

Ratna Singh, Oliver Bernath Petitioners v Serguei Belousov, Ilya Zubarev, Certain Shareholders Listed in Annex A To the Petition, Ulrich Dempfle, Gordon Caplan, Gaidar Magdanurov, Evan Kalimtgis, Jean-Pascal Crametz Respondents



No Substantial Judicial Treatment

Court

Chancery Division

Judgment Date

12 October 2023

No. CR-2021-000619

High Court of Justice Business and Property Courts of England and Wales Companies Court (ChD)

[2023] EWHC 2689 (Ch), 2023 WL 06796274

Before: Insolvency And Companies Court Judge Prentis

Thursday, 12 October 2023

In the Matter of Integrated Health Partners Limited

And

In the Matter of the [Companies Act 2006](#)

Representation

The First And Second Petitioners appeared In Person.

Mr J Robinson and Ms J Gibbon (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the First and Second Respondents.

Mr M Haywood (instructed by Shearman & Sterling (London) LLP) appeared on behalf of the Fifth and Sixth Respondents. The Third, Fourth, Seventh And Eighth Respondents did not appear and were not represented.

Judgment

The Insolvency and Companies Court Judge:

1. On 30 March 2021, Ratna Singh and Dr Oliver Bernath presented to the court this unfair prejudice petition under [s.994 of the Companies Act 2006](#) . The petition as presented was, in fact, forthwith amended and the amended version was sealed on 1 April 2021.

2. There has been a series of case management conferences. There was one on 19 August of that year and another on 11 April the next year. The one listed for 26 January of this year was stood out by, as I understand it, agreement between the petitioners and the respondents because, amongst other reasons, the parties wished to consider the effect of a judgment handed down by

Nigel Cooper KC in the London Circuit Commercial Court on 21 December 2022. The Deputy Judge made consequential orders on 1 February 2023 and the stay on those was lifted with effect from 17 March 2023, when the unsuccessful defendants to that claim (who are the petitioners here) had their application for permission to appeal to the Court of Appeal refused.

3. The claimants in that claim were Serguei Belousov and Ilya Zubarev. Mr Belousov has now changed his name by deed poll to Serg Bell.

4. By that judgment, the petitioners were found liable to the first and second respondents in the respective sums of US \$632,000 and US\$948,000. To those sums falls to be applied large interest. At the consequential hearing they were found liable for indemnity costs and an order for payment on account in excess of £500,000 was made.

5. That claim was one which was founded in fraudulent misrepresentation linked to the investment made by the first two respondents in the company, Integrated Health Partners Limited, the subject of the unfair prejudice petition.

6. Perhaps because of that underlying litigation, matters in the petition have not progressed as swiftly as they might. I understand the position to be that the disclosure review document has yet to be agreed despite earlier court orders. But that explains why it was only on 24 March that the first and second respondents issued their application, returnable before me today, to strike out the petition or for summary judgment thereon. On the same date, the fifth and sixth respondents, Gordon Caplan and Gaidar Magdanurov, issued a reflective application; reflected in the sense that they say that if the first application succeeds then they should obtain like relief. On 27 March, Ulrich Dempfle, the fourth respondent, also issued a reflective application. Also on 27 March, the petitioners issued an application to amend the petition.

7. This date was set aside for the CMC but, in fact, the respondents' applications have been listed for determination today and the petitioners' application has been listed for directions or for disposal, depending upon the time available to the court, including its pre-reading. I was pleased to report to the parties, on being questioned, that the court has had an opportunity to pre-read substantially the documents which it was invited to in the parties' skeleton arguments. I am grateful to the petitioners for their submissions. They have appeared before me in person. I am grateful as well to counsel, Jason Robinson and Julia Gibbon, who appeared for the first and second respondents, and Mr Haywood, who has appeared for the fifth and sixth respondents. The court has also received a letter from the fourth respondent, through his solicitors, Baker Botts (UK) LLP, stating that in order to avoid the inherent unnecessary costs, they were not instructed to attend but nevertheless stood by their application.

8. As presented to the court, the respondents primarily put their application on the basis of striking out under [CPR 3.4](#). By 3.4(2):

"The court may strike out a statement of case if it appears to the court –

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings ..."

I should add that the application also relies upon (c), at least in a slightly modified form, (c) being:

"that there has been a failure to comply with a rule, practice direction or court order,"

in that it was suggested to me that the court could be satisfied that there is no genuine intention to prosecute the petition. That is not something on which I encouraged counsel, by reasons of time rather than merit, and it is something which I intend to put on one side for today's purposes. Thus, the focus of the court has been on the pleadings themselves and whether or not they disclose a cause of action under [s.994](#) . I have been referred as well to the summary judgment test in [CPR 24.3](#) :

"The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—

- (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

9. Unfair prejudice petitions may engage both [CPR 3.4](#) and [CPR 24](#) . In a case sometimes reported as a practice note, the Court of Appeal gave recent guidance to the pleading out of unfair prejudice petitions. That was in *Re Kings Solution Group Limited [2021] EWCA Civ 1943* . The lead judgment in that case was delivered by Snowden LJ. As he noted at para.3:

"The main issue on the appeal is whether, and if so, in what circumstances, it is permissible to include in a statement of case in a petition under [Section 994](#) , allegations of personal conduct by the respondents to that petition which are not, of themselves, within the scope of [Section 994](#) . The appeal also raises questions of abuse of process by re-litigation of matters said to have been decided in other proceedings."

He then sets out [s.994](#) and I shall read it out:

"(1) A member of a company may apply to the court by petition for an order under this Part on the ground –

- (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
- (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."

Jurisdiction to grant relief is expressed by s.996(1).

10. Paragraph 5 of Snowden LJ's judgment:

"The basic requirements for a petition under [Section 994\(1\)\(a\)](#) were conveniently and shortly summarised by Floyd LJ in [Loveridge v Loveridge \(No.1\)](#) ..."

And this is the quotation from that:

"A number of uncontroversial propositions can be derived from the authorities cited to this court:

- i) For a petition to be well founded the acts or omissions of which the petitioner complains must consist of the conduct of the affairs of the company ...
- ii) The conduct of those affairs must have caused prejudice to the interests of the petitioner as a shareholder;
- iii) The prejudice so caused must be unfair;
- iv) A minority shareholder cannot normally complain of conduct which is in accordance with the company's constitution unless he can establish a breach of the rules on which it is agreed that the affairs of the company should be conducted, or the use of those rules in a way which equity would regard as contrary to good faith: [O'Neill v Phillips](#)"

And there is then a comment on the use of legitimate expectation as a phrase.

11. At para.61, Snowden LJ considered the judgment delivered below:

"I consider that to the extent that the Judge identified, ..., the need for a causal connection to exist between the personal actions of the shareholder or third party and some other act or omission constituting conduct of the company's affairs within [Section 994](#), this was a correct analysis of the majority judgments in [Graham v Every](#) ."

At para.62 he quoted from Males J in *Grove Park Properties v Royal Bank of Scotland* :

"Statements of case should be as concise as the nature of the case allows and should plead only material facts, that is to say those which are necessary to formulate a cause of action or defence, not background facts or evidence [quoting *Tchenguz*]. It is wrong in principle to plead matters which do not support or relate to any of the remedies sought and to plead immaterial matters with a view

to obtaining more extensive disclosure than might otherwise be ordered ... To do so is likely to complicate or confuse the fair conduct of proceedings."

At para.63 Snowden LJ observed as follows:

"The principle that statements of case should only set out the facts that go to make up each essential element of the cause of action relied upon is particularly relevant to pleadings in unfair prejudice petitions. There has, from the early days of the unfair prejudice jurisdiction, been a clear tendency for petitions and pleadings in such cases to seek to raise myriad grievances and complaints of diverse forms of misconduct against the respondents to the petition. This experience has been especially prevalent in cases in which it is alleged that the company is a quasi-partnership so that equitable considerations are in play. Such wide-ranging allegations are often then said to require extensive disclosure and a lengthy trial at which the entire history of the formation and breakdown of the relationship between the parties is gone through in enormous detail."

Sadly, it must be said, that remains the experience of this court notwithstanding these dicta from the Court of Appeal. I observe as well at this point, that this is not a quasi-partnership case on the pleadings. That does not mean that these principles are not applicable.

12. At para.64, Snowden LJ quoted from Harman J in *Re Unisoft Group Limited (No.3)* . Let me just draw this from that:

"The acts of the members themselves are not acts of the company nor are they part of the conduct of the affairs of the company and cannot found a petition under section 459 [which, of course, is the predecessor section]."

At para.66, Snowden LJ, having quoted in the previous paragraph from Arden LJ (as she then was):

"I respectfully agree with the observations of Harman J and Arden LJ. Although designed to overcome some of the limitations which beset the oppression remedy under [section 210 of the Companies Act 1948](#) , neither [section 459](#) ... nor [Section 994](#) were drafted on the basis that a shareholder could simply complain, for example, that "a course of conduct in relation to the company" had unfairly prejudiced his interests [I would underline those words]. The potential breadth of what is now [Section 994](#) has been limited and kept within manageable bounds by the express statutory requirements that the acts complained of must either (i) be an act or omission of the company, or (ii) be conduct of the company's affairs rather than acts done in the conduct of a shareholder's personal affairs.

"67. Satisfaction of these requirements should not be overlooked or minimised [again I underline that first sentence]. Petitions and statements of case in unfair prejudice cases should make it clear which limb of [Section 994](#) is being relied upon and should contain a concise statement of the facts upon which the petitioner relies to make out that requirement. On the basis of the majority judgments in *Graham v Every*, it may be legitimate for a concise statement of personal acts of the respondents which are causally connected to an act or omission of the company, or causally connected to conduct

of the company's affairs, to be included to support the primary allegation. There is, however, no such justification for allowing other allegations of personal conduct of the respondents, which are not causally connected to an act or omission of the company, or not causally connected to conduct of the affairs of the company, to be included in a statement of case under [Section 994](#)."

13. At para.70, Snowden LJ looked at an element of pleading in that case:

"Moreover, paragraph 234 simply asserts in a generalised manner that,

'the matters set out in V, VII and IX-XIV of these Points of Claim constitute unfairly prejudicial conduct of the affairs of the Company.'

That portmanteau style of pleading is inappropriate."

All of this may, of course, also be set against the need for the court to have regard to the overriding objective. That includes not wasting the time of all parties and the court in trying to decipher pleadings which are not themselves plain on their face. It is a waste of the court's time, it is a waste of the parties' time, it is generative, I am afraid, often of very large costs.

14. Bearing those principles in mind, I turn to the petition as currently formulated. What I am not going to do is to set out the wide factual background of the dealings between the parties because it does not seem to me to be necessary. There are at least uncontentious facts in the first few paragraphs of the petition relating to the CAR.O.L exercise bike, its perceived advantages, and the roles of the petitioners in its early development.

15. The applicant respondents have broken down their understanding of the allegations in the petition into the headings of bullying, unfair dismissal and the devaluation allegation. At para.9, the petitioners refer to the 1 June 2018 service agreement, by which Ms Singh was appointed as CEO of the company. Clause 23 of the service agreement provided that she would retain her directorship so that the Board could not remove her as a director even if it terminated her employment and position as a CEO, a statement which is denied by the respondents.

16. Above para.12 is a heading "Conduct of [Serguei Belousov] towards [Ms Singh]". It refers to him having been a shareholder in the company since 2020 and a director between January and April 2020, when he then appointed Gordon Caplan as his nominee. That is the fifth respondent. At 12.2, Mr Caplan is described as Mr Belousov's proxy. At 12.3, it is said that at all material times Mr Belousov acted as an agent and shadow director of the company. At 12.6, although Mr Belousov personally only held some 4.82 per cent of the shares at the time of Ms Singh's dismissal as CEO, his influence and control is "out of all proportion to the shareholding and simply exerts complete influence over the other shareholders and directors". No particulars are given in this part of why Mr Belousov is characterised as a shadow director, nor as to how he exerts complete influence both over all the other shareholders and the other directors.

17. Above para.13, there is a heading "The Chinese group". I do not know what that is from the petition but I note that the respondents are not confused by it and do understand to what it relates. There are references to discussions between Ms Singh and "the Chinese group". At 13.2 is a quotation from an email of 6 August 2020 between Mr Belousov and Ms Singh:

"... do not do business with Chinese. Only with my help. This is very expensive, time-consuming, and dangerous. I do business with Chinese for 28 years. Please stop this childish thoughts and follow the advice."

This was "intended to harass and belittle" Ms Singh.

18. Thus far, there is no identification of what unfairness there may be perpetrated by whom or what prejudice may have been caused.

19. Above para.14 is a heading "Legal fees". There is a complaint, which may relate back to 12.4, that Mr Belousov has not provided promised funding. The 12.4 allegation is that Mr Belousov, through Mr Caplan and Mr Magdanurov, assured all the other shareholders, the directors and, in particular, Mr Dempfle, that he had access to billions. There is a complaint that Mr Belousov is not paying the company's legal fees. The basis of that complaint is not identified. Then a complaint that there has been an abuse of the company's insurance policy against the legal fees. Again, there is no identification here of any unfairness. At the end of this section is a statement:

"Misappropriate charging of legal fees, high product discounting, low revenue per bike and high cost per acquisition are poised to make the Company run out of money very soon."

I do not know if that is an allegation or not. If it is, it is unsupported.

20. Above para.15, a heading "[Mr Belousov]'s lack of understanding of and interference in, the business of [the company] and the role of [Ms Singh]." Between 2019, and that was actually before Mr Belousov became involved according to the pleading, and 4 November 2020, the date when the employment of Ms Singh was terminated, Mr Belousov has "relentlessly interfered, bullied, criticised and opposed the actions of Ms Singh in running the company". It is not clear how this can be conduct of the company's business on the part of Mr Belousov. Even taking these pleaded examples on their face, these are actions of an individual.

21. Further, it is a trait both of this pleading and of the submissions of Dr Bernath and Ms Singh before me that there are complaints about how the company's business has generally been managed and, coupled with that – and this is really the overarching complaint – that the company's business has collapsed since Mr Belousov and the other respondents became involved and, in particular, since Ms Singh was removed. In order to attribute collapse to particular individuals in control of the company, and in order to justify a claim that the members have been unfairly prejudiced by that, great precision is needed in the pleading, because what is being analysed is the company's business as a whole, all its myriad facets. Day in/day out, I am afraid, companies fail for reasons within their control and otherwise. That they have failed does not mean that there has been culpable failure on the part of the directors.

22. Just taking 15.4, which is the one I was looking at:

"SB dictated an unreasonable and erratic monthly sales target of first 500 Bikes, 1,000 Bikes and 10,000 per year despite knowing that the first Series A Preferred funding (\$3.5 million) arrived late in tranches in [the company]'s bank between January and March 2020, while \$1.5 million, owed by [Mr Zubarev], had been unreasonably withheld and delayed, and only arrived at the end of May 2020."

This is incomprehensible. What is this meant to go to? What explanation is there for money, if this is said to be relevant, to have been withheld, or unreasonable? This appears to be related to the terms on which Mr Zubarev subscribed for his shares but that is something which has to be drawn from elsewhere.

23. Similar defects pertain to the next section, called "Treatment of [Ms Singh]'s invention by [Mr Belousov]." This is the invention of the CAR.O.L bike. No doubt Ms Singh is very attached to it but it is, as I understand it, the company's asset, albeit that it was, as I say, invented and then developed by her.

24. Paragraph 16 is headed "Investment rounds and valuation." This does refer to the terms of the investments, including by the first and second respondents. 16.6, just to take some examples:

"This delay in funding showed down developments and marketing of the CAR.O.L bike because [the company] did not have the funds that were necessary to progress with the speed that had been intended."

16.13:

"No director has ever engaged in a strategic discussion. No director was ever offered any operational help. Instead, Petitioners believe [Mr Belousov] had told [Mr Caplan] to begin the process of terminating [Ms Singh] as CEO from the beginning."

These, and the other allegations within this paragraph, are described in 16.16 as examples of the prejudicial way that Mr Belousov has conducted himself towards Ms Singh. To the extent that the word "prejudicial" is intended to relate to [s.994](#), it is clear that what is alleged here are simply personal dealings between the two of them. 16.18:

"This precarious cash situation is the result of mismanagement of the Company by the new management ..."

Again, a desperately bald statement if this is meant to justify relief. The previous paragraph illustrates again one of the traits of the petitioners as it refers to the company valuation, and the petition is very specific in the valuation it wishes per share in the event that a buy-out order is made, being £1.89. So 16.17 records that:

"In February 2021, the shares of the Company were valued at \$8 million by Haines Watts, instructed by the directors, which is significantly lower than the previous \$45 million valuation made by [Mr Belousov] himself. [£1.89 gives a \$45 million valuation.] [Ms Singh] obtained an alternative valuation by an experienced start-up financial adviser. This valuation using two tested methodologies came to \$42-44 million. When the Board was presented with this, they refused to engage and insisted that the \$8 million valuation was correct given the Company's poor performance and precarious cash situation."

It is expressed in 16.9 that nevertheless the March 2021 agreement to invest put in an even lower valuation of \$4 million.

25. As to that, it is said that:

"At an Emergency Board Meeting on 5th March 2021, management and the Board discussed the fact that Company was two weeks away from becoming insolvent. At this meeting, [Mr Caplan] presented an investment offer from [Mr Belousov] and [Mr Zubarev] to fund the Company with \$2.5 million immediately but at an even lower valuation of \$4 million."

That paragraph is not itself controversial.

26. Again, what seems to be the summary of this part is, in bald terms:

"This significant reduction of the value of the shares in the Company is the result of the destructive conduct [Mr Belousov], the Board and new management and is clearly prejudicial to the Petitioners as the minority shareholders of the Company. [Mr Belousov] has manipulated the position, through his nominees, to obtain more shares and control of the Company."

That is an allegation which requires, not least because of the hint in it of dishonesty, the most precise pleading.

27. It appears that the heading above the next paragraph applies to all that follows. It is "Unfair Prejudice resulting in loss of financial value for the Petitioners":

"The directors have embarked upon a funding round by share sales, at an undervalue, which has increased the shareholders' percentage of shareholding for which they have bought shares at a gross undervaluation."

"Particulars", it is so headed, but then given "Pre-meditated Company de-valuation". There are references to other valuations of the company in July 2019 at \$17 million pre-money, and then to valuations we have already heard about; reference to the precarious cash situation; a reference in 17.5 to the \$4 million valuation:

"This \$4 million valuation is the result of management and Board not seeking interim funding at an earlier stage despite the cash situation having been forecasted in summer 2020. It seems clear that it was the intention to let the Company run into financial distress and then be forced to accept any valuation as a rescue from insolvency. This devaluation was threatened by [Mr Caplan] on the 4th September 2020 when, at an [emergency board meeting], [he] was recorded as warning [the petitioners] that the investors would 'crush' the Founders. This dilutive down-round was clearly premediated to enable a take-over of the Company by [Mr Belousov]. These actions are unfairly prejudicial to the Petitioners."

At 17.6:

"The offer from [Mr Belousov and Mr Zubarev] communicated via [Mr Caplan] was a 'take it or leave it' offer and it was contingent on immediate acceptance. The Board, shareholders and Petitioners had no choice but to accept this or go into administration."

28. Even on its face, there are a number of difficulties with this pleading, in particular the lack of details. There is a reference back to the course of the company's trade and some sort of failures to obtain interim funding since the summer of 2020. That is a very large period in the life of a company, particularly a company which is developing a new strand to its business, and detailed particulars would have to be given of the basis on which inferences were to be drawn if there was a deliberate ignoring of the need for cash. It is not set out precisely who was involved in the alleged intention, or how it was made manifest, or over what period. There is also an inherent unlikelihood in the position, or at least a hurdle which would have to be looked at, which is that if, indeed, this was the intention then the obvious way of giving effect to it would be to allow the company to go into administration and to buy out the assets from the officeholders.

29. 17.11, which concludes this section, says:

"The Petitioners have been prejudiced by the sale of the shares in the Company at a gross undervalue which has resulted in their shareholding to be reduced by 39% while [Mr Belousov]'s group have increased theirs by 127% and have taken majority control."

Even if that describes prejudice within s.994, it does not describe unfairness or perpetrated by whom.

30. The next section is headed "Mismanagement of the company by [Mr Magdanurov], [Mr Dempfle], and the Board." This relates to a period after Ms Singh's dismissal, on 4 November 2020, when the company held about \$2 million in cash. There is another complaint about non-use of the insurance funds. It is said that Mr Belousov and Mr Zubarev:

"... made unfounded and misconceived allegations against the Petitioners for misrepresentation in relation to the Subscription Agreement warranties."

Of course, we now know that that is not true. There are complaints about the removal – this is 17.21 – of Ms Singh and Dr Bernath:

"The removal of [them] was unwarranted, and the abusive action and poor performance of the Board, [Mr Belousov] and new management was premeditated.

17.22 [Dr Bernath] was victimised because he is married to [Ms Singh]."

Again, very general statements and, insofar as it is victimisation, that is, on its face, a personal matter, not a company matter. It is not said by whom and neither is it explained why the removal was unwarranted.

31. The next section, para.18, is headed "The conduct of [Mr Belousov] towards [Ms Singh]":

"[Mr Belousov] had repeatedly made abusive and threatening comments to [Ms Singh] in which he has denigrated her and created a hostile working environment."

Again, there is nothing that goes here beyond personal dealings between the two. These are not fairness of the company on this pleading.

32. Paragraph 19, "Removal of [Ms Singh] as CEO". She refers to the terms of her Service Agreement. The Service Agreement was for her to provide her services as an employee. This section, therefore, appears to be misconceived as it does not relate to her interests as a member of the company. For what it is worth, she is, as I have already recorded, vindicating her rights to the Employment Tribunal.

33. Paragraph 20 is headed "The conduct of Mr Caplan, Mr Magdanurov, Mr Dempfle, Mr Kalimtgis and Mr ... Crametz as directors of [the company]." Then there are little sections in relation to each one. Mr Caplan is said to have bullied and harassed Ms Singh. Again a personal matter. Mr Magdanurov: there is an undetailed complaint about his appointment. Mr Dempfle: his actions and inaction have contributed to Dr Bernath stepping down. It does not amount to any sort of complaint. Mr Kalimtgis:

"... is in breach of his fiduciary duties and has caused the Petitioners unfair prejudice by denying that he had any interest in the China market despite his entire investment thesis in [the company] was to take the product to China using his own Company in China where he claims to have a substantial number of top-level contacts."

That is para.20.15 and it is incomprehensible. Mr Crametz has agreed with the investors.

34. Paragraph 21 is headed "Conduct of the Board during Board meeting". The first complaint is:

"The Board ... would arrive at Board meetings, state they had other commitments, and spent most of their time checking their messages."

Then it makes complaints which again Ms Singh has expressed before me today, that they just did not understand the business and she understood it much better, she says, and therefore she is very unhappy about the collapse of the business. There is no identified unfair prejudice from this paragraph.

35. Paragraph 23 refers to each of the fourth to eighth respondents owing duties under s.172 to promote the success of the company, to avoid conflicts of interest under s.175, to exercise their powers for a proper purpose under s.171, and to exercise independent judgement under s.173. All these are the [Companies Act 2006](#) . At para.24:

"The conduct of the directors as set out above is in breach of these obligations, carried out with the approval of the other shareholders and is unfairly prejudicial to the Petitioners."

That is not a proper pleading of unfair prejudice. It is instead not unakin to the paragraph which Snowden LJ picked up in his para.70, which I have already quoted, and his observation that a portmanteau style of pleading is inappropriate.

36. There is then a reference to Dr Bernath being placed in a position where he had no alternative but to resign. That does not set out any cause of action. There are then paragraphs on conduct since the removal of Ms Singh as the CEO. Again, as I say, those relate to her position as employee.

37. Paragraph 44 begins with a similar wide expression of breaches of duty. Paragraph 47 includes the complaint that:

"It is apparent that, at the behest of [Mr Belousov] in breach of the invention by [Ms Singh], the Board has changed the direction of the Company that it is now being run according to the wishes of [Mr Belousov] who has simply treated the Company as an extension of his own views"

And there are details given of that. Again, this does not go anywhere to establishing unfair prejudice.

38. It follows that, in my judgment, the petition, as it stands, is bound to be struck out under [CPR 3.4](#). It does not begin to set out a coherent case, whether against the first and second respondents or, indeed, the fourth, fifth and sixth.

39. There is another point on what has been described as the devaluation allegation, in other words the deliberate running of the company into the ground so that it could be bought cheap and the petitioners diluted, which is that it is simply not open to the petitioners to rely upon that anymore given the findings of the Deputy Judge in the London Circuit Commercial Court. I am satisfied, as Mr Robinson submits, that the Deputy Judge did, indeed, determine that within that action. To look at para.128 of his judgment:

"The [financial] position did not improve during 2019. By late 2019, neither Mr. Darwent nor Mr. Bensoussan were prepared to invest further in [the company]. Mr. Bensoussan had sought to resign as Chair of the board. Mr. Gal and Mr. Kalimtzis was not prepared to invest further unless it was at a price of US\$ 0.50 per share or if Ms. Singh was replaced as CEO or her role was changed materially."

Then para.130, which is headed: "Were existing investors unwilling to invest further in [the company] unless it was at a lower share price than the price at which they had bought their original shares and, or possibly alternatively, that Ms. Singh was replaced as CEO?", there is a finding that they were not prepared to invest further unless it was at a lower share price than the price at which they bought their original shares.

40. The judge goes on to consider consequential losses at paras.254 onwards:

"The Defendants accepted in Opening [and they were represented by counsel] that in an appropriate case a subsequent decline in share value between the date of purchase and the date of trial might be recoverable as consequential loss. However, the Defendants submit that there is no good evidence to support the valuation of [the company] on which the claim for consequential loss is based. They further allege, albeit without pleading particulars of their case, that the decline in value of [the company] was a consequence of poor management following Ms. Singh's resignation as CEO and that in any event the Claimants have deliberately sought to drive down the value of [the company] to be able to take control of the company."

So that is the devaluation allegation, as it is described in the petition. The Deputy Judge continued:

"There are presently unfair prejudice proceedings on foot between the parties. The Defendants ask that I should not make any findings as to the propriety of the March 2021 share issue going beyond those necessary for the resolution of the present claims. However, to determine the Claimants' case that they are entitled to recover consequential losses, it is necessary for me to decide whether there was a need for the Claimants to put further funds into [the company] in March 2021 and if so, whether their investment in March 2021 (in mitigation of their loss) resulted in a reduction in value of their original shares, which they were entitled to claim as a consequential loss."

Thus, the judge was made aware of the claim in these proceedings. The petitioners, in this petition, did not want the matter dealt with because it was being dealt with in these proceedings but the judge decided that he had to continue anyway.

"The Defendants plead that any need for further investment was a consequence of poor management decisions made after Ms. Singh was removed as CEO and that the purchase of shares was done at an under-value as part of a strategy to enable the Claimants to take control of [the company]. Accordingly, these are matters which I have to decide and in relation to which it was incumbent on the Defendants to put evidence before the Court."

At 261 the judge rejected the defendants' case that the fundraising round in March 2021 was at a deliberate undervalue and, at 259, he noted that he had no evidence before him to support the defendants' case that the decline in value was a consequence of poor management decisions, other than an assertion to that effect in Ms Singh's witness statement.

41. For those reasons, the petition falls to be struck out.

42. The next question is what I should do about the amendment application made by the petitioners. The applicable principles have been set out by Mr Robinson and Ms Gibbon in their skeleton. The proposed amendments must be properly formulated in the sense of being comprehensible and setting out clearly the case which the other party is to meet. Those amendments must satisfy the requirements of the [CPR](#) in terms of the particularisation of the pleading of any cause of action asserted in the amended pleading. There is then a reference to the proposed amendment having to raise a new claim which has a real and not fanciful prospect of success. Then that the court ought to be guided by the principles in *Pearce v East and North Hertfordshire NHS Trust*, including that the overriding objective is of "central importance". A balance must be struck between injustice to the applicant if the amendment is refused and injustice to the opposing party, and other litigants in general, if it is permitted.

43. The application for amendment is supported by a witness statement of Ms Singh. The amendments she identifies are the result of her and Dr Bernath's efforts because Mr Duggan QC, who has represented them at times, has unfortunately since passed away. It has become apparent during the course of the hearing that what was presented on behalf of the applicants as the proposed amended petition is not now maintained by them: they have provided in their bundle a yet further expanded amended petition.

44. The first group of amendments, at para.6.7 onwards, provide more factual background and various corrections of typographical errors and the such-like in the dates. From para.50 onwards are additions to the existing pleading:

"By excluding [the petitioners] from all Company affairs, the directors, on the instructions of the shareholders, have taken away their right to be part of and influence the Board that sets strategy, its governance and compliance and management in put based on their vast knowledge and as founders and creators of the company and product, paid or unpaid. Their exclusion has led to the Company's near demise, compliance failures that may lead to it being struck off, severe fines and criminal charges. Because of these risks, the Petitioners had to resign from the Board and be absolutely excluded ...", and so forth.

This paragraph does not of itself set out, with any sufficient particulars or clarity, a position of unfair prejudice. For example, there is a reference to a "right" to be part of the board. This right is not here identified. We ascertained in argument that it derives from Article 29.6, which gives a right to a founder to appoint a director, but that itself would have to give rise to further pleadings as to the desire to appoint or why no appointment could actually be made in precise terms; and "precise terms" meaning more than what is here.

"They cannot risk nominating anyone on the Board in their place for fear of them being open to criminal convictions and to similar brutal treatment."

These are high-end allegations (and the petition is full of them, spread around liberally) against the various respondents. They are serious and unpleasant allegations and if they are to be seriously put forward then they need to be specified so that the individuals concerned can deal with them.

45. Ms Singh told me in argument that this related to her being told lies in the December 2022 board meeting, but that is not set out here. As I tried to emphasise to her, and as I have actually tried to emphasise through the judgment, in particular through the quotations from the Court of Appeal case, this court's task is not to have presented a lot of material and then for itself to winnow out what might be the claim. That is the task for litigants. Indeed, more particularly, it is the task for the person who is putting this forward as their pleading, as their case. It is an unfair exercise, as I have already said, on those who have to respond to the pleading, particularly so when these serious allegations fly around.

46. Paragraph 51 refers to:

"The shares of the Petitioners are not tradeable so unfortunately, they are stuck with them"

That is a statement, doubtless, of fact, but it does not itself ground any relief. The petitioners have referred me to *O'Neill v Phillips*, but Lord Hoffmann does not say in that case that you necessarily obtain relief just because you have held on to shares in a company which you could not sell. Indeed, he said exactly the opposite.

47. Paragraph 52 refers to the forcible removal of the two of them "due to illegality malfeasance and exclusions." Details are required. Paragraph 56 refers to the causation – it is not said by whom – to the petitioners of "defamation, deliberate

harm, and significant mental and physical trauma due to unconscionable and oppressive treatment." All those, even on their face, are personal assets. They are not company assets or assets related to their character as members of the company. The proposed para.56 refers to further devaluation. No unfair prejudice is alleged in that.

48. Then there are a succession of pleas as to various what are described as "illegalities": a breach of FSMA, a violation (as it is described) of the person with significant control process. That is linked to their belief that Mr Belousov controls more shares than he had. They include as well that banking facilities were withdrawn by the company's existing bankers, including HSBC, because, I am told, of non-compliance with KYC documentation. There is a reference to a failure to file a confirmation statement, a violation of anti-money laundering laws, violation of GDPR.

49. The difficulty with all these is that what is not identified is meaningful prejudice caused by any of them. Again, also the particularisation would have to include which respondents were directly responsible for this and why.

50. Between paras.110 and 110 is a statement:

"Paragraph 22 of this Petition refers to the relevant Companies Act sections that are pertinent to this Petition, all of which have been violated."

Again, the sort of pleading which is absolutely impermissible.

51. The next section is called "Breach of trust" and "Dishonest Assistance". There are references to collusion, doing the will of Mr Belousov, references to management failures since the removal again, and then there is a claim, which is obviously unsustainable, for security for costs; unsustainable because they are petitioners.

52. The last heading involving individuals is a remedy against Mr Magdanurov for what is described as "spoliation". By that word is apparently meant not an action for spoliation in the ecclesiastical courts but some sort of complaint about destruction of evidence. It is not explained how that may be unfairly prejudicial.

53. Lastly, you have "Other remedy the court sees fit":

"As litigants in person, we are not experienced in litigation and whilst we know the court has wide powers and discretion, we do not feel equipped to ask for anything specific that may be available to the Court. Therefore, we respect the Court's jurisdiction on what is just and equitable."

In a sense I have less issue with that, in that the court has a wide discretion under s.996; but at the moment that is not a discretion which the courts could possibly exercise on the basis of these pleadings.

54. The pleading which emerged this morning contains further additions relating to matters which have developed since this April and, indeed, 24 April, when the proposed amendments were filed. The first aspect to that is that an erroneous confirmation statement was filed, and I use the word "erroneous" deliberately neutrally, which recharacterized, wrongly, as is acknowledged by Mr Dempfle, the petitioners' shares as being Class B and therefore non-voting and not, as they are, Class A. Mr Dempfle has put in a short statement explaining that that has now been put right at Companies House. The respondents in this court acknowledge that the petitioners remain A class shareholders. Ms Singh tells me she does not accept that at all and that this is again part of a deliberate ploy. But that, again an allegation of dishonesty, is one which needs to be specifically pleaded out.

55. Then there is a chart for loss of company valuation. I have no issue with the fact, but the question is how it creates any cause of action for the petitioners. [Section 994](#) is then set out and by the time we get to internal p.52, there is a reference now to Article 29.6, the right to remove, which I have already addressed, and this is now stated to give rise to a "legitimate expectation".

"Excluding [the petitioners] has harmed the company and unfairly prejudiced them due to the ramifications ...

"Due to their legitimate expectations being unfairly withdrawn, prolonged and deliberate withholding of information prevented [them] from participating in company management and financing.

...

"16. [Ms Singh] was forced to resign from the board because, in December 2022, it was evident that the directors were violating their fiduciary duty ...

"b. The board frequently called meetings by special committees where [the petitioners] would not be invited."

56. In fairness to the petitioners, I have considered whether it would be right to permit them to have a final opportunity to put forward their case in terms which comply with the Court of Appeal guidance. There are elements which may be drawn, particularly from the quotes which I just took from para.16, which might with more amount to a cause of action; but they do not presently amount to a justifiable or viable cause of action.

57. Bearing in mind, in particular, the overriding objective, I do not consider that that would be the right course. This remains, even in its latest version of the proposed amended petition, a mess of a pleading which fails to set out any comprehensible case or any case which would justify relief being granted under s.996. This petition has been on foot since 2021. It would require significant amendment just to remove, as would have to be done, the devaluation allegations. It continues to spray around serious allegations against the parties without any form of particularisation.

58. In those circumstances, and given that if amendment is not allowed it will still be open to the petitioners to present a new properly-pleaded petition, it seems to me that the right course is to draw a line under this and the attempts to amend it and make it viable because even those attempts do not do so. It would be wrong, in my judgment, to allow the respondents still to be subject to these serious and unparticularised complaints.

59. For those reasons, I allow the applications made by the first, second, fourth, fifth and sixth respondents and I dismiss the petitioners' application.

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