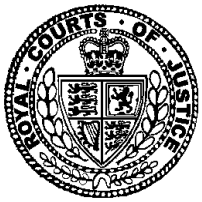

Neutral Citation Number: [2024] EWHC 1173 (Ch)

Case No: CR-2022-004485

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

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

Date: 17th May 2024

Before :

ICC JUDGE MULLEN

- -

IN THE MATTER OF ELITE MOTORS BODYSHOP LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

Between :

ROBERT MORRIS	**Petitioner**
- and -	
(1) ELITE MOTORS BODYSHOP LIMITED **(2) JULIAN MORRIS**	**Respondents**

- -
- -

Mr Paul Strelitz (instructed by **Howes Percival LLP**) for the **Petitioner**
The First Respondent was not represented
Mr Alaric Watson (instructed by **EMW Law LLP**) for the **Second Respondent**

Hearing dates: 13-14 February 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17th May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

ICC JUDGE MULLEN

ICC Judge Mullen :

Introduction

1. On 30th November 2022, Mr Robert Morris presented a petition under section 994 of the Companies Act 2006, that is to say a petition on the grounds that the affairs of Elite Motors Bodyshop Limited were being conducted in a manner unfairly prejudicial to him. The petition named Mr Julian Morris and Elite Motors Bodyshop Limited as respondents. To avoid confusion, particularly given that the respondents have not always been consistently numbered, I shall adopt the approach taken in the points of claim in support of the petition and refer to the petitioner as "Robert" and the second respondent as "Julian". I intend no discourtesy in doing so. I shall refer to the first respondent as "the Company".

2. As is conventional, the court issued standard directions on issue of the petition requiring the filing and service of points of defence, with consequential directions leading to a case management conference. On 7th February 2023 Julian applied to strike out the petition and points of claim in whole or in part ("the Strike Out Application"). The case management conference was adjourned by consent to abide the outcome of the Strike Out Application. This is my judgment on that application.

Events leading up to presentation of the petition and the contents of the petition

3. The Company was incorporated on 20th October 1995 and carries on business repairing and respraying motor vehicles. Robert and Julian are brothers and are the directors of, and equal shareholders in, the Company, although it is said that the day-to-day management of the Company has been carried on by employees from about 2005. In January 2021, Robert sent a text to Julian saying that he intended to retire. He attached a screen shot of an article about the Company and said:

> "Hi Julian 20 years have flown by since this article in 2001. I'm considering retiring this year therefore we need to discuss all parties options.
>
> Please let me know when is convenient for a provisional chat. Regards Rob".

This message does not seem to have been met with a response by text from Julian. It did however prompt a response from Julian's then solicitors on 15th January 2021 in which Robert's proposals were invited. A response was provided by Howes Percival, Robert's solicitors, on 21st January 2021 in which Robert's dissatisfaction with a reply from lawyers, rather than a personal reply from his brother, was made clear. It was stated that he was not proposing to "do any deal 'sooner rather than later'" and he had simply wanted "a friendly chat" about their respective plans for the future.

4. The relationship between Robert and Julian seems to have deteriorated thereafter and Howes Percival wrote again on 10th March 2021 to complain of "deliberate attempts to frustrate his rights and duty as a Director of the company". The letter alleged that decisions were being made by Julian and his wife, Mrs Karen Morris, without reference to Robert. The letter also referred to a claim for unpaid dividends. There were further exchanges between solicitors raising further matters over the course of the following

months and a threat of an unfair prejudice petition being issued by Robert. For present purposes I need only mention that the correspondence included an open offer from Julian's new solicitors, EMW Law LLP, dated 29th September 2021, to purchase Robert's shares for fair value ("the Open Offer"). That offer was not accepted.

5. An interim injunction application was made on 4th August 2022 for an order compelling Julian to restore Robert's access to the Company's records and premises ("the Interim Application"). Proceedings had not at that stage been issued and the draft order annexed to the application included an undertaking to issue proceedings within 28 days. The application was accompanied by a certificate of urgency.

6. Michael Green J considered that the Interim Application was neither urgent nor fit to be heard during the long vacation. His clerk sent out his view as follows:

> "1. The dispute has been going on for a long time. Extremely detailed correspondence between the parties' solicitors began in March 2021 and continued until the end of 2021 without resolution.
>
> 2. After a letter from Howes Percival on 27 January 2022, there was no further correspondence within the exhibit to the Claimant's witness statement until Howes Percival's letter before action on 1 July 2022. That letter threatened a s.994 unfair prejudice petition and an application for an injunction if the Defendant had not complied with their requests within 14 days.
>
> 3. The application was only issued on 4 August 2022 in the Court's vacation.
>
> 4. The certificate of urgency merely repeats the reasons why the Claimant needs the relief and suggests that the Claimant's concerns have been heightened by the lack of response to the letter before action. That is inadequate.
>
> 5. There is no explanation as to why this application was not brought in term time. There has been plenty of time to prepare for it, as the letter before action demonstrates.
>
> 6. Furthermore there is no explanation as to why the petition under s.994 has not been presented whereas a detailed witness statement in support of the application has. Offering an undertaking to present the petition is no explanation for it not having been done.
>
> 7. The Defendants have indicated that they wish to file evidence in answer. That will mean that there is little chance that this can be dealt with in 2 hours, including judicial pre-reading, submissions, judgment and costs.
>
> 8. The vacation court is not there for parties who have not managed to get their application on during term time. It is for

> genuinely urgent matters that cannot wait until the new term. The delay before issuing the letter before action and after there was no response to it means that there does not seem to be sufficient urgency in the application that it should be heard in the vacation. The current situation has pertained for 18 months and there is no particular event happening in August or September that means this is particularly urgent."

The Interim Application was listed for hearing on 26th January 2023 and the proceedings were not issued until 30th November 2022. No undertaking had in fact been offered to the court to issue proceedings as contemplated in the Interim Application. In the event, the Interim Application was withdrawn with the consent of the parties on the basis that there be no order as to costs.

7. The petition alleges that the Company was carried on as a quasi-partnership between Robert and Julian and alleges unfair prejudice by the mismanagement of company assets, payment of unequal dividends and exclusion of Robert from the management of the Company. Specifically, the petition claims that in September 2021 Robert's company credit cards were suspended or cancelled and he also ceased to be a signatory on the company accounts. Certain of the Company's suppliers were instructed not to deal with him at about the same time. He no longer has access to the Company's Xero accounting software or financial information and the Company's accountant will not provide him with information. Robert further claims that he was excluded from the Company premises in 2021. He also alleges that Julian has replaced his Company-owned campervan and also acquired a new motorhome at significant cost to the Company.

8. The petition also alleges that Julian procured the termination of the employment of Robert's son, Wayne Morris ("Wayne"), in September 2021 through what is described as a "sham redundancy" process. Though Wayne had been an employee for some 19 years, he was the only employee to be dismissed and he was subsequently replaced. Robert's instructions to suspend the process pending a resolution of the board was ignored. He contends that it can be inferred that this was for the purpose of preventing him from gaining any insights as to the affairs or internal management of the Company via his son.

9. The petition claims that Company business was diverted and Company monies were expended for the benefit of Julian, including by the purchase of a Porsche 911, which was purchased by the Company and has been removed from the Company premises, with no corresponding payment to the Company to indicate that it had been sold. Company monies were also used to refurbish Julian's own vehicle and Robert cannot verify that the costs of parts purchased were charged to Julian's loan account as Julian claims. The Company incurred substantial costs in facilitating Julian's participation in the Porsche Club Championship each year, without any benefit to the Company. Robert alleges other unexplained payments from the Company's accounts from 2019.

10. Finally, Robert complains that unequal dividends have been paid from 2000. In that period, he says that at least £917,657 has been paid to Julian while only £22,000 was paid to him. He says that Julian has denied his entitlement to the dividends that he claims are owed to him.

11. In the circumstances, he asks for an order that Julian buy his 50% shareholding at a fair value with:

    i) a premium to reflect the loss suffered by the Company or Robert as a result of the unfairly prejudicial conduct and or the additional value to the Respondent of acquiring the shares; and

    ii) no minority discount.

    He also asks for final injunction in the terms of the draft order annexed to the Interim Application, together with an account of dividends and payments made to Julian and any necessary declarations as to his entitlement.

The Strike Out Application

12. The Strike Out Application asks that the petition be struck out in whole or in part under CPR 3.4(2)(a) and/or (b). The application is supported by the statement of Julian, dated 6th February 2023, which submits that the petition should be struck out entirely on the basis of the Open Offer, and/or the failure to issue proceedings promptly as foreshadowed in the draft undertaking included in the Interim Application. If those submissions are not successful, he seeks to strike out parts of the points of claim.

13. Robert's evidence in answer to the Strike Out Application is in the form of a witness statement from his solicitor, Ms Satnam Chayra, dated 11th May 2023. Julian's evidence in reply is a statement from his solicitor, Mr Mark Rondel, dated 2nd June 2023. Robert made a further statement dated 19th September 2023. Ms Chayra and Mr Rondel's statements and Robert's second statement have been redacted pursuant to the order of ICC Judge Jones dated 15th January 2024. I have not seen the unredacted versions.

Legal principles in respect of strike out applications

14. CPR 3.4 provides:

> "(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case
>
> (2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate."

The court will only strike out a petition on the basis that it discloses no reasonable grounds in a plain and obvious case. The test is whether it is bound to fail.

15. My attention was also drawn to the speech of Lord Templeman in *Williams & Humbert v WH Trade Marks (Jersey) Limited* [1986] AC 368, 435, in which he said in the context of a strike out under the old Rules of the Supreme Court in a trade mark case:

> "My Lords, if an application to strike out involves a prolonged and serious argument the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for trial or the burden of the trial itself."

16. In the same case, Lord Mackay said at 441:

> "If on an application to strike out it appears that a prolonged and serious argument will be necessary there must at the least, be a serious risk that the court time, effort and expense devoted to it will be lost since the pleading in question may not be struck out and the whole matter will require to be considered anew at the trial. This consideration, as well as the context in which Ord. 18, r. 19 occurs and the authorities upon it, justifies a general rule that the judge should decline to proceed with the argument unless he not only considers it likely that he may reach the conclusion that the pleading should be struck out, but also is satisfied that striking out will obviate the necessity for a trial or will so substantially cut down or simplify the trial as to make the risk of proceeding with the hearing sufficiently worthwhile."

More recently, His Honour Judge Purle QC, sitting as a High Court Judge, in *Peters v Menzies* [2009] EWHC 3709 (Ch), considered that the overriding objective of the CPR seemed "to reinforce the *Williams & Humbert* approach".

17. It is undoubtedly true that unfair prejudice proceedings are costly and prolonged. While anything that will reduce the cost and time to be devoted to resolving them is of assistance to the court and parties, interlocutory skirmishes that serve only to increase the time and expense of the petition are to be discouraged. Mr Strelitz, who appears for Robert, therefore invites me to decline to entertain the Strike Out Application at all insofar as it relates to specific parts of the points of claim. I will consider that in due course but, in any event, it does appear to me that the considerations set out in *Williams & Humbert* are relevant to the exercise of the court's discretion in relation to striking out those elements on the ground of abuse of process, even if the application is to be entertained in relation to them. Striking out is draconian and a last resort. If it will not simplify the proceedings or save time or costs to any real degree, and is not otherwise necessary to the just and proportionate conduct of the proceedings, then striking out elements of the claim appears to me to be unnecessary.

The principles applicable to unfair prejudice petitions

18. In approaching the petition I bear in mind the scope of section 994 of the Companies Act 2006. In *Loveridge v Loveridge* [2020] EWCA Civ 1104, Floyd LJ (as he then was), with whom Asplin and Lewison LJJ agreed, said:

> "41. A number of uncontroversial propositions can be derived from the authorities cited to this court:
>
> i) For a petition to be well founded the acts or omissions of which the petitioner complains must consist of the conduct of the affairs of the company: *Hawkes & Cuddy (No 2)* [2007] EWHC 2999, at [202] per Lewison J;
>
> ii) The conduct of those affairs must have caused prejudice to the interests of the petitioner as a shareholder: *ibid*;
>
> iii) The prejudice so caused must be unfair: *ibid*;
>
> iv) A minority shareholder cannot normally complain of conduct which is in accordance with the company's constitution unless he can establish a breach of the rules on which it is agreed that the affairs of the company should be conducted, or the use of those rules in a way which equity would regard as contrary to good faith: *O'Neill v Phillips* [1999] 1 WLR 1092, at 1099 A-B per Lord Hoffmann;
>
> v) Although the term 'legitimate expectation' has been used in connection with establishing equitable restraint on the exercise of constitutional power, that expression does not have 'a life of its own', supplanting traditional equitable principles: *ibid* at 1102 B-F."

19. The court has a range of remedies available to it, including providing for compensation to the petitioner and directing that a party's shares be bought out. As was noted by the Court of Appeal in *Grace v Biagioli* [2005] EWCA Civ 1222:

> "73. Once unfair prejudice is established, the court is given a wide discretion as to the relief which should be granted. Although s.461(1) speaks in terms of relief being granted "in respect of the matters complained of", the court has to look at all the relevant circumstances in deciding what kind of order it is fair to make. It is not limited merely to reversing or putting right the immediate conduct which has justified the making of the order. *In Re Bird Precision Bellows Ltd* (1985) 1 B.C.C. 99,467 at p.99,471; [1986] Ch. 658 at p.669, Oliver L.J. described the appropriate remedy as one which would "put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company". The prospective nature of the jurisdiction is reflected in the fact that the court must assess the appropriateness of any particular

remedy as at the date of the hearing and not at the date of presentation of the petition; and may even take into account conduct which has occurred between those two dates. The court is entitled to look at the reality and practicalities of the overall situation, past, present and future.

74. It was, therefore, incumbent on the judge to consider the whole range of possible remedies and to choose the one which on his assessment of the existing state of relations between the parties was most likely both to remedy the unfair prejudice already suffered and to deal fairly with the situation which had occurred. The principal criticism of his judgment on this issue, is that it concentrated on the precise nature of the prejudice already suffered (i.e. the non-payment of the dividend), but failed to look at matters in the round. In particular, no adequate regard was paid to the fact that the respondents had in effect helped themselves to the dividend to which Mr Grace was undoubtedly entitled, nor to what is said to be the overwhelming likelihood that similar acts of prejudice will be suffered in the future.

75. In most cases, the usual order to make will be the one requiring the respondents to buy out the petitioning shareholder at a price to be fixed by the court. This is normally the most appropriate order to deal with intra-company disputes involving small private companies. This is the relief which Mr Grace says that the judge should have granted and which he seeks on this appeal. The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the value of its business and assets in return for foregoing any future right to dividends. The company and its business will be preserved for the benefit of the respondent shareholders, free from his claims and the possibility of future difficulties between shareholders will be removed. In cases of serious prejudice and conflict between shareholders, it is unlikely that any regime or safeguards which the court can impose, will be as effective to preserve the peace and to safeguard the rights of the minority. Although, as Lord Hoffmann emphasised in *O'Neill v Phillips*, there is no room within this jurisdiction for the equivalent of no-fault divorce, nothing less than a clean break is likely in most cases of proven fault to satisfy the objectives of the court's power to intervene.

…

85. For these reasons we consider that the judge exercised his discretion under s.461 on too narrow a basis and that the factors which he took into account as reasons for not making a buy-out order, do not on analysis justify the conclusion which he reached. It seems to us that the right order to make is for the respondents to purchase Mr Grace's shares at a price to be determined by the

court. The appeal will therefore be allowed. We will remit the case to a judge of the Chancery Division to determine the purchase price of the shares.

86. Although the point does not arise for decision, we should also say that we accept Mr Hubbard's submission that even if the order which the judge made for the payment of the dividend had otherwise been justified, it should have been made not against the company, but against the respondents who received the amount of the dividend."

Striking out the petition as a whole

Striking out on the basis of the Open Offer

20. The Open Offer is as follows:

"1. Our client will purchase your client's shares at a fair value. To be clear 'fair value' will be the value calculated by an expert (see below) of 50% of the total Issued Share Capital of a Company without any discount for minority holding or otherwise.

2. So far as determining fair value is concerned our client invites your client to seek to agree a Chartered Accountant who has experience in valuing shares in private companies to act as an expert (rather than for example as an arbitrator). If agreement on the identity of the expert and his terms of appointment cannot be reached within 21 days of the date of acceptance of the offer contained in this letter then our client proposes that a Chartered Accountant be appointment by the President of the Institute of Chartered Accountants in England and Wales who will also agree with the expert the terms of his appointment.

3. In determining value the expert will do so as an expert as if he were appointed as a single joint expert in accordance with the provisions of Rule 35 contained within the Civil Procedure Rules.

4. The expert's fees will be shared equally between the parties but the expert will also have the power to decide whether the fees should be borne other than equally between the parties and in that regard the expert's decision should be final.

5. In determining value the expert shall be jointly instructed by the parties. There will be equality of arms between the parties in instructing the expert with both having the same right of access to information about the Company which has any bearing upon the value of the shares. Equally both should have the right to make submissions to the expert albeit the form that such admissions [*sic*] should take and indeed any dispute upon the

> relevance or otherwise of the information that the parties seek to put before the expert should be left to the discretion and final decision of the expert.
>
> 6. Completion of the sale of your client's shares shall take place on such date as shall be agreed but in any event no later than 28 days after the date on which the decision of the expert is issued and received by the parties or their representatives.
>
> 7. At completion your client will sell and our client will buy your client's shares in full and final settlement of all claims which your client may have against our client relating to his allegations of unfair prejudice and /or arising out of or connected in any way with his shareholding in the Company."

21. The Open Offer was met with a long letter from Howes Percival on 14th October 2021 in which they set out the bulk, if not all, of the matters now complained of in the petition. In particular, the letter set out Robert's position in relation to unpaid dividends as follows:

> 3.6. With regard to dividends paid to date:
>
> 3.6.1. Mr Morris does not have information of the dividends paid prior to 1 January 2010. Please provide this;
>
> 3.6.2. in relation to the period between 1 January 2010 and 31 December 2019, we enclose a letter from Kilby Fox, who were the Company's accountants for a number of years, confirming that a total sum of £797,733.84 was paid to your client by way of dividends and £22,000 was paid to Mr Morris. Mr Morris is therefore owed a sum of £777,733.84 for this period;
>
> 3.6.3. in relation to the period since 1 January 2020, it is Mr Morris' understanding that your client was paid dividends of £83,500 in 2020 and has been paid £56,424 up to 31 July 2021;
>
> 3.6.4. Mr Morris does not have information of the dividends paid to your client after 31 July 2021 and your client is required to provide details of the same.
>
> The total sum therefore payable to Mr Morris in relation to the arrears of dividend is £917,657.84 from 1 January 2010 up to 31 July 2021 together with an amount equal to any dividends paid to your client but not Mr Morris prior to 1 January 2010 and after 31 July 2021. To be clear, Mr Morris is not demanding an immediate payment of these accumulated arrears, and remains content for these to be paid when the business is sold or a settlement is reached, but strictly on the basis that your client

> acknowledges in principle that these monies are payable to Mr Morris."

22. It concluded by saying that the Open Offer did not address the matters complained of and stated that Robert would be agreeable to determination of the value of the shares by an expert on condition that:

> "6.2.1. any valuation of the Company will be adjusted to add back:
>
> 6.2.1.1. the monies paid by EMR to your client for the Materials;
>
> 6.2.1.2. the costs related to participation in the Club since 2017, which Mr Morris maintains was for your client's personal benefit;
>
> 6.2.2. Mr Morris will be paid his share of the dividend arrears as set out above."

They set out the information that they required as to dividends and various other actions that Robert considered necessary for the settlement of the dispute.

23. EMW invited Robert to reconsider by a letter of 28th October 2022:

> "Your client's rejection of the offer is not justified in the manner that you suggest. It proceeds on a false assumption that the offer would mean your client foregoing his alleged claims. Instead, you suggested that any valuation should be predicated on an assumption that our client accepted and therefore that the valuer was expressly instructed to effectively accept your client's case on liability in relation to that issue.
>
> We would remind you that the offer that was made was that the valuation would be left to an accountant acting as an expert (as if he were appointed as a single joint expert in accordance with the provisions of Rule 35 in the CPR). The offer furthermore, made it clear that the expert would be instructed by the parties, with equality of arms in terms of information to instruct the expert and the ability of both parties to make submissions to the expert.
>
> In short, it would be for the expert to decide the issue in relation to dividends and any other issues that the parties wish to put to him as relevant in determining value. In such circumstances the criticism of the proposal is unjustified. In fact the offer falls squarely within the criteria that the court in *O'Neill v Phillips* and indeed subsequent authorities held would be a fair offer and likely to lead to strike out of any petition."

24. *O'Neill v Phillips* [1999] 1 WLR 1092, referred to in that letter, is the heart of this limb of the Strike Out Application. In that case Lord Hoffmann described the characteristics

of an offer to purchase a petitioner's shares that would entitle a respondent to have the petition struck out on the basis that the petitioner has unreasonably refused a fair offer for the purchase of the shares. He said:

> "In the first place, the offer must be to purchase the shares at a fair value. This will ordinarily be a value representing an equivalent proportion of the total issued share capital, that is, without a discount for its being a minority holding. The Law Commission (paragraphs 3.57-62) has recommended a statutory presumption that in cases to which the presumption of unfairly prejudicial conduct applies, the fair value of the shares should be determined on a pro rata basis. This too reflects the existing practice. This is not to say that there may not be cases in which it will be fair to take a discounted value. But such cases will be based upon special circumstances and it will seldom be possible for the court to say that an offer to buy on a discounted basis is plainly reasonable, so that the petition should be struck out.
>
> Secondly, the value, if not agreed, should be determined by a competent expert. The offer in this case to appoint an accountant agreed by the parties or in default nominated by the President of the Institute of Chartered Accountants satisfied this requirement. One would ordinarily expect the costs of the expert to be shared but he should have the power to decide that they should be borne in some different way.
>
> Thirdly, the offer should be to have the value determined by the expert as an expert. I do not think that the offer should provide for the full machinery of arbitration or the half-way house of an expert who gives reasons. The objective should be economy and expedition, even if this carries the possibility of a rough edge for one side or the other (and both parties in this respect take the same risk) compared with a more elaborate procedure. This is in accordance with the terms of the draft regulation recommended by the Law Commission: see Appendix C to the report.
>
> Fourthly, the offer should, as in this case, provide for equality of arms between the parties. Both should have the same right of access to information about the company which bears upon the value of the shares and both should have the right to make submissions to the expert, though the form (written or oral) which these submissions may take should be left to the discretion of the expert himself.

25. In *CVC/Opportunity Equity Partners Ltd v Demarco* [2002] UKPC 16 Lord Millett sounded a note of caution at paragraph 34:

> "In *O'Neill v Phillips, Re a company (No 00709 of 1992)* [1999] 2 BCLC 1 at 16, [1999] 1 WLR 1092 at 1107 Lord Hoffmann explained that the unfairness did not lie in the exclusion of the petitioner from the management of the company but in his

> exclusion without a reasonable offer for his shares. If the respondent has plainly made a reasonable offer, he said, then the exclusion as such will not be unfairly prejudicial and he will be entitled to have the petition struck out. Their Lordships draw attention to the requirement that the offer must plainly be reasonable: a respondent is not entitled to have the petition restrained or struck out if the reasonableness of his offer is open to question."

26. On the face of it, the Open Offer complies with Lord Hoffmann's guidance. Here however, there are also a number of disputed factual allegations that may affect the value of the Company and Robert's shares. These are not expressly referred to in the offer and no means of determining them is proposed. No admissions are made as to Robert's alleged entitlement to dividends, for example. Indeed, it appears to be Julian's position that the right to these dividends had been waived. Nor are any admissions made as to the diversion of business or expenditure for the personal benefit of Julian. Mr Watson, who appears for Julian, submitted that they could be "taken into account" by the expert and matters such as the unequal payment of dividends should be evident from the records. It is not, however, apparent to me what is to happen if the records are unclear or open to dispute in some other way, such as by way of an allegation that the entitlement to these had been waived. Around £1 million is at stake. Again, in respect of the complaint in respect of the participation in the Porsche Championship Club, how is the expert to decide whether or not that was proper expenditure for the Company to incur?

27. It is quite clear to me that the allegations set out in petition, if not admitted, require a fact-finding exercise that an expert valuer, acting as such, is ill-equipped to carry out. While such an expert might act as arbitrator, that is not what is proposed. What is proposed is not a fair offer, allowing for a "rough edge" here and there. It does not provide for a fair or sufficiently rigorous examination of Robert's complaints so that they may be properly taken into account in determining a value to ascribe to his shares so as to address any unfairness that he has suffered. At the very least, the reasonableness of the offer is open to question and the petition should not be brought to a premature conclusion by striking it out on the basis of the Open Offer.

Striking out on the basis of the failure to issue promptly

28. I can deal with this shortly. The Interim Application was made on 4th August 2022 prior to presentation of the petition. CPR Part 25 permits an application to be made before proceedings start if the matter is urgent or it is otherwise desirable to do so in the interests of justice. PD24A, paragraph 4.4(1), however, provides that an undertaking must be given to issue proceedings immediately or the court will give directions for the commencement of the claim.

29. The draft order annexed to the Interim Application included an undertaking to issue proceedings within 28 days of the making of the order sought. The application was however ineffective, no order was made and no such undertaking was ever given. There was a delay in issuing thereafter, which is explained in Robert's witness statement as follows:

> "I issued the Petition as soon as reasonably possible taking into account the following:
>
> > i. my lead Counsel and solicitor were on annual leave in August 2022 and my lead counsel was then involved in a 15 day trial in September through to October 2022;
> >
> > ii. as explained in paragraph 34 of my witness statement dated 3 August 2022, I have been struggling with my health, specifically my heart. I had undergone an unsuccessful procedure in May 2019, and also had a valve repair and open heart surgery in January 2022. However, I have continued to struggle with my health since. In September, October and November 2022, I was experiencing heart rate problems again and dizzy spells and was prescribed further medication. My focus was not therefore on issuing the Petition."

However that may be, the petition was issued in good time in advance of the date on which the Interim Application was listed to be heard. Had that not been the case, Julian would have had cause for complaint, and I doubt that the court would have heard the Interim Application, had it been pursued. Similarly the consequences of failing to issue proceedings if an undertaking had been given would have been serious. Neither of those scenarios is what happened. There was no breach of a rule or an undertaking – there was simply a degree of delay.

30. In *Re Edwardian Group* [2018] EWHC 1715 (Ch), Fancourt J considered the effect of delay as follows at paragraph 571:

> "In my judgment, the right approach is to consider how the delay in question should affect the exercise of the court's discretion under section 996 to make such order as it thinks fit. There is no statutory time limit for issuing a petition, nor does the equitable doctrine of laches strictly apply where the relief sought is not equitable relief. However, unjustified delay resulting in prejudice or an irretrievable change of position (the essential ingredients of a defence of laches) are likely to be significant factors in the exercise of the court's discretion to grant or refuse a particular remedy. So too is any evidence that the Petitioners have previously acquiesced in the state of affairs of which they now complain, which is the basis of a number of the authorities to which I was referred. If, in view of the delay and the reasons for the delay, it is unfair or inappropriate in all the circumstances for the Petitioners to obtain the relief that they seek, the Court will exercise its discretion to refuse it."

The delay here after issue of the Interim Application is a matter of months. It is difficult to see any prejudice that has been caused to Julian by that delay. Certainly nothing specific is relied upon. Even if one could characterise the delay as an abuse of the process of the court it could not in my judgment possibly justify the draconian approach of striking out the petition in its entirety and denying Robert access to a remedy. I reject this limb of the Strike Out Application too.

Conclusion in relation to Strike Out in relation to the whole of the petition

31. I reject the Strike Out Application in so far as it seeks to strike out the petition and points of claim as a whole.

Strike out application in relation to parts of the points of claim

32. Having rejected the Strike Out Application in relation to the petition and points of claim as a whole, I turn to points taken on parts of the pleading. It appears to me that I must address them rather than, as Mr Strelitz urges, dismiss them out of hand as "nit-picking". Some of the points made do indeed deserve that description, but it seems to me that I have to address them in a little detail in order to consider whether the application in relation to those paragraphs has the potential to reduce the scope of dispute at trial.

(i) Claim to a premium

33. Objection is taken to the claim to a buyout of Robert's shares without a minority discount but including a premium to reflect the acquisition of control of the company by Julian. This is set out in paragraph 102.1 of the points of claim as follows:

> "Julian must purchase Robert's 50% shareholding in the Company at a fair value to be determined by the Court with the assistance of expert valuation evidence with (i) any premium required to reflect the loss suffered by the Company and/or Robert as a result of any unfairly prejudicial conduct, and/or the additional value to Julian by acquiring 100% of the Company's shares as a consequence of the order sought, and (ii) with no discounts, including for a minority shareholder".

34. The objection taken is that the absence of a minority discount takes account of the acquisition of control of the company by the Respondent. In *Re Edwardian Group Limited, supra,* Fancourt J considered the authorities on valuation as follows:

> "637. The authorities do not speak with one voice on the correct approach to valuation where a share purchase order is made in relation to a non-quasi partnership company, as is the case here. On the one hand, in *Strahan v Wilcock* [2006] EWCA Civ 13; [2006] 2 BCLC 555, Arden LJ said:
>
> > "Shares are generally ordered to be purchased on the basis of their value on a non-discounted basis where the party against whom the order has been made has acted in breach of the obligation of good faith applicable to the parties' relationship by analogy with partnership law, that is to say where a 'quasi-partnership' relationship has been found to exist. It is difficult to conceive of circumstances in which a non-discounted basis of valuation would be appropriate where there was unfair prejudice for the purposes of the 1985 Act but such a relationship did not exist. However, on this appeal I need not express a final view on what those circumstances might be."

The comment was, as it indicates, *obiter*, but is made by a very experienced judge with expertise in company law.

638. In more recent first instance decisions, however, the view has been expressed that there is no inflexible rule; that a 'non-discounted' basis of valuation may well be appropriate in some non-quasi partnership cases, and that material factors are whether the seller is to be treated as a willing or unwilling seller and whether the shares were bought by the Petitioner at a discount: see *Re Sunrise Radio Ltd* [2010] 1 BCLC 367, where Judge Purle QC concluded that purchase at a pro rata ('non-discounted') value was appropriate, and *Re Blue Index Ltd* [2014] EWHC 2680 (Ch), where Mr Hollington QC reached a similar conclusion.

639. The authorities are replete with references to 'discounted' and 'non-discounted' bases of valuation. A 'non-discounted' basis of valuation is a valuation of the entirety of the company, which is then apportioned pro rata between the shareholders. A 'discounted' basis of valuation is generally taken to refer to the market value of the minority shareholding, valued separately, which is generally less – sometimes much less – than a pro rata share of total shareholder value. The market value may depend not just on the size of the holding but on the content of the company's articles of association. For example, pre-emption rights in favour of existing shareholders, giving them the right to acquire shares at the same price offered in the market by a would-be purchaser, will suppress the market value of the shares. Absent such a provision, the market value may be very significantly higher, particularly if the holding in question would be of special value to another shareholder. Further, a 2% shareholding will be considerably more valuable to an existing shareholder with 49% or 74% of a company's shares than it will be to an outside investor.

640. Any basis of valuation selected must be fair in all the circumstances. It must also provide a remedy that is proportionate to the unfair prejudice suffered by the Petitioners. The prejudice suffered by the Petitioners is, ultimately, that the value of their shares has been suppressed. They could be sold in the market, subject to the other shareholders' rights of first refusal, but the value of the shares will have been affected, not just because there is no benefit from the Expotel shareholding but because of the conduct of the directors, sc. their willingness to treat minority shareholders unfairly, as I have found. A valuation of the shares at their true market value, reflecting the pre-emption rights in the Company's articles, will therefore lock in the prejudice that the Petitioners have suffered, rather than grant relief from it. That would be unfair. Correspondingly, a sale of the shares to JS or the Company at

> such a valuation will give the purchaser a significant windfall benefit from the unfairly prejudicial conduct, as the purchaser will obtain the shares at a price depressed by virtue of that conduct.
>
> 641. The Petitioners argue for a pro rata, 'non-discounted' valuation on the basis that the Petitioners are involuntary sellers and that the purchasing Respondents will be obtaining the full, non-discounted value of the shares, and so otherwise benefiting hugely from their own wrongdoing. Further, they submit that HS has been a shareholder and participant in the Company from the outset, and that the shares of HS and Estera were intended to be operated as a single block of majority shareholding, held for the joint benefit of those shareholders.
>
> 642. In my judgment, those factors do not justify making an order for purchase on a pro rata basis. While such an order may be appropriate in certain circumstances when a company is not a quasi-partnership, such as the circumstances in *Re Sunrise Radio*, there is no presumption in favour of it, as there is in the case of a true quasi-partnership. The shares of HS and Estera do not have and never did have that enhanced value, as a minority shareholding, and there are no considerations binding the other shareholders that require them or any of them to treat the shares as having a pro rata value. Further, it would not be accurate, at any time after 2006, to characterise HS or Estera as unwilling sellers of their interest in the Company: I find that they were in principle willing to sell, but only at a price that JS was unwilling to pay, namely a pro rata share of the value of the Company. The purchasers would benefit from their wrongdoing if they were able to acquire the shares for their suppressed market value, having regard to the articles of association, but that does not of itself lead to the conclusion that a pro rata valuation is appropriate."

35. He went on:

> "648. What I have to determine is a basis for a fair price for JS (or the Company) to pay HS and Estera for their shares, in circumstances where a share purchase is appropriate and necessary to relieve HS/Estera against unfair prejudicial conduct that they have suffered as shareholders. That question is not, in my judgment, a simple choice between a pro rata share of the Company's overall value and the market value of the shares. Those are, as it were, the two extremes of price that could be ordered to be paid, but between them there are various possibilities for specifying a basis of valuation that results in a fair price as between these minority shareholders and the Respondents against whom relief is granted. I do not read Arden LJ's *obiter dictum* as implying that market value is the only

> alternative in cases where a non-discounted valuation is inappropriate.
>
> 649. A purchase of the shares of HS and Estera by JS, the Jasminder trustees on his behalf, or the Company, will release what a valuer calls 'marriage value'. That is generally understood to mean the additional value created by putting two interests, properties or shareholdings together, rather than valuing them individually as separate holdings. If a minority shareholder sells his holding to another minority shareholder, and the result is that the buyer then has more than 50% of the shares, the shares that he holds are more valuable as a single holding than the aggregate of the values of the buyer's and seller's separate holdings. This is what Arden J, as she then was, referred to as the 'control premium' in a case called *Re Macro (Ipswich) Ltd* [1994] BCC 781 at 837G, and as the 'value gap' at 837H. In order to realise any part of the marriage value, the seller and buyer have to reach agreement, otherwise neither will benefit from any part of the marriage value. For that reason, where parties negotiate at arm's length for the sale and purchase of property, they generally agree to share the marriage value, unless there are other circumstances that give one of the parties the whip hand in negotiations."

36. Mr Watson's submission is that, once a valuation is arrived at on a pro-rata basis, that is to say without a minority discount, it is, as he put it, "vanishingly unlikely" that any additional sum would be awarded to reflect the marriage value. He therefore proposes that the words "and/or additional value" and following in paragraph 102 should be struck out. There is a deal of force in that submission, as is recognised by Mr Strelitz, who made it clear that it was not Robert's intention to ask for both a pro-rata valuation and a premium. They are offered in the alternative. Given that concession I have to consider whether I should strike out the paragraph and require it to be repleaded to make it clear that a marriage value premium will only be sought in the event that a buyout without minority discount is not ordered. While Robert's position is now made clear and I am concerned that repleading the paragraph will add to expense without any associated reduction in the time and costs of the case I think that I should require this paragraph to be repleaded so that Julian can respond to Robert's true case. The cost of doing so will be minimal. I will strike the paragraph out insofar as it seeks a buyout without a minority discount and a marriage value premium and I give permission for the points of claim to be amended to claim these as alternatives.

(ii) Injunctive relief

37. At paragraph 102.2 is a request for an injunction as follows:

> "Until such time as Robert ceases to be a shareholder of the Company, the Court grants, on a final basis, the injunctive relief sought in paragraphs 1-7 of the draft order and Schedule B thereto provided with the Interim Application or in some other form as the Court thinks fit."

The draft order in support of the Interim Application, at paragraphs 1-7, was in the following terms:

> "Injunction
>
> 1. The First Respondent shall forthwith not, pending final judgment (including any appeal) or earlier settlement of the Proposed Claim, directly or indirectly, hinder, prevent or otherwise impede the Applicant's access to:
>
> a. the Company's premises, being 91-93 St James Mill Road, Northampton NN5 5JP and 99 St James Mill Road, Northampton NN5 5JP (including but not limited to all internal rooms and repositories) (together, the 'Relevant Premises'). The First Respondent shall do this by the provision of all keys and passcodes to the Relevant Premises and any other part of them (including all repositories within them) so as to ensure parity with the Respondent's access to the same as at the date of this Order;
>
> b. the Company's accounting software, Lloyds Bank current trading account (account number 77391160), Lloyds Bank deposit account, online banking accounts and facilities for Lloyds, any other Company bank accounts or credit card accounts or loan accounts, and security accounts (including CCTV, guarding, and/or monitoring systems). The First Respondent shall do this by the provision of all relevant username, password, and other security information (and any other information necessary to ensure the Applicant's access) and ensuring all necessary permissions are in place.
>
> 2. The First Respondent shall provide copies to the Applicant of the documents or classes of documents set out in Schedule B to the Order. 'Document' and 'copy' are given the meanings set out in CPR r 31.4 and 'Document' includes the documents described in paragraph 2.5 of Practice Direction 57AD;
>
> 3. The First Respondent shall further:
>
> a. Provide to the Applicant confirmation in writing (to be sent to the Applicant's solicitors, Howes Percival LLP) of:
>
> i. the total amount the First Respondent has been paid by the Company as or in respect of dividends from 1 March 2000 to date;
>
> ii. the total amount the First Respondent has been paid by the Company as or in respect of salary since 1 January 2020 to date;

iii. the legal basis on which Karen Morris is presently engaged by the Company;

iv. the total sums paid directly or indirectly to Karen Morris out of the Company's funds since 1 January 2020 to date.

b. Procure that all of the Company's contractors, suppliers, agents, accountants, banks and/or employees are informed in writing that the Applicant remains a director and authorised signatory of the Company and has the unilateral right to request and be provided with access to any and all of the Company's documentation, data, records, and affairs, and provide to the Applicant written confirmation that this has been done;

c. Inform Circle Leasing Limited that the Applicant continues to have authority to lease vehicles from Circle Leasing Limited on behalf of the Company.

4. The First Respondent shall comply with paragraphs 2 and 3 of this Order within 7 days of the date of this Order.

5. The First Respondent shall not take any steps or otherwise act or cause or encourage any other person to act to obstruct the matters set out in paragraphs 1, 2 and 3 of this Order.

6. Until final judgment (including any appeal) or earlier settlement of the Proposed Claim, the First Respondent must not directly or indirectly take any steps to:

a. Exclude the Applicant from the Relevant Premises;

b. Refuse to provide upon request from the Applicant any documents generated by or for use by the Company in the conduct of its affairs or business, including but not limited to all financial and accounting documentation;

c. Represent, directly or indirectly, to any contractors, suppliers, agents, accountants, banks and/or employees of the Company that the Applicant does not remain a director or equal shareholder of the Company and/or that they should not take instructions from or communicate with the Applicant about the Company and its affairs;

d. Exclude the Applicant from the Company's decision-making processes or decisions taken about Company affairs;

e. Open or otherwise inspect postal mail present on or in the immediate vicinity of the Relevant Premises addressed to the Applicant.

> 7. For the avoidance of doubt, the Respondent must not do the things set out above in paragraphs 1 and 6 above either himself or by others acting on his behalf or on his instructions or with his encouragement."

38. Schedule B sets out the documents of which Robert requires provision:

> "1. Copies of any documentation which sets out the agreement between the Company and Karen Morris.
>
> 2. Copies of any documentation showing the total sums paid directly or indirectly to Karen Morris by the Company or out of the Company's funds since 1 January 2020 to date.
>
> 3. Copies of all documentation which sets out Karen Morris' remuneration is and has been accounted to HMRC during her engagement by the Company.
>
> 4. Copies of all documentation relating to any loans or loan accounts for recording the direct or indirect provision of loans to the First Respondent and/or Karen Morris for the last three years to date, being 2020, 2021, and 2022.
>
> 5. Copies of all documentation relation to Company loans, finance agreements, and any government grants, funding or loans between 1 January 2018 to the date of this Order.
>
> 6. Copies of the following for the period since 1 January 2021 to the date of this Order
>
> a. Monthly management accounts
>
> b. Monthly work list progress reports
>
> c. Monthly sales listing showing all invoices and sales from the Company
>
> 7. Copies of the following for the period since 1 August 2021 to the date of this Order
>
> a. Monthly credit card statements for Barclays and Lloyds
>
> b. Monthly bank account statements for Lloyds (current trading account and the deposit account)
>
> c. Monthly bank account statements for any other account held by the Company
>
> 8. Copies of all sponsorship agreements relating to the Company's Porsche race car between 1 January 2018 to the date of this Order."

39. Mr Watson submits that, if the court were to accept Robert's case, a buyout would be ordered. Given that the Interim Application is no longer pursued, all that can legitimately be requested is further injunctive relief between order and transfer of shares, potentially allowing Robert to come back into the business and "cause havoc". Even if there were to be a split trial, he submits there would be no basis to allow interference in the business between the trial on liability and the trial concerning remedy.

40. Much of the relief sought in the Interim Application appears inapt to be claimed in the petition. Paragraph 2 of the order and the documents listed in Schedule B for example appear to be matters of extended disclosure, not final relief. I am not however satisfied that striking out this part of the relief sought will save any time at trial. The relief sought is not as tightly drafted as it could be but it reduces to a claim for protective injunctive relief which may or may not ultimately be necessary. The range of remedies available to the court on a petition under section 994 is very wide and it is not at this stage clear how the trial will be structured or what the position will be when the matter comes to trial. I am not satisfied that Robert does not have a reasonable prospect of achieving much of the relief sought to protect his position, or that Julian will clearly not be required to produce information to his brother after a trial on liability. In any event, I do not consider that any significant time or cost will be saved by striking this paragraph out.

(iii) Account

41. Paragraph 102.3 is as follows:

> "Julian must give a full account of:
>
> > 102.3.1. all dividends paid to him between 1 March 2000 and the date of trial;
> >
> > 102.3.2. all payments received by Julian into his personal account (or any other account not belonging to the Company) in respect of recycling materials sold to EMR during the course of his involvement with the Company."

This is said to be similarly injunctive in nature and covered by the abandoned Interim Application so that it is part and parcel of the relief sought in paragraph 102.2. The Company information will be provided on disclosure and it is not something that will be ordered on judgment. I consider however that there may be circumstances in which such an account is ordered and it is impossible to say that this relief will not be ordered if, for example, there were a split trial dividing the question of liability from that of relief.

(iv) Money claims and declarations in relation to dividends

42. Paragraph 102.4 is as follows:

> "Further or alternatively:

> 102.4.1. an order to the effect that the Company (or alternatively Julian) must pay to Robert an amount equal to his accrued but untaken dividends as at the date of trial (or at some other date the Court considers appropriate); and
>
> 102.4.2. a declaration that Robert is entitled to the payment of dividends equally with, and in amounts equal to, Julian as they accrue in future until such time as Robert ceases to be a shareholder whether by the purchase of his shares by Julian or otherwise."

Paragraph 102.5 then says:

> "Further or alternatively, in the face of Julian's denial of Robert's entitlement to dividends equal in amount to the Julian Dividends (together with any other dividends paid to Julian without Robert's knowledge), Robert seeks declarations to the effect (or otherwise as the Court thinks fit) that he:
>
> 102.5.1. is equally entitled, with Julian, to the payment of dividends in equal amounts to Julian;
>
> 102.5.2. remains entitled to receive dividends in the amount determined as having been paid to Julian by way of dividends between 1 March 2000 and the date of trial or assessment subject to giving credit for the Robert Dividends already received (the 'Outstanding Dividends'); and
>
> 102.5.3. is entitled to receive the Outstanding Dividends (i) at a time of his election, or (ii) alternatively, upon ceasing to be a shareholder."

43. Again Mr Watson submits that there is no basis on which this order could be made. If dividends have been withheld this can be dealt with in the purchase price. If the court orders a buyout it will not additionally order the payment out of dividends, even in the period between the judgment and any buyout taking effect. The Company could not be ordered to make such a payment.

44. In *Ntzegkoutanis v Kimionis* [2023] EWCA Civ 1480 Newey LJ at paragraph 55(iv) stressed the flexibility of the relief available on a petition under section 994:

> Where, on the other hand, an unfair prejudice petition seeks both relief in favour of the company and relief that would not be available in a pure derivative claim, and the petitioner appears to be genuinely interested in obtaining the latter, I do not think that it would ordinarily be appropriate to strike out either the petition or any part of the relief sought. It is not difficult to conceive of a situation in which it would make sense for a petitioner to include in an unfair prejudice petition a claim for, say, an order for a respondent to buy or sell shares and an order for a payment to be made to the company on the basis of a breach of duty by a

> respondent. In such a case, it would "not seem … to be very convenient" "from a practical point of view" (to echo Hoffmann J in *Re a Company (No. 005287 of 1985)* to insist that the claim for relief in favour of the company be the subject of a separate claim form. Even supposing that, on the particular facts, it would make more sense for the order in favour of the company to be pursued in a distinct derivative claim, it seems to me that it would rarely be right to deem the petition or any relief sought in it to be abusive if all the heads of relief were being pursued otherwise than to evade the requirements of Part 11 of the 2006 Act. As Judge Eyre QC remarked in *Hut Group*, 'the same acts can be both mismanagement which is unfairly prejudicial to a minority shareholder and misconduct in breach of a director's duties and causing harm to the company'. If a petitioner considers, for example, that such facts could warrant a share purchase order or, failing that, at least the grant of relief in favour of the company, I should not have thought that it would be improper to claim both in an unfair prejudice petition. As Vos J said in *Fi Call*, sections 994-996 of the 2006 Act "provide a wide and flexible remedy" and "[a]rtificial limitations should not be introduced to reduce the effective nature of the remedy introduced by ss.994-996";

45. It appears to me that Mr Strelitz is again right to say that these paragraphs are alternative ways of claiming the dividends to which Robert says he is entitled while a shareholder. Relief that might ordinarily have to be brought by conventional Part 7 proceedings may be encapsulated within a unfair prejudice petition. I cannot say, at this very early stage in proceedings, that, as the petition proceeds, one or other of these pleadings will not provide a route to the substantive relief that Robert seeks. Nor am I of the view that they will add substantively to the time the proceedings will take to resolve. At worst some of these paragraphs are surplusage. They do not warrant striking out.

(v) Reservation of rights

46. Paragraph 103 says as follows:

> "For the avoidance of doubt, Robert expressly reserves his rights in respect of any and all further claims he may have or may be able to bring on behalf of the Company against Julian (by way of a derivative action or otherwise), including but not limited to claims in respect of any breaches by Julian of his duties as a director of the Company."

Mr Watson says that this is wrong in principle. Robert should bring all his claims in one go. It is certainly true that the reservation of rights is often used as little more than a ritual incantation, to no effect at all. Those words would be ineffective to prevent a *Henderson v Henderson*-type issue estoppel argument being pursued if further proceedings were brought that should have been dealt with in this petition. If the court considers it appropriate to authorise the bringing of a derivative claim as part of the relief granted in the petition it will do so. Mr Watson described this paragraph as pointless and circular. I have sympathy for this submission but, again, while these

words may be superfluous they do not in any way obstruct the disposal of the proceedings.

(vi) Wayne's redundancy

47. This appears in the particulars of unfair prejudice at paragraph 99.11, although the circumstances of Wayne's dismissal are set out in more detail elsewhere in the pleading. Paragraph 99.11 alleges that Julian unfairly prejudiced Robert by:

> "Covertly preparing and then implementing (or causing or permitting to be prepared and then implemented) a sham redundancy scheme within the Company designed to and/or having the effect of dismissing Robert's son from his employment with the collateral and improper purpose of preventing or restricting Robert's insight into the affairs of the Company".

Mr Watson submits that nothing is pleaded that would tie this to unfair prejudice qua shareholder. Decisions to hire and fire were not taken at board level and the issue falls away unless he can say that there was an agreement that his son would always be employed. Wayne himself has not brought unfair dismissal proceedings and they cannot be resolved in this case in any event.

48. In my judgment the circumstances of Wayne's dismissal are plainly relevant to the question of Robert's exclusion from management. No relief is sought in respect of Wayne's dismissal that should properly be brought in the employment tribunal by Wayne himself. There may be any number of reasons why Wayne has not brought such a claim. His dismissal in the face of objections from his father as a director is self-evidently relied upon as an instance of Robert's exclusion from having an indirect knowledge of what was going on at the Company. There are no grounds for striking out this element of the petition.

Conclusion in respect of the application to strike out in part

49. Save to the very limited extent in relation to the pleading of the claim to a premium to reflect for marriage value, this element of the Strike Out Application fails.

Disposition

50. The Strike Out Application is dismissed, save as above. The petition must now be progressed. It seems to me that I should simply direct that the amended petition should be filed and served within 7 days and remake the automatic directions issued on 30th November 2022 from paragraph 4 onwards, providing 28 days from the handing down of this judgment for the filing and service of points of defence, with consequential directions to a CCMC accordingly.

51. The costs of the Strike Out Application and any application for permission to appeal will be listed for a short hearing if they cannot be agreed in the order for directions that I have contemplated above. If there is any reason why such directions should not be made now but should also await the consequentials hearing, they can be provided, briefly, in writing together with counsel's typographical corrections on the draft.

52. I will ask Mr Strelitz to draft a directions order and I invite the parties to lodge an agreed order either dealing with the consequential matters arising from my judgment on the Strike Out Application or providing for a short consequentials hearing.