[2020] EWHC 23 (Ch)

Claim No: CR-2019-004377

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF R-SQUARED HOLDCO LIMITED (Company No, 10708321)
AND IN THE MATTER OF THE COMPANIES ACT 2006

Date: 22 January 2020

Before :

Mr James Pickering
(sitting as a Deputy Judge of the High Court)

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Between :

(1) DAVID BROWN
(2) ALIX BROWN **Petitioners/Applicants**

and

(1) MML CAPITAL EUROPE VI EQUITY II SA
(2) R-SQUARED HOLDCO LIMITED
(3) R-SQUARED BIDCO LIMITED
(4) PROPERTY INFORMATION EXCHANGE LIMITED
(5) ALISON BROWN
(6) ALIX BROWN
(7) DAVID BROWN
(The Sixth and Seventh Respondents as trustees of the Brown, French and Brown Foundation) **Respondents**

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Timothy Collingwood (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Petitioners/Applicants**
Andrew Charman (instructed by **Pinsent Masons LLP**) for the **First Respondent**
Sonia Nolten and **Luka Krsljanin** (instructed by **Gateley PLC**) for the **Second to Fourth Respondents**

Hearing dates: 21-22 November 2019

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APPROVED JUDGMENT

Mr James Pickering (sitting as a Deputy Judge of the High Court):

PART I: INTRODUCTION

1. The matter before me is an application for injunctive relief to prohibit the holding of certain disciplinary proceedings in respect of the Petitioners. It is made within the context of an unfair prejudice petition brought under section 994 of the Companies Act 2006 ("**the CA 2006**").

2. In one of the skeleton arguments, counsel described the matter as "a sorry and increasingly complex story". The matter may or may not be complex but there is no doubt that it is a sorry one. Ultimately, it will be for the trial judge to determine who is right and who is wrong in the underlying dispute; but whatever the outcome it is clear that a great deal of time and money will have been spent fighting over what was once a highly profitable business.

PART II: THE BACKGROUND

The Browns and the incorporation of PIE

3. In 2006 David and Alix Brown ("**the Browns**") arranged for the incorporation of Property Information Exchange Limited ("**PIE**"). Originally, they were its principal shareholders and directors. Under the guidance of the Browns, over the next 11 years PIE then carried on the business of providing electronic search services to solicitors and other licenced conveyancers involved in conveyancing transactions. The business was successful and by 2016 had an annual turnover of about £16 million. In this matter the Browns are the Petitioners and PIE, in the circumstances set out below, is the Fourth Respondent.

The introduction of MML and the corporate restructuring

4. In the course of 2016, the Browns became interested in PIE acquiring a competitor business. One option for the Browns was for PIE to fund the proposed acquisition by way of a loan from a bank. Another option was for the acquisition to proceed by way of a private equity investment – in other words, an arrangement by which a private equity house would invest in PIE in return for a shareholding in the business. By the end of 2016, the Browns had been introduced to a number of private equity houses including MML UK Partners LLP. It is that private equity house's special purpose vehicle, MML Capital Europe VI Equity II SA ("**MML**"), which is the First Respondent to the underlying unfair prejudice petition.

5. In the first half of 2017, negotiations took place between all concerned. On 2 June 2017 the matter completed. Amongst other things, a corporate restructuring took place. Under that corporate restructuring, the entire shareholding in PIE (which had previously been controlled by the Browns) was transferred to a recently incorporated company called R-Squared Bidco Limited ("**Bidco**"). Bidco's shareholding was completely owned by another recently incorporated company called R-Squared Holdco Limited ("**Holdco**"). At the same time, MML invested some £10.45 million into the business. In return for its investment, MML received a 33.3% minority shareholding in Holdco, with the bulk of the remaining majority shareholding in

Holdco becoming owned by the Browns[1] who also received some £1,131,564.25 in deferred consideration together with a further sum of £14,470,308 which they immediately reinvested in the business in return for loan notes[2] issued by Bidco. The net effect, therefore, was that the Browns gave up a significant amount of their equity in (and control of) the underlying business in return for cash and loan notes, thereby enabling the purchase of the competitor company. In any event, Holdco is the Second Respondent to the underlying unfair prejudice petition (as well as being "the Company") and Bidco is the Third Respondent.

6. A further important feature of the restructuring was the inclusion of leaver provisions in both the articles of association and the loan stock instruments. Under these documents, a person leaving the business was defined either as a "Good Leaver", an "Intermediate Leaver", a "Bad Leaver" or a "Very Bad Leaver". In short, in the event of either of the Browns becoming a Bad Leaver (which included leaving by reason of summary dismissal, resignation, committing a criminal offence or breaching certain covenants) or a Very Bad Leaver (which included leaving by reason of fraud or material dishonesty), he or she could be deprived of their shareholding in Holdco for a nominal sum and, moreover, Bidco would become entitled to redeem their loan notes – again for a nominal sum.

The investigations and the proposed disciplinary hearing

7. For the first year or so following the restructuring things were relatively uneventful. On 27 September 2018, however, a group board meeting took place. At that meeting questions were raised of Mr Brown as to a payment of £57,000 to EJ Winter & Son – an important solicitor client of PIE. According to PIE, Mr Brown's response was unsatisfactory and gave rise to a suspicion that the payment was in reality a bribe. According to the Browns, the meeting was a "scripted sham" motivated by a desire to remove the Browns from the group as Bad or Very Bad Leavers and therefore at a nominal price.

[1] In fact, the Browns received a 59.44% shareholding in Holdco (of which they then transferred 27.7% to a charitable foundation) with the remaining 7.22% passing to Mr Brown's sister.
[2] In addition, Mr Brown's sister received £2,979,692 in loan notes.

8. In any event, the outcome of the meeting was the commissioning of an investigation report. That report and subsequent investigations highlighted various further perceived financial irregularities. The investigations continued into 2019 and on 11 March 2019 a further meeting took place at which the Browns were asked to provide explanations as to various matters. Again, the explanations given were perceived as being unsatisfactory and accordingly on 2 April 2019 a further board meeting took place at which it was allegedly[3] decided that PIE would conduct disciplinary hearings against the Browns. The potential impact of this on the Browns should not be understated. In the event of either of them being dismissed (or found to have acted in breach of covenant or to have left by reason of their fraud or material dishonesty), under the above-mentioned leaver provisions they would be deemed as Bad or Very Bad Leavers and in such circumstances not only would they be deprived of their shareholding for a nominal sum but also some or all[4] of their loan notes would be redeemed at a nominal sum too.

9. Originally, the date fixed for the disciplinary hearings was 18 April 2019 but due to the unavailability of the Browns this was rescheduled for 8 May 2019. On 30 April 2019, the Browns' solicitors sent a letter before action threatening to present an unfair prejudice petition pursuant to section 994 of the CA 2006. In addition, the letter threatened injunctive relief restraining PIE from conducting the disciplinary hearing pending the outcome of the petition. Following the above, the hearings were rescheduled – but only to 19 and 20 June 2019. Again, injunctive relief was threatened and further an issue was raised as to Mrs Brown's availability. In any event, once again the hearings were rescheduled, this time to 4 and 5 July 2019.

The email of 2 July 2019 and the presentation of the petition

10. On 2 July 2019 (and therefore just two days before the adjourned disciplinary hearings were due to start), the Browns once again threatened to apply to court for an injunction restraining PIE from conducting the hearings. On the same day, 2 July 2019, PIE's solicitors sent an email to the Browns' solicitors ("**the 2 July Email**") stating:

[3] The Browns deny that the board meeting was validly convened.
[4] 50% in the event of them being Bad Leavers and 100% in the event of them being Very Bad Leavers

> "On the basis that the unfair prejudice petition is issued and served by your client tomorrow (as you confirm in your letter your clients will do) then the hearings will be placed on hold until such time as the petition has been determined."

11. On the following day, 3 July 2019, the Browns presented an unfair prejudice petition. A previous draft of the petition which had been sent to PIE had included injunctive relief; because of the arrangement which had been made by way of the 2 July Email, however, the petition as in fact presented by the Browns did not include any such injunctive relief. In any event, as had been discussed in the above-mentioned solicitors' correspondence, the disciplinary hearings which would otherwise have started on 4 July 2019 were once again put on hold, albeit this time no new date was fixed - presumably on the basis that they were not to be reconvened until after the petition had been determined.

12. On 6 August 2019, MML filed and served its Points of Defence[5]. Suffice to say, those Points of Defence denied that the Browns were entitled to the relief claimed in the unfair prejudice petition or indeed any relief at all.

The proposed reconvening of the disciplinary hearing

13. On 14 August 2019, PIE's solicitors sent a letter to the Browns reconvening the disciplinary hearings for 10 and 11 September 2019. According to the Browns, this was out of the blue and in any event flew in the face of what they say was a contractual undertaking created by way of the 2 July Email. According to PIE, the reconvening of the disciplinary hearings was unobjectionable on the basis that the 2 July Email amounted to nothing more than a gratuitous promise and in any event was not a binding agreement capable of enforcement.

The issuing of the present application

[5] No Points of Defence has been served by either PIE or Bidco pending the hearing of an application to extend time beyond the outcome of a strike out application brought by MML.

14. Following various communications between the parties, on 3 September 2019 the Browns issued (within the petition) the present application for injunctive relief seeking to restrain the holding of the disciplinary hearings[6] until after the determination of the petition. Originally, the matter was due to be heard on 9 September 2019 but following discussions between the parties it was agreed that the application should be adjourned (with a timetable for evidence) to the present listing in late November 2019.

Recent events

15. Relatively recently, on 6 November 2019, a board meeting took place. According to the Browns, they were only given 1¾ hours' notice of the meeting despite the fact that a large amount of documentation was produced which (so say the Browns) must have taken some time to prepare. In any event, at that meeting it was resolved (despite the Browns' objections) that Holdco would issue to MML some 2 million ordinary shares at par. Before that share issue, MML had held 33.3% of the shares in Holdco; afterwards they held 79.3%. In short, therefore, the Browns went from being the majority shareholders to becoming minority shareholders, while MML went from being a minority shareholder to becoming the majority shareholder – and indeed a super-majority shareholder.

16. On 13 November 2019 – and therefore just a few days before the present application was due to be heard – the Browns served further witness statement evidence setting out the detail of the above share issue (and consequent dilution of their own shareholding) together with various additional matters which were said to be highly relevant not only to the underlying petition but also to the present application for injunctive relief. MML, Holdco, Bidco and PIE, however, objected to the new material being admitted (and indeed even to me reading them in advance *de bene esse*) and accordingly at the start of the hearing on 20 November 2019 I heard brief argument on the points raised. I then gave a short *ex tempore* judgment which I need

[6] In fact, the application notice sought to restrain not only the holding of the disciplinary hearings but also the terminating of the Browns' employment with PIE and/or their removal as directors from any of the relevant companies.

not repeat here save to say that I allowed the inclusion of the further witness statements.

17. Over the next day and a half, I then heard argument and was ably assisted by counsel for the Browns, counsel for MML, and counsel (both senior and junior) for Holdco, Bidco and PIE. In any event, the thrust of the Browns' argument as to why I should grant injunctive relief came down to two key points:

(1) **The primary case:** The Browns' primary case was that the holding of the disciplinary hearings would amount to a breach of (what they say is) the contractual undertaking contained in the 2 July Email.

(2) **The alternative case:** The Browns' alternative case was that the holding of the disciplinary hearings should in any event be restrained pending the trial of the underlying petition on classic ***American Cyanamid*** principles.

18. I shall consider both in turn.

PART III: THE PRIMARY CASE - WHETHER OR NOT AN INJUNCTION SHOULD BE GRANTED TO RESTRAIN BREACH OF THE ALLEGED CONTRACTUAL UNDERTAKING

The issue in a nutshell

19. As stated above, following a threat by the Browns to apply to court for an injunction to restrain PIE from conducting the disciplinary hearings, PIE's solicitors had sent the 2 July Email stating:

> "On the basis that the unfair prejudice petition is issued and served by your client tomorrow (as you confirm in your letter your clients will do) then the hearings will be placed on hold until such time as the petition has been determined."

20. As also stated above, the following day the Browns did then present and serve an unfair prejudice petition.

21. In a nutshell, the Browns say that the above exchange gave rise to a contractual undertaking such that the proposed reconvening of the disciplinary hearings would amount to a breach of the same which ought to be restrained by injunction. PIE, on the other hand, says that given the lack of any valuable consideration there was no binding agreement capable of enforcement and accordingly there is no reason why the disciplinary hearings should not be reconvened. In short, therefore, the matter comes down to whether the indication given by PIE in the 2 July Email that it would place the disciplinary hearings on hold was or was not legally binding.

The nature of the injunctive relief sought: interim or not interim

22. During the course of argument, a curious issue arose as to the nature of the injunctive relief for which the Browns were applying under this head. Were they applying for an interim injunction to restrain breach of the alleged contractual undertaking pending the final determination of that issue at a later stage? Or was the present hearing the actual final determination of that issue itself at which, if relief were to be granted, any injunction would necessarily be final? If the former, ***American Cyanamid*** principles would of course apply; the court would need to be satisfied only that there was a serious issue to be tried that the 2 July Email was legally binding before then considering the other well-known elements of such interim relief. If the latter, the court would need to be satisfied not just that there was a serious issue to be tried but would need to be persuaded to the full standard applicable in the final determination of civil matters, namely, on the balance of probabilities.

23. The application notice and draft order were ambiguous. They sought injunctive relief prohibiting the holding of, amongst other things, the disciplinary proceedings "until determination of the Petition or further order of the court". On the one hand, this is of course the language of interim injunctions – in other words, injunctions which are put in place on a temporary basis until the final determination of the underlying matter. On the other hand, the alleged contractual undertaking contained in the 2 July Email was that the disciplinary hearings would be "be placed on hold until such time as the petition has been determined". In short, therefore, even a final injunction to enforce compliance with the alleged contractual undertaking could only properly prohibit the

holding of the disciplinary hearings up to and until the final determination of the petition in any event.

24. On balance, it seems to me that I should treat this as an application for final injunctive relief. One can look at it this way. In the present case, the argument is that PIE made a promise to the Browns to put on hold the disciplinary hearings in return for the Browns presenting the petition the following day. But imagine the slightly different hypothetical situation where Party A makes a promise to Party B to do (or not do) something in return for something other than the issuing of proceedings. If Party A is then said to have gone back on its word, in order for Party B to enforce that promise it would have no choice but to issue some form of originating process – presumably by way of a Part 8 claim form supported by a witness statement. Assuming the matter was one which turned on an interpretation of the documents (and without any material dispute of fact), there would then follow an exchange of evidence over a period of a few weeks before the matter was set down for a hearing for final determination. If pending that final determination, the parties could agree what should happen in the meantime, all the better; but if not, it would be open for Party B to apply for an interim injunction to regulate the position until final determination. Where, however, there are already underlying proceedings in place, while it would remain open for Party B to seek to enforce the alleged contractual undertaking by way of separate Part 8 proceedings, equally there could be no objection to that party instead issuing an application for final injunctive relief within those already existing underlying proceedings. That application too would involve an exchange of evidence followed by a final determination hearing. Once again, the parties might be able to agree what should happen in the meantime but, if not, it would be open to Party B to apply on an urgent basis for interim injunctive relief.

25. That latter situation, so it seems to me, is effectively what has happened here. The Browns believe that PIE's reconvening of the disciplinary hearing amounts to a breach of what they say was the contractual undertaking contained in the 2 July Email. While they could have issued a Part 8 claim form which, in due course, would have led to a final hearing, they instead issued an application within the pre-existing petition. That application was followed by an exchange of evidence over a period of weeks culminating in the present hearing before me. Sensibly, PIE agreed not to

proceed with the disciplinary hearing pending the outcome of this application; but if it had not, it would have been open to the Browns to apply for interim relief on an urgent basis.

26. Moreover, so it seems to me, there would be procedural and practical difficulties in treating this first part of the Browns' application as an application for interim relief only. If I were to treat it as such and (applying ***American Cyanamid*** principles) were to grant an interim injunction, that interim injunction would have to be in place pending the final determination of the relevant issue, namely, whether or not the 2 July Email was legally binding. As things stand, however, that issue is not one of the issues to be determined on the trial of the petition – something which is wholly unsurprising given that the petition was presented by the Browns on the assumption that PIE would not be proceeding with the disciplinary hearings until after the final determination of that petition. This being the case, treating this part of the present application as being an application for interim relief pending the outcome of an issue which is not currently due to be tried would not, so it seems to me, be a particularly sensible or expedient way to proceed.

27. All in all, therefore, it seems to me that this first and primary part of the Brown's application – namely, their attempt to enforce the promise made in the 2 July Email – is one which I can and should treat as an application for a final injunction, with the present hearing being the final determination of that application. Indeed, it is a short and self-contained point which has been foreshadowed by a large number of lengthy witness statements from all parties over a period of several weeks. In short, therefore, in order to succeed, the Browns will have to persuade me that the 2 July Email is legally binding to the full standard applicable in the final determination of civil matters, namely, on the balance of probabilities.

Is the 2 July Email legally binding?

28. The Browns' case is simple. They say that PIE's promise that if the Browns were to present and serve the petition the following day it would put the disciplinary hearings on hold, combined with the Browns then presenting and serving the petition the following day, gave rise to a legally binding contract.

29. PIE, on the other hand, says it does not. In particular, it denies that its promise to put the disciplinary hearings on hold was supported by any valuable consideration. As stated in the skeleton argument filed by counsel on its behalf:

> "47. …There is no binding agreement capable of enforcement in that:
>
> a. The Petition would in any event have been issued; and
>
> b. Issuing a Petition was a detriment to the Respondents including PIE, and not capable of constituting valuable consideration."

30. At this stage, it is worth reviewing the relevant guidance on the matter. As stated in ***Chitty on Contracts*** (33rd edition):

> "**Benefit and detriment**
>
> **4-004** The traditional definition of consideration concentrates on the requirement that "something of value" must be given and accordingly states that consideration is either some detriment to the promisee (in that he may give value) or some benefit to the promisor (in that he may receive value). Usually, this detriment and benefit are merely the same thing looked at from different points of view. Thus payment by a buyer is consideration for the seller's promise to deliver and can be described either as a detriment to the buyer or as a benefit to the seller; and conversely delivery by a seller is consideration for the buyer's promise to pay and can be described either as a detriment to the seller or as a benefit to the buyer…
>
> **Either sufficient**
>
> **4-005** Under the traditional definition, it is sufficient if there is either a detriment to the promisee or a benefit to the promisor. Thus detriment to the promisee suffices even though the promisor does not benefit…"

31. Further, a little later in the same chapter, ***Chitty*** continues as follows (with underlining added):

"**Promisee would have performed anyway**

4-024 Consideration may also be said to be illusory where it is clear that the promisee would have accomplished the act or forbearance anyway, even if the promise had not been made. This would be the position if A promised B, who had religious objections to smoking, £10 if B did not smoke for a week. Since "it is no consideration to refrain from a course of conduct which it was never intended to pursue", B's forbearance from smoking would not constitute consideration for A's promise. The burden of proof on this issue is on the promisor. To discharge it, the promisor must show that the promisee would (even if the promise had not been made) definitely have accomplished the act or forbearance in question; the burden would not be discharged by the promisor's showing no more than that the promisee had simply not given any thought to the question whether or not to accomplish it. Moreover, where the promise provided an inducement for the act or forbearance, the requirement of consideration is satisfied even though there were also other inducements operating on the promisee's mind."

32. Having considered the matter carefully, it seems to me clear that by presenting the petition on the day following the 2 July Email the Browns did provide valuable consideration for PIE's promise to put the disciplinary hearings on hold pending the outcome of the petition. In particular:

(1) **Detriment to the Browns:** As set out above, PIE submitted that the presentation of the petition could not amount to a detriment to the Browns as the petition would have been issued in any event. I disagree. While I agree that it is highly likely that the Browns would have presented the petition at some stage, it is clear that as a result of PIE's promise they did so the following day and, moreover, they did so having removed a section within the draft petition relating to injunctive relief. Rather than presenting at a time of their choosing, instead they did so in accordance with PIE's chosen timescale and in a modified form. My view on this is only reinforced by the underlined passage from ***Chitty*** in the previous paragraph.

(2) **Benefit to PIE:** As also set out above, PIE had submitted that not only did the presentation of the petition not benefit it in any way but, on the contrary, was to its

detriment. This, however, misses the point. At the time of the 2 July Email it was being threatened with the imminent issue of an injunction application. If such an injunction application had been issued, PIE either would have had to fight it, thereby incurring costs and facing the risk of losing, or it would have had to back down and submit to an order prohibiting it from going ahead with the disciplinary hearings. Instead, the deal meant that PIE did not have to face such an injunction application at that time – something which was to its clear benefit. Moreover, by forcing the Browns to put up or shut up, it brought a level of certainty in that the underlying shareholder dispute between the Browns and (principally) MML would at last be underway – something else which was clearly to PIE's benefit. Indeed, it should not be forgotten that the presenting of the petition the following day was precisely what PIE had asked for – it was the *quid pro quo* in return for which it agreed to put the disciplinary hearings on hold.

Conclusion regarding contractual undertaking

33. In conclusion, therefore, in my judgment PIE's promise to put the disciplinary hearings on hold was supported by valuable consideration – both in terms of detriment to the Browns and benefit to PIE. This being the case, I find that the above promise was legally binding.

34. Given my finding above, it is clear that the threatened reconvening by PIE of the disciplinary hearings amounts to a breach of that legally binding promise. This being the case, it seems clear to me that I should grant a final injunction broadly in the terms sought – in other words, that pending the final determination of the petition, PIE is prohibited from proceeding with the proposed disciplinary hearings against the Browns.

PART IV: THE ALTERNATIVE CASE - WHETHER OR NOT AN INTERIM INJUNCTION SHOULD BE GRANTED ON CLASSIC *AMERICAN CYANAMID* PRINCIPLES

35. Given my conclusion above, it follows that strictly speaking I do not need to consider the Browns' alternative case. Because, however, I heard extensive argument on the

matter (and in case it should become relevant in the event of an appeal), I shall set out my findings on this aspect in any event.

The issue in a nutshell

36. The Browns' alternative case was that – even before the 2 July Email – they were entitled to interim injunctive relief (on classic *American Cyanamid* principles) to prohibit PIE from proceeding with the disciplinary hearings.

The principles

37. The relevant principles for the grant of interim injunctive relief are well established and derive of course from the familiar case of ***American Cyanamid v Ethicon Ltd*** [1975] AC 396. In short, an applicant must show that:

(1) there is a serious issue to be tried;

(2) damages would be an inadequate remedy; and

(3) the balance of convenience favours the grant of interim injunctive relief.

The case law

38. While there are many authorities on the principles applicable to the grant of interim injunctions generally, a special body of case law has developed in relation to the application of those principles within the context of unfair prejudice petitions – and particularly in relation to the second and third stages of the ***American Cyanamid*** test, namely, the adequacy of damages as a remedy and the balance of convenience. During the course of the hearing I was helpfully referred to a number of these authorities.

39. An appropriate starting point is ***Re a Company (No 002612 of 1984)*** [1985] BCLC 80. In that case, the petitioner was a minority shareholder who had brought a petition under section 75 of the Companies Act 1980 (one of the predecessors to the current

section 994 of the CA 2006). Following the presentation of the petition, the respondents (who now had effective control of the company) resolved to increase the company's share capital, the net effect of which would have been to substantially dilute the petitioner's shareholding. The petitioner therefore sought an interim injunction to prohibit the board from so acting pending the outcome of the trial of his petition. The respondents argued that it could never be prejudicial to have a rights issue pro rata to all members at moderate price because no overall change to the parties' respective interests would be effected.

40. Harman J, however, disagreed and in a well-known passage (with underlining added) stated[7]:

> "I would add that, as it seems to me, in cases of litigation under section 75, it is most desirable that the position of the company be not altered or disturbed more than is absolutely essential between the presentation and the hearing of the petition. The existing share structure, the existing contractual rights, the present service contracts and so forth, should in my judgment be maintained as they are pending the determination of the litigation. There might be circumstances where change was essential, but if possible the existing position should be preserved. In my judgment, that is a factor which in these matters arising under contributories petitions is particularly powerful and has more than the normal "Cyanamid" force in favour of preserving the status quo, since it is the very nature of this matter that the status quo must affect the remedy which may be available."

41. In short, therefore, in the context of an unfair prejudice petition, so it was held, the position of the company should not be altered more than was essential between the presentation and hearing of the petition. What I take from this is that, in general terms, the starting point in such cases should be to preserve the status quo.

42. The next case of relevance to which my attention was drawn was ***Re Posgate & Denby (Agencies) Ltd*** [1987] BCLC 8. Again, this was an application for an interim injunction within an unfair prejudice petition – this time to restrain a company and its directors from disposing of a substantial part of its business. ***Re a Company*** was not

[7] At 82I-83B

cited but in any event there appears to have been a different dynamic in play. As Hoffman J said[8] (again with underlining added):

> "The position is therefore that if I grant an injunction and allow the holders of a majority of the equity shareholders the right to veto the transaction, there is a risk (to put the matter no higher) of thereby causing irreparable harm to the company and its shareholders as a whole. If I refuse the injunction and the transaction turns out on the hearing of the petition to have been unfairly prejudicial to Mr. Posgate, he can in my judgment be fully compensated by orders which enable him to receive the value his shares would have had if the transaction had not taken place."

43. The passage underlined above derives from the fact that, as is well established, where an unfair prejudice petition is made out, the court has extremely wide and unfettered powers under (what is now) section 996 of the CA 2006 when ordering a remedy[9]. This, of course, is a double-edged sword for a petitioner seeking interim injunctive relief. On the one hand, the fact that the court has such wide powers is to his/her advantage should he/she be successful at trial; on the other hand, it is because of those same wide powers that a court hearing an application for interim injunctive relief may conclude that an interim injunction is unnecessary precisely because any harm caused in the meantime can be effectively remedied by the final order made at trial.

44. This is all the more so, it is clear, where (as in ***Re Posgate & Denby***) the relief sought by the petitioner is for a "buy-out order" – in other words, an order that the unsuccessful respondent is to buy-out the shares of the successful petitioner. Indeed, as neatly summarised in ***Minority Shareholders: Law, Practice and Procedure*** (6th edition) at 8.73:

> "Even if he manages to establish an arguable case, a petitioner may be denied an interim injunction if the court considers that he can be adequately compensated financially. In this context, it is usually possible adequately to compensate the petitioner by making appropriate adjustments to the valuation of his shares pursuant to a buy-out order. In a case where the petitioner can be adequately compensated in

[8] At 15d-e
[9] See, for example, ***Re Bird Precision Bellows Ltd*** [1986] Ch 658 at 669

this manner, the court may be less willing to grant an injunction pending trial, even where the effect of its refusal to do so would be to depart from the status quo."

45. In ***Williams v Brinkmann*** [2004] EWHC 601, however, the court had to consider the position where the relief sought by the petitioner included not just a buy-out order but the less commonly sought "sale order" – in other words, an order that the unsuccessful respondent is to sell his/her shares to the successful petitioner. In that case, the petitioner was not only a minority shareholder in the company but also its managing director. For various reasons, he presented the underlying unfair prejudice petition in which the primary relief sought was a sale order under which the majority shareholder third respondent would be required to sell its 90% shareholding to him at an independent valuation. At the same time, the petitioner issued an application within the petition for an interim injunction to restrain his removal as managing director pending the outcome of the petition. It is also worth noting that, not dissimilar to the present case, the petitioner was the subject of "undoubtedly serious allegations"[10] as to his conduct which had yet to be tested or tried but, if made out, may well have justified his removal.

46. In any event, after recounting the factual background and citing the above passage in ***Re a Company***, the judge went on to state:

> "53. Whilst there is an arguable case for [the petitioner] obtaining an order entitling him to buy out [the third respondent]… the status quo should be preserved, if this can be achieved in a manner which sufficiently protects the interests of the Respondents."

47. The next case to which I was referred was ***Pringle v Callard*** [2007] EWCA Civ 1075. Here, the petitioner had presented an unfair prejudice petition in which the primary relief sought was once again the more commonly sought buy-out order. The petitioner then applied for and was granted interim injunctive relief under which the respondents were prohibited from removing the petitioner as a director of the company pending the final determination of the petition. The respondents then appealed to the Court of Appeal.

[10] At [40]

48. In her judgment (with which Thomas LJ agreed), Arden LJ cited the above passage of Harman J from ***Re a Company*** before stating:

> "25. In my judgment it is very important to read what [the judge][11] said against the background of those facts. He had in mind a situation where the refusal of the interim remedy could affect the remedy that might be available at trial. Accordingly, when [the judge] says that "it is the very nature of this matter that the status quo must affect the remedy which may be available", he is referring to the very nature of the matter which was before him, and his observations as to the desirability of maintaining the status quo being a particularly powerful matter in a contributory's petition apply where, and only where, the failure to maintain the status quo may affect the remedy sought in the petition.
>
> 26. It is a very different matter where the remedy sought at the end of the day is a buyout and where the matters complained of on an interim basis can be taken into account in the process of the valuation of the shares for the buyout."

49. Then, after referring to ***Re Posgate & Denby***, Arden LJ went on to state:

> "27. So Hoffman J refused on that basis to grant an interim remedy in a Section 459 petition when an order was sought seeking to enjoin the disposal of certain of the company's assets. He said that that could all be dealt with at the stage when the valuation of shares was being done if the petition was successful. Accordingly, as I see it, when considering the grant of interim remedies the court must consider whether there is an issue to be tried and, if there is, then the court has to consider whether there is an adequate remedy at the end of the day for the petitioner."

50. The court then went on to consider certain undertakings which had been given by the respondents and, having concluded that they were sufficient to protect the petitioner's position pending the final determination of the petition, allowed the appeal and discharged the interim injunctions.

[11] The judgment refers to "Hoffman J". This should, I think, read "Harman J".

51. Finally, I was referred to ***Mission Capital plc v Sinclair*** [2008] BCC 866. Unlike the other authorities referred to above, the underlying matter was not an unfair prejudice petition but was instead in the context of a potential derivative claim by applicants who had had their directorships and employment terminated. The matter did, however, involve an interim application by which the applicants sought mandatory injunctions requiring their directorships and employment to be reinstated. When considering the issue of the balance of convenience Floyd J said:

> "31. Balancing the respective cases of the parties, I have no hesitation in finding that the balance of justice is plainly in favour of refusing injunctive relief. First, it seems to me that to restore the Sinclairs to their executive positions under the control of a board of directors with whom they are locked in litigation is a recipe for strife at the workplace. Secondly, the concern felt by the Sinclairs about the future of the company is no doubt genuine, but it is by no means certain that the company will not manage satisfactorily without them. Thirdly, even if the relative injustices on the Cyanamid basis (***American Cyanamid Co v Ethicon Ltd*** [1975] AC 396) were evenly balanced, which I do not think they are, they are certainly not so heavily weighted in favour of the Sinclairs to justify granting mandatory relief of the kind sought here."

52. Quite clearly then, when considering whether or not to grant interim injunctive relief, the fact that parties whose relationship has clearly broken down may, if interim relief is granted, be forced to work together is a factor which may be taken into account when weighing up the balance of convenience.

53. In any event, taking these various authorities as a whole, it seems to me that the following broad propositions can be reached when considering the grant of interim injunctive relief in the context of an unfair prejudice petition:

(1) The requirement for an applicant to satisfy the second stage of the three-stage ***American Cyanamid*** test, namely, that damages[12] would be an inadequate remedy, applies just as much to an unfair prejudice petition as it does to any other form of underlying proceedings.

(2) When considering whether or not damages would be an inadequate remedy, a convenient starting point will be, as Harman J said in ***Re a Company***, that the position of the company should be not altered or disturbed more than is absolutely essential between the presentation of the petition and its final determination at trial.

(3) Where, however, the petitioner ultimately seeks a buy-out order (requiring the respondent to buy him/her out), the remedies available to the trial judge hearing the petition under (what is now) section 996 of the CA 2006 are so wide and unfettered that they will often be considered adequate to compensate the petitioner – who in this scenario would be having a clean break from the company - from any wrongs carried out between the presentation of the petition and its final determination at trial. In such circumstances, it is likely that interim injunctive relief will be refused: see, for example, ***Pringle***.

(4) Where, on the other hand, the petitioner ultimately seeks a sale order (requiring the respondent to sell his/her shares to the petitioner), although the remedies available to the trial judge hearing the petition under section 996 of the CA 2006 are, as stated above, wide and unfettered, it is less likely that those remedies will be considered adequate to compensate the petitioner – who in this scenario would be remaining in, or even taking control of, the company – from any wrongs carried out between the presentation of the petition and its final determination at trial. In such circumstances, interim injunctive relief is more likely to be granted: see, for example, ***Williams***.

54. Having considered the above case law, I now turn to consider each stage of the above three stage test.

[12] Although the word "damages" is used throughout the authorities, as Hoffman J observed in **Re Posgate & Denby**, in the context of an unfair prejudice petition: *"One cannot literally ask whether damages would be an adequate remedy because section 461 [now section 996 of the CA 2006] does not provide for an award of damages at common law. But the section allows the court to order various forms of financial compensation."*

Serious issue to be tried

55. The first stage of the ***American Cyanamid*** test is for the court to consider whether there is a serious issue to be tried. While this itself was of course uncontroversial, there was an issue between counsel as to what, in the context of the present case, that issue actually was.

56. In summary, the Browns argued that the question was whether there was a serious issue to be tried on the underlying unfair prejudice petition. The Respondents, however, invited me to take a more nuanced approach and consider whether there was a serious issue that the conduct which the Browns sought to restrain would, if committed, violate the Browns' legal rights.

57. It seems to me that the Respondents' approach is, with respect, overcomplicating the robust and practical procedural tool that is the interim injunction. An application for an interim injunction takes place within underlying proceedings – it is a battle within a war. Its purpose is to regulate the position until the trial or other final determination of those underlying proceedings. At the interim injunction stage, the court will not be in a position to know whether the party applying for that interim relief will ultimately win or lose at trial – and it will rarely, if ever, be appropriate for a court to undertake at this interim stage a mini-trial. It is for this reason that the battleground for most interim injunction applications will be the issues of the adequacy (or otherwise) of damages and the balance of convenience. Having said that, it is plain that there would be little justice in granting an interim injunction where the applicant did not even have a serious issue to be tried. It is for this reason that in the case law the courts have set the threshold as they have. While an applicant for an interim injunction does not have to satisfy the court of the merits of the underlying claim in the same way as would be required at trial, he/she must at least show that in relation to the underlying claim there is a serious issue to be tried.

58. In my judgment, therefore, the question I have to ask in relation to this first stage is whether there is a serious issue to be tried in relation to the underlying unfair prejudice petition. Quite clearly, there is – the petition is long and complex and undoubtedly raises serious issues which can only be properly determined at trial. In

my judgment, the issue of the extent to which the conduct which the Browns now seek to restrain would violate their legal rights is more a matter for the remaining stages of the test and/or the form of any order if granted.

59. In short, therefore, I find that there is a serious issue to be tried and that the first of the three-stage tests is satisfied.

Would damages be an inadequate remedy?

60. Moving to the second stage, the principle is clear. When granting an interim injunction, the court does not at that stage know whether the party applying for the interim injunction is ultimately going to win or lose. Although as discussed above, an applicant needs to show that he/she has raised a serious issue to be tried, there will often be cases where a party can show that they do have a serious issue to be tried but will ultimately nevertheless lose at trial. There is therefore a real risk that a party who is ultimately successful at trial will for a period of time be subject to an interim injunction. And it goes without saying that even an injunction which is in place only for an interim period can cause harm.

61. It is for this reason, of course, that interim injunctions are not to be granted lightly. Accordingly, even if an applicant has an otherwise strong case for interim relief, if ultimately it is felt that the continuation of any alleged wrong pending the final determination at trial can be properly compensated in money, that applicant will be denied interim injunctive relief and will instead, if they are indeed successful at trial, have to seek recompense through damages or other monetary relief. Where, on the other hand, damages would not be an adequate remedy – where the applicant would suffer loss or harm which could not realistically be compensated in monetary terms – then interim injunctive relief may well be appropriate after all. Further, all of the above has to be considered in the light of the case law applicable specifically to interim injunctive relief as summarised in paragraph 53 above.

62. In the present case, the Browns argue that damages would not be an adequate remedy. They say that if I were to refuse to grant an interim injunction and that as a result the disciplinary hearings were to take place resulting in their dismissal, they would suffer

harm which, according to them, would not be capable of compensation in monetary terms or other relief in the event of them ultimately being successful on the petition at trial. This is particularly the case, so the Browns say, given that the primary relief they seek on the petition is a sale order under which they want MML to be ordered to sell to them its shares. This is not, therefore, a case where if they are successful on the petition they will have nothing more to do with the business; on the contrary, if they are successful, they hope to continue working for the business and indeed re-take control of the same.

63. Of particular concern to the Browns is that if the disciplinary hearings are allowed to take place, they fear that not only will they be dismissed but they will almost inevitably be deemed Bad Leavers or Very Bad Leavers in which event they could be deprived of their shareholding in Holdco for a nominal sum and, moreover, Bidco would become entitled to redeem their loan notes for a nominal sum.

64. In response, the Respondents raise a number of points. First, they argue that it is wrong to suggest that, if interim injunctive relief were to be refused, any losses suffered by the Browns pending trial would be irremediable. In particular, on the basis of the passages referred to above in ***Re Posgate & Denby*** and ***Pringle***, they submit that, in the event of the Browns ultimately being successful at trial, the powers of the court under section 996 of the CA 2006 are so wide that there would be little difficulty in granting a remedy which could take into account not only the various wrongs forming the subject matter of the petition but also any additional harm which may have been suffered in the period between presentation of the petition and trial.

65. Attractively as this argument was put, however, I am not persuaded. First and foremost, I take into account that the primary relief sought by the Browns is a sale order – if successful at trial the Browns will not be ending their association with the business but instead will be re-taking control of it. This being the case – and applying the principles set out in the case law set out above and summarised in paragraph 53 above – it seems to me that the starting point should be that the status quo should be maintained and that the position of the company should be not altered or disturbed more than is absolutely essential unless I can be properly satisfied that any matters

which take place between now and the final determination at trial could be fairly and adequately remedied by the final relief at trial.

66. As to this, it seems to me that if I were to decline to grant interim injunctive relief, the disciplinary hearings would no doubt go ahead in which event there would be a real risk that the Browns would be dismissed as Bad or Very Bad Leavers and would then be deprived of their shares and have their loan notes redeemed for nominal sums. While I accept of course that the trial judge making the final determination on the petition would have the very wide powers described above under section 996 of the CA 2006, it nevertheless seems to me that the more radical and drastic the steps taken over the interim period, the less likely it is that the Browns would be properly compensated for (what would be on this hypothesis) the wrongful steps taken in the interim period prior to trial. Indeed, the more that has happened in relation to the internal organisation of the business, not only will it be more difficult for a trial judge – even with the above wide powers – to effectively restore the Browns to the position they would otherwise have been in but for those wrongful acts, but also there is a real risk that the trial judge will (quite naturally) feel less inclined to intervene and reverse what could be a complicated series of transactions – particularly if a significant amount of time has passed prior to that final determination at trial.

67. I also take into account that there is, at the very least, a real argument that under the terms of the contractual documentation between the parties (including in particular the articles of association and the loan stock instruments) in the event that any summary dismissal of the Browns is subsequently found to be unlawful or wrongful, the Browns would nevertheless still be contractually deemed to be Bad or Very Bad Leavers – and therefore still liable to have their shares bought and their loan notes redeemed at a nominal price. This being the case, there must be some doubt as to the extent that the trial judge determining the petition would want or feel able to interfere with an outcome which (partly at least) was the result of the contractual arrangements freely negotiated between the parties. In short, this only reinforces my view that, if I were to refuse to grant interim injunctive relief and the Browns were later dismissed and designated as Bad or Very Bad Leavers (with the very dire consequences set out above), there is real risk that the same would, at least in part, be irreversible and/or

not properly remediable even taking into account the very wide powers under section 996.

68. Overall, therefore, it seems to me that if I were to refuse interim injunctive relief, damages (or the other relief available under section 996 of the CA) would not be an adequate or fair remedy. This being the case, the second stage of the three stage ***American Cyanamid*** process is satisfied too.

The balance of convenience

69. Finally, then, I turn to the balance of convenience. Weighing up the arguments on all sides, it seems to me that it is clear that that balance does favour the grant of interim injunctive relief. In particular:

(1) The Browns set up the business from scratch. It is their baby - and they want it back. The Browns may or may not win at trial but, in case they do - and given that they seek a sale order - it seems to me that the balance favours maintaining the status quo in terms of the internal organisation of Holdco (and its subsidiaries) so far as reasonably possible. Refusing an interim injunction would be likely to result in very radical and far-reaching changes to such internal organisation which, as explained above, may not be readily reversible or otherwise remediable.

(2) By contrast MML has only been involved in Holdco and the underlying business for a relatively short period of time. Moreover, its involvement is as an investor such that its interest is purely financial. If ultimately the Browns are unsuccessful at trial there is no reason why MML could not be adequately compensated by money by way of the usual cross-undertaking in damages (for which, see further below).

(3) The Respondents argue that granting interim injunctive relief would effectively result in the parties being forced to work together in circumstances where the relationship between them has quite clearly broken down. I bear in mind the guidance given in ***Mission Capital*** but I also bear in mind that this situation – with the parties at loggerheads - has been in place for over a year now. Although no doubt the working atmosphere must be less than pleasant, there is no evidence before me to suggest that

if the Browns were to stay in their roles for a further period until trial the business would suffer in any material way.

(4) A further particularly important factor, in my judgment, is that making an order putting the disciplinary hearings on hold until after the trial would be doing no more than that which PIE proposed in the 2 July Email. Even if I am wrong about the arrangement set out in that email being legally binding, it is nevertheless undeniable that as at 2 July 2019 PIE was content for the disciplinary hearings to be put on hold until trial. At that time, at least, it cannot have believed that keeping the Browns in post until trial was going to cause the business to suffer any serious harm.

(5) I also take into account the fact that in addition to the Browns there are other disciplinary hearings in relation to other employees which have also been put on hold. PIE therefore argues that it is unfair to those employees – and indeed potentially damaging to the business – to keep those employees hanging too. Again, however, I note that this does not appear to have been a concern of PIE at the time that its solicitors sent the 2 July Email (whether legally binding or not). I am also sceptical of the suggestion that those other disciplinary proceedings cannot take place until those of the Browns have been held. I can see that in an ideal world, free of any unfair prejudice petition, PIE would wish first to conduct the disciplinary hearing against the alleged principal perpetrator (namely, Mr Brown – not Mrs Brown). Yet the mere fact that PIE may be injuncted from conducting the disciplinary hearing against Mr Brown does not mean, so it seems to me, that PIE cannot conduct any other disciplinary hearings now against those other employees if it really thinks that holding those in suspense too would be likely to cause any real problems for the business.

(6) It is also argued that if interim injunctive relief were to be granted and the Browns were to stay in their position until trial that there is a real risk that PIE would suffer reputational damage within the industry. Again, however, I note that the current dispute has been ongoing for over a year without any evidence of material damage to the business - and once again, I note that (whether legally binding or not) as at the time of the 2 July Email at least, PIE was apparently content to allow the Browns to remain in place pending trial.

(7) Finally, I have taken into account the evidence from the Browns that, in the event of them being successful at trial and obtaining a sale order entitling them to buy MML's shares, they would do so with the assistance of a financial backer. Their concern, however, is that if they are summarily dismissed (and then stripped of their shares and have their loans notes redeemed at a nominal value) there is a real risk, so they believe, that they will lose the support of that financial backer in which event they would not be in a position to complete any sale order thereby making the petition pointless. It seems to me that there is force in this argument and I should be slow to decline an injunction where there is a real risk that to do so might effectively stifle what may turn out to be a meritorious petition.

70. I should add that in coming to the above view, I have also carefully considered the various arguments on behalf of both PIE and MML that the present application for interim injunctive relief is premature if not misconceived. While originally it had been PIE's intention that the disciplinary hearings against the Browns would be conducted by one of the directors of MML (in other words, a director of the primary respondent to the underlying unfair prejudice petition), PIE has since confirmed that any such disciplinary proceedings would now be conducted by an independent barrister specialising in employment law. This being the case, so it is argued, there can be no question of any unfairness in the conducting of the disciplinary hearings themselves – any alleged unfairness would be in relation to any steps taken subsequently by PIE or MML in the event that that independent barrister were to find wrongdoing on the part of the Browns.

71. In particular, so PIE and MML say, if the Browns do have any cause for complaint (which they do not accept), it would be in relation to PIE acting on the recommendation of the independent barrister by taking the step of summarily dismissing the Browns, or by MML then acting on that summary dismissal by taking the step of serving a transfer notice thereby setting in motion the process of the compulsory purchase of the Browns' shares and/or the redemption of their loans notes at a nominal price.

72. On this basis, so it is submitted, the Browns' current application is (at the very least) premature. Instead, the disciplinary hearings should be allowed to take place and only

in the event that wrongdoing is found against the Browns, and there is then reason to believe that PIE is proposing to act on that finding by dismissing them and/or MML is proposing to act on any such dismissal by serving a transfer notice, that the Browns should bring their application for interim injunctive relief. This is all the more so, according to PIE and MML, given certain undertakings given by each during the course of the proceedings. Indeed, at the close of oral submissions, counsel for PIE (and Holdco and Bidco) offered an undertaking that if the disciplinary hearings were allowed to take place, it (they) would not act on the recommendation of the independent barrister for a period of 7 days after that recommendation had been given (thereby giving the Browns time to issue an application for interim injunctive relief at that time). Similarly, in its skeleton argument MML indicated that, in the event of PIE summarily dismissing the Browns, it would wait at least 14 days before serving any relevant transfer notice and/or would give 14 days' notice of any intention to do so (again, therefore, giving the Browns time to issue an application for interim injunctive relief at that time).

73. In my judgment, however, the above argument somewhat misses the point. The underlying allegation made by the Browns (which may or may or not be well made) is that the entire investigatory and disciplinary process has always been a charade (or at the least opportunistic) and in any event has always had a pre-ordained outcome of removing the Browns. I stress that there is absolutely no suggestion that the independent barrister who has (relatively recently) been invited to conduct the disciplinary proceedings is indeed anything other than impartial. Nevertheless, given (what they say is) the tainted approach to the investigation, together with the fact that there will be no disclosure or proper testing of the apparent evidence against them, it is the Browns' case – as pleaded in the petition – that the whole process is part of the unfairly prejudicial conduct of which they complain. This, of course, will ultimately be a matter for trial at which the Browns may or may not succeed. For present purposes, however, I am, as I have already indicated, proceeding on the basis that there is at the very least a serious issue to be tried and it seems to me that there is no reason in principle why I should not injunct the allegedly tainted process now rather than wait until a bit further along the line. Nor would putting the matter off to a later day be a sensible or proportionate use of either the court's or the parties' resources. If I were to dismiss the matter on the basis of it being premature, there is a real risk that

the parties would be back in court in a few months' time arguing materially similar points all over again.

74. Overall, therefore, and as I have already indicated, when weighing up all relevant matters it seems clear to me that the balance of convenience (or the balance of justice to which it is sometimes referred) is clearly in favour of interim injunctive relief being granted. In short, therefore, in my judgment the third and final stage of the three stage ***American Cyanamid*** test is also satisfied.

Cross-undertaking in damages

75. One further important matter which I have to consider, however, is the question of a cross-undertaking in damages – something which has often been described as the quid pro quo or the price which an applicant must pay in return for the grant of interim injunctive relief. If the court is not satisfied that a respondent is sufficiently protected in the event of the applicant ultimately being unsuccessful at trial, this may well be a reason for refusing interim injunctive relief which would otherwise be granted.

76. In the present case, the Browns have offered such a cross-undertaking. The issue, however, is the adequacy of that undertaking – in other words, in the event that they lose at trial and it is found that those injuncted have suffered financial loss as a result such that the cross-undertaking comes into play, do the Browns in fact have sufficient funds to make good that cross-undertaking?

77. In short, the Browns say that they do indeed have sufficient assets and, in particular, point to their shares and loan notes which are on any basis worth significant sums. I take into account, of course, that the cross-undertaking will only come into play in the event that the Browns are unsuccessful at trial in which event they may well in due course be designated as Bad or Very Bad Leavers resulting in their shares and loan notes being redeemed at a nominal sum. I also note, however, that it is only in the event of them being designated as Very Bad Leavers will the entirety of those assets be valued nominally – if they are designated merely as Bad Leavers, while they will lose a significant amount of their wealth, they will still have to be bought out for a not insubstantial sum. I also note that even in the event of them being designated as Very

Bad Leavers – which would involve findings of fraud or material dishonesty – they would still retain the nominal value of those assets. In circumstances where there is no evidence of what, if any, financial losses those injuncted would suffer, I am not prepared to find that the cross-undertaking in damages offered by the Browns is not sufficient – particularly where, whether legally binding or not, by the 2 July Email PIE at least was prepared to put the disciplinary hearings on hold pending trial without any such undertaking from the Browns.

Conclusion regarding interim injunction on *American Cyanamid* principles

78. In conclusion, therefore, even if I had not found for the Browns on their primary case, I would nevertheless have granted them interim injunctive relief on their alternative case on classic ***American Cyanamid*** principles.

PART V: OVERALL CONCLUSION

79. In conclusion, therefore:

(1) In my judgment, PIE's promise to put the disciplinary hearings on hold pending the final determination of the petition was legally binding. I will therefore grant a final injunction broadly in the terms sought – in other words, that pending the final determination of the petition, PIE is prohibited from proceeding with the proposed disciplinary hearings against the Browns.

(2) Even if I am wrong as to the above, I would nevertheless have granted the Browns interim injunctive relief on classic ***American Cyanamid*** principles – again, broadly in the terms sought – in return for an appropriate cross-undertaking in damages from the Browns.

80. I will invite the parties to draw up an appropriate order. If the parties are able to agree terms, it may be possible that it can be approved without the need for a further hearing. If, however, no such agreement is possible - whether in relation to which respondents need to be formally injuncted (as opposed to merely being on notice of

such injunction), costs or otherwise – a further short consequentials hearing can be listed on a convenient date.

81. I conclude by expressing my gratitude to all counsel for the thorough and helpful way in which the matter was presented both in writing and orally.

22 January 2020