroz Pereira. The new Law of Corporate Recovery and Bankruptcy: repercussion on Labor Law (Law m. 11.101, of February 2005). **Journal of the Superior Labor Court**, a. 73, n. 4, Oct/Dec 2007, p. 40.

[11] LOPES, Ana Frazão de Azevedo. **Empresa e propriedade:** função social e abuso de poder econômico. São Paulo: Quartier Latin, 2006. p. 280.

function operates as a heuristic institute, giving meaning to and housing the constitutional duties linked to the entrepreneur[12].

The purpose of the social function of the company is to allow a socially responsible entrepreneur, rescuing his institutional role in the face of the commitments assigned by the economic order[13]. It – the social function of the company – brings a proposal for rehumanization, so that individuals can be recognized as the main values to be protected and not as mere instruments of an economic activity[14].

The Federal Supreme Court itself, when judging ADI 319[15], established the understanding that free enterprise will not be legitimate when it is exercised with the exclusive objective of profit; it will only be legitimate as long as it achieves social justice.

All this also demonstrates the commitment that the Brazilian legal system has with the human person, so that the social function of property - from which the social function of the company derives - is still a form of commitment to the dignity of the human person itself[16].

Now, the entrepreneur who is no longer able to honor his obligations and, because of this, is not able to continue his activities (irreversible crisis), must be removed from the activities without violating the rights of third parties, as well as through a program of equal compliance with such obligations. All of this is aimed at and regulated by Law No. 11,101/05. Notwithstanding what has just been said, it must be borne in mind that the closure of the company is not the constitutional objective of the social function[17].

The justification for the existence of a specific rule, which enshrines the existence of a special enforcement, where all creditors are brought together in a single proceeding, for joint enforcement by the debtor, lies in the principle of *par conditio creditorum*, through which creditors must receive equal treatment[18]. Otherwise, if there were an individual execution for each creditor, even when the debtor was in a situation of insolvency, there would be the unfair situation of some creditors achieving satisfaction of their credit, while others would not be so lucky.

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[12] TAVARES, André Ramos. **Direito Constitucional da Empresa.** São Paulo: Método, 2013. p. 92.
[13] VAZ, Isabel. **Direito econômico da concorrência**. Rio de Janeiro: Forense, 1993. pp. 481-482.
[14] LAMY FILHO, Alfredo. A função social da empresa e o imperativo de sua reumanização. **Revista de Direito Administrativo – RDA**, nº 190, out/dez 1992, pp 54/60.
[15] [15] BRASIL. Supremo Tribunal Federal. **Ação direta de inconstitucionalidade, questão de ordem nº 319**, do Tribunal do Pleno, de relatoria do Ministro Moreira Alvez, Brasília, DF, , March 3, 1993. Publication date: DJ 30-04-1993.
[16] PERLINGIERI, Pietro. ***Introduzione Allá Problemática della Proprietá***. Camerino: Jovene, 1971. p. 21-22.
[17] TAVARES, André Ramos. **Direito Constitucional da Empresa**. São Paulo: Método, 2013. p. 105.
[18] MAMEDE, Gladston. **Direito Empresarial Brasileiro:** falência e recuperação de empresas. 13. ed. Rio de Janeiro: Atlas, 2022. E-book. ISBN 9786559771707. Available at: https://integrada.minhabiblioteca.com.br/reader/books/9786559771707/. Accessed on: 06 Apr. 2025.

Having made the above considerations, we will now deal with the piercing of the corporate veil, especially in what is called the reverse way of the piercing of the corporate veil.

THE PIERCING OF THE CORPORATE VEIL

For a long time, the theory of piercing the corporate veil was seen in Brazil as a taboo, since it was not conceivable to remove the patrimonial autonomy of the legal entity in relation to its partners or managers.

Such a situation generated a series of injustices and only contributed to the disconnection between the reality of the world of facts and the world of law. This is because, not infrequently, private legal entities were used as a true protective shield for the practice of illegal activities and, thus, their members were protected through limited liability or even the absence of liability, when exercising business activities.

As a result, a considerable number of people, holders of the right to credit to the detriment of legal entities, saw their claims frustrated in the face of the protection granted to partners through the limitation/absence of liability, in the manner mentioned above.

The above-mentioned scenario was changed, however, with the theory of disregard of the legal entity (*disregard doctrine*) starting to combat such abuses, which is characterized by the overcoming of the general rule of autonomy between the legal entity and its members when the latter, on behalf of the former, practice acts with deviation of purpose and abuse of the legal [19]personality. With this, the personal assets of the partners or managers are sought for the accountability of the obligations defaulted by the legal entity.

In the words of Paulo Lôbo,

> The piercing of the corporate veil is intended to reach the real controllers of the legal entity (another legal entity, partners, shareholders, administrators), so that they are liable with their assets for acts considered as deviation of purpose or confusion of assets[20].

The theory of piercing the corporate veil does not seek to extinguish the legal entity, but only to remove its legal effects temporarily, with the objective of holding the true culprit responsible for the damage caused, having as main characteristics: a) abuse of the

[19] CORREIA JUNIOR, José Barros. A desconsideração da personalidade jurídica, os princípios constitucionais e o novo Código de Processo Civil brasileiro. In: EHRHARDT JÚNIOR, Marcos (Coord.); MAZZEI, Rodrigo (Coord.). Coleção Repercussões do novo CPC: Direito Civil. Salvador: Juspodvim, 2017. p. 361, v 14., Rodrigo (Coord.). Repercussions of the new CPC: Civil Law. Salvador: Juspodvim, 2017. p. 361, v 14.

[20] LÔBO, Paulo. **Direito civil:** parte geral. v.1. 12. ed. Rio de Janeiro: Saraiva Jur, 2023. E-book. p.76. ISBN 9786553628311. Available at: https://integrada.minhabiblioteca.com.br/reader/books/9786553628311/. Accessed on: 06 Apr. 2025.

condition of partner and limitation of liability; b) departure from the general rule of autonomy of liability applied to legal entities; c) maintenance of the legal personality, with the temporary removal of its effects; d) to prevent third parties from not having their rights satisfied by virtue of the general rule of existential and patrimonial autonomy of legal entities[21].

The piercing of the corporate veil applicable to private law in general constitutes an exceptional measure, the use of which requires the unequivocal demonstration that the patrimonial autonomy of the legal entity was instrumentalized with a misuse of purpose or confusion of assets, to the detriment of third parties. It is an institute that aims to preserve the integrity of the legal system, preventing the mantle of legal personality from being used as an artifice for the practice of fraud, abuse or acts contrary to objective good faith.

In essence, there is no denial of the existence of the legal entity, but the momentary relativization of its effects, with the purpose of reaching the assets of the partners or managers who used it improperly. In this way, disregard is presented as a mechanism for protecting legal certainty and the instrumental function of the process, allowing the Judiciary to go beyond the legal fiction of the autonomy of the legal entity to restore equity in relations, especially in cases where the use of the pejotized structure as an instrument of subversion of the legal order is verified.

However, in the past, with the admission of the piercing of the corporate veil, a new form of abuse began to be verified, its indiscriminate use by the Judiciary, contrary to the most important fundamental rules of Procedural Law. There are those who even claim that the flexibility was so great that, even if there was no evidence of abuse of the legal personality, the Judiciary determined that the piercing of the corporate veil should be carried out[22].

This occurred mainly because the theory mentioned here was applied without the interested parties being able to effectively participate in the process in which they were summoned or subpoenaed under the argument that they were always aware of the existence of the process and its content.

Such abuses in the use of piercing the corporate veil were taken into account when the new Code of Civil Procedure was approved, which, by regulating the procedure for such

[21] CORREIA JUNIOR, José Barros. A desconsideração da personalidade jurídica, os princípios constitucionais e o novo Código de Processo Civil brasileiro. *In:* EHRHARDT JÚNIOR, Marcos; MAZZEI, Rodrigo (coord.). **Coleção Repercussões do novo CPC:** Direito Civil. Salvador: Juspodvim, 2017. p. 362-363. v. 14.

[22] NUNES, Márcio Tadeu Guimarães. **Desconstruindo a desconsideração da personalidade jurídica**. São Paulo: Quartier Latin, 2007. p. 36.

piercing of the corporate veil, brought hope not only for the effectiveness[23] of judicial decisions, but also for the realization and obedience to the fundamental guarantees of due process, adversarial proceedings, ample defense, reasonable duration of the process, among others.

THE PIERCING OF THE REVERSE CORPORATE VEIL

The piercing of the corporate veil, in its original form, that is, the liability of the partners and managers who, despite having acted on behalf of the legal entity, acted with abuse of power (through the confusion of assets or deviation of purpose), is not the only form of piercing the corporate veil.

Thus, there is also the so-called inverse piercing of the corporate veil, which occurs when the partners or managers use the legal entity as a shield against the practice of unlawful acts, thus exempting themselves from their personal responsibilities. Thus, it does not enter into the individual assets of the partner, but into that of the legal entity itself, as a way of fulfilling the obligations of the latter[24].

Such a form of disregard is a derivation of *the disregard of the disease* itself and has achieved considerable projection in recent years. In these cases, the legal entity is used in an abusive way to hide the private assets of its partners and/or managers, being much more common in litigation involving Family Law[25]. Objectively, the reverse disregard avoids the use of the debtor's assets to hold his personal debts accountable when he transfers all his personal assets to the legal entity of which he holds control. Thus, the partner or administrator, despite not being the owner, continues to enjoy all the aforementioned assets, in addition to being able to frustrate any debt collections assumed by him[26].

It is exactly the inverse disregard that is of interest to the theme proposed through this work, because what is intended to be answered is whether it is possible to enter the assets of the bankruptcy estate in order to hold the partners and managers responsible for the obligations assumed by them, that is, in the condition of natural persons (individuals) and not in the name of the legal entity, which in the present case, is the business company.

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[23] CORREIA JUNIOR, José Barros. A desconsideração da personalidade jurídica, os princípios constitucionais e o novo Código de Processo Civil brasileiro. *In:* EHRHARDT JÚNIOR, Marcos; MAZZEI, Rodrigo (coord.). **Coleção Repercussões do novo CPC:** Direito Civil. Salvador: Juspodvim, 2017. p. 362-363. v 14.

[24] CORREIA JUNIOR, José Barros. A desconsideração da personalidade jurídica, os princípios constitucionais e o novo Código de Processo Civil brasileiro. *In:* EHRHARDT JÚNIOR, Marcos; MAZZEI, Rodrigo (coord.). **Coleção Repercussões do novo CPC:** Direito Civil. Salvador: Juspodvim, 2017. p. 362-363. v 14.

[25] XAVIER, José Tadeu Neves. A processualização da desconsideração da personalidade jurídica. **Revista de Processo**, São Paulo, Revista dos Tribunais, 2016, n. 254, p. 151-191.

[26] PALHARES, Felipe. A aplicação da teoria da desconsideração inversa da personalidade jurídica à luz do ordenamento jurídico brasileiro. **Revista de Processo,** São Paulo: Revista dos Tribunais, 2015, v 3, p. 56.

In other words, the reverse piercing of the corporate veil seeks to affect the assets of the company itself, due to the partner's obligations.

However, even in this type of disregard, all the legal requirements must be present for it to occur[27], as can be seen from the reading of article 50 of the Civil Code[28].

However, the provision contained in article 50 of the Civil Code, especially after the changes promoted by Law No. 13,874/2019, expressly consolidated the possibility of piercing the corporate veil in its reverse form, by admitting that the effects of certain obligations assumed by the partners or managers may be extended to the legal entity itself, when it is used as an instrument of abuse.

Paragraph 3 of the aforementioned provision is unequivocal in establishing that the liability regime governed therein also applies to the hypothesis of extension of the obligations of natural persons - partners or managers - to the legal entity, thus conferring normative support to the reverse disregard. This interpretation is reinforced by the logic of the previous paragraphs: the deviation of purpose and the confusion of assets are conducts that, when practiced in the opposite direction, lead to the removal of the patrimonial autonomy of the company, so that it responds to the personal obligations of its members.

The repeated transfer of personal assets to the company, without due consideration, or the use of the corporate structure to frustrate the rights of third parties - such as, for example, rights arising from the division of assets in marital dissolution - are typical examples of situations in which the application of the reverse piercing of the corporate veil is justified, in accordance with article 50 of the Civil Code.

What is observed, therefore, is the legislative enshrinement of an instrument that aims to prevent the fraudulent use of the legal entity as a shield against legitimate obligations, granting the magistrate, upon provocation by the party or the Public

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[27] DONIZETTI, Elpídio. **Novo Código de Processo Civil Comentado** (Lei 13.105, de 16 de março de 2015): análise comparativa entre o novo CPC (LGL/2015/1656) e o CPC/73 (LGL/1973/5). São Paulo: Atlas, 2015. P 112.

[28] "Art. 50. In the event of abuse of the legal personality, characterized by misuse of purpose or confusion of assets, the judge, at the request of the party, or of the Public Prosecutor's Office when it is incumbent upon him to intervene in the process, may disregard it so that the effects of certain and certain relationships of obligations are extended to the private assets of administrators or partners of the legal entity directly or indirectly benefited by the abuse. Paragraph 1 - For the purposes of the provisions of this article, deviation of purpose is the use of the legal entity for the purpose of harming creditors and for the practice of unlawful acts of any nature. Paragraph 2 - Confusion of assets is understood as the absence of de facto separation between the assets, characterized by: I - repetitive compliance by the company with the obligations of the partner or manager or vice versa; II - transfer of assets or liabilities without effective consideration, except for those of proportionally insignificant value; and III - other acts of non-compliance with patrimonial autonomy. Paragraph 3 - The provisions of the caput and paragraphs 1 and 2 of this article also apply to the extension of the obligations of partners or managers to the legal entity". (BRAZIL. Law No. 10,406 of January 10, 2002. Establishes the Civil Code. **Plateau.** Available at: https://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm. Accessed on: 06 Apr. 2025).

Prosecutor's Office, the possibility of penetrating the company's assets to enforce substantial justice, provided that the legal requirements are demonstrated.

Furthermore, the legal provision for the theory of inverse piercing of the corporate veil is also found in article 133, paragraph 2, of the current Code of Civil Procedure[29]. This provision reinforces the normative framework of piercing the corporate veil in its reverse form by expressly providing that the incident may be instituted both to disregard the legal entity for the benefit of the liability of the partners or managers, and to extend their liability to the legal entity itself.

This provision expands the effectiveness of the *disregard doctrine* at the procedural level, ensuring its applicability in both directions - traditional and inverse - and allowing the adequate instrumentalization of the adversarial and broad defense. The normative provision acts as a guarantee of procedural regularity, avoiding procedural surprises and reinforcing legal certainty, while legitimizing, in procedural terms, judicial action aimed at overcoming the separation of assets when it proves to be a mere disguise for fraudulent or abusive practices.

In this way, the procedural rule not only recognizes the possibility of reverse disregard, but also provides the judge with the necessary instruments to enable its application within its own rite, without violating the structuring principles of constitutional civil procedure.

Notwithstanding the express affirmation of such a modality of disregard, it should be noted that it continues to be a measure that should only be adopted on an exceptional basis, that is, when there is no other solution capable of satisfying the interests of the creditors that must be protected. Its use also imposes the discard of the possibility of using the direct piercing of the corporate veil, as well as the fact that it may affect the legal sphere of third parties in good faith, which are the shareholders who, although they have not committed any unlawful act, may have their assets invaded through reverse piercing of the corporate veil[30].

The application of the piercing of the corporate veil in its reverse modality, when projected on the bankruptcy scenario of the business company, inaugurates a sensitive discussion that still lacks doctrinal and jurisprudential consolidation: the possibility of

[29] "Article 133. The incident of piercing of the corporate veil will be initiated at the request of the party or the Public Prosecutor's Office, when it is incumbent upon it to intervene in the process. Paragraph 1 - The request for piercing the corporate veil shall comply with the assumptions provided for by law. Paragraph 2 - The provisions of this Chapter apply to the hypothesis of inverse piercing of the corporate veil". (BRAZIL. Law No. 13,105 of March 16, 2015. Code of Civil Procedure. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/L13105.htm. Accessed on: 06 Apr. 2025).
[30] TEPEDINO, Gustavo. Desconsideração inversa da personalidade jurídica no direito brasileiro. São Paulo: Thompson Reuters, 2011. v. 3 p. 137.

admitting personal creditors of the partners or managers, raised to the condition of creditors of the bankruptcy estate, by virtue of the judicial recognition that the legal entity was used as an instrument of asset concealment.

In such cases, once it has been demonstrated that the transfer of assets to the company had the purpose of frustrating personal obligations assumed by its members, and that such conduct was covered by the elements that characterize the abuse of the legal personality, it is necessary to reflect on whether these creditors, whose obligation relationship did not originate directly from the business activity of the bankrupt company, could legitimately compete with the other creditors in the bankruptcy proceedings.

It is, therefore, a matter of admitting that, on an exceptional basis and upon compliance with the relevant legal and procedural requirements, the legal entity may be liable, within the scope of the universal bankruptcy court, for debts contracted exclusively by its partners, provided that the abuse of the legal personality and the consequent subversion of the property separation regime is evidenced. This hypothesis requires a careful analysis not only in the light of the civil and procedural provisions, but also in view of the principles that guide the bankruptcy system, notably that of *par conditio creditorum* and legality in the classification of credits.

It is understood that the answer does not present major difficulties for two very simple reasons, namely: a) the first arises from the fact that there is no prohibition, express, or logical, in Law No. 11,101/05; b) the second reason is also found in it, in its article 189[31], when it provides for the application of the Code of Civil Procedure itself to the procedures regulated by the latter.

Thus, it is perfectly compatible to apply article 133, paragraph 2, of the CPC, to Law No. 11,101/2005, with regard to the reverse piercing of the corporate veil.

Having made this consideration, it remains to ask the following: if such disregard is allowed for entry into the assets of the legal entity that is the target in the bankruptcy proceeding for the execution of an obligation assumed by its partner/manager, what is the order in which such payment will be made?

[31] "Article 189. Law No. 5,869, of January 11, 1973 - Code of Civil Procedure, as applicable, applies to the procedures provided for in this Law". (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025). This provision, despite its mention of the revoked CPC, is perfectly compatible with the new CPC.

OF THE ORDER FOR PAYMENT OF DEBTS UNDER THE RESPONSIBILITY OF THE PARTNER: CLASSIFICATION OF CREDITS IN THE BANKRUPTCY ESTATE

The order for payment of the debts of the bankruptcy estate is not provided for in a single legal provision, contrary to what it may seem in a first and inattentive reading of Law No. 11,101/05. Thus, the aforementioned law, when regulating the classification of credits, deals not only with the people to whom the payments will be made, but also with the order and amounts in which they will be paid.

In this sense, the general list of creditors provided for in article 83 of Law No. 11,101/2005 will be the last of the groups to be paid. Certainly, according to the discipline of article 149[32] of the same law, restitutions and non-bankruptcy creditors must be paid before all creditors.

After the legal refunds are satisfied, the payment order proceeds with the discharge of the so-called extra-bankruptcy credits, governed by article 84 of Law No. 11,101/2005[33], with wording updated by Law No. 14,112/2020. These credits take precedence over those contained in the general list of creditors provided for in article 83, and are subdivided into hierarchically ordered categories. Among the non-bankruptcy credits, the amounts dealt with in articles 150 and 151 stand out, now reiterated in item I-A of article 84, followed by the amount actually delivered to the debtor under judicial reorganization by the financier (item I-B), the cash credits subject to restitution (item I-C) and the remuneration and reimbursements due to the judicial administrator, his assistants and the members of the Creditors' Committee. as well as labor claims arising from services rendered after the

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[32] "Article 149. Once the restitutions have been made, the extra-bankruptcy credits have been paid, in accordance with article 84 of this Law, and the general list of creditors has been consolidated, the amounts received with the realization of the assets will be allocated to the payment of creditors, in accordance with the classification provided for in article 83 of this Law, respecting the other provisions of this Law and the judicial decisions that determine the reservation of amounts" (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025).

[33] "Article 84. Extra-bankruptcy credits shall be considered and shall be paid with precedence over those mentioned in article 83 of this Law, in the following order, those relating: I-A - to the amounts referred to in arts. 150 and 151 of this Law; I-B - the amount actually delivered to the debtor under judicial reorganization by the financier, in accordance with the provisions of Section IV-A of Chapter III of this Law; I-C - to cash credits subject to restitution, as provided for in article 86 of this Law; I-D - the remuneration due to the judicial administrator and his assistants, the reimbursements due to members of the Creditors' Committee, and the credits derived from labor legislation or arising from work accidents related to services rendered after the bankruptcy decree; I-E - the obligations resulting from valid legal acts performed during the judicial reorganization, pursuant to article 67 of this Law, or after the bankruptcy decree; II - the amounts provided to the bankruptcy estate by the creditors; III - expenses with collection, administration, realization of assets, distribution of its proceeds and costs of the bankruptcy proceeding; IV – the legal costs related to the actions and executions in which the bankruptcy estate has been defeated; V - taxes related to taxable events occurring after the bankruptcy decree, respecting the order established in article 83 of this Law". (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025).

bankruptcy decree (item I-D). The list also includes obligations arising from valid legal acts performed after the bankruptcy decree or in the course of judicial reorganization (item I-E), amounts provided to the bankruptcy estate by creditors (item II), expenses with collection, administration, realization of assets and procedural costs of the bankruptcy (item III), court costs of actions in which the bankruptcy estate has been defeated (item IV) and taxes levied on taxable events subsequent to the bankruptcy (item V), respected, in the latter case, the order of article 83.

It is, therefore, a detailed list, which ensures preferential treatment to credits directly linked to the maintenance, processing and procedural regularity of the bankruptcy, safeguarding the interests of the estate and the balance between creditors. Such creditors represent a new and special group of creditors, as they are located outside the bankrupt's creditors' bankruptcy framework, provided for in article 83. It is not a matter of inclusion in the general list of creditors, but of the prevalence of the dignity of the human person[34].

Finally, it is the turn of the creditors provided for in the general framework of article 83, established in preferential order, so that the payment of a class presupposes the discharge of the previous class. Here, as we have seen, payment is made only after the settlement of extra-bankruptcy credits.

THE POSITION OF THE CLAIM ARISING FROM THE DECISION GRANTING THE REVERSE PIERCING OF THE CORPORATE VEIL

After a brief analysis of the classification of credits, we will deal with the main problem proposed here, that is, the order of payment of the debt arising from the reverse piercing of the corporate veil.

In other words, after the entry into the assets of the bankruptcy estate, due to a debt belonging to its partner, as a result of the reverse piercing of the corporate veil, what is the order in which such payment should be made?

It is necessary, first of all, to make a brief distinction between debt and responsibility. The debt (obligation) is a legal bond that aims to oblige another person to perform an obligation; liability, on the other hand, is the subjection of the debtor's assets or that of a third party in order to satisfy the obligation; In other words, the debtor is the person who owes, but his assets - or those of a third party - are the ones who will be responsible for the obligation[35]. Thus, the obligation (or debt) falls on the person, the subject of the obligation,

[34] TOMAZETTE, Marlon. Curso de Direito Empresarial: falência e recuperação de empresas. 4 ed. São Paulo: Atlas, 2016. p. 535. v 3.
[35] SILVA, Beclaute Oliveira. Desconsideração da personalidade jurídica no novo CPC. In: EHRHARDT JR, Marcos (Coord.) Impactos do novo CPC e do EDP no Direito Civil Brasileiro. Belo Horizonte: Fórum, 2016. p. 22.

while the responsibility falls on his or her assets, or on the assets of a third party. For this reason, it is possible to have a debt-free liable[36].

In this order of ideas, it is easy to see that, with the inverse piercing of the corporate veil, the bankruptcy estate does not become a debtor of its partner's obligations, but its patrimonial autonomy (in relation to the debtor partner) is suspended so that its assets can respond for those obligations.

It is worth examining the hypotheses of restitution provided for in articles 85 and 86 of Law No. 11,101/05[37].

As is known, the main basis of the request for restitution of assets, provided for in article 85 of the above-mentioned law, is to allow the property right of a third party to be recognized, because he has been harmed due to the undue collection of his property by the bankruptcy estate. With this, once it is proven that the collection was undue, the injured third party will file a request for the restitution of said asset.

In a first analysis, it is possible to be attracted by the idea that it would be impossible to classify the credit, in the form of article 85 already mentioned, of a person who filed a lawsuit against the partner of the bankruptcy estate and managed to redirect the responsibility of such obligation to the assets of the business company that had its bankruptcy decreed. The reason for such a conclusion would be simple: it is not a third-party asset that was improperly collected and, therefore, could not be the subject of the request for restitution provided for in said article.

However, the radicalism of the conclusion exposed in the previous paragraph succumbs to some situations that may arise due to the inverse piercing of the corporate veil.

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[36] SILVA, Beclaute Oliveira. Desconsideração da personalidade jurídica no novo CPC. In: EHRHARDT JR, Marcos (Coord.) Impactos do novo CPC e do EDP no Direito Civil Brasileiro. Belo Horizonte: Fórum, 2016. p. 23.

[37] "Article 85. The owner of assets collected in the bankruptcy proceedings or that is in the possession of the debtor on the date of the bankruptcy decree may request its restitution. Sole Paragraph. The restitution of something sold on credit and delivered to the debtor within fifteen (15) days prior to the filing for bankruptcy may also be requested, if not yet sold. Article 86. The restitution in cash will be made: I – if the object no longer exists at the time of the request for restitution, in which case the applicant will receive the value of the appraisal of the asset, or, in the event that it has been sold, the respective price, in both cases at the updated value; II – the amount delivered to the debtor, in national currency, resulting from an advance to an exchange contract for export, pursuant to article 75, paragraphs 3 and 4, of Law No. 4,728, of July 14, 1965, provided that the total term of the operation, including any extensions, does not exceed that provided for in the specific rules of the competent authority; III – the amounts delivered to the debtor by the contractor in good faith in the event of revocation or ineffectiveness of the contract, as provided for in article 136 of this Law. IV – to the Public Treasury, in relation to taxes subject to withholding tax, third-party discounts or subrogation and amounts received by the collection agents and not collected from the public coffers. (BRAZIL. Law No. 11,101, of February 9, 2005. Regulates the judicial and extrajudicial reorganization and bankruptcy of the entrepreneur and the business company. **Plateau**. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm. Accessed on: 06 Apr. 2025).

An example is cited: the request for reverse disregard of the legal entity formulated in a divorce action cumulated with a request for division of assets, in which the applicant of the request for disregard alleges and proves that the defendant used the legal entity of which he is a partner to hide assets that should be shared, that is, that he used the legal entity with the purpose of hiding assets from his spouse, harming the latter when the dissolution of the conjugal partnership is carried out. Note the following: the assets never belonged to the business company, but were there because the partner, in an attempt to harm his spouse, made use of the legal entity for such purpose.

Now, in the example brought above, denying the right to restitution to the one who has the right to a certain asset, illicitly hidden in the assets of the bankruptcy estate by the partner, is equivalent to denying the basis of the restitution itself. Thus, with the inverse piercing of the corporate veil, the creditor can demonstrate that a certain asset, specific, therefore, was his, but that due to an unlawful act of the partner, it was hidden in the assets of the legal entity that has its bankruptcy decreed.

In this case, there is no way to deny the creditor the right to formulate the request for restitution of an asset that was never from the bankruptcy estate, but from that creditor himself.

It is also understood that, if the asset that belonged to the creditor no longer exists – and which had been illicitly hidden in the company's assets, by the debtor partner – the credit can still be classified as restitution in cash, under the terms of article 86, I, of Law 11.101/05, with the creditor having the right to restitution at the appraisal price of the asset or, if the sale has occurred, at the respective price.

The reasoning developed so far applies to any other case that is characterized by the fact that the creditor has been able to prove, during the incident of inverse piercing of the corporate veil, that a specific (determined) asset that should be part of its assets, was transferred, through an unlawful act of the partner, to the assets of the legal entity that came to be bankrupt.

However, the cases of piercing of the corporate veil are not limited to the example that has just been given, nor do they necessarily involve the dispute over a specific (determined) asset. Thus, in situations where there is no specific asset involved, but only the need to redirect the partner's liability to the bankruptcy estate, what about the creditor who has granted his request for reverse piercing of the corporate veil?

A hasty answer could perhaps lead to the conclusion that there would be no alternative but to classify the aforementioned credit as bankruptcy and, therefore, to fit it

under article 83 of Law No. 11,101/05. However, this does not seem to be the most appropriate solution and in line with the norm itself.

This is because bankruptcy creditors are creditors of the bankruptcy estate, that is, they had an obligation relationship formed with the business company that came to have its bankruptcy decreed. This is not the case of creditors who had the request for reverse piercing of the corporate veil granted.

It should be noted: the debt is not of the bankruptcy estate, but of the partner who, due to the reverse disregard, had his liability redirected to the assets of the bankrupt business company. In other words, the debt is not of the bankruptcy estate; The latter is only responsible for the obligation that continues to be the partner's, but which had its patrimonial liability redirected due to the reverse disregard.

Thus, it is understood that even in situations of this nature, the credit must be classified in the hypothesis of article 85 of Law No. 11,105/05, that is, as restitution of assets. The conclusion may cause strangeness, depending on the meaning we attribute to the expression "goods". However, to avoid any confusion, it should be remembered that this expression has a much broader meaning than "thing".

In other words, the creditor of an obligation to pay a certain amount and who has managed to redirect the responsibility of the obligation, originally assumed by the partner, to the assets of the bankruptcy estate, has the right to have his credit classified as "restitution of good", under the terms of article 85 above.

Furthermore, another argument weighs in favor of the conclusion mentioned here. It is that the inverse piercing of the corporate veil (as well as the direct piercing) causes the assets of the legal entity that had its self-disregarded (suspended) to be considered as if it actually belonged to the partner who, in a fraudulent and abusive manner, transferred his personal assets to the legal entity of which he is a member.

Thus, when formulating the request for restitution of assets, the creditor in question does nothing more than demand that the money that is in the assets of the bankruptcy estate (only due to the fraudulent act practiced by the partner) be delivered to him as a way of satisfying the obligation that could not be satisfied only due to such ruse.

FINAL CONSIDERATIONS

Although the main conclusions have already been clear throughout the work presented, this space will be used as a way to reinforce the premises adopted here, as well as to synthesize the thought defended here.

In fact, the Bankruptcy and Corporate Recovery Law cannot be interpreted regardless of the social function of the company and the values contained in article 170 of the Federal Constitution. On the contrary, it is the social function of the company that guided not only the elaboration of that law, but must always be in the minds of its interpreters and enforcers.

The theory of piercing the corporate veil, despite not being a novelty in private law studies, gained important reinforcement through the positivization of its procedure through the current Code of Civil Procedure (Law No. 13,105/15) and the Civil Code of 2002.

However, there is no provision, in the express sense, that deals with the piercing of the corporate veil in bankruptcy proceedings, or rather, the application of the piercing of the corporate veil inverse to Law No. 11,101/05.

The absence of an express text in the sense mentioned above does not prevent us from stating, however, that the piercing of the corporate veil, in its inverse form, is perfectly compatible and, therefore, applicable to Law No. 11,101/05. The relevance of such application, in practice, is to guarantee an instrument of protection for creditors against partners who abuse the legal entity, in which they have a stake, when they transfer their personal assets to said legal entities, with the sole objective of defrauding the people with whom they enter into legal relationships of the most diverse.

Having faced the first question, the answer is in what order the creditor mentioned above will have his credit satisfied during the bankruptcy process. Thus, based on the premises and reasons adopted throughout the work, two situations can be seen that deserve individualized treatment.

The first situation concerns the creditor who manages to demonstrate that a certain asset, over which he has a right, was transferred by the partner to the assets of the legal entity that goes bankrupt. In this case, if a fraudulent act practiced by said partner is proven, during the request for reverse piercing of the corporate veil, it will be up to the creditor to request the restitution of said asset, pursuant to article 85 or 86 of Law No. 11,101/05, as the case may be.

Likewise, in other cases of inverse piercing of the corporate veil, the credit can be classified under article 85 of Law No. 11,101/05, that is, as restitution of property, for the reasons and premises already set forth at the end of item 4.1 of this work.

All that has just been said, according to the observation made in the introduction of the present work, does not claim to be a definitive or revolutionary answer to the problem proposed here. If the ideas defended here can provoke some reflection on the aforementioned problem, we will already consider our main desideratum achieved.

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