

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Rolls Building, New Fetter Lane
London, EC4 1NL

Date: 4 March 2020

Before :

Mark Cawson QC
Sitting as a Deputy Judge of the High Court

Between :

(1) INTERMEDIA PRODUCTIONS LIMITED

(2) SHARAD CHANDRA PATEL

Petitioners

- and -

(1) VIJENDRA SHARAD PATEL

(2) URVESH SHARAD PATEL

(3) HASMITA SHARAD PATEL

(4) LALITABEN SHARAD PATEL

(5) IBHADEVI DEVCHAND SHAH

(6) DIMPLE RAJENDRA PATEL

(7) HEMALA SHANTUPRASAD PATEL

(8) ASHIA CENTUR LIMITED

Respondents

Richard Colbey (instructed by **Singhania & Co**) for the **Petitioners**
Stephen Schaw Miller (instructed by **Keystone Law**) for the **First to Fourth Respondents**

Hearing dates: 22-25, 27 and 29 January 2020

APPROVED JUDGMENT

Introduction

1. By a petition presented on 1 November 2017 (“**the Petition**”), the petitioners, Intermedia Productions Ltd (“**Intermedia**”) and Sharad Chandra Patel (“**Mr Patel**”) (together “**the Petitioners**”) seek relief pursuant to s. 994 of the Companies Act 2006 (“**the 2006 Act**”), alleging that the affairs of the above company, Ashia Centur Ltd (“**the Company**”), have been conducted in a manner unfairly prejudicial to them.
2. The Petition is actively opposed by the first to fourth Respondents, who I shall refer to as “**the Respondents**”. The other Respondents have played no active part in the proceedings, and seemingly have not even been formally served.
3. The essence of the Petitioners’ case is that the Company was, from 2007, properly to be regarded as a quasi-partnership in consequence of the close familial relations of the relevant parties and/or understandings that it is alleged had been reached between the relevant parties in or about 2007 (“**the 2007 Understandings**”), so as to give rise to equitable considerations which the Court is required to have regard in considering whether the affairs of the Company have been conducted in an unfairly prejudicial manner.
4. It is then alleged that the first to fourth Respondents acted contrary to those equitable considerations and/or in breach of their duties as directors of the Company in a number of respects, and in particular:
 - 4.1. By taking steps in 2009 and 2010 that purported to deprive the Petitioners of some of their shares, and to wrongly appropriate those shares;
 - 4.2. By purporting to appoint the second, third, and fourth Respondents as directors of the Company in January 2015;
 - 4.3. By purporting, in February 2017, to remove Mr Patel as a director; and
 - 4.4. In failing to provide the Petitioners with information about the Company’s affairs.
5. However, it is common ground between the Petitioners and the Respondents that the key underlying issue between the parties is as to who is entitled to the issued share capital of the Company, and thus as to who is entitled to control of it.
6. The Petition seeks a declaration that the shareholdings in the Company are as set out in paragraph 22 of the Petition, reflecting the position as set out in an annual return submitted to Companies House on 17 December 2007. In their Points of Defence, the Respondents contended for the position as set out in an annual return submitted on 5 January 2011. It is apparent from the statements of case that the parties have based their respective pleaded positions upon what they

respectively contend was the last agreed position between certain of the relevant the parties, as reflected in annual returns.

7. However, in the course of submissions, Richard Colbey who appeared for the Petitioners, and Stephen Schaw Miller who appeared for the Respondents, each recognised that this was not the correct approach to determining share ownership, and that the starting point was that the Company's register of members, when last updated in 1992, showed only two issued shares, one held by Mr Patel and the other by the fifth Respondent, Ibhadevi Devchand Shah ("**Ms Shah**"), and that true entitlement to shares would depend upon the validity, or deemed validity in the event of there being unanimous shareholder assent, of procedural steps purported to have been taken thereafter with regard to the issue and transfer of shares.
8. The Petitioners' primary position thus became that Mr Patel held one share and Ms Shah one share, and that subsequent allotments of shares were invalid, but that if subsequent allotments and transfers were valid, then the 2007 position originally contended for by the Petitioners prevailed, but Mr Colbey did not advance with any enthusiasm a reasoned case as to how one got to that latter position. On behalf of the Respondents, Mr Schaw Miller contended that the correct position was as reflected following an allotment of shares in 2003, and that the subsequent representations as to the position in a number of annual returns were not reflective of any subsequent valid or effective transactions.
9. It is fair to say that Mr Colbey and Mr Schaw Miller, to whom I am grateful for their helpful written and oral submissions, did not draft the statements of case and were both instructed very late in the day.
10. The fact that on the Petitioners' own case they, or one of them (Mr Patel, possibly together with Ms Shah, who is a close friend of Mr Patel), are entitled to exercise control and that the Respondents are not, does, as Mr Colbey recognised, raise a fundamental difficulty in seeking relief pursuant to s. 994 of the 2006 Act to which I shall return. For this reason Mr Colbey invites me, at this stage, simply to make an appropriate declaration as to share ownership, an approach that Mr Schaw Miller contends is misconceived, Mr Schaw Miller contending that the Petition ought simply to be dismissed without the making of any declaration as to share ownership.
11. It will be apparent therefore that the background to the case is complicated by the failure of the Company to maintain a register of members after 1992, and the practice of making annual returns recording allotments of shares for which there is no evidence of the necessary formalities for the issue of shares being carried out, and transfers of shares for which there is no evidence of the relevant transfers actually having been made. This lack of formality is somewhat surprising bearing in mind that the Company is the owner of underdeveloped land adjacent to the North Circular Road in London ("**the Wembley Land**") that

may be worth significantly in excess of £100m.

12. The position is further complicated by the involvement of the parties with various family trusts established in Jersey, business entities in Kenya, and various offshore companies, some of which themselves raise disputed questions of ownership that cannot be resolved on the evidence before the Court.

The Petitioners

13. Mr Patel, who now 82 years old, describes himself as a successful film producer, director and businessman, especially in property development. It is clear that the Patel family's involvement in the film industry has generated significant income over the years, that has led to the use of the Jersey trusts and the offshore companies that I have mentioned. There is an issue, to which I will return, as to whether Mr Patel is properly to be regarded as the sole effective generator of this income as he sought to maintain in the course of his evidence, or whether, as the Respondents maintain, the involvement in the film industry was very much more of a family affair, with the various members of Mr Patel's family playing a significant part, in particular, Mr Patel's late son, Rajendra Patel ("**Rajendra**"), who was himself a film producer based in Hollywood.
14. Intermedia was incorporated in the Cayman Islands on 25 October 1976. The entire issue share capital of Intermedia is in Mr Patel's name, but there is an issue as to whether the shares are held for himself beneficially, or, alternatively, for the benefit of Rajendra's estate and/or the first Respondent, Vijendra Sharad Patel ("**Vijendra**") as an asset of one of the family trusts, as the Respondents maintain.
15. There is no doubt that Mr Patel has locus standi to petition under s. 994 as a "member", within the definition in s. 112(2) of the 2006 Act, being a person who had agreed to become a member and whose name has been entered on the register of members. However, the same cannot be said of Intermedia whose name does not appear on the register of members, nor is locus standi conferred on Intermedia by s. 994(2) of the 2006 Act. Even if, contrary to the Petitioners' own now primary case, and the Respondents' case, Intermedia was entitled to have the register rectified to show it as a member, the register would require to be formally rectified before locus standi could be conferred to present a petition under s. 994, cf. *Re Starlight Developers Ltd* [2007] BCC 929. However, nothing probably turns on this given that one of the Petitioners, Mr Patel, plainly does have locus standi in any event.

The Respondents

16. The first to third Respondents, Vijendra, Urvesh Sharad Patel ("**Urvesh**"), and Hasmita Sharad Patel ("**Hasmita**") are Mr Patel's surviving children.
17. The fourth Respondent, Lalitaben Shard Patel ("**Mrs Patel**"), is Mr Patel's

estranged wife, and the mother of Vajendra, Urvesh and Hasmita.

18. The fifth Respondent, Ms Shah, is a close friend of Mr Patel's who lives in Kenya. Whilst she may have been notified of the proceedings, they have not been formally served on her, and she was not represented before me.
19. The sixth Respondent, Dimple Patel ("**Dimple**"), is the widow of Mr and Mrs Patel's late son, Rajendra Patel ("**Rajendra**"), who died in October 2005. Dimple lives in Mumbai. There is no evidence of any grant of probate or letters of administration, or of alternative foreign probate procedure having been initiated to as to constitute anybody as Rajendra's personal representative. Further, the proceedings have not been served on Dimple. Consequently, Rajendra's estate cannot properly be regarded as being before the Court.
20. The seventh Respondent, Hema Patel ("**Hema**") is a doctor, and Mr Patel's current partner. She lives in London. Hema was present in court during the trial accompanying Mr Patel, but was not formally represented, and has taken no active steps in the proceedings even if, which it is unclear, she was ever formally served.
21. The Company is formally joined as eighth Respondent.

Other relevant individuals and entities

22. An important witness called by the first to fourth Respondents was Rajnikant Champaklal Jani ("**Mr Jani**"), a chartered accountant and principal of Jani Taylor Associates Limited, an accountancy firm. Mr Jani began to provide accountancy services to the Company upon acquiring the practice of Admoss Taylor, which he renamed, from a Mr Taylor in 1997. He has provided such services to the company from time to time thereafter.
23. Caversham Trustees Limited ("**Caversham**") is a Jersey based professional trustee company which acted as, or provided corporate trustees of offshore family trusts, including the Huvlir Trust, the Rainbow Trust and the Filmcorp Trust (together "**the Family Trusts**"). The individual at Caversham principally involved was Stephen Whale ("**Mr Whale**"). In about 2001, a dispute arose between Caversham and Mr Patel as to the fees that should be paid to Caversham. Caversham brought proceedings in Jersey in respect thereof. Ogier, lawyers based in Jersey, acted for Mr Patel in respect of these proceedings, the beneficiaries initially being separately represented. An order was made on 26 August 2004 in the Jersey courts providing a framework for the settlement of that dispute ("**the 2004 Jersey Order**"), by which time Ogier acted in the proceedings for Mr Patel and the beneficiaries of the respective Family Trusts.
24. Nyconnit NV is a company incorporated in Curacao in 1985 as an asset of the Huvlir Trust. As referred to in more detail below, in 1998, the Company purports to have increased its share capital, and to have issued 149,998 shares to

Nyconnit NV, making Nyconnit NV the holder of all but two of the Company's issued shares, if such issue of shares was valid and effective.

25. Nyconnit (Jersey) Limited ("**Nyconnit Jersey**") is a company incorporated in Jersey in 1999. It was incorporated by Caversham when the latter was acting as trustee of the Family Trusts, and the shares therein were held for the benefit of the Filmcorp Trust. As to this company:

25.1. The evidence suggests that in February 2000 Caversham caused Nyconnit NV to transfer its 149,998 shares in the Company to Nyconnit Jersey – see Caversham's letters dated 22 February 2000 to Mr Patel and Mr Jani. The share capital of Nyconnit Jersey was transferred to Mr Patel on 18 November 2004, apparently pursuant to the 2004 Jersey Order which, as far as relevant provided:

"1. the Filmcorp Settlement shall be terminated and the assets distributed in accordance with paragraph 1.1 below ...

1.1 The assets of the Trusts shall as set out above be distributed by the Representor to [Mr Patel] or to any other person, on the written directions of all beneficiaries of the Trusts;"

25.2. There is an issue between the parties as to the effect of this provision, in particular as to whether it conferred absolute beneficial ownership on Mr Patel in respect of the shares in Nyconnit NV, or whether Mr Patel was to be subject to the directions of the beneficiaries. This is not an issue that falls to be resolved in the present proceedings, and which it is impossible to resolve on the evidence before the Court.

25.3. There is a further issue as to whether Nyconnit Jersey transferred its shares in the Company to Intermedia. Although an annual return was submitted by the Company on 19 May 2006 showing Nyconnit Jersey as still holding 149,998 shares, a further annual return was submitted on 12 October 2006 referring to Nyconnit Jersey as having disposed of the shares on 22 May 2006.

25.4. These are issues that I will return to in more detail below, but apart from the absence of any evidence of any share transfer having been executed, a more fundamental difficulty is that the evidence suggests that Nyconnit Jersey was dissolved on 1 October 2005.

26. Huvlir Trust is, or was, a trust declared in Jersey by declaration made on 25 March 1974. The original trustee was Wobaco Trust (Jersey) Limited. The original beneficiaries were Mrs Patel, Rajendra, Vijendra, Hasmita and Urvesh. By an instrument dated 3 December 1976, Ms Shah was added as a beneficiary. Mr Patel was the first (and as far as known only) protector of the trust and was thereby excluded from being a beneficiary. Caversham became the trustee of the Huvlir Trust on 11 June 1980. The Huvlir Trust was also the subject matter of the 2006

Jersey Order, with the latter providing for the Huvlir Trust to be terminated, and for clause 1.1 thereof, referred to above, to apply to the assets specified in the 2006 Jersey Order.

27. The Rainbow Trust is a trust that was declared by Caversham on 13 May 1996. The beneficiaries were Rajendra and Vijendra. The initial asset of the trust when declared was the share capital of Intermedia. According to an affidavit made by Mr Patel on 19 November 2003 in the proceedings brought by Cavenham in Jersey, the relevant shares had initially belonged to the Huvlir Trust, but had been distributed to Rajendra, who then settled the same upon the Rainbow Trust. The 2006 Jersey Order did not in terms provide for the termination of the Rainbow Trust, but merely for the film rights owned by Intermedia to be distributed in accordance with clause 1.1 thereof. Nevertheless, the shares held by the Rainbow Trust in Intermedia were transferred to Mr Patel on 18 November 2004, the same day that Mr Patel, Rajendra, Vijendra and Urvesh were appointed as directors of Intermedia. In a letter dated 23 October 2006, Ogier, the Solicitors then acting for Mr Patel, suggested that the transfer of the shares to Mr Patel may have been a mistake. Again, this is not a matter that requires to be decided for the purposes of the present proceedings, but if the Rainbow Trust was not terminated, then it may well be that Mr Patel acquired the shares in Intermedia subject to the terms thereof.
28. Filmcorp Trust is a trust that was declared by Caversham on 14 December 1999. The beneficiaries were Mr Patel, Lalitaben, Rajendra, Vijendra, Hasmita, Urvesh, and Ms Shah. As I have mentioned, the share capital of Nyconnit Jersey was an asset of this trust, at least prior to the 2006 Jersey Order.

Witnesses and the reliability and credibility thereof

29. Mr Patel was the only witness for the Petitioners.
30. The Respondents called Vijendra, Mr Jani, Urvesh, and Hasmita.
31. The key events in the present case took many years ago, the events of 2003 now having taking place nearly 17 years ago, and the events of 2006 to 2009 having taken place well over 10 years ago. I take into account that, after this length of time, recollections of events are likely to be unreliable, at least unless supported by contemporaneous documentation or the inherent probabilities of the situation.
32. So far as the evidence of Mr Patel is concerned, I take into account that he is now 82 years old. I was informed before he gave evidence that, given the state of his health, it would be desirable if breaks were allowed in his evidence from time to time. I was further told that his partner, Hema, as a doctor, would be able to indicate when his health was affecting the quality of his evidence, so that breaks might be taken as appropriate. There was at least one occasion when I became concerned that Mr Patel was becoming tired and that this was affecting the quality of his evidence. Although Mr Patel indicated that he was content to proceed, understandably stating that he wanted to get his evidence over and done with, I considered it necessary that a break

be taken. I am satisfied that breaks were taken as required, but it remains necessary, in my judgment, in assessing the quality and reliability of Mr Patel's evidence, to take into account Mr Patel's age and the state of his health, and the fact that errors on his part in giving evidence might well be down to this rather than the deliberate giving of false evidence.

33. It is an unfortunate feature of the present case that, for reasons that are not required to be explored further at this stage, there was no proper engagement between the respective parties' Solicitors with regard to the preparation of agreed trial bundles. A consequence of this was that the Respondents produced, late in the day, a number of supplemental bundles. These did, save with one or two relatively minor exceptions, include documents that had been duly disclosed and which might therefore have been expected to have been considered by the respective parties prior to trial. Nevertheless, there was real scope for witnesses, and Mr Patel in particular, to become disorientated by the production to them in cross-examination of bundles produced in this way. I have, again, taken this into account in assessing the reliability and credibility of answers given in respect of documents to which witnesses were taken in the course of cross-examination.
34. Notwithstanding having taken these considerations fully into account, I regret that I found Mr Patel to be an unreliable and unsatisfactory witness. In a number of respects, which I will analyse in the course of determining the factual issues that arise for determination in the present case, Mr Patel's evidence lacked credibility, in particular when dealing with documents that plainly contradicted his case. An example of this was his suggestion under cross examination that Vijendra and Mr Jani conspired together behind his back with regard to the allotment of shares in 2003. The suggestion of such a conspiracy is not supported by the contemporaneous documents, and even Mr Colbey, in cross-examining Mr Jani, was reluctant to put Mr Patel's case in these terms to Mr Jani.
35. As I have touched upon, there is an issue between the parties as to whether the family wealth, as reflected by, amongst other things, the assets within the Family Trusts, was derived from Mr Patel's efforts and endeavours more or less exclusively, as he maintains, or whether it was more properly to be regarded as derived from the efforts of the family as a whole. There is simply not the evidence before the Court to enable me to reach any firm conclusion in relation to this, although the impression that I am left with is that Mr Patel was unwilling fully to recognise the efforts of other members of the family. On the other hand, I was left with the impression that Mr Patel may genuinely consider, rightly or wrongly, that other members of the family were seeking more than they deserved and did not fully appreciate his own role, and that this gave rise to considerable resentment on the part of Mr Patel, in particular for a period of time in and around 2006 when the Respondents began to assert themselves, including in relation to the family interests in Kenya, a resentment that has resurrected itself after steps were taken in 2017 to remove Mr Patel as a director of the Company. I consider that such resentment has served not only to taint the evidence of Mr Patel, but to cause him to give a deliberately false account of

events, and even to create, or cause to be created, false documents in an attempt to bolster steps that he took in 2006 to seek to deprive Vijendra and others of their shares in the Company, if validly allotted to them in 2003.

36. On the other hand, I found Vijendra and Mr Jani to be good, essentially reliable witnesses, whose evidence generally accorded with the contemporaneous documents, and the inherent probabilities of the situation.
37. Having said this, one less than satisfactory feature of the evidence of both Vijendra and Mr Jani was that on occasion they each said they were able to actually recall events that took place up to 17 years ago in a level of detail that it is frankly difficult to accept can have been recalled in such detail after such a length of time. In particular, I had concerns in this respect about the circumstances surrounding the meeting that Mr Jani held with Mr Patel and John Tillotson on 17 March 2003 referred to in Mr Jani's email of 24 March 2003 to Mr Bird of TNT Solicitors. Mr Jani said that he was able to recall this meeting in considerable detail. I asked Mr Jani whether his recollection was based on a re-reading of the contemporaneous documents, or his own actual recollection, in that it was apparent that what he was saying about his contact with Mr Bird at that time did not tie in with other documentation. Mr Jani said that it was based on his actual recollection. However, I consider it most improbable that a witness, in particular one such as Mr Jani who must have been attending many client meetings at the time and having many conversations with or regarding clients, would have such a clear actual recall of a meeting of this kind.
38. However, I do not consider that Mr Jani was fabricating his evidence in any respect. Rather, I consider that he has, in respect of certain points of detail, reconstructed events in his mind in a way that is not entirely accurate. Nevertheless, I do not consider that this detracts from the more general thrust and key points of his evidence, which is and are supported by the contemporaneous documents. However, this does all serve to emphasise to me that I should be cautious about accepting evidence based upon actual recollection of events, at least unless clearly supported by the contemporaneous documentation.
39. Nevertheless, having regard in particular to the fact that, on the whole, the contemporaneous documentation supports the evidence of Vijendra and Mr Jani where it conflicts with that of Mr Patel, in particular in relation to the key issues where there is a difference between them, I prefer the evidence of Vijendra and Mr Jani, in particular in relation to Mr Patel's suggestion that he was not behind the 2003 allotments, or the first two at least of the annual returns submitted in October and November 2006 referred to below.
40. I should add that Mr Jani gave the impression that he was, perhaps understandably, embittered by the fact that Mr Patel had chosen to brand him as a co-conspirator with Vijendra in respect of the allotment of shares in 2003 which Mr Patel have maintained was carried out behind his back. However, I am satisfied that this did not

taint the reliability of his evidence in any material respect.

41. The evidence of Urvesh and Hasmita was very short, largely being confined to confirming a number of passages in Vijendra's witness statement. However, they both confirmed the contents of short supplemental witness statements in which they both say that they recall being telephoned by Mr Patel in about March 2003 to be informed that the Company, and other associated companies, had allotted an equal number of shares to the four children, and that the actual number of shares allotted was 133,300. They were asked whether this evidence was based upon the actual recollection of the telephone call, and whether they could actually recall Mr Patel mentioning the precise number of shares allotted. They both confirmed that they could. Again, I am not convinced that they can have had an actual recollection of this call, in particular as to the actual number of shares allotted being mentioned. Whilst I consider that such a call may well have been made informing Urvesh and Hasmita that shares had been allotted to them, and whilst I do not consider that Urvesh's and Hasmita's evidence in relation thereto has been fabricated, I consider it likely that they have persuaded themselves that they can recall the level of detail that they described in evidence when in reality they cannot.

The parties' respective cases

The Petitioners

42. As already mentioned, the Petitioners highlight the dispute as to share ownership in the Company, and invite me to determine this as a preliminary issue.
43. The Petitioners refer to the power to rectify the Company's register of members under s.125 of the Companies Act 2006, the point being made by reference to *Re Starlight Developers Ltd* (supra) that in an appropriate case, a petition under s. 994 can be stayed pending the bringing of proceedings for rectification of the register of members.
44. So far as the question of share ownership is concerned, it is said that the starting point is that Ms Shah remains holder of 50% of the issued share capital of the Company, and that all steps taken without her consent are properly to be regarded as invalid. On this basis, and contrary to the Petitioners' pleaded case as referred to in paragraph 6 above, it is said that there was no valid increase in the authorised share capital in 1998, and no valid allotment of shares to Nyconnit NV in 1998. It is, however, said that if this allotment was valid and effective, then there was an effective subsequent transfer of the relevant shares to Nyconnit Jersey and, in turn, to Intermedia.
45. Following on from the above, and Petitioners maintain that there was no valid allotment of shares in 2003 as contended for by the Respondent. It is fair to say that, in closing submissions, Mr Colbey accepted that, in the light of the documentation, there was some difficulty in Mr Patel maintaining that he had been excluded from the relevant events in 2003, and the focus of Mr Colbey's

submission was to the effect that the necessary formalities had not been gone through, and that what had been done could not be treated as valid by virtue of the unanimous assent of all the shareholders because there is no evidence that Ms Shah had been involved in the process.

46. So far as the transactions purportedly effected in 2006 and 2007 are concerned, it is said that in respect of the former, Mr Patel was only doing that which was within his power, that any changes in 2007 in respect of share ownership were “potentially” effective, and that subsequent purported changes were not, because they had not been assented to by Mr Patel. However, it is right to say that the submissions in relation to 2006 and 2007 were advanced with some diffidence by Mr Colbey who did not seek to explain in any real detail how the relevant transactions purported to have been affected in 2006 and 2007 might properly to be said to have been formally or informally approved by shareholders.
47. Mr Colbey realistically recognised that if his primary contention as to share ownership was right, then it was difficult to see that there was any proper basis for petitioning under s. 994 given that Mr Patel had effective control of the Company and could avail himself of other methods for bringing the alleged prejudicial state of affairs to an end. However, Mr Colbey submitted that that ought not to prevent the Court from deciding questions of share ownership, if necessary by my decision being reflected in a recital to an order dismissing the petition.
48. Insofar as there was any question as to any party who might be affected by any decision as to share ownership not being properly before the Court, he submitted that I could make some form of provisional declaration that made it clear that those who were not represented before me would not be bound by my decision.
49. Mr Colbey suggested that the case having been fought out over a number of days during the course which I have heard extensive evidence, I should grapple with the question of share ownership notwithstanding the above difficulties so that the parties are not left with uncertainty.
50. If I should find for the Respondents, and be satisfied that the correct position is reflected by that following the 2003 allotments, thus leaving Mr Patel as a minority shareholder, then Mr Colbey invites me to proceed to determine the Petitioners’ unfair prejudice petition on that basis. Although there are other allegations of unfairly prejudicial conduct as referred to in paragraph 4 above, Mr Colbey’s submissions focused upon the removal of Mr Patel as a director in 2017. He submitted that even if Mr Patel’s evidence as to the 2007 Understandings is not accepted, and even if the Respondents were technically entitled, as the majority, to remove Mr Patel as a director, equitable constraints did still intervene given the familial relationship between the parties and the expectations within the family, so as to lead to a finding that the affairs of the Company in the hands of the majority had been conducted in a manner unfairly

prejudicial to the interests of the Petitioners – cf. *O'Neill v Phillips* [1999] 1 WLR 1092 at 1098D-1102A, per Lord Hoffmann.

51. When pressed as to the relief that the Petitioners sought, Mr Colbey referred to the fact that paragraph 3 of the order of Mr Deputy ICC Judge Barnett dated 19 January 2018 provided for the determination of issues of liability at this stage, and not relief. However, Mr Colbey indicated that what Mr Patel is really seeking is to be reinstated as a director rather than, for example, to be bought out.

The Respondents

52. The point is formally taken that Intermedia does not have locus standi to petition.
53. The Respondents' case is that the Petition has been presented on a false and unsustainable basis, and is seriously flawed in that:
 - 53.1. The primary matter complained of is not concerned with the conduct of the Company's affairs, but rather concerned with an allegation that the Company has been stolen by outsiders falsely representing the position as to the true share ownership within the Company, which, it is said, is not the proper basis for a s. 994 petition;
 - 53.2. In any event, the intervention of the Court is not required under s. 994 in that if the Petitioners are right with regard to share ownership, then the remedy is in their own hands;
 - 53.3. The Petitioners' primary pleaded case, i.e. that the Petitioners are in the majority, is made on the basis of a version of the Company's history which fails to address the real issues concerning who is entitled to what by way of shareholding.
54. The Respondents maintain that the central issue in the case is as to whether Mr Patel approved the 2003 allotments, and they say that it is clear on the evidence that he did.
55. The Respondent say that the above matters require the dismissal of the Petition because:
 - 55.1. There is no possible basis on which the court could make the declaration sought by the Petitioners in the Petition as the primary source of relief, namely declaration based upon the alleged position as at 2007;
 - 55.2. In the light of the fact that Mr Patel is the author of the Company's convoluted state of affairs, it would not be appropriate to allow him to now amend to seek an alternative form of declaration based upon the Company's share register;

- 55.3. In any event, in the light of the events that have taken place since 1992, it would not be appropriate for the court to make a declaration, potentially having effect *in rem* against everyone potentially interested, that the shares remain held as they were as recorded in the Company's register of members in 1992;
- 55.4. Rajendra's estate has not been properly joined as a party, is not represented, and has not been served, and it would be wrong to make any order that might affect it;
- 55.5. Likewise, Nyconnit Jersey is not before the court. Albeit that it has been dissolved, there are issues as to its true beneficial ownership. If the Respondents are right that the question of share ownership stops with the 2003 allotment, then Nyconnit Jersey is at risk of being adversely affected by any order made.
56. In short, the Respondents submit that it would be wrong to accede to the suggestion by Mr Patel that a declaration should now be made that he and Ms Shah are the only members, because that is not the case that the Respondents came to court to meet, and in any event it would involve a finding against parties who are not before the court. It is said that if the Petitioners' pleaded case had been focused upon the status of Ms Shah, then one might have expected there to have been further evidence before the court being therewith. Although Mr Schaw Miller does not ask me to formally decide the point or make any declaration with regard to share ownership, Mr Schaw Miller does submit that the circumstances militate strongly in favour of the Respondents' case that there was a valid and effective increase in the issued share capital of the Company and allotment shares in 1998, and a further valid and effective allotment of shares in 2003, and to the extent that any necessary formalities were not followed, all shareholders assented thereto, or are to be taken to have done so in accordance with the *Duomatic* principle – *Re Duomatic Ltd* [1969] 2 Ch 365 .
57. This issue does, in part at least, turn upon the disputed evidence concerning Mr Patel's involvement in the 2003 allotments, in respect of which I am able to make findings of fact. The more difficult issue is recognised to be the position of Ms Shah, although it is pointed out that Mr Patel, himself, saw fit to submit annual returns after 1992 showing himself to be holder of the two issued shares in the share capital of the Company.
58. The Respondents therefore say that there are issues, which require further investigation, as to whether Ms Shah might have transferred her share to Mr Patel, and whether Ms Shah might, as Mr Patel himself suggested in giving evidence, have held her share as nominee for Mr Patel¹. Further, Mr Schaw Miller makes the point

¹ As to whether the beneficial owner of shares can provide the requisite assent in accordance with *Duomatic* principles, there are suggestions in *Re BW Estates Ltd (No 2)* [2018] Ch 511 (see para 71) that that a beneficial owner cannot provide the requisite assent. However, in the more recent case of *Dickinson v Nal Realisations (Staffordshire) Ltd* [2019] EWCA Civ 2146, Newey LJ, at paras [19] – [20],

that, in appropriate circumstances, a party might be taken to have informally assented to some step taken by a company in accordance with the *Duomatic* principle by acquiescence or conducting themselves in such a way as to make it inequitable for them to deny that they have given their approval – see *Re Bailey Hay & Co Ltd* [1971] 1 WLR 1357 at 1367D, and *EIC Services Ltd v Phipps* [2003] BCC 931 at [122]. It is therefore said that if the focus of the evidence were to be on this issue of Ms Shah’s position, which it is not because of the basis upon which the Petition has been presented, then on a proper consideration of the evidence and Ms Shah’s apparent inaction after 1992, the evidence might well show acquiescence or the equivalent thereof.

59. Mr Schaw Miller therefore invites me to go no further than to simply dismiss the petition without making any declaration with regard to share ownership. He recognises that this leaves unresolved issues between the parties, but says that is a necessary consequence of a misconceived petition, and that the parties will at least have the benefit of the findings of fact that I am able to make, which ought to serve to subsequently narrow the issues between the parties.
60. So far as any residual claim to relief under s. 994 of the 2006 Act based upon any finding that Mr Patel is a minority shareholder is concerned, it is submitted that, given the false basis upon which the Petition has been presented, I simply do not get to deciding this. In any event, it is pointed out that the pleaded case as to unfair prejudice is very much based upon the alleged 2007 Understandings, which it is said is not established on the evidence, and indeed is undermined by admissions made by Mr Patel under cross-examination.
61. In all the circumstances, it is submitted on behalf of the Respondents that the Petition should be dismissed.

Factual background and my findings in relation thereto

The events up to 2004

62. The Company was incorporated on 28 July 1992 with the name Judgestyle Limited. Its authorised share capital was £100 divided into 100 £1 shares, two of which were issued to incorporation agents.
63. The Company’s only activity has been as owner of the Wembley Land.
64. There are two associated companies, Asia Centre plc and Asiansky Television plc. These are of peripheral relevance in that there are a number of references to them in the evidence and because, and in the case of Asiansky Television plc, there are annual returns relating to it which provide relevant background to disputed events. Asia Centre plc has been dissolved. Asiansky Television plc is not thought to have

was prepared to assume that the assent of the beneficial owner would suffice. The question therefore remains moot.

any assets of significant value.

65. According to the Company's register of members, on 27 August 1992 one share was transferred to each of Mr Patel and Ms Shah. As I have mentioned, no subsequent alterations been made to the register of members to reflect any subsequent allotment or transfer of shares. Subsequent returns to Companies House up to 1996 showed the only director to be Mr Patel.
66. Article 4 of the Company's articles of association (as amended in August 1992) conferred power on the directors to allot unissued shares of the company, but the power was limited to the original share capital and for a period of five years.
67. On 15 September 1992 the company's name was changed to Asiansky Properties Limited.
68. On 10 July 1996, a form 288a was received by Companies House recording the appointment of Vijendra as a director of the Company on 31 May 1996.
69. An annual return submitted to Companies House in September 1996 showed Mr Patel as the holder of the 2 issued shares of £1 each in the share capital of the Company, as did subsequent annual returns. This was notwithstanding that Ms Shah continued to be shown in the register of members as the holder of one of the issued shares. There is no evidence of any transfer of Ms Shah's share to Mr Patel, although, as I have said, Mr Patel, himself, accepted in giving evidence that Ms Shah held the share as his nominee.
70. There was filed at Companies House an ordinary resolution dated 30 April 1998 purporting to increase the authorised share capital of the Company from £100 divided into 100 shares of £1 each to £1,600,000 divided into 1,600,000 shares of £1 each.
71. On the same date, a return of allotments of shares (form 88(2)) signed by Mr Patel recording the allotment of 149,998 £1 shares to Nyconnit NV was sent to Companies House. By this time, the authority conferred by art 4 of the Company's articles had expired and there is no evidence that any further express authority to allot shares was conferred on the directors. As referred to above, at that time Nyconnit NV was an asset of the Huvlir Trust. It is, perhaps, not without significance that the beneficiaries of the Huvlir Trust were Mrs Patel, Rajendra, Vijendra, Hasmita and Urvesh, and that Mr Patel, as Protector, was apparently excluded from benefiting thereunder. I note that Ms Shah was added as a beneficiary of the Huvlir Trust with effect from 16 November 1976 by a deed dated 3 December 1976.
72. On 22 February 2000 Caversham wrote to Mr Patel and Mr Jani informing them that they were arranging for the transfer of the 149,998 shares in the Company held by Nyconnit NV to Nyconnit Jersey on what was described as a "*no profit/loss basis on the part of Nyconnit NV*". The letters refer to the fact that following the transfer,

Nyconnit NV would be left with no assets, and that arrangements should be made to “close the company”. The Respondents complain that the beneficiaries of the Huvlir Trust were not consulted about this transfer, which meant that the relevant shares in the Company were now held, through Nyconnit Jersey for the benefit of the Filmcorp Trust, of which Mr Patel was, amongst others, a beneficiary. However, I consider that the evidence suggests that it is more probable than not that the shares were validly transferred to Nyconnit Jersey.

73. Subsequent annual returns made to Companies House up to and including that submitted in December 2002 referred to an issued share capital of £150,000 divided into 150,000 shares of £1 each of which 149,998 were held by Nyconnit Jersey and 2 by Mr Patel.
74. However, on 21 March 2003 a return of allotment of shares (form 88(2)), signed by Vijendra as a director, was received by Companies House referring to the allotment of 683,200 further shares, allotted as follows:

Mr Patel – 150,000 shares

Hasmita – 133,300 shares

Rajendra – 133,300 shares

Vijendra – 133,300 shares

Urvesh – 133,300 shares

75. Further, the next annual return submitted in December 2003, signed by Vijendra as “Director/Secretary” referred to the issued share capital of the Company as held as follows:

Nyconnit Jersey – 149,998 shares

Hasmita – 133,300 shares

Ravenrda – 133,300 shares

Vijendra – 133,300 shares

Mr Patel – 150,002 shares

Urvesh – 133,300 shares

76. There is no evidence of any resolution having been passed authorising the directors to make this allotment of shares, or of the allotment otherwise having been formally approved by the shareholders of the Company who were:

- 76.1. Mr Patel, at least in respect of one share, and possibly two shares dependent on the status of the share that had, initially at least, been transferred to Ms Shah;

- 76.2. Subject to the validity of the allotment of shares in 1998 and the transfer of the shares to it by Nyconnit NV in 2000, Nyconnit Jersey, in respect of 149,998 shares.
77. As I have already identified, there is an issue between the parties as to whether this further “allotment” in 2003 was authorised and approved by Mr Patel. In his witness statement, Mr Patel refers to the return of allotment of shares made in March 2003 as having been made “... *unbeknownst to me at the time, and without any agreement sought from me or Nyconnit and in breach of numerous corporate formalities as well as [Vijendra’s] duties as a director of the Company ...*”. As further already mentioned, in the course of cross-examination Mr Patel went so far as to suggest that the allotment of shares involves some sort of conspiracy between Vijendra and Mr Jani. The Respondents’ case is that this “allotment” was something known and approved by all the relevant members of the family, including Mr Patel, and that, indeed, it was Mr Patel who was instrumental in causing the allotment to be made in order to overcome a difficulty that had arisen concerning the provision of “KYC” (know your customer) information to the Company’s bankers, NatWest.
78. Notwithstanding his protestations to the contrary, I am satisfied that Mr Patel did fully approve the 2003 allotment and, indeed, was instrumental in respect of the relevant steps taken in respect thereof. I reject his evidence to the contrary for the following principal reasons:
- 78.1. Mr Jani’s evidence was clear to the effect that, certainly at that time, his instructions in respect of the Company principally came from Mr Patel. Mr Jani’s recollection in this respect is supported by the contents of his email dated 24 March 2003 sent to Mr Bird of TLT Solicitors, copied into “*asiacentreplc@aol.com*”, in which he refers to the fact that: “*in my meeting with Mr S Patel and John Tillotson on 17.3.2003 we discussed three points: ... 1. Shareholding to be redistributed to achieve the parameters now imposed by UK banks in operating the company bank accounts ...*”.
- 78.2. As to this email dated 24 March 2003, it is to be noted that:
- 78.2.1. The attachment to the email included precise details of the allotment, specifically showing no shareholder as owning more than 18% of the issued share capital of the Company;
- 78.2.2. The return of allotments had, as I have said, been received by Companies House on 21 March 2003, shortly before this email was sent;
- 78.2.3. The email was copied in to “*asiacentreplc@aol.com*”, which was an email address referred to in the heading on correspondence sent by Mr Patel at the time, as shown, for example, by a letter dated 22 April 2003 from Mr Patel to his Jersey lawyers, Ogier.

- 78.3. On 18 March 2004, Mr Jani wrote to Victoria Connolly of Ogier explaining the issue of new shares in “*Asiansky “group” of companies*”. Mr Jani explained that: “*Mr Patel wanted me to do this*”, and that “*Mr Patel has stated to me that I should state the circumstances surrounding the issue of new shares ...*”. Mr Jani then referred to the new legislation, including the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003, and continued: “*Mr Patel attempted to contact Caversham with a view that all shareholders’ details will be placed on records for the bank. I believe Caversham failed to respond. The only short-term alternative was to redistribute the shares to comply with the bank’s requirement. Failing to achieve this would have frozen the bank account rendering the companies operations to a standstill.*”
- 78.4. There had, in 2002 and early 2003, been correspondence from NatWest referring to new guidance from the Financial Services Authority, and seeking information in relation to the shareholders, including the identity of all shareholders within Nyconnit Jersey on the basis that it held more than 20% of the share capital of the company – see e.g. NatWest’s letters dated 14 June 2002 and 25 November 2002 addressed to “*Mr S Patel*”. By a letter dated 6 December 2002, Mr Patel wrote to Caversham asking them to provide a letter from “*a local Jersey solicitor, confirming the current shareholders of [Nyconnit Jersey]*”, and seeking a response as a matter of urgency. This letter was signed by Mr Patel. There is then a letter dated 8 January 2003 from NatWest directly to Caversham chasing up the relevant information. By then, Mr Patel was in dispute with Caversham, and there is no evidence of them having responded to the requests made of them.
- 78.5. Mr Jani was adamant that the “*Mr Patel*” he was referring to in his letter dated 24 March 2004 was indeed Mr Sharad Patel on the basis that Mr Patel was his principal contact at the time, and that, in any event, he would always have referred to Mr Patel as “*Mr Patel*”, and any other male member of the family by their first names. This is, to my mind, inherently likely. Further, the explanation that Mr Jani gave in his letter dated 24 March 2004 fits in entirely with the contemporaneous documentation which shows Mr Patel having been involved in a process whereby information had been sought from Caversham, which Caversham had failed to provide, no doubt as a result of the fact that the dispute between Mr Patel and Caversham was, by then, ongoing.
- 78.6. In paragraphs 5.2 and 18 of an affidavit made by Mr Patel on 19 November 2003 in the proceedings that had by then been brought by Caversham against Mr Patel and others, Mr Patel referred to Nyconnit Jersey as “*not a majority shareholder in Asian Style Company*”, and to not owning “*the controlling interest*”.
- 78.7. From and after the annual return made in December 2003 up to and including that made on 19 May 2006, annual returns were made to Companies House

showing the shareholdings in accordance with the position following the 2003 allotment. Further, the Company's accounts were prepared showing an issued share capital of £833,200, note 3 to the accounts for the year ended 31 July 2003 specifically referring to the fact that the Company had issued a further 683,200 ordinary shares during the course of the year *"to the directors and members of their family"*. Notwithstanding that the return and the accounts may have been signed by Vijendra, I find it inconceivable that Mr Patel would not have raised objection well prior to 2006 if the 2003 allotment had indeed been effected behind his back and without his knowledge.

79. The share capital in Nyconnit Jersey Limited was, as I have said, a trust asset of the Filmcorp Trust of which Caversham was, at least until the 2004 Jersey Order, the trustee. On 14 April 2004, Caversham caused Nyconnit Jersey to write to Mr Patel and Vijendra as directors, and to Vijendra, Hema and TS Patel as company secretaries, seeking an explanation *"as to how additional shares appear to have been issued without reference to us?"*. This prompted Mr Patel to respond on 21 April 2004, referring to the letter dated 14 April 2004 as being one ... *"regarding the additional shares issued in all three companies, which were due to pressure from NatWest Bank, when you refused to comply with their notice to provide details required i.e. who owns shares in excess of 20% (a British Government regulatory requirement)."*
80. By letters dated 27 May 2004, Caversham sought indemnities from the beneficiaries of the Filmcorp Trust. It does not appear that any indemnities were given. Neither Caversham nor Nyconnit Jersey appear to have taken any objection further at this stage.
81. The 2004 Jersey Order was then made in the Royal Court of Jersey on 26 August 2004, with the consequences in respect of the Family Trust that I have already referred to.
82. As referred to above, and as explained in a letter to Mr Patel from Victoria Connelly of Ogier dated 23 October 2006, on 18 November 2004:
 - 82.1. Caversham transferred the shares that it held in Nyconnit Jersey, comprising the entire share capital, to Mr Patel, and Mr Patel, Rajendra, Vijendra, and Urvesh were appointed as directors of Nyconnit Jersey;
 - 82.2. Caversham transferred the shares that it held in Intermedia, comprising the entire share capital, to Mr Patel, and Mr Patel, Rajendra, Vijendra, and Urvesh were appointed as directors of Intermedia.
83. As explained in paragraphs 25 to 27 above, there are issues as to the basis upon which these shares were transferred to Mr Patel, and as to the basis upon which he has subsequently held these shares, and in particular whether he has continued to hold them on trust, or for himself beneficially. However, these are not issues that require to be determined for present purposes.

84. On 22 November 2004 the name of the company was changed to Ashia Centur Limited, pursuant to a special resolution said to have been passed on 3 November 2004.
85. Against the above background, and in the light of my findings as to his involvement in the 2003 allotments, his having held himself out as holder of the two issued shares in the Company prior to the 1998 increase in share capital and allotment of shares, and the fact that he took a transfer of the entire share capital of Nyconnit Jersey, I do not consider that it can be open to Mr Patel to now contend that the 1998 and 2003 allotments were invalid and ineffective as lacking due or proper shareholder assent. However, without Ms Shah, Nyconnit Jersey and Rajendra's estate being properly before the Court, I accept that it would be inappropriate for me to make any formal declaration to that effect.

Events between 2005 and 2006

86. Although there was, at one stage, an issue as to this, it became common ground that on 1 October 2005 Nyconnit Jersey Limited was dissolved.
87. On 9 October 2005 Rajendra died in California.
88. On 24 May 2006, an annual return for the company was filed at Companies House based on information extracted from Companies House records on 19 May 2006. It was signed by Vijendra on 23 May 2006, and continued to show the share capital of the Company as held as had been set out in the annual return submitted in December 2003 as referred to above, and a return that had been submitted in October 2004.
89. In October and November 2006, three further annual returns were filed at Companies House:
 - 89.1. First on 12 October 2006, a return which stated that Nyconnit Jersey had disposed of 149,998 shares on 22 May 2006, that Rajendra had disposed of 133,300 shares on 22 May 2006, and that Intermedia held 283,298 shares as at 28 July 2006. The holdings of Hasmita, Urvesh and Vijendra were shown as standing as before at 133,300 shares each, and Mr Patel was shown as still holding 150,002 shares. The directors were shown as Mr Patel and Vijendra.
 - 89.2. Secondly on 1 November 2006, a return which stated that Intermedia held 679,198 shares as at 31 October 2016, that Hasmita had disposed of all but 1000 shares, that Mr Patel held 150,002 shares, that Urvesh had disposed of all but 1000 shares, that Vijendra had disposed of all but 1000 shares, and that Ms Shah held 1000 shares. The return showed Mr Patel as the only director, a form 288b having been submitted to Companies House on 31 October 2006 referring to Vijendra having resigned as a director on 25 October 2006.
 - 89.3. Thirdly on 14 November 2006, a return which stated that Intermedia held 680,198 shares as at 14 November 2006, that Hasmita had disposed of her

1000 shares, that Mr Patel held 150,002 shares (as before), that Urvesh had disposed of his 1000 shares, that Vijendra had disposed of his 1000 shares, that Ms Shah held 1000 shares, that Dimple held 1000 shares and that Hema held 1000 shares. Mr Patel remained as the only director.

90. Mr Patel's evidence was that Vijendra had been behind these returns, and that he had only specifically approved the last of them. His case is that these steps were taken in 2006 in recognition of the fact that he had not approved the 2003 allotments carried out behind his back. The Respondents' case is that the supposed changes of shareholdings reflected in these further annual returns were carried out unilaterally by Mr Patel or someone acting on his instruction and that therefore they have no legal or other effect.
91. Mr Patel sought to justify the transfers of shares recorded in the October to November 2006 returns by reference to a number of documents which, on their face, comprise:
 - 91.1. A document dated 18 November 2004 on the headed paper of Nyconnit Jersey with the address Malzard House in Jersey (which is Caversham's office), addressed to the company secretaries of the three companies, including the Company, headed "Notice" and "Shareholders' Consent" and purporting to record that the original shareholders of the companies did not ratify or approve "the New Shareholders", and authorising the recipients to transfer the "nullified" shares of Hasmita, Urvesh, Vijendra and Rajendra to Intermedia, and to allot 1,000 shares to each of Ms Shar, Dimple and Hema.
 - 91.2. Notice of "the Ordinary GENERAL MEETING" of the Company to be held on 28 September 2006;
 - 91.3. A minute headed "Ashia Centur Ltd" purporting to relate to an annual general meeting of the Company held at Crown House on 28 September 2006 containing amongst other things a resolution that the 133,300 shares allotted to each of Hasmita, Vijendra, Rajendra and Urvesh be "cancelled forthwith";
92. The Respondents' case is that these documents are bogus, in particular that they are back-dated and do not reflect any meetings that actually took place.
93. On the basis of the documentary evidence that I have seen, and the oral evidence that I have heard, I am satisfied that the annual returns submitted in October and November 2006 were submitted by Mr Patel or at his instigation, without the knowledge or approval of Vijendra or other shareholders. I am also satisfied that the documents referred to in paragraph 91 were created by Mr Patel, or at his instigation, in October or November 2006, or subsequently thereto, in an attempt to falsely justify the transactions underlying the annual returns submitted in October and November 2006, which such transactions never, in fact, took place.
94. My reasons for so finding can be summarised as follows, although I consider the evidence against Mr Patel on these issues to be overwhelming:

- 94.1. Mr Patel's supposed justification for the changes in the shareholdings reflected in the annual returns made in October and November 2006 was said to be a recognition by other parties, including the Respondents, that the 2003 allotments had taken place behind his back, hence the shareholders agreeing to reverse them. However, as I have found, Mr Patel was, in fact, positively behind the 2003 allotments.
- 94.2. I accept Vijendra's evidence that he knew nothing about the annual returns made in October and November 2006 at the time, and was, most certainly, not behind the submission of the same to Companies House as contended by Mr Patel.
- 94.3. There is evidence, not least from Vijendra himself, that he was out of the country at the relevant time, in Kenya marking the first anniversary of Rajendra's death, at which such time Vijendra and other members of the family were also taking steps in Kenya to secure their position in respect of the family partnership, Film Corporation of Kenya, against the actions of Mr Patel. On return from Kenya on 17 November 2006, Vijendra, on, on 27 November 2006, wrote to Victoria Connolly of Ogier protesting that Mr Patel had moved all the trust assets into Intermedia whilst he was away from the country, and without his agreement. It is inherently unlikely that he would have written in these terms if he had been party to the events behind the annual returns submitted in October and November 2006. I note that, in this email dated 27 November 2006, Vijendra observed that: "*The beneficiaries have agreed all the assets to be transferred to [Mr Patel] solely on the understanding that he would set up another trust once the assets were transferred to him. He assured us that a new trust will be set up but has done no such thing after the assets were transferred to him.*" I understand this to be a reference to the shares in Nyconnit Jersey and Intermedia being transferred to Mr Patel. These are hardly the circumstances in which Vijendra might have been expected to accept a change in the shareholdings in the Company so as to make Intermedia and Mr Patel the majority shareholders.
- 94.4. The document dated 18 November 2004 is a very odd document indeed. It is dated the same date as the transfer of the shares in Nyconnit Jersey to Mr Patel. Mr Patel equivocated in giving evidence as to who had produced this document, at one point suggesting that it was Caversham, which simply is not credible in the circumstances, not least because it does not reflect the professional style or grammar likely to have been used by Caversham. Further, it is odd that this document is reflective of the position after the last of the three annual returns submitted in October and November 2006. If the document dated 18 November 2004 had been a genuine document, setting out what was intended to be achieved, then one would have expected it to have been reflected in the first annual return submitted in October 2006 without the need for two further annual returns. Further, it is odd that the document refers to Dimple bearing in mind that, as at 18 November 2004, Rajendra was still

alive. In the circumstances, I am satisfied that this document is a false document, and that it taints the genuineness or otherwise of the further documents referred to in paragraph 91 above which, at least in the minute dated 28 September 2006, referred to and purported to give effect to the earlier document. I thus conclude that these are all false documents created in or about October or November 2006, or thereafter, in an attempt by Mr Patel to falsely bolster his case as to the transactions purported to be represented by the matters disclosed in the annual returns.

94.5. That Mr Patel was behind the 2006 returns is, in my judgement, further evidenced by the fact that there have been produced printouts showing shareholdings following the submission of annual returns in October/November 2006 to which Mr Patel has added what he accepted in evidence was his own handwriting, showing various crossings out, and manuscript additions of figures. An example is a printout dated 31 October 2006 showing the position following the submission of the annual return submitted on 12 October 2006. The manuscript additions made by Mr Patel are consistent, amongst other things, with the disposal by Hasmita, Urvesh and Vijendra of all but 1000 of their shares, being the position reflected in the annual return submitted on the day following the date of the printout, namely 1 November 2006, that Mr Patel maintained, in giving evidence, that he had nothing to do with. This documentation does, in my judgement, wholly undermine Mr Patel's evidence in that respect.

95. In the circumstances, I am quite satisfied that the transactions reflected in the changes in shareholdings represented by the annual returns made in October and November 2006 did not validly or effectively take place, and that the contents of these annual returns most certainly did not reflect matters agreed to by the Respondents. Consequently, if the annual return submitted in May 2006 did accurately reflect the true entitlement to shareholdings within the Company following the 2003 allotments, then I consider that that must have remained the true and correct position notwithstanding the submission of the annual returns in October and November 2006.

Events between 2007 and 2010

96. An annual return was submitted on 30 November 2007 showing the same position as the return submitted on 14 November 2006, but showing Mr Patel, in the meantime, as having transferred 15,000 shares to each of Vijendra, Urvesh and Hasmita.

97. Mr Patel's case is that relations improved, and that during 2007 he decided to give 15,000 shares to each of Vijendra, Urvesh and Hasmita, hence the contents of the annual return dated 30 November 2007. Mr Patel then says that, in early 2008, he decided that he should prepare Vijendra for more responsibility, and reappointed him as a director, which he did as from 15 April 2008. Mr Patel refers to the fact that the annual return submitted in December 2008 was in the same terms, regarding

shareholders, as that submitted the previous year.

98. It is Mr Patel’s case that as from 2007, there were understandings in place (the 2007 Understandings) between the relevant parties, including the Respondents, that the shareholdings in the Company should be as stated in the 2007 annual return, that Mr Patel and Vijendra should be the only directors of the Company so long as each continued to promote the Company’s success in particular for members, that Mr Patel should always, in his own right or through a corporate vehicle such as Intermedia, remain the main shareholder in the Company, and otherwise as set out in paragraph 25 of the Petition. It is then alleged that, by reason of the 2007 Understandings and/or the close familial relationship between the relevant parties, the Company was, from 2007 onwards at least, properly to be regarded as a quasi-partnership company in which the shareholders were subject to equitable constraints consistent with the 2007 Undertakings and/or the familial relationship.
99. Mr Patel then complains with regard to the contents of the annual return dated 18 December 2009 and submitted on 29 March 2010, alleging in paragraph 36 of the Petition that ... *“Unbeknownst to [him and Intermedia] the shareholding in the Company was purportedly changed without any consent or authority from [Mr Patel or Intermedia].”* A similar complaint is made in relation to the return made up to 18 December 2010, filed on 5 January 2011. These annual returns show the following shareholders as holding the following number of shares:

	2009 Return, filed 29 March 2010	2010 Return, filed 5 January 2011
Intermedia	608,198	133,321
Mr Patel	80,002	166,640
Hema	500	0
Ms Shah	500	0
Dimple	1000	0
Hasmite	15,000	133,312
Urvesh	15,000	133,312
Vijendra	15,000	133,312
Mrs Patel	26,000	133,312

100. The Respondents say that the purported transfer of 15,000 shares to each of Hasmita, Urvesh and Vijendra in 2007 was a unilateral attempt on the part of Mr Patel to appease them, and that there was no question of them having agreed to the

shareholdings as reflected in the December 2007 return, or of them having reached any agreement or understanding with regard to the other matters said to be the subject matter of the 2007 Understandings.

101. It is further the Respondents' case that Mr Patel approached Vijendra to return to the Company as a director in early 2008, and that Vijendra agreed to do so having been promised that the shareholdings would be corrected, following on from the events of 2006, so as to restore the position, so far as possible, to that following the 2003 allotments and as represented by the annual return made in May 2006. It is the Respondents' case that Mr Patel was slow to act upon this promise, and only did so after Urvesh and Hasmita had introduced a potential investment partner in connection with the development of the Wembley Land, with a memorandum of understanding being entered into in respect thereof on 17 December 2010. The Respondents then say that, as against this background, agreement was reached with Mr Patel that the position should be restored, so far as possible, to the 2003 position, and the December 2010 annual return, so reflecting, was submitted on an agreed basis. Of course, by this stage, Nyconnit Jersey had been dissolved, thus explaining why the position could not be restored so as to show Nyconnit Jersey is a shareholder. The Respondents point out that all subsequent annual returns were submitted referring to the same shareholdings as in the December 2010 return, such annual returns being submitted without objection from Mr Patel until he was subsequently removed as a director in 2017.
102. As to the conflicting version of events in respect of matters as between 2007 and 2010, I prefer the Respondents' account. However, as I have already indicated, this ought to make no difference as to the true and proper basis upon which shares are held within the Company, because it is plain that all the various annual returns submitted from and after the May 2006 annual return did not reflect transactions that actually occurred, albeit that the 2010 annual return may have reflected an agreement between Mr Patel, Intermedia (acting by Mr Patel), and the Respondents, but not other parties that might have an interest – such as Rajendra's estate.
103. Further, it is right to say that, under cross examination, Mr Patel accepted that there was no express agreement that gave rise to the alleged 2007 understandings, and no evidence was given to suggest that the latter might have arisen otherwise than by way of agreement. On this basis, even apart from the conflict of evidence, Mr Patel has, in my judgement, failed to establish any evidential basis for the 2007 Understandings.
104. As to this conflict of evidence, my reasons, in brief, for preferring Vijendra's evidence to that of Mr Patel in respect of the events as between 2007 and 2010 are the following:
 - 104.1. My more general finding that where there is a conflict, the evidence of Vijendra should generally be preferred to that of Mr Patel, a finding reinforced by my specific findings in relation to the events of 2003 and 2006.

- 104.2. When cross-examined about an email dated 24 March 2010, Mr Patel, whilst first appearing to accept that it was his email, began to resile from this admission in an unpersuasive way when he came to realise that the contents of the email did not help his case. The email from Mr Patel (signed off as “Dad”) to Hasmita referred to ... “*Reducing you and your brothers’ shares in [the Company] in October 2006*”. The email referred to their still having shares in the Company, and suggested that what Mr Patel was going to do was to give them all “*equivalent shares*” in Intermedia, which is referred to as owning around 80% of the share capital of the Company. The email also said that he had asked the Company’s accountant to give 26,000 shares “*to your mum*”, the latter being reflected in the 2009 return submitted on 29 March 2010 that showed Mrs Patel as the holder of 26,000 shares.
- 104.3. Vijendra sent an email dated 17 March 2016 to Mr Patel which set out the current, i.e. following the 2010 and subsequent annual returns, and proposed new shareholdings. In the email, Vijendra explained that he was doing this because Mr Patel had suggested that he wanted to rearrange the shareholdings to include the grandchildren. Although Vijendra accepted that Mr Patel did not reply to this email, I accept his evidence in relation to the sending of this email, and the fact that it was duly sent, and I consider it significant that this email reflected Vijendra’s contemporaneous understanding as to the shareholdings in the Company, and that Mr Patel did not object, which surely he would have done if there is any validity to his case in relation to the 2010 and subsequent annual returns, and that these were submitted “*unbeknownst*” to him and without his consent. When taken to this email in cross-examination, and having realised the significance thereof, Mr Patel sought to distance himself from it in an unpersuasive way
- 104.4. I consider that it is significant and telling that all subsequent returns from and after the 2010 annual return submitted in January 2011 set out the same shareholdings. I consider that Mr Patel would almost certainly have subsequently raised some objection in relation thereto prior to his removal as a director had he had any cause for complaint in relation thereto. However, the fact of the matter is that there is no evidence of any such complaint until after the purported removal of Mr Patel as a director in 2017.
105. I am therefore satisfied that the 2010 and subsequent annual returns did reflect an agreed position, at least as between Mr Patel, Vijendra, Urvesh, Hasmita and Mrs Patel. However, for the reasons that I have explained, these returns cannot govern the true entitlement to the shares in the share capital of the Company. For the reasons explained above, this is most likely governed by the position following the 2003 allotments, as reflected in the 2003 annual return and the annual return submitted in May 2006, at least as between Mr Patel and the Respondents.

Events after 2010

106. The evidence provides no real narrative of events after 2010, until, on 23 January 2015, a resolution purports to have been passed appointing Hasmita, Urvesh and Mrs Patel as additional directors.
107. Mr Patel complains that these appointments were made without any consent or authority from him or Intermedia, and contrary to the 2007 Understandings. The Respondents, on the other hand, maintain that a general meeting was duly convened, giving appropriate notice, but that Mr Patel refused to attend, falsely claiming that poor eyesight prevented him from doing so. The Respondents maintain that the further appointments of directors were made to prevent Mr Patel from continuing to cause the Company to embark on costly unmeritorious litigation, which he was prone to do.
108. Mr Patel further complains that, on 4 February 2017, a notice was filed at Companies House recording his removal as a director. He says that, at no point, was he consulted with regard to this, or given any notice prior to any such removal. He also complains that, following the events of 2015 and 2017, there has been a lack of consultation with him with regard to the affairs of the Company, and that he has not been provided with all the information that he should have been provided with.
109. In response, the Respondents maintain that Mr Patel was removed as a director as a result of the breakdown in trust between him and Hasmita and Mrs Patel, a particular concern being the sale of an asset, namely a property at 445 Walker Drive, Beverly Hills, belonging to the Huvlir Trust, for some US\$5.9 million, the proceeds of which Mr Patel is alleged to have misappropriated. The Respondents' evidence does not deal with the formalities of the relevant resolution removing Mr Patel as a director, nor state whether he was given specific notice thereof, albeit that there is included in the hearing bundle what purport to be the minutes of a meeting of the members of the Company held on 11 February 2017 at which an ordinary resolution purports to have been passed removing Mr Patel as a director. These minutes record the attendance of Vijendra, Hasmita, Urvesh and Mrs Patel, each of whom signed the minutes.
110. There was no real exploration at trial of the evidence concerning, or issues arising in respect of the resolutions that purported to appoint additional directors in 2015, and the resolution that purported to remove Mr Patel in 2017. However, the hearing bundles did contain correspondence from Vijendra to Mr Patel in the period leading up to the purported removal of Mr Patel as a director, which such correspondence, and in particular a lengthy email dated 6 February 2017, does provide contemporaneous evidence of real concerns in his part, and that of his siblings and mother, as to what Mr Patel had been up to, and with regard to his continued involvement with the Company. Further, Vijendra was cross-examined with regard to these concerns, and provided what was, in my judgement, a cogent and reasoned explanations in relation thereto.

Conclusions

111. In the light of the findings that I have made in the course of considering the background and evidence, I can set out my conclusions relatively brief.
112. The Petition is premised upon a pleaded case that, from a settled and agreed position as to share ownership in 2007, steps were taken by the Respondents in 2009 and 2010, by the submission of annual returns unbeknownst to Mr Patel and without his authority, to wrongly deprive Mr Patel and Intermedia of their status as majority shareholders. However, the case as so pleaded is, I accept, deeply flawed, not least because:
- 112.1. If the position in respect of share ownership was truly settled and agreed in 2007 so as to properly constitute Mr Patel and Intermedia as majority shareholders, then the true complaint is not that the affairs of the Company have been conducted in a manner unfairly prejudicial to Mr Patel and Intermedia within the meaning of s. 994 of the 2006 Act, but rather that the Respondents are seeking to rely upon invalid and ineffective steps to claim control of the Company, to appoint further directors, and to remove Mr Patel as a director. Given the way that the Petition is premised, this conduct cannot properly to be regarded as unfair to Mr Patel's and Intermedia's interests because they have available to them a method of bringing the prejudicial state of affairs to an end, namely to assert their position as majority shareholders, by action if necessary including an application for rectification of the share register to reflect the 2007 position – see *Re Legal Costs Negotiators Ltd* [1999] 2 BCLC 171 at 197e-197f, per Peter Gibson LJ, referring to *Re Baltic Real Estate Ltd (No 2)* [1993]. BCLC 503 at 507, per Knox J.
- 112.2. However, more fundamentally, as I have found, the steps taken by or at the instigation of Mr Patel in October and November 2006, by the submission of annual returns that purported to change the shareholdings so as to constitute Mr Patel and Intermedia as majority shareholders, cannot be valid or effective. It was in the light of these difficulties, that, during the course of the trial, the Petitioners' primary case became that the true shareholdings in the Company are properly to be regarded as being those shown in the register of members of the Company, namely two issued shares of £1 held as to one each by Mr Patel and Ms Shah.
- 112.3. Given Mr Patel's acceptance that Ms Shah held her share for him beneficially, the practical position is that, even on this alternative case now advanced by the Petitioners, they, through Mr Patel, are entitled to control of the Company, and so the application still faces the difficulties referred to in paragraph 112.1 above.
113. It was against this background that Mr Colbey himself, in the course of submissions, recognised the difficulty in pursuing a petition under s. 994 of the 2006 Act as majority shareholder with control of the Company, and so invited me to make a declaration as to share ownership in favour of Mr Patel, if necessary dismissing the

petition at the same time upon the basis of a recital to the effect that I had found that Mr Patel was entitled to control of the Company on the basis of the issued shares being held as to one share by him, and as to the other share by Ms Shah (as his nominee).

114. However, I am not persuaded that this is the right course of action for the following reasons:

114.1. The Respondents did not come to Court to meet a case that the true ownership is now as primarily contended by Mr Patel and Intermedia, with one share being held by each of Mr Patel and Ms Shah, and this was not the case as advanced in their Skeleton Argument relied upon for the trial, but rather emerged during the course of the trial itself.

114.2. I do not consider that it would be appropriate to make any form of declaration concerning entitlement to shares in the share capital of the Company without all interested parties having been properly joined and served in particular. In particular, Rajendra's estate has not been served, and it is unclear whether Dimple is properly be regarded as representative thereof. Further, Ms Shah has not been served, and is not represented before me. Ultimately, she might accept that Mr Patel has acted as her nominee, or even that Mr Patel took a transfer of her share from her, but I have nothing to verify this. It was suggested that I could make some form of provisional declaration, subject to challenge by other non-represented third parties. However, in the circumstances, I consider that this is unlikely to serve any useful purpose, and that it would be wrong to prejudge what those who are not represented might wish to say.

114.3. Subject to the question as to whether Ms Shah can properly be regarded as having assented thereto, and further potential issues in respect of Nyconnit Jersey, there is cogent evidence to support the validity of the 1998 increase in share capital and the allotment of shares in 1998 to Nyconnit NV, the subsequent transfer of shares to Nyconnit Jersey, and the allotment of further shares in 2003 so as to arrive the position as set out in the 2003 annual return, and as subsequently reflected in the May 2006 annual return. As to the position of Ms Shah, the Respondents make what I consider to be a good point, namely that the focus of the evidence has not, given the way that the Petitioners' case has been made and run prior to trial, been upon Ms Shah's status as a shareholder, and whether, if she is properly to be regarded as having remained as a shareholder notwithstanding that Mr Patel caused to be submitted annual returns suggesting that she had disposed of her share to him, nor upon whether she is properly to be regarded as having assented to the 1998 increase in share capital, and the 1998 and 2003 allotments if Mr Patel had not acquired her share. I accept that it is at the very least quite possible that the evidence will show that her share was transferred to Mr Patel, and if not, that she assented to, or is to be treated as having assented to, the 1998

increase in share capital, and the 1998 and 2003 allotments. There are further issues as to the status of Nyconnit Jersey, particularly bearing in mind that it was dissolved in 2005. However, it might be somewhat easier to infer the latter's assent to the various arrangements given that the share capital thereof was transferred to Mr Patel in November 2004, and Mr Patel might reasonably, given my other findings, be taken to have approved the annual returns made thereafter, on behalf of Nyconnit Jersey, at least prior to the events of October/November 2006.

115. In short, therefore, I decline to grant the declaratory relief that Mr Patel and Intermedia invite me to grant, even as part of a recital dismissing the Petition.
116. Mr Patel's and Intermedia's fallback position then is that if Mr Patel and/or Intermedia are properly to be regarded as minority shareholders, then they are entitled to petition as such, and can show unfair prejudice, in particular by the removal of Mr Patel as a director contrary to equitable constraints said to arise in consequence of the 2007 Understandings and the familial relationship between the relevant parties.
117. However, I am not persuaded that it is appropriate to make a finding of unfair prejudice within the meaning of s. 994 of the 2006 Act on this basis for the following reasons:
 - 117.1. This was not the case that the Respondents came to trial to meet, which was a flawed case premised upon the Petitioners being the majority shareholders.
 - 117.2. In any event, the Petitioners have failed, on the evidence, to make out the 2007 Understandings as their foundation for the existence of equitable constraints. It is certainly right that, in certain instances, the existence of a familial relationship might give rise to the existence of a quasi-partnership subject to equitable constraints - see e.g. *Fisher v Cadman* [2006] 1 BCLC 499 at [89] per Philip Sales (sitting as a DJHC), and *Rahman v Malik* [2008] 2 BCLC 404 at [56] per HHJ Roger Kaye QC. However, given the relationship that I consider existed between Mr Patel and the Respondents, I do not consider that there can have been the necessary relationship of trust and confidence to give rise to the required equitable considerations even apart from the fact that not all those might have had an interest as shareholders fell within the familial relationship contended for, cf. *Estera Trust (Jersey) Ltd v Singh* [2019] 1 BCLC 171, per Fancourt J at [130]-[139]. On this basis, even if Mr Patel and Intermedia are properly to be regarded as being minority shareholders, a claim that the affairs of the Company have been conducted in an unfairly prejudicial manner based on a breach of equitable constraints or considerations existing as between quasi partners is not, in my judgement, made out.
 - 117.3. It is possible Mr Patel does have a legitimate cause for complaint based upon the necessary technical formalities required in connection with the

appointment of new directors, and his own removal as a director not having been followed. As I mentioned, there was no real focus upon any such case at trial, and it was not the subject matter of specific submission or argument. However, even if these appointments, and Mr Patel's removal as a director are open to challenge by Mr Patel on technical grounds, I do not consider that this would make it appropriate to grant relief under s. 994 of the 2006 Act in the present circumstances given that:

117.3.1. If the 2003 allotments were valid and effective, then at least whilst Nyconnit Jersey remains dissolved, Vijendra, Hasmita and Urvesh are in the majority as shareholders and would be in a position to ratify their actions. As I have said, it is difficult for Mr Patel, himself to maintain that the 2003 allotments were invalid given his own involvement therewith and his acceptance that Ms Shah held her share as nominee for him; and

117.3.2. In any event, if there is any cause for complaint, there is a remedy in seeking appropriate declaratory relief as to the validity or otherwise of the appointments and Mr Patel's removal as a director and that ought, in particular in the present circumstances, to rule out granting relief pursuant to s. 994 of the 2006 Act.

118. In all circumstances, a case for relief pursuant to s. 994 of the 2006 Act has not, in my judgement, been made out, and the Petition ought to be dismissed without my making any declaration or granting any other form of relief, apart from costs.

119. Whilst this judgement does not resolve the issues that still exist between the parties, I would hope that the findings that I have made will serve to limit the areas of dispute between the parties, and do so to such an extent as to facilitate a compromise of the outstanding issues that I have not been able to resolve given the basis upon which the Petition has come before me.