Neutral Citation Number: [2023] EWHC 1729 (Ch)

No: CR-2022-000906

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

IN THE MATTER OF KENT CONVERSIONS LTD
AND IN THE MATTER OF THE COMPANIES ACT 2006

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 21 July 2023

Before:

Deputy ICC Judge Baister

- -

Between :

JOANNE COUCH — **Petitioner**

- and –

(1) KEVIN FOX — **Respondents**
(2) KENT CONVERSIONS LTD

Ms Chloe Shuffrey (instructed by **Germain Kaile Law**) for the **Petitioner**
The First Respondent appeared in person
The Company did not appear and was not represented

Hearing dates: 28, 29 and 30 June 2023

Approved Judgment

This judgment was handed down remotely at 10.00 am on 24 July 2023, by prior circulation to the parties/their representatives by e-mail and by release to the National Archives

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Deputy ICC Judge Baister:

The background

1. These proceedings arise out of the breakdown of a personal and business relationship between the petitioner, Joanne Couch, and Kevin Fox, the first respondent.

2. Ms Couch and Mr Fox met in 2003 when they were working at a firm called Zenith Windows. They began a personal relationship but initially lived apart. In 2011 Mr Fox had an accident as a result of which he underwent a hip operation. He became homeless. Ms Couch invited him to move into her house at 2 Acott Fields, Yalding, Kent. She is the sole owner of that property.

3. Ms Couch worked as a childminder for some 17 years. Mr Fox assisted her in that business. He is a builder. At one stage he ran a dance school, having been, it seems, a dancer of considerable ability.

4. Ms Couch was diagnosed with breast cancer in 2015. She received £164,280.75 under an insurance policy she had taken out. She wanted to use that money to good purpose and initially considered investing in what she describes as a "no involvement investment project involving offices being converted into flats," but she decided against that. Instead, she says, at Mr Fox's suggestion, she decided to buy a property to let.

5. Kent Conversions Ltd was the vehicle for that project. It was incorporated on 8 May 2017 with a nominal and paid up capital of £100. Ms Couch and Mr Fox are each 50% shareholders and each is a director. It is common ground that the company was incorporated as a joint venture and was (and remains) a quasi-partnership. The relationship between the parties has never been the subject of a shareholders' agreement. Neither of them has a written contract governing their office as director or the terms on which each was employed.

6. A property, Hydrangea House, 17 Twiss Road, Hythe, was acquired in 2017 for £260,000. Ms Couch put up the deposit of £26,000, in addition to which she says she provided a further £70,000 towards the purchase price and covered various other initial costs. Mr Fox undertook himself or supervised others in carrying out work to renovate the property. That work started in November 2017 and went on until the spring of 2019. Hydrangea House became available for letting in or around Easter 2019 when the company took its first booking. In March 2020 England became subject to lockdown as a result of the Covid pandemic, so letting had to cease.

7. The relationship between Ms Couch and Mr Fox was not always smooth, although it lasted some time in spite of vicissitudes. On 11 February 2021 Mr Fox was admitted to hospital for urgent treatment for a hernia. He returned to Ms Couch's property on 14 February 2021, but, to put it neutrally, difficulties in the relationship persisted, and it came to an end. Mr Fox left Ms Couch's home on 28 February 2021. Mr Fox says he was forced to leave. Ms Couch implies that he left voluntarily, returning to her house to pick up his belongings and go to stay with his son, although she also mentions threatening to call the police, as a result of which "he [Mr Fox] left without too much fuss, apart from the usual accusations and threats." Whatever the exact circumstances may have been, the parting was plainly unhappy: it represented the end

of a personal relationship that had by then lasted something like 18 years. It was also the turning point in the couple's business relationship that has culminated in these proceedings.

8. The trial which this judgment follows took place on an expedited basis in melancholy circumstances: following admission to hospital in November 2022, Ms Couch was told that her cancer had metastasised. In February of this year she was told that her life expectancy was six months. The treatment she is now receiving is life-prolonging and palliative.

9. That bare and intentionally bland account is sufficient by way of introduction to what follows. I shall flesh out the detail later as necessary.

The petition and the counterclaim

10. On 25 March 2022 Ms Couch issued the unfair prejudice petition that, together with Mr Fox's counterclaim, is the subject of this judgment.

11. The unfairly prejudicial conduct relied on by Ms Couch can be summarised as follows:

    (1) Mr Fox has interfered with the smooth conduct of the company's business in that he has persistently delayed in authorising or has refused to authorise business expenses, many of them of low value and of a day-to-day nature.

    (2) He has refused to agree to Ms Couch's taking a salary from the company and to authorise the repayment of loans she made to the company.

    (3) He has sought to block Ms Couch's access to the business by taking the business telephone and changing passwords on various accounts.

    (4) He has refused to co-operate in taking steps to make the business more profitable.

    (5) He "broke into" and "squatted" at Hydrangea House.

    (6) He has submitted a "fabricated" invoice to the company.

    (7) He has used company money for unauthorised personal expenditure.

    Ms Couch also relies on some of those matters as breaches by Mr Fox of his duties as a director.

12. Mr Fox contests those allegations and counterclaims, relying on the following as constituting unfair prejudice to him:

    (1) Ms Couch has wrongly excluded him from management of the company.

(2) She has denied him access to the company's books and records.
(3) She has caused the company to incur unauthorised personal expenditure.
(4) She has inflated her director's loan account.

(5) She has diverted company funds and income.

(6) She too has stayed in Hydrangea House without authorisation.

It was agreed before trial that these could be dealt with without Mr Fox having to cross-petition.

The evidence and the witnesses

13. In support of her petition Ms Couch has made two witness statements. In support of his defence and counterclaim Mr Fox relies on his own single witness statement and witness statements of Michael Andrew Casson, Christopher Culpin, Joe Parker, Derek Jackson, Peter Chapman, Stephanie Chapman, Dr Shamim Ahmed (although it is a letter which is not exhibited to a proper witness statement) and Arron Peter Fox, his son.

14. I heard oral evidence by way of cross-examination from Ms Couch, Mr Fox and Mr Culpin. Arron Fox was unable to attend. I propose to take into account the written evidence of all the witnesses but give limited weight to that of those who did not appear. In reality, what follows draws almost entirely on the testimony of Ms Couch and Mr Fox alone: the evidence of the other witnesses has contributed little to my understanding of the respective parties' cases.

15. I found Ms Couch to be a straightforward and honest witness who did her best to assist the court. I do not mean thereby that I necessarily accept the totality of her evidence. My principal criticism of her evidence is that she tended, at times, to exaggerate or to be over-ambitious in her claims. One example is her use of the word "alcoholic" in relation to Mr Fox. It may be that he drinks too much, but that does not amount to alcoholism. Mr Fox's GP says he is not an alcoholic, and I accept that. Ms Couch claims it is unreasonable of Mr Fox not to agree to her taking a salary; but there is no basis on which she is at present entitled to one. (I shall return to this below.) Ms Couch describes Mr Fox's brief but ill-advised occupation of Hydrangea House in circumstances for which I have some (but I stress "some") sympathy as his having broken into and squatted there, language that, in my view, overstates what actually occurred and is unduly vituperative. I am sceptical as to Ms Couch's claim about the extent of her involvement in the renovation of Hydrangea House. In her petition she claims to have overseen and directed the works and to have been present and assisting "at all times." She was not.

16. Mr Fox gave his evidence courteously and forcefully. I accept a great deal of what he said, but in significant respects I found it unsatisfactory.

17. First, he did not always directly answer the questions Ms Shuffrey asked him in cross-examination. I shall not make too much of that: it is a common fault, but one that often demonstrates that there is no real answer to the question put.

18. Secondly, Mr Fox gave opaque responses to some of Ms Shuffrey's questions. I mention just one by way of example because it was striking (others, I accept, less so). Ms Shuffrey asked Mr Fox to confirm yes or no to her question whether he had ever contributed to the mortgage on Ms Couch's home. His reply was "Neither one nor the other." That is plainly ridiculous: Mr Fox did not wish to admit what I infer, namely that the true answer was "No."

19. Thirdly, and this is more serious, there were significant respects in which Mr Fox's evidence was at best fanciful, at worst untruthful. In her second witness statement Ms Couch complains that after Mr Fox moved in with her "He treated my house like his own and became 'entitled' very quickly." She goes on to say that he asserted a claim to half of her home on the basis that they were married in common law. (Mr Fox would not be the first to give credence to this legal myth.) I do not think Ms Couch was exaggerating here. In his witness statement Mr Fox refers to Ms Couch's property as "our joint home." In the sense that both he and Ms Couch lived at Acott Fields, that description is understandable, and when Mr Fox was cross-examined by Ms Shuffrey he properly conceded that the property was only in Ms Couch's name. However, the word "joint" appears in another context in Mr Fox's witness statement. He claims that the money to purchase Hydrangea House came not solely from Ms Couch's insurance money but in part "from our joint savings." Ms Shuffrey put to him that none of the money came from joint savings, but he did not agree. Even after Ms Shuffrey took him to bank statements showing the relevant payments to have been made by Ms Couch, Mr Fox refused to concede that none of the funding had come from joint savings. He simply said (twice) that Ms Couch had multiple accounts, declining to elaborate. Nor could he, I suspect, for his written evidence contains no explanation of how the supposed joint savings were accumulated, how much he contributed or which of the many accounts Ms Couch is claimed to have had was used for them. Mr Fox's evidence on this point was plainly untruthful.

20. That does not mean that I reject the whole of his evidence: there were many other occasions where he gave perfectly truthful and straightforward answers. The matters I have mentioned, and others to which I shall come, do, however, substantially undermine his overall credibility as a witness. The result is that where there is direct conflict between what Mr Fox says and what Ms Couch says, I generally incline to accept Ms Couch's version of the facts.

21. I shall say more about Ms Couch's and Mr Fox's evidence when I come to deal in more detail with the allegations.

22. I need say little about Mr Culpin's evidence. His claim that Ms Couch played little part in the building works was overstated, but that is of minor importance. She did play a role, but not as great a one as she claims. Arron Fox's evidence goes to a single issue. He was unable to attend for cross-examination because of a childcare problem. I shall admit his evidence in spite of that but attach little weight to it.

The law

23. I take what follows largely from Ms Shuffrey's skeleton argument. It is uncontroversial.

24. The starting point is s 994 Companies Act 2006 which provides:

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

If either ground is established, s 996(1) confers a very broad discretion on the Court to "make such order as it thinks fit for giving relief in respect of the matters complained of."

25. The effect of s 994 is that the petitioner must show:

> (a) that the matters of which he complains are either actual or proposed acts or omissions of the company or consist of conduct of the company's affairs;
>
> (b) that those matters have caused prejudice to his interests as a member of the company; and
>
> (c) that the prejudice is unfair.

26. The conduct complained of must relate to the company's, not a member's personal, affairs. It has been held that the affairs of a company extend to any matter capable of coming before the board or the company in general meeting or which could be subject of a board or shareholder decision (*Apex Global Management Limited v Fi Call Limited* [2015] EWHC 3269 (Ch)).

27. The prejudice will often take the form of a decrease in the value of a member's shares, but it need not necessarily be financial. It must, however, affect the petitioner adversely in his capacity as a shareholder or offend the rules which he and other shareholders agreed should regulate the conduct of the business (*Apex Global Management* at [41]). In *Re Coroin Ltd* [2013] 2 BCLC 583 at [630] David Richards J, as he then was, said:

> "Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So, for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members have rights recognised in equity if not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the

> company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section."

28. The concept of fairness is wide but must be applied "judicially and … [on the basis of] rational principles" (*O'Neill v Phillips* [1999] 1 WLR 1092, at p. 1098E, *per* Lord Hoffmann). In *O'Neill v Phillips* (at p. 1098H-1099A), it was held that unfairness may consist of (i) a breach of the terms on which the member in question agreed that the affairs of the company should be conducted, or (ii) a breach of the equitable constraints which apply to the exercise of legal powers by reason of the nature of the relationship between the parties (such equitable considerations usually arising in the case of a quasi-partnership).

29. A member is entitled to require the affairs of a company to be conducted in accordance with the terms on which the parties, through the company, have agreed to do business together. These may be found in the company's articles of association or a shareholders' agreement; but they may also (most commonly in the case of a quasi-partnership) be founded on a common understanding or informal agreement between the members (*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360). Furthermore, the terms on which members have agreed to do business together include, by implication, an agreement that any party who is a director will comply with the obligations set out in ss 171-177 Companies Act 2006 (*Re Tobian Properties Ltd* [2013] 2 BCLC 567 at [22] *per* Arden LJ (as she then was)). Thus a breach of director's duties may constitute unfairness.

30. Unfair prejudice may be established where there has been a justifiable loss of confidence in one of the quasi-partners leading to a breakdown of the relationships among them: *Re Baumler (UK) Ltd; Gerrard v Koby* [2005] BCC 181 at [181]:

> "[I]n the case of a quasi-partnership company a breach of duty by one participant may not in the event be causative of "prejudice or loss" to the company, but may nevertheless lead to such a loss of confidence on the part of another, innocent, participant and breakdown in relations that the innocent participant is entitled to relief under s.461 of the 1985 Act. In effect the unfairness lies in compelling the innocent participant to remain a member of what was once a company formed with the characteristics which made it capable of being given the label of "quasi-partnership", unsatisfactory as that label might be. In this respect I refer to the part of the speech of Lord Hoffmann in *O'Neill v Phillips* [1999] B.C.C. 600; [1999] 1 W.L.R. 1092 at p.609E; 1101H."

31. In *Apex Global Management* the court held that if, in a quasi-partnership, one quasi-partner "so denigrates the activities of another quasi-partner as regards the latter's conduct of the company's affairs as to make their constructive continuation in quasi-partnership unrealistic, that may well suffice" (at [48], *per* Hildyard J).

32. In *Re Abbington Hotel Ltd* [2011] EWHC 635 (Ch), each member had established entitlement to relief in circumstances where each had acted in a manner contrary to the agreed basis on which the joint venture had been established, thereby destroying the relationship of trust and confidence that existed between them at the outset:

> "One party or the other conducted itself entirely contrary to the agreed basis and, in so doing, caused the other justifiably to lose the trust and confidence which was fundamental to their relationship as members of the company. I have found in favour of Mr DiGrado's version of the facts, so I can confine my comments to that. Mr D'Angelo's conduct in August 2006, in seeking on behalf of the company to sell the hotel and knowingly creating and putting forward a false minute for that purpose, was wholly at odds with the agreed basis. His conduct destroyed the essential relationship of trust and confidence. In contrast with the last passage cited from O'Neill v Phillips, this is not a case where the relationship had broken down without fault on the part of Mr D'Angelo." (at [105], *per* David Richards J).

33. In *Thomas v Dawson* [2015] BCC 603 it was held appropriate to order one member to buy out the other member's shares in the following circumstances:

> "I do not think that it will help to rehearse the parties' mutual grievances any further at this point. The simple fact is that the financial management of the company has largely broken down, in circumstances that I have already set out. This is to the prejudice of the members generally, namely Mr Thomas and Ms Dawson. There are three possible courses of action. First, the company could be wound up and the assets distributed. Second, an order might be made for the purchase by one party of the other's shares. Third, the parties might agree the terms of a shareholders' agreement, with management being vested in one or the other of them. I cannot impose such an agreement. I should not wish to make an order for the company to be wound up, unless it were unavoidable. If an order for purchase of shares is to be made, it will make more sense for Mr Thomas to purchase Ms Dawson's shares: first, he has closer involvement in the business of the company; second, it was apparent at trial that the manager of the care home and Ms Dawson would not be able to share a constructive relationship. I shall discuss the way forward with the parties at the hearing for the handing down of the judgment."

34. On exclusion from the management of a company, Ms Shuffrey mentions the following authorities.

35. It has been held that it is not exclusion from management alone that may give rise to unfairness but exclusion without a reasonable offer to acquire the excluded shareholders' shares (*O'Neill v Phillips* at p. 1107C *per* Lord Hoffmann). There is no rigid rule that exclusion from management amounts to unfair prejudice: it has been

held that it is not unconscionable to exclude a shareholder from management where that shareholder has been guilty of gross misconduct (albeit in good faith) (*Re LCM Wealth Management Ltd* [2013] EWHC 3957 at [53]-[55] *per* Hildyard J) or more generally where his exclusion has been justified (*Richardson v Blackmore* [2006] BCC 276 at [66]-[67] *per* Lloyd LJ).

36. The relevance of the foregoing authorities to this case is so plain as to require no further exposition.

37. To the above, I would wish to add reference to s 386 Companies Act 2006 which provides:

> "(1) Every company must keep adequate accounting records.
>
> (2) Adequate accounting records means records that are sufficient –
>
> (a) to show and explain the company's transactions,
>
> (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
>
> (c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act.
>
> (3) Accounting records must, in particular, contain –
>
> (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and
>
> (b) a record of the assets and liabilities of the company.
>
> (4) […]
>
> (5) […]

In my view, the provision has some relevance to the allegations involving the loan account or accounts and the sums it is claimed were improperly paid using company money.

Some preliminary points

38. Before I turn to the allegations in detail I should deal with some preliminary matters.

39. First I should say something about the way the business of the company was conducted and what was done by whom. Whether as a result of discussion and agreement, which I think is likely, or simply as a result of the way things developed, there was a broad division of responsibilities in the running of the company. Generally speaking Ms Couch dealt with the administration of the business while Mr Fox dealt with building work, repairs, maintenance and the like. That was a sensible

arrangement, although there was, as is common in a small business, some overlap. It was only after he and Ms Couch separated that Mr Fox began to take more of an interest in the administrative side of the business. That is understandable: he was justifiably concerned to protect what he described as his investment (his 50% interest in the company).

40. Secondly, Ms Couch refers to Mr Fox's behaviour as, variously, abusive and coercive. She attributes her decision to abandon her child minding business to his conduct. In his oral evidence, at one point Mr Fox said, "Jo likes control" (he was referring to the business, as I understood him, not making a more general point). The issue of Mr Fox's character was not explored much in cross-examination. I do not think it necessary or desirable to make any findings of fact on this: important though it undoubtedly is to the parties, it is, in the end, of little relevance to the issues I have to resolve.

41. Thirdly, Ms Couch claims that when she and Mr Fox separated Mr Fox threatened to ruin her and/or the business. Ms Shuffrey invites me to view the allegations on which Ms Couch relies against the backdrop of that threat. I do not doubt that Mr Fox said something along the lines of what Ms Couch claims, and I give the threat some weight. Again I say "some:" threats of this kind are not uncommon at times of emotional stress. They are not necessarily to be taken literally. I think much of Mr Fox's conduct was born of frustration and, possibly, regret at the loss that separation entailed. He did behave badly, but I do not think he embarked on a concerted effort to destroy the company. As he said more than once in the course of the trial, there would have been no point in damaging the company as this would have meant damaging his own interests as well as Ms Couch's.

42. I turn, then, to the issues themselves.

The allegations in detail

43. Ms Couch and Mr Fox each accuse the other of excluding them from the management of the business and acting to its detriment. They do so by reference to conduct described in slightly different ways, and which overlaps to some extent. The headings I use below are therefore somewhat broad.

44. I shall deal first with Ms Couch's complaints.

Impeding the operation of the company by delaying/refusing to authorise the payment of business expenses

45. Ms Couch's case is that, since she and Mr Fox separated, Mr Fox has impeded the proper running of the company's business by persistently refusing to authorise or by delaying in authorising the incurring or payment of expenses necessary for the day-to-day running of the company (for example, for maintenance and cleaning work). She relies on what Ms Shuffrey describes as a course of conduct whereby (i) she will ask Mr Fox to approve payment of an expense (generally of small sums for the payment of which no real explanation is needed) even where she has sent proof of the expense incurred in the form of a receipt; (ii) Mr Fox will refuse to authorise the payment, demanding further particulars of the expense and why it is justified; (iii) Ms Couch will provide further particulars and justification and/or further

proofs/invoices/receipts; (iv) Mr Fox will sometimes fail to respond, or at other times, even when he does approve the expense, will only do so after having allowed payment to "time out" so that Ms Couch has to resubmit it on the banking system. Mr Fox's refusal to authorise, or delay in authorising, expenses, it is claimed, has been detrimental to the business not only by impeding its efficient running, but sometimes by exacerbating the expenses that were incurred.

46. Mr Fox denies the allegation, complaining that it was agreed through solicitors that he would "sign off outgoing payments," and that it is Ms Couch who has been at fault for putting forward payments unsupported by invoices, asking him for approval at the last minute, not providing information when requested, providing invoices she has produced herself and spending money without prior approval.

47. Ms Shuffrey took Mr Fox to a number of exchanges he had had with Ms Couch. They make unedifying reading, and I have no intention of going over all the material that was covered. I shall mention just a few examples of such everyday occurrences and then deal with one that I regard as important.

48. In May 2021 there were spats about Ms Couch's ordering a radiator brush and milk sticks at a cost of £19.98. Mr Fox said he would not approve the expenditure at the moment, saying, "When I get back will deal with these. Can you put all monies back accounts. Please." He also queried the need for the brush. Ms Couch pointed out that there were cobwebs. There was an exchange about the lack of a receipt for a £40 cash withdrawal. Ms Couch explained that the machine was not printing at the time of the withdrawal. Ms Couch asked for consent to do some work on a "dodgy oven shelf." Mr Fox wanted a picture. There is more in the same vein. Ms Couch conceded that there were times when Mr Fox agreed to something without delay, but her case is that much of what went on followed the pattern described in paragraph 45 above; and that seems to be right. It plainly did disrupt the business of the company. The delay often meant that payments that had been set up to be made were "timed out" so that the work Ms Couch had done once had to be repeated.

49. When Ms Shuffrey took Mr Fox through some of the pettier exchanges he and Ms Couch had had and suggested to him that they did not reflect a spirit of cooperation, Mr Fox was gracious enough to say that he agreed that things could have been dealt with better.

50. If these matters were minor, the same cannot be said of Mr Fox's conduct when it came to remortgaging (or rearranging the mortgage on) Hydrangea House in 2022 after an initial fixed interest rate period came to an end. Ms Couch complains that again Mr Fox delayed giving consent, which resulted in extra interest charges to the company; Mr Fox says that that was because he was only given a couple of days to review the matter. Ms Shuffrey demonstrated that that was not the case. She took Mr Fox to an email exchange of 12 August 2022, an early stage in the process, and then to an exchange on 8 September 2022 in which Ms Couch gave Mr Fox a range of possible interest payments which Mr Fox asked to be explained, then a text message from Ms Couch of 21 September asking Mr Fox to return the paperwork by midday, which he appears not to have done as this was followed by an email of 22 September from her solicitor to Mr Fox's asking for papers to be returned as a matter of urgency. Ms Shuffrey put to Mr Fox that he had refused to agree to the proposed rearrangement and the result had been a delay of some 12 days, so that the company had had to agree

to a higher interest rate. My notes (which are not verbatim) record the following exchange:

> Q: There was no response [to the 22 September email]. You knew of the urgency?
>
> A: On the advice of solicitors.
>
> Q: Your solicitors knew you were not acting in the best interest of the company?
>
> A: The interest rates had risen anyway.
>
> Q: This was the single biggest outgoing of the company.
>
> A: There was no significant change.
>
> Q: A rate of 4% was passed up. It became 6%.
>
> A: I agree. But there was no benefit to me in destroying the business.

I intervened at one point in this exchange, asking Mr Fox what benefit the company had from his refusal to agree the remortgage more speedily. He offered no response.

51. I am satisfied that Mr Fox was simply being perverse. Notwithstanding his claim that interest rates were increasing in spite of his delay, I find on the balance of probabilities that his delay did damage the company in that it ended up paying a higher rate of interest than it needed to.

52. Mr Fox also complains of what Ms Shuffrey describes as Mr Fox's repeated demands for directors' meetings in order to pre-approve the incurring of day-to-day expenses. Ms Couch, she says, had been unwilling to meet Mr Fox face to face but had been open to holding remote meetings; yet "Mr Fox has repeatedly refused to provide an agenda." I cannot see why an agenda would have been necessary: this seems to me to be an example of Ms Couch behaving obstructively, as she would have known in broad terms what Mr Fox wanted to talk about, namely company expenditure. (This was not a complicated business.) I do, however, sympathise with her not wanting to engage with Mr Fox in the form of a face to face meeting. I have not made any findings about Mr Fox's behaviour (see paragraphs 40-41). I do, however, accept Ms Couch's *perception* of Mr Fox as aggressive, and I think Mr Fox was well aware of that. He failed to follow up on the suggestion of a remote meeting. In the circumstances I find that to have been unreasonable of him.

53. I think that all the foregoing needs to be seen in the light of the bitterness attendant on and following Ms Couch's and Mr Fox's unhappy separation. Whatever its immediate cause may have been, neither trusted the other to run the company "behind their back." It seems to me that both of them could and should have approached the post-separation situation more pragmatically, but that in fact each used it to get at the other, Mr Fox, in my view, more than Ms Couch. Solicitors tried to agree a mechanism and a timetable for response to requests, but without total success. I think that was largely Mr Fox's doing.

54. In my view, all this did impede the smooth operation of the company and to that extent was prejudicial to Ms Couch as shareholder (and indeed Mr Fox).

Taking the business telephone and changing passwords

55. I take this point next as it is similar to the previous point.

56. When Mr Fox left Acott Fields he took with him the business telephone. (I understand there was only one.) He did not ask or tell Ms Couch. Mr Fox does not contest this. It was unclear to me how long he kept it. When I asked I was told that it had never been returned and that Ms Couch had had to use her personal phone.

57. Given that it was Ms Couch who dealt with the administration of the company, which included generally, but not exclusively, dealing with guest bookings, this was plainly damaging to the company and can only have been intended to have that effect. Mr Fox's changing passwords, which he did not deny (he said Ms Couch did the same, so it was "tit-for-tat"), was also potentially detrimental to the company.

Refusal to cooperate in taking steps to make the business more profitable

58. Ms Couch says that, in addition to refusing to authorise business expenses, Mr Fox has refused to approve her taking steps to help the company to become more profitable. There are various gripes about the booking agents used by the company, but at the heart of this point is Mr Fox's refusal to agree to cancel a contract the company has with an online travel agency called Mulberry Cottages which takes a 20% commission on each booking. Ms Couch sent Mr Fox an email about this (and much else) on 21 June 2021 to which she says he did not respond. In cross-examination Mr Fox said that they had discussed the matter and that Ms Couch is well aware of his thoughts on Mulberry. In his witness statement he complains that he has had no access to booking information but goes on,

> "From the little information I have Mulberry Cottages have been responsible for the largest number of rentals of Hydrangea House. In fact, prior to our separation, we had discussed Mulberry Cottages and agreed to continue with their services."

59. This looks to me like a simple difference of opinion, incapable of resolution by the court. I do not know who is right: whether Mulberry should be retained or not. I have no alternative but to dismiss the allegation.

Mr Fox's refusal to agree to Ms Couch's taking a salary or to repayment of her loans

60. Ms Couch says that it is not financially possible for her to continue to run the company without being repaid the loans she contributed or taking a salary from the company.

61. I can find no basis on which Ms Couch can be entitled to a salary. Ms Couch concedes in paragraph 13 of her petition that neither she nor Mr Fox "initially drew a salary from the Company." There is no suggestion that there was ever an agreement to change that position. There is no shareholders' agreement that provides for either Ms Couch or Mr Fox to take a salary, nor has the board resolved that either of them may

do so. Neither has a contract in their capacity as an employee of the company. That, in my view, is the end of the matter.

62. The position is different as regards repayment of the money Ms Couch injected. Her director's loan account shows that she is indeed owed a substantial sum. In the absence of express terms governing when repayment was due to her, Ms Couch is entitled to payment on demand. There are, however, two difficulties. The first is that the company is insolvent. The second is that the debt is due under a *director's* loan account. It follows that the prejudice (if that is what it is) Ms Couch is suffering as a result of Mr Fox's failure to address the issue of repayment is suffered by her in her capacity as a director, not in her capacity as a shareholder.

63. Both limbs of this allegation fail.

Mr Fox's occupation of Hydrangea House

64. After moving out of Acott Fields, Mr Fox went to live in Hydrangea House. Ms Couch says he "broke into and squatted" there for about a month. Mr Fox admits staying there but only for 17 days. Ms Couch says he only left the property on 11 April 2021, two days before guests were due to arrive, under threat of eviction proceedings by the company. Ms Couch also alleges that Mr Fox left the property in a rundown state: the TV was broken, the toilets were dirty, as were the walls, pots and pans were left unclean, the window box plants were dead, the decking and garden furniture with mildew, and the heating left on at over 30°.

65. Mr Fox's decision to occupy the company property, apparently without telling Ms Couch, was foolish and plainly designed to irritate Ms Couch, which it did. There is, however, no indication of any real damage to the business of the company by reason of Mr Fox's use of Hydrangea House, whether it was for 17 days or a month. Mr Fox moved out two days before guests were due to arrive. To the extent that the company incurred legal costs with a view to ejecting him, there was no authority to do so. Ms Couch is not entitled to reimbursement of any costs incurred on behalf of the company. The allegation is in any event overblown.

66. There is a dispute about the state in which the property was left. Both Ms Couch and Ms Fox rely on photographs, Ms Couch's showing the state for which she contends, Mr Fox's doing the opposite. I cannot resolve the conflict, although I accept Mr Fox's evidence that he did not break the TV. Beyond that, I resort to the burden of proof, which I hold Ms Couch has not satisfied.

67. I dismiss this allegation.

The invoice for building works

68. As we have seen, Ms Couch contributed to the business the capital that enabled the company to acquire Hydrangea House. Mr Fox says that his contribution in the form of the work he did on the property was to be treated in the same way and recorded in his director's loan account as Ms Couch's contribution was recorded in hers. Given the 50/50 basis on which the company was set up I can understand this. Ms Couch says in her petition that it was never agreed or understood that the company would recompense either her or Mr Fox for the renovation work. Mr Fox says in his points

of defence that it was agreed that he would be repaid the value of the works in the same way as Ms Couch was to be repaid for her contribution to the purchase.

69. In December 2021 Mr Fox submitted a barely particularised invoice for £110,596 in respect of the building works carried out by him when the property was being renovated. This was submitted to the company's accountant, without telling Ms Couch or sending her a copy: she learned about it by an email of 30 December 2021 from Matthew Forshaw, the company's accountant. On 22 January 2022 Ms Couch asked Mr Fox to withdraw the disputed invoice so that the company's accounts could be filed, but he did not do so.

70. Whilst I understand why Mr Fox believes he is entitled to claim for the work he undoubtedly put into the renovation of Hydrangea House, I regret that I can see no basis on which he is entitled to be. (The position is similar to Ms Couch's claim for a salary). I say that for the following reasons.

71. First, there was no agreement to that effect (Ms Couch's claim to be reimbursed for her injection of funds was agreed), nor is there any documentary evidence pointing to or evidencing any agreement.

72. Secondly, the work was completed by Easter 2019. The invoice was not sent until December 2021. It is no coincidence, in my view, that that postdates the parties' separation.

73. Thirdly, the invoice is backdated, and the 1 May 2018 appears to be arbitrary.

74. Fourthly, it was sent to the company's accountant without being copied to Ms Couch: it was submitted, as it were, behind her back.

75. Fifthly, it contains almost no details of the work undertaken and no prices substantiating how the total claimed was reached. Mr Fox sought to remedy that by producing a more detailed version, still dated 1 May 2018, shortly before trial. Ms Shuffrey cross-examined Mr Fox about all those points, but I shall deal just with the points arising out of the second version of the invoice. Ms Shuffrey pointed out that no invoices had been submitted in the course of the renovation work or immediately after its completion. Mr Fox said that that was because it was part of Ms Couch's administrative work to do the invoicing and to credit it to his director's loan account. Ms Shuffrey asked Mr Fox how she was supposed to do that: how was she supposed to know or calculate the value of the work he had done? He could not answer her. She put to him "How was she to guess?" Mr Fox replied, "I have no idea."

76. Ms Shuffrey also took Mr Fox to occasions where he might have mentioned the agreement on which he was now relying but did not. Thus, when in an exchange of text messages on 22 January 2022 Ms Couch suggested to Mr Fox that he should withdraw the invoice, he replied, "I forgot I also done the washing ironing and help with the admin. Should I also put an invoice for that as well?????" (a less powerful point, I accept).

77. The description of Mr Fox's invoice as "fabricated" goes, I think, too far; and plainly its submission, of itself, has caused no prejudice. What did cause prejudice was the

fact that the dispute about it delayed the filing of the company's accounts which gave rise to a penalty.

Unauthorised personal expenditure

78. Mr Fox withdrew just over £420 for personal use to cover the cost of building materials for his son, Arron. Mr Fox and his son say that this was agreed and that Arron repaid Ms Couch (as director of the company) in cash at her request, which Ms Couch denies. The use of company money is conceded. I was taken to nothing in the company's books and records to evidence its repayment. Mr Fox agreed that he was not present when his son repaid the money. Mr Fox junior did not appear at trial. That being the case, I must give greater weight to Ms Couch's evidence and therefore accept her account, although in doing so I note that the sum involved can barely be said to have caused prejudice; at best what happened goes to the breakdown in trust between the parties.

79. I turn now to Mr Fox's allegations.

Wrongful exclusion from the management of the company

80. It is true that since February 2021 Ms Couch has been solely or largely responsible for the day-to-day running of the company. Ms Couch seeks to justify this by reference to Mr Fox's conduct (his threats to ruin her and his post-separation conduct) which, she contends, makes him unfit to manage the company. It can be seen, however, that Mr Fox has continued to be involved in the company's running: Ms Couch has asked him to authorise business expenses and has sought his engagement on various business decisions, sometimes with success, sometimes without. I think I should also note Mr Fox's contention when giving evidence that he remained and remains willing to be involved in maintenance work. He complained about the cost of work on a chimney cowl, which he said he could have done more cheaply than Ms Couch had done using a contractor.

81. The other aspect of Mr Fox's complaint is that he has no or inadequate access to the company's books and records. Ms Couch denies this, saying that he has read only access to the company's accounting system, Xero. Mr Fox accepted that he only needed read only access and that he had had occasional access but did not have a password that consistently worked so he had had to contact the accountants to get one.

82. I find that Mr Fox has had and continues to have access via Xero. I say that for three reasons advanced by Ms Shuffrey. First, in evidence are screenshots showing that Mr Fox has accessed Xero successfully on a number of occasions, albeit infrequently. Secondly, Spain Williams, Ms Couch's former solicitors, sent an email on 9 April 2021 to Whitehead Monckton, Mr Fox's former solicitors, stating that Mr Fox had always had access to the company's records, and Whitehead Monckton did not take issue with that in their reply later the same day. Thirdly, and this is the most important reason, on 10 October 2022 Ms Couch's current solicitors sent an email to Sarah Jackson, who I take to have been Mr Fox's solicitor at the time, containing what is described as "your access invitation to the ongoing expenses for Hydrangea House" which appears below in the message string as a link that begins "https://login.xero.com." When Ms Shuffrey put to Mr Fox that he must have had this he said, "I never received this from the solicitor. Anyway, the solicitors don't run the

company." I think it highly unlikely that Mr Fox did not receive this important communication. I have seen no correspondence to indicate that that was the case. There would have been protest from Mr Fox if the link had not been sent or received.

83. For those reasons this allegation fails.

Unauthorised personal expenditure

84. Mr Fox complains that Ms Couch withdrew £20,000 out of the company's bank account and used it for personal expenditure. Ms Couch admits the withdrawal but says that the money was transferred to a separate account for safekeeping because she was frightened by Mr Fox's threat to ruin her. It was intended to be a temporary measure until a dual mandate was set up for the company's account so that Mr Fox could not withdraw or deal with company funds without Ms Couch's consent. Ms Couch's evidence is that the monies were used to cover company expenditure, and the balance was re-transferred to the company's account. This is evidenced in an email from Ms Couch which includes one from her then solicitors to Mr Fox's then solicitors as well as elsewhere.

85. The important point, in my judgment, is that, although the money was sequestered, that was done for understandable reasons and for a short period of time, and in reality the money always remained the company's. The allegation accordingly fails.

Ms Couch's use of Hydrangea House

86. Mr Fox complains that it was not just he who made personal use of Hydrangea House; Ms Couch did the same. He says Ms Couch stayed there in June 2021 and again in November 2021.

87. Ms Couch concedes that she stayed at Hydrangea House in June 2021. There was an exchange of text messages on 5 June 2021 when Mr Fox asked why 8-11 June had been blocked for booking. Ms Couch explained, "The dates are blocked as I'm going to Hythe to complete some jobs prior to Visit England wanting to do their inspection." She also sent a message via BT email App on 9 June giving further detail and explaining that she was going with a family member because he, Mr Fox, had threatened to turn up (as indeed he had). I am satisfied with that explanation.

88. The contention regarding the supposed stay in November appears to have been the result of a misunderstanding that was cleared up in cross-examination. Mr Fox had spotted a reference to a stay at the property by someone called Jo and thought it was a reference to Ms Couch. In fact it appears to have been a booking by someone called Jo Ellis.

89. It follows that there is nothing in Mr Fox's allegation.

Inflation of Ms Couch's director's loan account/diversion of company income

90. These allegations are made in very broad terms and are, as Ms Shuffrey observes, not particularised or substantiated. When he was cross-examined Mr Fox said that he had been concerned that Ms Couch's director's loan account appeared to have gone up. Ms Shuffrey took Mr Fox to an email from Ms Couch of 17 August 2022 explaining that she had been paying for things herself personally but that the expenses had been

recorded on Xero. When Ms Shuffrey put to him that Ms Couch had not been spending company money on herself Mr Fox conceded "She wouldn't do that."

91. Again, I dismiss both limbs of this allegation.

Result

92. Save in respect of the limited allegations I have not upheld, Ms Couch's petition succeeds. The matters of which Ms Couch complains were actual or (in the sense that they were likely to continue) threatened acts or omissions of the company and were conduct of the company's affairs; they caused prejudice (within the meaning ascribed to that term by the authorities) to her interests as a member of the company; and that the prejudice was and is unfair.

93. Mr Fox's counterclaims are dismissed.

94. Subject to hearing any further submissions on the form of order, I would propose, when this judgment is handed down, to make the following orders broadly as suggested by Ms Shuffrey in paragraph 110 of her skeleton argument:

(1) That Ms Couch purchase Mr Fox's 50 shares totalling in the capital of the company at a price to be fixed. (This is agreed.)

(2) That Mr Fox's shares be valued by reference to the open market value of the company (of which his shares represent 50%) as at 31 March 2021 on the assumption that the company was indebted to Ms Couch on her director's loan account in the sum of £201,153.88 as at that date, which sum is liable to be repaid to her before any member is entitled to draw any income from the company. (I think that date, a month after the breakdown of the parties' business relationship, is appropriate in this case.)

(3) That such valuation be carried out by a single joint expert whose identity should be agreed by the parties (in default of which there be further reference to the court).

(4) That Mr Fox be removed as a director of the company. (There is no constructive role he can now play, nor is there any reason for him to maintain oversight of the company, given the valuation date on which I have decided.)

(5) That the petition be listed for further directions with a view to trial of the issue of valuation.

Postscript

95. I thank Ms Shuffrey for her helpful skeleton argument and her assistance in the conduct of the trial more generally in the light of the fact that Mr Fox appeared without the benefit of legal support. I thank him too for his able and courteous conduct throughout, including a helpful written opening statement (which I read to

save time) and concise oral closing submissions. I hope that both he and Ms Couch will shortly be able to draw a line under the part of their respective lives with which this case has been concerned and make a fresh start.