Neutral Citation Number: [2021] EWHC 630 (Ch)

Case No: CR-2018-009040

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS ENGLAND & WALES
COMPANIES COURT

Rolls Building
Fetter Lane, London EC4A 1NL

Date: 19/03/2021

Before :

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

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Between :

(1) MILAD MAKRAM MORGAN SHEHATA	**Petitioner**
- and -	
(1) MANSFIELD HOTEL LIMITED	
(2) RAOUF MESHREKY	
(3) HANY SHAKER	
(4) RAMSES RIAD ANDRAOUS	**Respondents**

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CLIFFORD DARTON QC (instructed by **EDWARD HARTE SOLICITORS**) for the **Petitioner**
JULIAN REED (instructed by **STEPHEN RIMMER LLP** for the **SECOND TO FOURTH RESPONDENTS**

Hearing dates: 22, 23, 24, 25 February and 1 March 2021

- -

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10:00hrs on 19 March 2021

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Chief ICC Judge Briggs:

Introduction

1. By an amended petition Milad Makram Morgan Shehata ("Mr Shehata") seeks an order that the second to fourth Respondents buy his shares. He claims that their conduct has been unfair and prejudicial to his interests as a member of Mansfield Hotel Limited (the "Company").

2. As the name suggests, the Company's business is the operation of a hotel. The Company has the benefit of a lease of St Mark Hotel at 4 Barkston Gardens, Earls Court, London ("the Hotel"). The lease was renewed on 25 April 2019 for a term of 20 years at a passing rent of £96,000 per annum. Due to the pandemic, the Hotel is unable to open its door to guests. It is not currently able to produce an income.

Background

3. Mr Shehata identifies as an Orthodox Coptic Christian. In or about 2005, he started importing fruit and vegetables from the Middle East for wholesale. The business, later transferred into a limited company, Middle East Fruit and Vegetable Products Ltd ("MEFV"). MEFV operated throughout the period to which these events relate.

4. It was at his place of worship in Kensington that he forged a relationship with the second to fourth Respondents. In his written evidence Mr Shehata explains that he has now known "Hany, Raouf and Ramses for nearly 20 years. They are all Egyptians like myself and Coptic Christians and we and our families go to the same church in Kensington and on occasions would have lunch together. It was through one of our mutual friends that we were introduced to the best of my recollection some time in or about 2000 in London." I shall refer to Raouf Meshreky as "Mr Meshreky"; Hany Shaker as "Mr Shaker", Ramses Andraous as "Mr Andraous" and together as the "Respondent directors" (to exclude the first respondent). Mr Shehata viewed his new friends as "wealthy individuals in their own right but who had also built up their business interests together on several occasions." They had been involved in property development, and had experience of owning and running hotels such as the Holland Inn Hotel Ltd and The York Hotel Ltd.

5. There is some disagreement about Mr Meshreky's involvement in MEFV but it is not disputed that he was a director until 2008 and provided a personal guarantee securing an

overdraft facility provided by the bankers to MEFV. He was released from the guarantee in 2010.

6. Mr Shehata states that he and the Respondent directors "decided to go into the hotel business together" in 2005. Although this represents a brief account, and there is little other detail, it is not inconsistent with the account provided by the Respondent directors. They accept that the business relationship was borne of friendship. Mr Meshreky says: "Ramses and I had found a hotel to lease [Mansfield] and Milad suggested joining us on this enterprise as he said he had money to afford his share."

7. Mr Shehata did not have sufficient funds to purchase an equal shareholding in the Company. It is common ground that a loan was provided to him by the Respondent directors which he repaid and as such became "an equal partner". The loan bore no interest: "we always wanted him to prosper and make a better future for himself and his family." This account is consistent with that provided by Mr Shehata. He says that he "had managed to get a further £70,000 together by the completion date but I was still short by £85,000". He explains: "this was to cover my quarter share and Raouf, Hany and Ramses agreed that they would fill the gap for me temporarily and therefore the other directors loaned to me £85,000 towards my share of the purchase." The loan was interest free. He rather uncharitably adds "I suspect, that Raouf, Hany and Ramses could afford to be generous" which provides a small flavour of the current state of their friendship.

8. Once the Company was formed and capitalised, Mr Shehata and the Respondent directors were each issued with three shares.

9. Mr Shehata claims that there was an agreement at the "outset of the business" that they would take it in turns to receive "a lump sum of the net profits of the Hotel rather than smaller equal draws on a regular basis". In his written evidence he said that each director would receive £46,000 per annum but in oral evidence he revised that figure up to £60,000. It appears that this agreement, acknowledged in part by the Respondent directors, arose out of the need for Mr Shehata to repay the loan to purchase his 25% shareholding. No evidence was advanced that the agreement would endure after repayment of the loan.

10. It is common ground that the Company banked with Natwest and all had access to the online account. Mr Shehata was to be the director in charge of the hotel. A manager was employed. There is an issue at to the extent of Mr Shehata's involvement in the day-to-day operations and the delineation of responsibility between the duties of the hotel manager and Mr Shehata's role. There are no board minutes and few written records concerning the governance of the Company.

11. The issue of who made and kept accounting records has some bearing on this case. This is not because the identity of the record keeper matters in and of itself, but because it is said by the Respondent directors that some year-end unaudited accounts are incorrect. There is little doubt in my mind there was a lack of director engagement with respect to the accounts. The evidence I heard leads me to conclude that they often relied on a director other than themselves to read and agree the accounts, with little evidence of independent critical analysis. Mr Andraous was the director who had most involvement. This is explained partly because each director had other business interests and partly due to their faith in one another to do what was in the best interests of all.

12. Mr Shehata says "I trusted them implicitly". His case is that he started an excel spreadsheet in 2010 "to keep a record of all the monies that were paid to each of us", but he was never involved in the accounts: "I never went to any meetings with the accountants and was never asked to attend although they would almost certainly have relied on the Spreadsheet (sic)." He accepts that some of the accounts bear his name. He seeks to distance himself as a person who had any responsibility for the accounts notwithstanding he is a director of the Company: "I was never formally or even informally asked to approve or sign the accounts."

13. Mr Shehata's case is that the loan he received from the Respondent directors to invest in the Company had been repaid from drawings by 2014. In fact it was earlier. He has no complaint about the corporate governance or the Respondent directors decision making, actions or inactions up to this point in time. He mentions that by 2013 he was "able to devote more time to other business" and was paid a salary by Mr Meshreky to run a restaurant under Kings Cross Hotel. He became involved in another hotel project with Mr Shaker in 2015 purchasing a hotel in Eastbourne called the Afton Hotel which he says he managed. In January 2016 Mr Shehata agreed to buy another hotel with a third party. This

required his time and energy. He was unable to devote as much time, or as it would turn out, anytime to the Hotel.

14. In early 2017 Mr Shehata accepted an offer made by Mr Shaker and sold to him his shareholding in the Afton Hotel enterprise. Mr Shehata says that the sale price/sum he received for his shares represented the same amount as his investment. He does not expressly state that the shares were worth more or less but does say that he sold his shares under duress. There was an agreement to use one of the priests at their church to act as an intermediary. Mr Shehata says that the priest had "already been primed by Hany" suggesting that the priest could not be trusted to be impartial. That claim does not form part of these proceedings but contextually Mr Shehata says that this was a cause of the breakdown in relations between him and the Respondents directors.

15. It is agreed that "payments" were made from the Company to Mr Shehata until April 2017. Mr Shehata says that the payments received were of a lesser amount, and arrived with less frequency, after February 2016. He says that it had become obvious "to all of us that our business relationship was over" from mid-2016. The reason for receiving less after February 2016 is that he had taken more before that date. There was a policy of equality between members: members would suffer the detriments and reap the benefits equally. The Respondent directors needed to "catch-up" with the payments made to Mr Shehata to maintain the equal treatment policy.

16. Mr Shehata contends that he was excluded from the management of the Company for two and a half years before issuing proceedings. He rejects the notion that he was invited to attend meetings and failed to do so, and rejects the suggestion that he was able, in his capacity as director, to access the same accounting information as the Respondent directors from the accountant used by the Company: Jaffer & Co. In his written evidence he explains:

> "There was a limited exchange of email communications between us towards the end of 2017 and January 2018. I was not being included in any decisions which the Respondents were looking to make with regard to the Mansfield Hotel and nor was I being kept informed of the finances or management of the company."

17. He was specifically invited to a meeting of directors on 19 February 2018. He chose not to attend. The reason given is that he was "unclear what documentation they required of me at this meeting and also whilst the agenda was long I had no information supplied to me which meant that I would not be in a position to in any way be prepared for such a meeting." He did not seem to need documentation for any other meeting convened (I use that word loosely) in the previous 8 years.

18. In August 2018 Mr Shehata received notice of a general meeting to be convened on 9 September 2018. He "refused to attend" on the basis that the convening of the general meeting "went against everything we were trying to achieve". The use of the first person plural is reference to Mr Shehata and his solicitors. Shortly after the proposed general meeting, he issued this petition.

19. In his written evidence he complains not only that he was excluded and as a result had a lack of financial visibility with respect to the Company, but that Jaffer & Co had not responded or not responded sufficiently quickly to queries he had about the Company's bank account. He was concerned that £220,000 had been paid out to HMRC in 2019. This led to an e-mail exchange with the accountant but not until February 2020. Jaffer & Co informed Mr Shehata that the money was paid to HMRC in respect of "Advance Corporation Tax and Corporation Tax". He also queried a payment of £40,000 and complains that he received no or no satisfactory answer: "to this day I do not know what this payment was for". In fact a perfectly straight forward answer has been provided. The payment was a mistake. It was paid into the bank in error and paid out in short time. Mr Shehata, as Mr Reed observed, could see mischief lurking in every corner though, more often than not, there was no mischief. These transactions were properly accounted for and no prejudice results.

20. A major issue concerns a sum of £536,524 (the "£536k"). Mr Shehata says that he discovered during the course of the proceedings that the sums taken out by the directors since the year ending 31 October 2014 had been treated as directors' loans and not dividends. He complains that he was not consulted about the treatment of the money: "I was never told of the £586,000 payments by the Respondents...". This complaint is disingenuous. He was given the opportunity to discuss and attend the meeting in 2019 I

have mentioned above. The effect of treating the payments made to the directors as loans, is to create a creditor-debtor relationship and to make Mr Shehata liable to make repayment for money he received as loans.

The pleaded case

21. The amended petition avers that the joint venture to purchase and run the hotel for profit was "in effect" a quasi-partnership. This is denied by the Respondents. Mr Shehata relies on (i) their friendship prior to incorporating the Company; (ii) the structure: each member was allocated 25% of the issued shares; and (iii) an agreement that Mr Shehata would "be involved in the management of the Company". The reply provides more detail explaining that the relationship was "personal" and involved "mutual confidence between them such that it would be inequitable for the Second to Fourth Respondents to use their rights to force the Petitioner out of the company". He adds that a quasi-partnership is also evidenced by reason of their friendship being formed at church and that the parties have the same ethnicity and share the same orthodox faith.

22. Mr Darton argues that the relationship was quasi-partnership, and evidence of the relationship can be gleaned by the restrictions on sale or transfer of shares contained in the articles of association (the "Articles"). Each of shareholder is obliged to offer their shares to the other members in the event that they wish to sell. By article 7 of the Articles a seller of shares has to give notice to the directors of the intention, together with a price per share at which he is willing to sell. A mechanism for consideration of the sale price, valuation and allocation is incorporated which in effect gives the existing shareholders the right of first refusal. Where negotiations break down or if there is no appetite for purchase article 7(k) provides:

> "During the 3 months following the expiry of 56 days from the date of the Offer Notice the Seller may…transfer to any person and at any price but not less than the Final Price fixed in the Transfer Notice…"

23. The grounds of unfair prejudice start with exclusion. The facts pleaded in support of exclusion are that Mr Shehata i) has not been "*fully* engaged or consulted or otherwise" involved in the negotiations for the extension of the lease, the licence for alterations or

plans to renovate the Hotel; and ii) has not been "furnished with copy correspondence in respect of the Company's affairs and management…including management accounts". Three further matters are relied upon namely:

23.1. in or around March 2018, [Mr Shehata discovered that] the Second, Third, and Fourth Respondents had granted security to Natwest Bank in 2011 and Lloyds TSB in 2014 over the Hotel without consulting or otherwise obtaining his consent or providing him with the details. Such secured monies were not obtained or used for the benefit of the Company. Mr Shehata claims that if he had been given notice, he would not have consented to the security being granted;

23.2. the Accounts filed with Companies House in 2018 and 2017 appear to have been executed by Mr Shehata despite him having no involvement with the accounts and not signing any documentation or otherwise confirming his acceptance;

23.3. the Second, Third, and Fourth Respondents appear to have taken steps or to have contemplated taking steps to remove Mr Shehata as a director of the Company. Indeed, notice of a general meeting to be held on 19 September 2018 was given on 13 August 2018 to consider precisely this issue. At the date of this Petition, Mr Shehata had not received any board minutes or resolutions from that meeting. It is accepted that he has not been removed.

23.4. Mr Shehata was not consulted on the treatment of the £586k and did not approve the payments.

24. Two further issues arise in relation to the £536k. First, it is pleaded that the Respondent directors breached their duties to the Company by treating the money as if it had been paid by way of loans. Mr Shehata "does not accept that the [£536k] were in fact loans but simply a means by which the Company paid the Second, Third and Fourth Respondents income whilst depriving him of such payments". Secondly, it became apparent that Mr Shehata had notice of a general meeting, where the treatment of the £536k would be discussed. In closing it was argued for the first time that Mr Shehata could not have consented to the treatment of the £536k on account of the fact that the Respondent directors had already signed off the accounts for the year ending 31 October 2017 prior to inviting him to a meeting. Mr Reed objected to this line of argument on the ground that it

had not been pleaded, covered in witness evidence and the case had not been opened on that basis. The late argument is impermissible because it was not pleaded. That is enough to deal with it, but I shall say a word or two about the factual position later in this judgment.

25. Mr Shehata claims that he "ran" the Hotel until 2016. He accepts that there was a hotel manager during and after this period.

26. The Respondent directors' amended defence admits that there was a joint venture; the parties "were to be of equal status within the Company, in respect of investment, drawings and involvement". The Respondent directors' case is that it was the manager who "ran" the Hotel and not Mr Shehata and that the hotel managers "tended to contact" Mr Meshreky and Mr Andraous "in the event of problems, including maintenance." It is said that this was not only necessary but expedient as Mr Shehata "spent substantial periods of time running his fruit and vegetables business", and that Mr Meshreky "assisted" Mr Shehata "by providing a personal guarantee to obtain overdraft facilities" for MEFV.

27. The Respondent directors accept that the loan made to Mr Shehata at the outset "was repaid in full in …" and state that he received dividends after that point in time until the year ending 2014. The Hotel manager was responsible for compiling the financial information, sending it to a bookkeeper who would then organise it for the accountant. Each director had a role to play and no director was expected to receive remuneration. The Company would pay dividends when it was responsible to do so.

28. The Respondent directors claim that Mr Shehata chose not to attend meetings, not to be engaged and not to consult. They assumed that his lack of engagement was down to a number of reasons including his desire to work with a third party, running MEFV and embarrassment. In respect of the first matter, Mr Shehata "acquired interests in three different hotels in Eastbourne". It is said that he was engaged "full time in dealing with those new business ventures".

29. It was suspected that Mr Shehata had taken cash from the Company. He did not admit it in his pleadings but did so late in the day in his witness statement dated 21 December 2020. He took cash and entered two consecutive leases for vehicles for his own personal

use and at the expense of the Company. The first lease was in 2016. He represented to Mercedes-Benz that it was the Company that was leasing the car. It is an example of him holding himself out as having authority to enter contracts on behalf of the Company following the time he asserts exclusion from the Company and may be treated as an inconsistency. Regardless of the inconsistency, as a matter of fact Mr Shehata did not use the vehicle for the benefit of the Company.

30. The Respondents in turn admit that security was granted against the Hotel for a loan that did not benefit the Company. It is said that Mr Shehata consented. Monies were also borrowed from the Company's bank, Natwest. It is said that this was not hidden from Mr Shehata. It was stated on the face of the accounts. The monies borrowed "were used to refurbish bathrooms at the Hotel in 2011. That being the time when the Hotel was last refurbished". This ground of unfairness claimed by Mr Shehata was not pursued with any vigour at trial. It was recognised that the security was granted to raise money for the Company. No prejudice can arise even if I were to find it unfair not to include Mr Shehata in the decision, which I do not.

The witnesses

31. During this short trial, the court heard 8 witnesses. Mr Shehata and Mr Andraous were each cross-examined for about a day; the other witnesses took considerably less time. Mr Shehata was continually asked if he was lying. Each of the parties to the petition (with the obvious exception of the Company) gave evidence on oath swearing on a full version of the bible. In my judgment the evidence I heard was not given with the objective of covering up errors or intending to mislead. The witnesses tried to recall events as they happened, guided by a relatively small number of contemporaneous documents.

32. Mr Shehata was the first to give evidence. He, without hesitation, accepted that the four shareholders had not been in partnership before the incorporation of the Company. He had never been involved in the hotel business prior to his involvement with the Company, and had no hospitality qualifications. His experience came from running MEFV. Mr Meshreky and Mr Andraous gave their time to help tutor him. Although he held MEFV out as successful, he accepted that was not the case.

33. He insisted in cross-examination that he ran the Hotel. He was pressed hard on the issue and accepted that the hotel manager looked after the day-to-day business but that he introduced the use of the excel spreadsheets which captured the finances of the Company for the benefit of and use by the i) directors ii) shareholders and iii) accountants. The spreadsheets would typically include information about occupancy, the rate of each rooms booked, outgoings and takings by each of the directors/shareholders.

34. In the period 2012-2014 Mr Shehata was able to access Company information at will by asking the manager: "Anything I wanted I could ask and receive from the manager". He could not point to a time when he requested information and did not receive it.

35. In assessing his evidence I take account of how it was given: by video link. I also take account of an obvious language barrier. Mr Shehata, like the Respondent directors, speaks excellent English but there were times when he did not readily understand words or meaning. In particular he struggled with questions where idioms were used. Taking cash from the Company and entering into car leases without consent were not actions of an objectively honest person. These actions have to be set apart from how he gave his evidence. I find that he was honest but at times mistaken. His evidence can be relied on in part, but it would not be safe to rely on it all.

36. Mr Andraous is an intelligent and articulate individual. He had less difficulty with language than Mr Shehata. He was quick to accept propositions put to him by Mr Darton. This included the treatment of dividends up until the year ending 2014 and Mr Meshreky's statement that after that date "drawings were treated as dividends". There are difficulties with that particular statement as I shall explain later. Having agreed that drawings were treated as dividends in the period after 2014, Mr Andraous was taken, in cross-examination, to the year ending 2017 accounts which are stated to have been approved by Mr Shehata. He accepted that this was incorrect and Mr Shehata did not sign these accounts. He said that the directors relied on the accountant to get the accounts right and that they had worked from information provided from the bookkeeper. In relation to all or any mistakes in the accounts he said "this is the accountant's mistake not ours". At times he was too quick to answer questions. I doubt he gave sufficient consideration to the question before answering. In my judgment he was keen to have the examination finished and was attempting to move things on. Overall his evidence was credible but I shall find mistaken in part.

37. The evidence given by Mr Meshreky and Mr Shaker was not undermined in cross-examination. Their evidence mostly concerned motivation and emotive issues such as their loss of trust and confidence in Mr Shehata. Mr Meshreky gave evidence that it was Mr Andraous who approved the accounts for the year ending 31 October 2017 but all directors agreed with him. This evidence coupled with the evidence of Mr Andraous leads to a conclusion that there was no proper oversight or scrutiny by any director as I have indicated above. The bookkeeper would pass the relevant material to the accountant who would do the best he could, and pass drafts to the directors. Mr Andraous, thinking that he had "delegated" the accounts to the accountant accepted them without apparent scrutiny. As Mr Andraous accepted the accounts. The other directors followed, again without individual scrutiny. In cross-examination Mr Meshreky explained what he now thinks is correct and incorrect about the accounts. There is no evidence that he critically examined the accounts prior to these proceedings. Answering a question about the purchase of Mr Shehata's shares, Mr Shaker said: "if he came peacefully to us and wanted us to buy his shares we would have done so - we tried to help him".

38. Mr Ellia Hanna was a manager at the Hotel between 2008 and 2009. His evidence is that Mr Andraous was "the only director in charge who used to deal with big issues which were over my authority such as maintenance, guest complaints and compensation…". His evidence was honest, reliable and straightforward, but of limited value. Mr Hanna was followed in his role by Mr John Georgy, Mr Michael Georgy and Mr Fady Saad Saad Ibrahim Saad. Save for Mr Saad's evidence, their evidence was not undermined, reliable but not of great consequence. I shall mention a little more about the evidence of Mr Saad.

39. Mr Saad's evidence played some importance to the issue of the Cash Withdrawals. He explained:

> "from June-July 2015, Mr [Shehata] started instructing me to remove the bookings that were paid in cash from the daily journal and Little Hotelier (the online property management system). When a reservation is made via telephone, email or online and the guest arrived and decided to pay in cash, Mr [Shehata] instructed me to remove the booking altogether from the daily journal and the online system…he also asked me to keep cash to one side until it was collected by him at some later

> stage. The amounts of money collected by Mr [Shehata] would vary from time to time, and it would usually be between £1,000 and £5,000 which would include cash kept from the bookings that were deleted from the system in addition to money generated from the sale of wi-fi and plug adapters."

40. His evidence is that "in excess of £15,500 plus undiscovered bookings as I did not keep a record of these bookings following Mr [Shehata's] orders" was taken without knowledge of the Respondent directors. His written evidence is that he was able to "recover information from Little Hotelier about these bookings during the handover totalling around £12,500, in addition to around £3,000 from the sale of wi-fi and European plug adapters". On any account, the sums were considerable when measured against anticipated yearly dividend payments. On one measure, Mr Shehata took over £30,000.

41. This evidence is to be contrasted with that of Mr Shehata who accepted in his written evidence that he had taken £9,000. Mr Saad was tested in cross-examination about the amount of the Cash Withdrawal. I accept his evidence. As the person who assisted in obtaining the cash for Mr Shehata, and having heard his explanation of how he undertook the calculation, I find that it is more likely than not that £12,500 of cash was diverted from Company for the personal advantage of Mr Shehata. The Respondent directors did not know of the diversion. That sum relates to the money diverted from the Company which should have been accounted for as being sums received from Little Hotelier bookings.

42. As a fiduciary, Mr Shehata owes a duty to account to the Company.

43. Mr Abbasali Rashid of Jaffer & Co gave evidence about his involvement in the production of the 2016 to 2018 year end accounts. In his written evidence he was keen to answer what he considered to be the following criticism made by Mr Shehata in his Reply dated 21 January 2019:

> "the Petitioner repeats that he has had a single dealing with the accountants where he queried a point relating to capital allowances. Mr Abbas of the accountants told the Petitioner it was nothing to do with him and advised the Petitioner to speak

> to the Directors of the Company. The accountants have not in any way assisted the Petitioner, and it has always been the case that the Second to Fourth Defendants have dealt with the accounts. It is repeated that the accounts have not been provided to the Petitioner since 2011/12 and he has not been asked to approve the accounts in that time".

44. His response:

> "As an accountant, my obligations would relate to all of the directors and I have always been happy to speak with any of them to explain any matter in relation to the accounts. I do not understand what Milad means when he says the accountants have not in any way assisted him. I and the firm are always open to assist our clients and Milad need only to contact us. The accounts was sent annually."

45. He was asked about his contact with Mr Shehata in cross-examination. Mr Rashid explained:

> "I met Milad a few times - the last time was he called me in 2017. I called him back he asked for 2016 or 2017 accounts. He spoke to Mamood and I called him back the next day. I think he emailed me back but I can't track the email as it is in an online archive. Mr Shehata's number is on my mobile. He has my number too…"

46. He also refers to an e-mail exchange. The evidence, given without hesitation, was convincing. It lays bare Mr Shehata's lack of engagement with the Company and undermines his case that the accountants did not respond to his requests for information. I do not say that the accountants were faultless; the complaint has been exaggerated.

47. As for applying Mr Shehata's electronic signature to the accounts, he explained the process and fully accepted that he did not seek Mr Shehata's permission each year. Mr

Shehata knew his signature was used on the accounts and never asked him not to use it. His evidence is consistent with that of the second and fourth Respondents in that it was Mr Andraous who tended to deal with the accounts on behalf of the Company.

48. His evidence is that the £586k was an accumulation of loans made to the directors in the period 2014 to 2018 with the addition of a few unaccounted payments reaching back to 2013. Mr Rashid was taken to his e-mail sent to all directors/members on 17 December 2018:

> "As mentioned we cannot submit the accounts with the directors/shareholders overdrawn- loan account unless we pay Advance Corporation Tax: (ACT) at the rate of 32.5% which in this instance will mean an ACT liability of £190k (£584k: x 32%) on top of the Corporation Tax on normal profits. This tax needed to be paid 9 months and one day after the year end (1 August 2018) unless as discussed you can introduce monies within the nine months as shareholders loan to extinguish the loan account"

49. Having read the e-mail he explained that there had been no resolution for these payments to be treated as dividends and thus they could only be treated as loans until such a resolution had been passed. He said that as a matter of fact he had advised that the time for treating the drawings as dividends had passed.

50. He was asked when the accounts were submitted. There was a pause before he answered when he said it was July 2018. Mr Darton had noticed that Mr Rashid had been typing and asked what he had been doing. He said that in order to answer the question accurately he had just accessed Companies House to check the date. This exposes one of the difficulties with hearing witness evidence remotely, but the evidence was given in good faith and Mr Rashid had not realised he was not permitted to access information on the internet when giving evidence.

51. Although Mr Andraous and Mr Meshreky were asked in cross examination about a note in the accounts for the year ending 31 December 2016, stating that directors' loans had been repaid, Mr Rashid was not questioned about it. Given the oral evidence of Mr

Andraous and Mr Meshreky that the question put to them about the note should be directed at the accountant because he was better placed to answer, I infer Mr Rashid was not asked because it was recognised that the note was a mistake. In any event the e-mail evidence supports the view that it was a mistaken entry.

52. In my judgment Mr Rashid gave reliable evidence.

53. Mr Ayman Hanna, a director of a fruit and vegetable import company, was not called. He was a bookkeeper of MEFV and worked part-time for Mr Meshreky and Mr Andraous between 2012 and 2017.

Legal framework

54. The starting point is section 994 of the Companies Act 2006 which provides:

> "A member of a company may apply to the court by petition for an order…..on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial".

55. Mr Shehata must demonstrate to the satisfaction of the court that: (i) the acts or omissions of which he complains relate to the affairs of the Company; (ii) the conduct of those affairs has caused prejudice to his interests; (iii) as a member of the Company; and (iv) the prejudice is unfair: *Hawkes v Cuddy (No 2)* [2008] B.C.C 390 at 437, 440 quoting *Re Saul D Harrison & Sons Plc* [1994] B.C.C 475 at 499.

56. A shareholder may be affected as a member if there is a breach of a shareholder agreement or a breach under the memorandum or articles. But a petition may succeed where there has not been a breach of such matters. In quasi-partnerships, equitable considerations may play their part: *Posgate & Denby (Agencies) Ltd* (1986) B.C.C. 99

57. In *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 it was submitted that a limited company, however small, essentially differs from a partnership… In the case of a company, the rights of its members are governed by the articles of association which have

contractual force; that the court has no power or at least ought not to dispense parties for observing the contracts; but in particular, when one member has been excluded from the directorate, or management, and the powers expressly conferred by the Companies Act and the articles, no analogy with a partnership should be drawn. Lord Wilberforce in his analysis, thought the whole judgement in *re Wondoflex Textiels Pty. Ltd* [1951] V.L.R 458 had value. He cited Smith J. at page 467 as follows:

> "It is also true, I think, that, generally speaking, a petition for winding up, based upon the partnership analogy, cannot succeed if what is complained of is merely a valid exercise of powers conferred in terms by the articles…… To hold otherwise would enable a member to be relieved from the consequences of a bargain knowingly entered into by him….. But this, I think, is subject to an important qualification. Acts which, in law, are a valid exercise of powers conferred by the articles may nevertheless be entirely outside what can fairly be regarded as having been in the contemplation of the parties when they became members of the company…"

58. He went on to explain that the exercise of legal powers conferred may be subjected to "considerations ….of a personal character arising between one individual and another…". In answer to the question when is it appropriate to subject the legal powers to equitable considerations, he opined:

> "Certainly, the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles."

59. Lord Wilberforce explained that the superimposition of equitable principles may arise where one or more of the following arose on the facts (i) "an association formed or continued on the basis of a personal relationship, involving mutual confidence"; (ii) "an agreement, or understanding, that all, or some…of the shareholders shall participate in the conduct of the business"; and (iii) "restriction upon the transfer of the members' interest

in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere". He went on to say:

> "It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to "quasi-partnerships" or "in substance partnerships" may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words "just and equitable" sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in".

60. Consistent with this analysis Lord Hoffmann in *O'Neill v Phillips* [1999] BCC 600 observed that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company would be conducted. These terms are contained in the articles of association and sometimes in the collateral agreements made between shareholders. Equitable considerations affecting the manner in which legal rights can be exercised will only arise in cases where there exist considerations of a personal character between the shareholders, which makes it unjust or inequitable to insist on legal rights or to exercise them in a particular way. Lord Hoffmann considered that the personal relationships were

of great importance explaining that he had no "difficulty" with the formulation given by Jonathan Parker J in *Re Astec (BSR) plc* [1999] BCC 59 at 86H:

> "….in order to give rise to an equitable constraint based on "legitimate expectation" what is required is a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former."

61. In *Strahan v Wilcock* [2006] B.C.C 320 Arden L.J (as she was) put the matter simply: "It is also relatively easy to establish whether a relationship between shareholders constitutes a 'quasi-partnership' when a company was formed by a group of persons who are well known to each other and the incorporation of the company was with a view to them all working together in the company to exploit some business concept which they have".

62. The court should always have in mind the nature of the arrangement between shareholders and in particular if there are professional "negotiated and drafted [agreements], containing lengthy and complex provisions governing their relations with each other and with the company" that is likely to reflect a pure business relationship: *Re Coroin Limited (No. 2)* [2013] 2 BCLC 583.

63. Where the court finds an agreement existed that the members should all be permitted to participate in the management of the company, and a member claims exclusion, the court will often have to weigh the evidence to determine if the exclusion was unfair. A distinction is to be drawn between a petitioner who is unfairly excluded by the conduct of the management and a petitioner who leaves of his own choice: *Larvin v Phoenix Offices Supplies* [2003] B.C.C. 11, paragraphs 57 to 80.

64. The conduct of the petitioner is a relevant factor when determining if any prejudice is unfair: *London School of Electronics* [1986] Ch 211; *Re Eurofinance Group Ltd* [2001] B.C.C. 551 Ch D. The Court of Appeal decision in *Grace v Biagioli* [2006] 2 BCLC 70 provides a good example. That was about a quasi-partnership company, but the exclusion of the petitioner from management was not found to have been unfairly prejudicial conduct, since he had set up a competing business.

65. Once unfair prejudice is established, the court is given a wide discretion as to the relief which should be granted: *Grace v Biagioli*

66. I shall consider first whether there was a quasi-partnership, second, the nature of the alleged agreement between the parties, third whether Mr Shehata was excluded.

Quasi-partnership

67. Mr Darton submits that each of the three factors identified in *Westbourne Galleries* are present in this case, namely:

    67.1. The Company was incorporated and operated on the basis of personal relationships;

    67.2. Mr Shehata and the Respondent directors agreed that they would all participate in the Company and indeed did so up until at least 2016; and

    67.3. Article 7 of the Company's articles restricts the transfer of a member's interest.

68. Mr Reed points to other factors that may negate a finding of a quasi-partnership:

    68.1. There was no partnership prior to incorporation of the Company;

    68.2. All parties held themselves out as experienced businessmen; and

    68.3. the articles of association govern their relationship.

69. In my judgment there is sufficient oral and written evidence to conclude that the relationships were personal. The Respondent directors met Mr Shehata at their place of worship. They prayed together, drank coffee together and formed a relationship of trust. The evidence from Mr Shaker is that they wanted to help Mr Shehata; that they will still "forgive" him. He was particularly aggrieved because he had an expectation that Mr Shehata would apologise for the Cash Withdrawal which was taken in an underhand way, not openly admitting to his default and failing to make a proper account.

70. Mr Andraous had financially assisted Mr Shehata in his MEFV venture. They had all "tutored" him in the hotel business. Mr Andraous gave evidence in cross-examination there was "no documentation - we worked on the basis of trust. There was nothing in

writing from the beginning of our relationship." There is no evidence that Mr Shehata or the Respondent directors paid any attention to the obligations contained in the Articles.

71. There is no evidence of a directors' or shareholders' meeting being convened by reference to the Articles prior to 2018. I accept the evidence of Mr Shehata that they would tend to discuss business matters over the telephone and with coffee after church: occasionally over lunch. This was their way, accepted by all. It was a relationship of trust and confidence where the members did not rely on their strict legal rights.

72. I have no difficulty in finding that a quasi-partnership arose in these circumstances. They felt no need to record their business arrangements (*inter se*) in writing. Their relationships, were based on trust and confidence, and akin to those expected of a partnership.

73. These facts and this conclusion make otiose any consideration of the share transfer restriction imposed in the Articles. I note, however, that the Articles provide for a right of pre-emption and a mechanism for valuation rather than an outright restriction on selling the shares. Nevertheless the ability of the directors to decline to register any share transfer, without assigning any reason, does impose a serious restriction.

The agreement

74. The nature and extent of the arrangement or agreement core to determining whether there has been a breach.

75. Due to the informal nature of the arrangements between Mr Shehata and the Respondent directors, the terms of any agreement they reached, before or at the time the Company purchased the Hotel, suffers from a lack of documentary evidence.

76. Mr Shehata says that the agreement included two major matters which he has relied upon at trial. First, that all members would be involved in the management of the Company. The slightly unorthodox plea includes an averment "or should be taken to have agreed", suggesting that the court may infer such agreement from the circumstances. There is because there is no evidence of an actual agreement. Secondly, each "director would receive approximately equal instalments during each of the Company's accounting period." The Amended Reply amplifies the averment by stating that they were to have

"equal status in terms of investment, drawings and involvement". I infer that this equality policy would have included suffering detriment equally in their capacity as member.

77. The "adopted practice", says Mr Shehata, was that each member would receive part of their initial investment in the Company. The "adopted practice" was subject to (a) the Company having sufficient funds to repay the investment and (b) taking it in turns to receive repayment of the initial investment. The Amended Petition states that until February 2016 "the Petitioner on average received £46,000 per annum, the payments being treated as dividends in certain years." It is said that due to these payments Mr Shehata was able to commit time to the Hotel as the £46,000 was "his principle source of income…which he was entitled in any event as a consequence of his shareholding and/or the (director's) loan he had made to the Company". I do not seek here to break down each element. It is sufficient to say that there is no evidence to support any agreement that Mr Shehata was to receive £46,000 per annum for every year he worked at the Hotel. At first the Respondent directors thought this was a positive part of the case advanced by Mr Shehata but it soon became apparent that this was not his position. His work at the Hotel and his receipt of dividends or loans were two separate issues.

78. The evidence in chief of Mr Shehata is that there was an agreement that each member would lend the same amount of money to "start-up…the business". The sum of £233,000 paid by each member enabled the Company to take an assignment of the Hotel lease, and refurbish the premises.

79. Mr Shehata's unchallenged evidence is that at "the outset of the business we agreed that we would each take turns to receive a lump sum of the net profits of the Hotel rather than smaller equal draws on a regular basis". And there was no discussion as to how "these shares of profit would be treated in the Company's accounts." In the context of this case, it is unsurprising that there was no challenge to his evidence on this point.

80. In my judgment, having heard the totality of the evidence, there was an understanding that the Hotel business may not always have sufficient funds to pay each member a dividend every year. Some years were good and some not so good. Some years required more expenditure than others. The evidence is that there was to be some sort of rota whereby they would take it in turns to receive a payment as and when a) the Company's accounts permitted a payment out to be made and b) if the payment was to be by way of

dividend, a resolution passed to for payment of such a dividend. I have seen no written resolutions. I infer that such resolutions as were passed were made were passed orally. This is consistent with the way the Respondent directors and Petitioner conducted the business.

81. The last matter follows as a matter of company law and may in any event it may be inferred from the following circumstances: (i) the members knew that the Company may not have sufficient funds to pay dividends each year; (ii) the trading premises was taken on a lease which would expire. It was known by all members that the lease would need to be renewed, if trade was going to continue; (iii) the unchallenged evidence of Mr Andraous is that refurbishments are required every 5 years and (iv) the unchallenged evidence of Mr Meshreky and Mr Andraous, which is consistent with the evidence of Mr Shehata, is that every member subscribed to the equal treatment policy. It is a finding I would have made in any event as the policy I infer from: (i) equal shareholding; (ii) no distinction being made as to voting rights; (iii) same time appointments as directors; and (iv) the structure of the initial loans made to the Company.

82. I find that there was an agreement that Mr Shaker would lead on rent reviews and lease renewals. I do not understand that Mr Shehata was suggesting otherwise, although it was not entirely clear. I find that it was agreed that building works was best managed by those who had experience in that field. That did not include Mr Shehata.

83. There is no evidence that the members had decided at the outset how expenditure in respect of refurbishment or other works would be funded: debt or equity. I infer that equity was an option that had not been discounted. It is for this reason that the members will have realised and expected that there would be some flexibility may not resolve to pay dividends even if profits had been made in any given year. It follows from this that even though Mr Shehata gives evidence that he received an average of £46,000 each year until the year ending 2014, there was no agreement that this sum or any sum would be paid regularly or was sustainable.

84. Mr Meshreky's written evidence, that after 2011, dividends were paid to each director, needs to be understood in the context of the finding that there was no entitlement or agreement that dividends would be paid each year or payments out would be treated as dividends. And the sums received by Mr Shehata up and until 2014 resulted from the

decision made at the time and not from an agreement or arrangement made at the outset. Mr Meshreky was explaining the factual situation. Payments out, made in accordance with the equal treatment policy, made between 2011 and 2014 were treated as dividends. That did not mean that all the money taken by any one director was to be a dividend.

85. It is common ground that Mr Shehata would be director in charge of the Hotel at the beginning of the venture. Mr Shehata explains in his written evidence that it "had been agreed between us at the outset that I would run the hotel although it was never suggested that this was a condition of my involvement." I find that an accurate statement. There was a sterile argument about the meaning of "run" in this context. I find that Mr Shehata was at the Hotel premises more regularly than the Respondent directors and oversaw certain aspects of its trade. In a similar way that it was agreed that Mr Shaker would lead and deal with rent reviews, Mr Shehata would "run" the Hotel. This is consistent with his answer provided in cross-examination when asked what he meant by "run the Company": "I meant that I was the only one there as others were away".

86. Mr Shehata advanced no evidence that there had been an agreement that he would always be involved in the management of the Company. That was not the expectation; it was a possibility. I accept his interpretation and that he was mostly present at the Hotel, and the director nominally in charge until in or around July 2016. I say "mostly" and "nominally" as it is also clear from the evidence adduced in cross examination that Mr Shehata was "running MEFV at the time", and Mr Andraous was also involved in the management of the Company overseeing, with Mr Shaker, the initial refurbishment. I find it more likely that not that Mr Shehata was not involved with the refurbishment although he said otherwise. There was little place for his involvement with two experienced men of property. They had the know-how gained from experience in other businesses, whereas Mr Shehata did not.

Exclusion

87. Mr Shehata's case is that from February 2016 he had been excluded from the management of the Company. His evidence is that he needed "to spend more time at the Afton Hotel to get the business under control and to keep the staff and suppliers happy and the customers satisfied". The Afton Hotel was not the concern of the Company. He asked the Hotel manager to inform the Respondent directors "that I wanted to take a step

back". His evidence is that as well as being occupied in other enterprises: "My health was also starting to be affected…". His clear evidence is that "there had never been an agreement between us for me to run the Mansfield Hotel…". His written evidence is consistent with his oral evidence. He said in cross-examination: "I stopped going [to the Hotel] regularly in July 2016- I told them, can someone please step-in as I have no time for that?". The evidence given by Mr Shehata and the Respondent directors lead me to conclude that Mr Shehata chose to stop attending the Hotel, and elected not to engage with the other directors about the management until he engaged solicitors in this dispute.

88. His pleaded case particularises several matters that he says amount to exclusion. None are supported by the evidence. He says first, he was not consulted about the lease renewal. He accepted in evidence that he knew the lease had to be renewed; that he had received an agenda for a meeting that included the lease renewal and refurbishments and again elected not to attend. He will have known that there was an agreement or at least an arrangement about who would lead on these matters. When asked why he did not attend or communicate on the subject at all, his response was: "I did not attend because I knew the outcome of the meeting". This is clear evidence that the election was his and his alone.

89. Given that he had decided to "step-back", had rarely communicated with the Respondent directors, had notice of a meeting where the very matter he complains about was to be discussed and a resolution passed, it was not unreasonable for the Respondent directors to proceed and act in what they considered to be (utilising the subjective test) the best interests of the Company. In these circumstances there is no unfairness and no prejudice.

90. Another aspect of the exclusion claim concerns negotiations for a license for alterations. The issue was not pursued at trial.

91. Lastly Mr Shehata claims exclusion by reason of a failure to furnish him with correspondence in respect of the Company's affairs and information relating to the trading of the Company.

92. The allegation is surprising. His case is that the Company was run on an informal basis. I have accepted his evidence that business matters were discussed over the telephone and after church on a Sunday.

93. In any event, it is more likely than not that Mr Shehata received e-mails from the Hotel manager regularly and these contained financial information about the business in the form of a spreadsheet.

94. Furthermore, I find that it more likely than not that Mr Shehata had access to the Company's bank account; he was able to obtain information, in his capacity as director, from the Company accountant; and he was never physically excluded from the Hotel premises. In respect of the accountant, it is not Mr Shehata's case that the Respondent directors instructed Jaffer & Co to be difficult or not to communicate or pass on any information concerning the Company. There is little correspondence electronic or otherwise to support an attempt by Mr Shehata to obtain information as director or member of the Company. Mr Shehata's pleaded case is that did not "get on" with the accountant. There is no link between the failures or alleged failures of the accountant to communicate and the Respondent directors.

95. The lack of engagement by Mr Shehata is consistent with his evidence that he was engaged in other enterprises and had "stepped back" from the Hotel in 2016.

96. In my judgment Mr Shehata self-excluded and has sought to justify his failure to engage or participate by alleging that he had been excluded by the Respondent directors.

97. The claim fails on the evidence and the distinction between self-exclusion and forced exclusion is clearly drawn in this case: *Larvin v Phoenix Offices Supplies.*

Unfair and prejudicial conduct by the majority

98. The finding of self-exclusion and the accepted equal treatment policy informs the alleged unfair and prejudicial conduct.

99. In my judgment the Respondent directors did not act unfairly by not treating the drawings as dividends. There was no agreement that cash reserves would always be used to pay dividends. Such an agreement would be contrary to commercial common sense and the evidence supports a finding that the Respondent directors were mindful of the costs of regular renovations and improvements. Mr Shehata and the Respondent directors were concerned to keep to their arrangement or agreement that each would be treated equally.

100. There is no unfairness by reason of not calling formal meetings when the company was run and always was to be run on an informal basis. As I have observed from the evidence, decisions were made in telephone conversations, after church or during lunch or coffee. Mr Shehata knew and subscribed to the informal nature of the Company's administration. No records of meetings were kept. As a matter of fact the directors and shareholders had no regard for the Articles. Mr Shehata did not seek to call a meeting himself, minute any decisions or call a meeting through other directors or members when he was able to do so. He had excluded himself from the decision making.

101. Causing or allowing a charge to be secured against the assets of the Company with no commercial justification is prima facie unfair and potentially prejudicial. It is not unfair if all members agree to a charge. I accept the evidence of Mr Andraous that there was consent to the charge. In his written evidence (evidence in chief) Mr Andraous explained that he and Mr Shaker were directors in a company known as Simply Rooms and Suites Ltd and:

> "on 28 February 2014 an omnibus guarantee and set off agreement was entered into between Simply Rooms & Suites Ltd and Lloyds Bank Plc. A charge was registered which was created by the Company. Milad was aware of the situation, it was discussed with him and he consented to the Charge. Simply Rooms always paid the Lloyds Bank indebtedness and there was never any arrears on this loan. The charge was redeemed…"

102. He was tested on his statement in cross-examination. He did not weaken. His oral evidence augmented his written evidence by adding substance. Mr Andraous said that he obtained

> "Consent about the charge in Feb/March 2014 as that is when the Bank asked for it and it was in a café next to the church. I didn't take a note of the time and place- I can assure you that the meeting took place in café next to church"

103. Mr Darton questioned Mr Andraous on his recollection: "you have no recollection of this do you?" he responded:

> "I can assure I do, I have the bible next to me."

104. I found Mr Andraous's evidence truthful and more likely than not to be an accurate account of what transpired, even if the language he used or recalls is not precise.

105. The treatment of the draws in the 2017 Accounts as "directors loans" is said to be unfair. Mr Darton submits that if the accounts for the year ending 2017 are correct, Mr Shehata has been treated unfairly because he has an additional liability (loss) of £51,057 (£146,631 - £95,574) on his loan account. That would be unfair if the Respondent directors were treated more favourably: they were not.

106. It is argued that accounts for this period were approved by the second and fourth Respondents only.

107. The evidence of Mr Shehata does not assist his own case. His written evidence is that he "never really worried about the accountants or accounts which they prepared." Mr Shehata said: "I never went to any meetings with the accountants"; "I was never formally or even informally asked to approve or sign the accounts"; "I left it to them to deal with the accountants; and in cross-examination "I did not ask to see the accounts between 2013-2018." This demonstrates his delegation. There is no evidence that he wanted to be involved in the accounts or tried to engage.

108. Consensual delegation is consistent with the informal nature of the Company. It is consistent with trust and confidence reposed in one another. Mr Shehata had the ability and means to challenge the any accounting issue at all times and chose not to do so.

109. I find (i) that since incorporation Mr Shehata, and the second and third Respondents had delegated the accounting responsibility to Mr Andraous; (ii) Mr Andraous would approve the accounts and the other directors would expressly agree or implicitly agree with his approval; (iii) there is no evidence of any member critically analysing the accounts for themselves or asking for the accounts to be revised or reconsidered; (iv) when approving the accounts Mr Andraous relied heavily on Jaffer & Co that the

accounts had been drawn accurately and (v) Jaffer & Co in turn relied on the book keeper to provide accurate financial information for the purpose of preparing the accounts. These strands of trust and/or delegation without taking personal responsibility undoubtedly led to some mistakes. I find that any mistakes that were made were not deliberate, but innocent. They are not specified as grounds of unfairness.

110. As Mr Shehata subscribed to the operation of an informally run company which had no regard to the Articles and did not record minutes of any meeting from inception, he cannot legitimately claim that there has been some breach of the terms on which he now says he agreed the affairs of the Company should be conducted, but for which there is no evidence.

111. It was argued in closing that the loans were illegal due to a failure comply with section 197 of the Companies Act 2006. The issue was not pleaded. It raises the issue about legality of all sums provided to the members that were not treated as dividends. Mr Reed submits that the Respondent directors are prejudiced by this late introduction of this issue. The Respondent directors are not equipped to deal with it so late in the day. It forms no part of the case brought by Mr Shehata. There is no application to amend the amended petition: *Dhillon v Barclays Bank Plc* [2020] EWCA Civ 619.

112. I decline to deal with the unpleaded issue. I observe, that the facts of this case lead me to conclude that Mr Shehata (a) is partly responsible for the draws (at least up until he chose to no longer be involved in the Company); (b) benefited from the draws himself and (c) chose not to raise the issue at the time or subsequently. I infer he had agreed whether expressly or by conduct that accounting decisions be delegated, agreed to the draws, agreed with the treatment of the draws and agreed with the advice provided by the Company's appointed accountant at the time.

113. Accordingly it was not unfair to treat drawings as loans or dividends since 2013 or 2014; treat the draws as loans in the 2017 accounts; or fail to comply with the Articles.

The cornerstone of unfair prejudice petition

114. As the trial progressed it became apparent that the treatment of the £586k was to be the cornerstone of Mr Shehata's petition. I turn to it now but state from the outset that many

of the findings I have made apply to this issue: in particular the terms of the agreement upon which the Company was to be operated.

115. Mr Shehata knew from the December 2018 e-mail sent by Jaffer & Co that the treatment of withdrawals by the directors/members had to be resolved. He knew that the accountants had recommended a general meeting be convened to resolve the issue. He knew that there would be tax implications. In short he knew that serious issues concerning his own wealth had to be decided.

116. It would have been no surprise to him that a general meeting was subsequently convened. He was sent an agenda in advance. The agenda was extensive and included the recently discovered Cash Withdrawal as well as building maintenance.

117. Mr Shehata accepts he received notification of the meeting and accepts that he chose not to attend.

118. It is not unfair of the directors to make decisions about the issues notified to Mr Shehata and on an agenda he had seen, when he chose not to attend the meeting or participate. There was no breach of agreement and no expectation was dashed. The plea is akin to "save me from myself".

119. The equal treatment policy agreed at the outset of the Company's incorporation meant equal drawings, and that the those drawings should be treated in the same way for each member. The decision was made with the assistance of professional advice is not contrary to that policy.

120. In my judgment it is difficult in these circumstances to discern any notion of unfairness. To put it another way, there was no expectation that Mr Shehata would be treated more favourably than the other participants in the venture.

121. The late submission concerning when approval was given for the 2017 accounts, I have touched upon already. I shall deal with in short.

122. In my judgment the starting point is the e-mail sent to Mr Shehata and the Respondent directors dated 17th December 2018 at 11:17. Mr Shehata accepted that he had been invited to attend the general meeting on 9 January 2019. He accepted that he had seen the

agenda. These admissions demonstrate: (a) that he had notice of the meeting; (b) he had not been excluded and (c) he knew of the loan/dividend issue.

123. It is argued that Mr Andraous admitted that the accounts were submitted before December 2018. They were submitted, it is argued on the date endorsed on the accounts: October 2018. In my judgment Mr Andraous was not provided with sufficient contextual information to provide an accurate answer to the question he was asked.

124. In my judgment it is more likely than not that he was responding to a simple question of whether the accounts stated 29 October 2018. The answer was "yes". That was not a reliable answer to ground the submission made. First, the e-mails and submission record, demonstrate they were submitted in 2019. Secondly, to accept the submission made on this issue would require the court finding that the e-mail sent by Jaffer & Co recommending a meeting be called was sent knowing that it would not be acted upon. It would require a finding that the Respondent directors purposefully drafted an incorrect agenda, knowing that Mr Shehata would decide not to play any part. It would require finding that Jaffer & Co had given false evidence as to when the accounts were submitted. And it would require a finding that there was some sort of scheme with the Respondent directors and Jaffer & Co designed to give an appearance that did not reflect the truth.

125. In my judgment the evidence of Mr Rashid is to be preferred. It is more likely than not that the accounts were submitted after the calling of the general meeting, and after due consideration was given to the advice provided by Mr Rashid. As none of these matters were put to the witnesses and the evidence is against such a finding. The court should in any event not be persuaded or at the very least be slow to reach conclusions where such serious allegations are not put to the relevant witness. It is more likely than not that the decision to treat the withdrawals as loans was decided in the usual manner in that Mr Andraous took the lead and Mr Meshreky agreed following advice from the accountant.

126. The evidence does not support the statement in the accounts for the year ending 31 October 2016 that the directors' loans had been repaid. Mr Shehata conceded that the loan account for year ended October 2017 was incorrect, the balance forward figures were wrong, and his balance forward figure was not £95,574. The Company's bank account does not reflect repayment. Mr Rashid believes there has been an obvious error. There is a conflict between the statement in the accounts and evidence provided to the court. In my

judgment Mr Dowling's assumption that the loan account had been repaid was wrong and was made without all the relevant documents.

127. The evidence does not support a finding that the Respondent directors had been acting in a manner that can be described as unfair or prejudicial.

128. In my judgment no one party is seeking to make another liable for a sum greater than that which is due. There is evidence to support the view that Mr Shehata had more than he has claimed in these proceedings (circa £95,000) and there is some doubt whether his calculation includes the Cash Withdrawal and other undisclosed benefits such as monies paid for car leases. On the other hand, having considered the figures I am not convinced that he has received the same amount as the Respondent directors. A reconciliation should now be made by an independent accountant so that each director can be assured that he owes the correct sum and in accordance with the equality policy, that sum is the same. This will require proper disclosure of personal bank accounting information by each director and a frank and open statement from Mr Shehata as to the full extent of the Cash Withdrawal. This issue has arisen as a result of a myriad of factors, none of which can be put at the door of the Respondent directors.

129. There is one matter that was touched upon although not pleaded. It was said that Mr Shehata should have been given the option whether to take money from the Company in the form of a loan. That is an attractive argument but fails on the facts. The evidence is that the members received funds from the Company prior to each year end (save for when Mr Shehata was asked to slow down and let the others catch-up in accordance with the equal treatment policy). No member waited for a dividend to be declared in advance of a drawing. This strategy was not debated or expressly agreed but arose by conduct. If directors choose to ignore the provisions of the Companies Act 2006 they expose themselves to risk. Mr Shehata was treated no differently from the other directors and chose to take money prior to declarations of dividends. That exposed him to the risk that come the year end the Company may not be able to declare a dividend and the drawing would have to be treated as a loan.

Conclusion

130. At the outset there was an agreement that each member would receive dividends sufficient to repay the loan to the Company. There was no agreement that after that point in time they would receive dividends every year or at all.

131. In or around 2016 Mr Shehata decided of his own volition to "step back". He excluded himself from the management of the Company.

132. There was an agreement that they would be treated equally. There is no evidence or indeed there is no allegation, that there has been a breach of the equal-treatment policy.

133. All dealings with the bank account have been adequately explained. The extra drawings received by Mr Shehata (without consent) which include the payments for car leases, are partly to blame for the accounting issue that has arisen: the state of the account of each member. To honour the equal treatment policy each director should have received equal amounts. It was Mr Shehata who broke loose from the equal treatment policy I have mentioned, by helping himself to the Cash Withdrawals without disclosure, leasing vehicles without knowledge of the Respondent directors and then self-excluding.

134. None of the parties have repaid their loans as at the date of trial. That corresponds with the equal-treatment policy of the members.

135. It is striking that all the complaints Mr Shehata makes in these proceedings arose when he had decided to no longer participate in the management of the Company. The Respondent directors did not disable Mr Shehata by barring him from access to Jaffer & Co, ability to observe movements on the Company's bank, receiving regular e-mail posts from the Hotel manager attaching financial details, invitations to directors' meetings or gaining unfettered access to the Hotel premises.

136. This case is quite different from *Grace v Biagioli* relied upon by Mr Shehata. True it is that *Grace v Biagioli* has in common with this case a finding that there was a quasi-partnership, but the unfairly prejudicial conduct was the denial of dividends and their payment to the majority shareholders dressed up as management fees. That unfairly prejudicial conduct was sufficient to justify an order for a buy-out. The equal-treatment policy has been maintained with all parties receiving the same benefits and liabilities. It follows that the conduct claimed as unfair and prejudicial have not been made out.

137. Having reached this conclusion the court need not order a buy-out. I acknowledge that the issue and pursuit of these proceedings is sufficient to demonstrate a breakdown in trust and confidence, and the parties now wish to sever their relationship. There is a mechanism within the Articles for the sale of shares. To this end the parties should make all reasonable efforts to agree a valuation mechanism and fully cooperate with the flow of accounting information.

138. I invite the parties to agree an order.