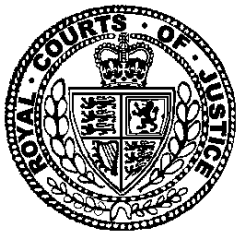

Neutral Citation Number: [2023] EWHC 175 (Ch)

Case No: CR-2022-000358 and CR-2022-000359

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

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

Date: 3 February 2023

Before :

DEPUTY ICC JUDGE CURL KC

- -

Between :

MS JOY MARGARET GRIFFITHS

Petitioner

- and -

(1) MR JOHN TUDOR GRIFFITHS
(2) THE MICHAEL GRIFFITHS SETTLEMENT
(BY ITS TRUSTEES MR JOHN TUDOR GRIFFITHS AND MR STUART HAYNES)
(3) T G BUILDERS MERCHANTS LIMITED

Respondents

MS JOY MARGARET GRIFFITHS

Petitioner

- and -

(1) MR JOHN TUDOR GRIFFITHS
(2) THE WM GRIFFITHS FAMILY SETTLEMENT
(BY ITS TRUSTEES MR WILLIAM GRIFFITHS AND MR STUART HAYNES)
(3) ELLESMERE SAND & GRAVEL CO. LIMITED

Respondents

Fraser Campbell (instructed by **Burges Salmon LLP** for the **Petitioner**)
Thomas Elias (instructed by **Aaron & Partners LLP**) for the **First Respondent**)
The other Respondents did not appear and were not represented

Hearing dates: 9 December 2022

- -

Deputy ICC Judge Curl KC:

1. On 9 February 2022, Ms Joy Margaret Griffiths presented two unfair prejudice petitions ("Petition(s)"). The Petitions concerned, firstly, T G Builders Merchants Limited ("TGBM"; the Petition in relation to it "TGBM Petition") and, secondly, Ellesmere Sand & Gravel Co. Limited ("ESG"; the Petition in relation to it "ESG Petition") (TGBM and ESG together "Companies"). It is alleged by the Petitions that the affairs of the Companies are being and have been conducted in a manner that has caused unfair prejudice to the petitioner as a member of each of them.

2. This judgment concerns applications made on 23 March 2022 ("Applications") by the first respondent to each of the Petitions, Mr John Tudor Griffiths, that the Petitions be struck out in their entirety or, alternatively, that certain paragraphs in the Petitions be struck out or have summary judgment entered in respect of them. In this judgment I refer to the applicant and the first respondent by their given names, "Joy" and "Tudor" respectively, as they were referred to by their counsel at the hearing, without intending any disrespect to either of them in doing so. Joy was represented by Mr Fraser Campbell and Tudor by Mr Thomas Elias, both of counsel.

3. No defence to the Petitions has yet been filed. Tudor's solicitor has made a witness statement dated 23 March 2022 concerned mainly with the procedural history to the dispute and also exhibiting some contemporaneous documents. There are no other witness statements, although the Petitions as issued are supported by a statement of truth signed by Joy's solicitor. Both sides made submissions on instructions at the hearing based on what their clients would say in due course. Even by the standards of an application for early summary disposal, there is little factual evidence before the court from either side.

BACKGROUND

4. I take the background primarily from the Petitions. Nothing in this judgment is to be taken as a finding of fact or any indication of the likelihood that any allegation made by either side will succeed at trial.

Factual background

5. Joy and Tudor are sister and brother. The Companies are part of a family business founded by Joy and Tudor's great-grandfather in 1874.

6. TGBM was incorporated in 1978. It currently has ten issued £1 shares. Joy and Tudor each own four of those ten shares and the remaining two are owned jointly by Tudor and Mr Stuart Haynes as trustees of the Michael Griffiths Settlement. The Michael Griffiths Settlement is named as the second respondent to the TGBM Petition. Mr Michael Griffiths was Joy and Tudor's brother; he was formerly a shareholder in TGBM and is now deceased. Tudor's co-trustee, Mr Haynes, is a solicitor and a partner in the firm Aaron & Partners LLP ("A&P"), which is acting for Tudor in these proceedings in his capacity as first respondent to the Petitions. Joy is a director of TGBM.

7. ESG was incorporated in 1959 and currently has 7,500 issued £1 shares. Joy and Tudor each own 2,500 of those shares. A further 2,500 shares are owned jointly by Mr William Griffiths and Mr Haynes as trustees of the WM Griffiths Family Settlement ("Family Trust"). The Family Trust is named as the second respondent to the ESG Petition. Mr William Griffiths is the father of Joy and Tudor and I refer to him in this judgment as "Billy", as he was referred to during the hearing, again without intending any disrespect thereby. Joy has not been a director of ESG at any time.

8. A third company, Tudor Griffiths Limited ("TGL"), is referred to a number of times in the Petitions. TGL was incorporated in 2008 and Tudor holds all the voting shares in it. Joy has no ownership interest or management role in TGL. Since at least 2009, ESG has been part of an informal partnership with TGL, known as WM Griffiths Farms ("WMGF"). The role of WMGF is to collect rent from agricultural land owned by each of EGL and TGL.

9. Central to Joy's complaints in the Petitions is the allegation that Tudor has achieved control of the Companies and has excluded Joy, contrary to a common understanding between their shareholders that they would be *"run subject to an overarching quasi-partnership"*. It is alleged that Tudor has caused TGL to operate as an administrative hub and has caused the Companies to pay excessive charges (variously referred to as an *"administrative fee"*, *"head office charge"* or a *"management charge"*) to TGL.

Procedural background

10. Following their issue on 9 February 2022, A&P on behalf of Tudor raised a number of objections to the Petitions by a letter dated 10 March 2022. Two detailed schedules ("Schedules") were provided under cover of that letter setting out a series of particularised issues with each of them.

11. ICC Judge Prentis made a directions order with the consent of the parties on 11 May 2022. That order directed, *inter alia*, that the Petitions be case managed and heard together.

12. Joy's solicitors, Burges Salmon LLP, provided draft amended versions of the Petitions under cover of a letter dated 7 November 2022. Those draft amended versions engaged with certain of the objections raised on behalf of Tudor in the Schedules. A&P agreed to the proposed amendments by a letter dated 14 November 2022, subject to Joy paying Tudor's costs of and occasioned by them. That agreement was, however, given expressly without prejudice to Tudor's intention to continue to pursue the Applications on the basis of his remaining objections to the Petitions which were set out in revised versions of the Schedules enclosed with A&P's letter of 14 November 2022.

13. By a letter from their solicitors FBC Manby Bowdler LLP dated 15 November 2022, the trustees of the Michael Griffiths Settlement and the Family Trust indicated their intention to take no part in the Applications on the basis that these were matters between Joy and Tudor.

14. Under cover of a letter from A&P dated 24 November 2022, Tudor provided a spreadsheet in relation to each of the five accounting years ending 31 March 2018 to 31 March 2022 inclusive ("the Spreadsheets"). The Spreadsheets provide a limited breakdown of the way in which the head office charges paid by the Companies to TGL have been calculated for those years. Costs of employees have been apportioned on a percentage basis between eight entities (including the Companies and TGL itself), as have various heads of cost described as *"head office running costs (being costs that are not specific to* [TGL]*)"*. The heads of cost are identified by broad categories, such as *"Computer"*, *"Rates"*, *"Repairs"*, *"Telephone, Fax & Postage"*. There is also a category described as *"uncharged rents"*, which A&P explained in their covering letter are costs charged to TGBM alone for the use of land and property owned by TGL.

15. Burges Salmon objected on behalf of Joy to the late provision of the Spreadsheets and raised a number of questions about them by a letter dated 30 November 2022. At the hearing, Mr Campbell repeated Joy's complaint that the provision of the Spreadsheets on 24 November 2022, which was two weeks before the hearing of the Applications, was extremely late given that the Applications had been made on 23 March 2022. He submitted that the Spreadsheets raised more questions than they answered, not least because they contained no underlying rationale or methodology for the various percentage shares attributed to the Companies or the other entities.

16. In light of the narrowing of the positions between the parties following the provision by Burges Salmon of the draft amended Petitions and by A&P of the revised Schedules, all references in the remainder of this judgment to the Petition or to the Schedules are to those updated versions of the documents, rather than to the Petitions as issued or the superseded versions of the Schedules, save where otherwise stated.

THE TEST FOR STRIKING OUT OR SUMMARY JUDGMENT

17. There was no dispute between the parties on the correct approach to striking out or the grant of summary judgment on a statement of case. Mr Elias drew my attention to the Court of Appeal's digest of the applicable principles in *Global Asset Capital Inc v Aabar Block SARL* [2017] EWHC Civ 37, [2017] 4 WLR 163, which drew on the well-known judgment of Lewison J (as he then was) in *Easyair Ltd (trading as Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch), at [15]. In *Global Asset Capital*, Hamblen LJ (with whom McFarlane LJ agreed) identified at [27] the following principles applicable both to strike out and to summary judgment:

> *"(1) The court must consider whether the case of the respondent to the application has a realistic as opposed to fanciful prospect of success – in this context, a realistic claim is one that carries some degree of conviction and is more than "merely arguable".*
>
> *(2) The court must not conduct a "mini-trial" and should avoid being drawn into an attempt to resolve conflicts of fact which are normally resolved by the trial process.*

(3) If the application gives rise to a short point of law or construction then, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should "grasp the nettle and decide it"."

18. The grounds for striking-out or summary judgment raised by Tudor on the Applications fall into three categories:

    i) Pleading issues: These are particularised in detail in the Schedules, which set out a series of numbered *"Issues"*. Most of the Issues are based on the contention that the Petitions impermissibly seek to raise family grievances or matters that relate to companies other than TGBM (in the case of the TGBM Petition) and other than ESG (in the case of the ESG Petition). It is also said that the trustees of the Michael Griffiths Trust and the Family Trust have not been properly joined to the proceedings as respondents and that each of the Petitions impermissibly purports to incorporate material from the other Petition by reference. Finally, Mr Elias raised a point in his oral submissions concerning the date of Tudor's appointment as a director of ESG.

    ii) Delay or acquiescence: It is said that Joy has raised complaints about matters that she has previously approved or known of or has acquiesced in for years. In the event that the Petitions are not struck out altogether, Tudor contends that certain matters complained of should not be permitted to be entertained by the court because they took place too long ago. In relation to Joy's complaint in relation to the head office charges, Tudor submits that no challenge should be permitted pre-dating the financial year commencing on 1 April 2020, because this was the point at which Joy first raised her complaint.

    iii) Offer to purchase: Tudor submits that he has already offered Joy the substance of the best relief she can obtain through the courts by way of an offer to purchase her interest in the Companies at a fair value with no minority discount and accordingly the Petitions should not be permitted to continue. Alternatively, in the event that the court is minded to permit the Petitions to continue, Tudor proposes a stay of six months to enable the valuation process to progress to a conclusion.

19. I take these points in turn below.

PLEADING ISSUES

The unfair prejudice remedy

20. I start by reminding myself of what a claimant must show in order to engage the court's discretion to grant relief for unfair prejudice. The statutory provisions are set out in ss.994 to 996 of the Companies Act 2006. Section 994(1) provides as follows:

    "994 Petition by company member

> *(1) A member of a company may apply to the court by petition for an order under this Part 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."*

21. I pause here to note that the allegations in each of the Petitions are put under the limb in s.994(1)(a) only, i.e. that TGBM's and EGL's *"affairs are being and have been conducted in a manner which has caused unfair prejudice to* [its] *members, including Joy in particular"*: see TGBM Petition, paragraph 38; EGL Petition, paragraph 37.

22. In order to satisfy the requirements of either limb of s.994(1) there are a number of distinct things that must be established. *Hollington on Shareholders' Rights* (9th edn) says this at 7-16:

> *"It is convenient for the purposes of exposition to identify four elements to a claim of unfair prejudice which a petitioner must establish:*
>
> *(1) the conduct complained of must consist of the conduct of the company's affairs or an "act or omission of the company (including an act or omission on its behalf)"; and*
>
> *(2) their (or shareholders' generally) interests as a member must have been,*
>
> *(3) prejudiced,*
>
> *(4) unfairly.*
>
> *To a large extent they are inter-related. For example, one cannot assess whether a petitioner has been prejudiced without assessing what his interests are for material purposes or what the court regards as relevant for the purposes of determining unfairness. Furthermore, the principles governing whether a broad view of a member's "interests" should be taken are the same as those governing whether there are equitable constraints on the exercise by the majority of their legal rights. The two most important elements are (3) and (4), namely prejudice and unfairness…*
>
> *It is necessary that all four of the above elements are satisfied…"*

23. This distinction is reflected in the authorities. In *Loveridge v Loveridge (No 1)* [2020] EWCA Civ 1104, [2022] 2 BCLC 314, Floyd LJ (with whom Lewison and Asplin LJJ agreed) gave the following summary of the components of a claim under s.994(1)(a) at [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:* Re Neath Rugby Ltd, Hawkes v Cuddy *[2007] EWHC 2999 (Ch), [2008] BCC 390 at [202] per Lewison J;*
> >
> > *(ii) The conduct of those affairs must have caused prejudice to the interests of petition as shareholder: ibid;*
> >
> > *(iii) The prejudice so caused must be unfair: ibid;*
> >
> > *…"*

24. Although Floyd LJ expressed the requirements in a slightly different form compared with the summary in *Hollington*, the substance of those requirements and the essential distinction drawn between the different elements of the cause of action is the same. Floyd LJ's summary was cited by Snowden LJ (with whom Green and Nugee LJJ agreed) in *Re Kings Solutions Group Limited* [2021] EWCA Civ 1943, [2022] BCC 529, on which both parties made submissions at the hearing before me.

25. These passages show that the requirement to identify an act or omission of the company or any conduct of its affairs is distinct from the need to show that any such act, omission or conduct was unfair and, separately, prejudicial in the necessary way. It is in the nature of things that the same underlying factual matters are likely to be relied upon to establish more than one element: they are *"inter-related"* as it is put in *Hollington* in the extract at §22 above. There is, however, a requirement on a petitioner to demonstrate each element distinctly.

26. Focusing in particular on the requirement that an act or omission of the company or any conduct of its affairs is unfair in the necessary sense, *Hollington* provides the following summary of *"unfairness"* at 7-01:

> *"(i) the concept of unfairness, although objective in its focus, is not to be considered in a vacuum. An assessment that conduct is unfair has to be made against the legal background of the corporate structure under consideration. This will usually take the form of the articles of association and any collateral agreements and understandings between shareholders which identify their rights and obligations as members of the company;*
>
> *(ii) these are the terms upon which the parties agreed to do business together, which include applicable rights conferred by statute. The starting point therefore is to ask whether the exercise of the power or rights in question would involve a breach of these terms;*
>
> *(iii) these terms include, by implication, an agreement that any party who is a director will perform his duties as a director;*

(iv) these terms are subject to established principles which may moderate the exercise of strict legal rights when insistence on the enforcement of such rights would be unconscionable;

(v) agreements and understandings do not have to be contractually binding in order to be enforceable in equity;

(vi) it follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements to be enforced in the particular circumstances under consideration…

(vii) the norm is that relations between shareholders are purely commercial and subject to no equitable restraints, whether borrowed from the law of partnership or not. It is an acutely fact-sensitive exercise to determine whether and if so what equitable constraints will apply in what are labelled quasi-partnerships, the hallmarks of which are: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business…"

27. Point (vi) of the foregoing extract from *Hollington* is derived from Lord Hoffmann's speech in *O'Neill v Phillips* [1999] 1 WLR 1092. Given some of the objections taken to the Petitions, it is helpful to consider this aspect in more detail. *O'Neill v Phillips* concerned s.459(1) of the Companies Act 1985, which was the predecessor to s.994(1) of the CA 2006. Lord Hoffmann held at 1098G to 1099B that:

> *"In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.*
>
> *The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal*

> *powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."*

28. Accordingly, *"unfairness"* in the sense necessary to establish a claim under s.994(1) may exist, even where the respondent is acting in accordance with their strict legal powers, if they are in breach of some equitable constraint on their conduct to which the shareholders have agreed. Such an equitable constraint may arise from a collateral agreement or understanding identifying their rights and obligations as members of the company. As *Hollington* explains, the inquiry into whether there is *"unfairness"* is a fact-sensitive exercise that is not to be conducted in a vacuum.

29. In his submissions for Tudor, Mr Elias relied first on the judgment of Males J (as he then was) in *Grove Park Properties v Royal Bank of Scotland* [2018] EWHC 3521 (Comm), at [24], to make the general point that statements of case should plead only material facts necessary to formulate a cause of action, not background facts or evidence. Next Mr Elias turned to the pleading requirements for unfair prejudice petitions in particular. These submissions focused on two recent decisions of the Court of Appeal: *Re Kings Solutions Group Limited* (to which I referred at §24 above); and *Re Loveridge v Loveridge (No 2)* [2021] EWCA Civ 1697, [2022] 2 BCLC 340 (which was a later decision of the Court of Appeal in the same proceedings as those referred to at §23 above).

30. Mr Elias submitted that these Court of Appeal decisions support the proposition that it is only permissible to plead matters relating to the particular company to which an unfair prejudice petition relates, i.e. TGBM in the case of the TGBM Petition and ESG in the case of the ESG Petition. This is because allegations of unfair prejudice may only be based on acts or omissions or conduct of the affairs of the company subject to the petition. To plead anything else is to seek to raise, and therefore to litigate, issues that do not relate to allegations of unfair prejudice in respect of the relevant company. This is impermissible, Mr Elias submitted, as a matter of authority and to do so would have undesirable consequences, not least in causing disclosure to proliferate.

31. Given the centrality of *Re Kings Solutions* and *Loveridge v Loveridge (No 2)* to Tudor's submissions, it is necessary to consider them in some detail. I take *Re Kings Solutions* first. The Court of Appeal's judgment concerned an appeal from the decision of Mr Tom Leech QC (sitting, as he then was, as a deputy High Court judge) to strike out only some, rather than all, of the paragraphs disputed by the respondents to an unfair prejudice petition. On appeal, the Court of Appeal struck out all the disputed paragraphs. It is notable that the petition was only one of a number of pieces of litigation that had arisen out of the shareholder dispute in question. The petition had been presented four days prior to the hearing of a Part 8 claim seeking an order for the sale of the petitioners' shares. That Part 8 claim had been made by the defendants (who included some of the respondents to the petition) to a previous Part 7 claim in fraudulent misrepresentation brought by the petitioners, the discontinuance of which had resulted in a significant costs liability that the defendants to it now applied to enforce. Each of the paragraphs in the petition that the respondents sought to strike out concerned events that had taken place either at the time of or after the

misrepresentation claim had been discontinued by the petitioners. Most of those allegations concerned other aspects of the litigation between the parties, rather than the underlying dispute that had occasioned that litigation.

32. The main issue on the appeal in *Re Kings Solutions* was whether, and if so in what circumstances, it is permissible to include in a statement of case under s.994 of the CA 2006 allegations of personal conduct by the respondents to that petition that are not, of themselves, within the scope of s.994. Snowden LJ gave the only reasoned judgment, with which Green and Nugee LJJ agreed. Having reviewed in detail the earlier Court of Appeal decision in *Graham v Every* [2014] EWCA Civ 191, [2014] BCC 376, Snowden LJ held at [61] that the majority in that case had required there to exist a causal connection between any personal actions of the respondent shareholder or a third party and the act or omission constituting conduct of the company's affairs within s.994. Snowden LJ specifically rejected at [68] the petitioners' contention that provided that the *"link"* between the allegations of personal conduct and the allegations of conduct of the affairs of the company *"makes sense from a case management perspective"*, then the court should permit those allegations to be pleaded. Further, Snowden LJ considered at [72] that the deputy judge had been wrong at first instance to the extent that he had reformulated the requirement in *Graham v Every* to suggest that some other type of *"link"*, rather than a causal connection, between the personal actions and the conduct of the affairs of the company would suffice for such personal actions to be pleaded.

33. *Graham v Every* provides an example on its facts of how such a *"causal connection"* between a personal act of a respondent and the conduct of the company's affairs might be established. In that case, an allegation that one of the respondent shareholders had bought the shares of two other shareholders without those shares having first been offered *pro rata* to all the other shareholders had been struck out at first instance. The Court of Appeal allowed the appeal and permitted that allegation to go forward. Their Lordships held that while the mere breach of a pre-emption agreement would not in itself constitute the conduct of the affairs of the company, there was a sufficient causal connection between them. In his concurring judgment in *Graham v Every*, Vos LJ explained the causal connection in the following way at [82]-[83]:

> *"…the allegation is, in effect, that the respondents denied* [the petitioner] *the additional shares he ought to have had, and have thereafter used their greater control of the company's affairs to his disadvantage by, for example, excluding him from the management of the company and reducing the (greater) profit share he would otherwise have had. These matters have been unfairly prejudicial to his interests.*
>
> *In a quasi-partnership, it is common for a group of partners to act in such a way as to reduce another partner's shareholding in a variety of different ways. It would be surprising if such conduct, if proved, could not, at least in theory, be prayed in aid in seeking to establish under s.994(1)(a) of the Companies Act 2006 that the company's affairs were being conducted in a manner that was unfairly prejudicial to the interests of the diluted member. After all, in such situations, the whole purpose of diluting the member inappropriately or unlawfully is to reduce his control of or influence in the*

quasi-partnership so that it will act more closely in accordance with the wishes of the majority, and in their interests…."

34. Having set out the foregoing passage, Snowden LJ in *Re Kings Solutions* added this:

> *"…Vos LJ was persuaded not to strike out the allegation because of the possibility that the petitioner could demonstrate that the respondents had used the greater control of the company's affairs that they had obtained by their acquisition of shares in breach of the pre-emption agreement to cause the company to act to his prejudice, e.g. by voting at a general meeting to remove him as a director, or because he would receive a lesser profit share from that which he might otherwise have received when dividends were declared. The situations envisaged by Vos LJ were thus ones in which the subsequent actions of the company or the conduct of its affairs would be causally connected – at least on a "but for" basis – to the changes in shareholdings resulting from the earlier breach of the pre-emption agreement."*

35. It is evident that a particular concern of the Court of Appeal in *Re Kings Solutions*, as it had been in *Graham v Every*, was the tendency of unfair prejudice petitions to become unwieldy. Snowden LJ observed at [63] that there has always been a tendency for petitions and pleadings in this type of litigation to raise *"myriad grievances and complaints of diverse forms of misconduct"*, with those allegations then said to require *"extensive disclosure and a lengthy trial"*. Observations to similar effect by Harman J in *Re Unisoft Group Limited (No.3)* [1994] 1 BCLC 609 (referring at 610-611 to the *"length…unpredictability of management, and the enormous and appalling costs"* of unfair prejudice petitions) and Arden LJ in *Re Coroin Ltd* [2014] BCC 14 (referring at [14] to the *"resource-intensive"* nature of this form of litigation) were then cited by Snowden LJ at [64]-[66]. Such concerns were plainly to the fore in *Re Kings Solutions*, where the petition was 69 pages long and contained 260 paragraphs and, as I mentioned earlier, contained allegations about other pieces of litigation arising in the same overall dispute between the parties, rather than the substance of the company's affairs that had given rise to that dispute.

36. Snowden LJ then set out at [66]-[67] in *Re Kings Solutions* the following summary of the correct approach when pleading an unfair prejudice petition. In a passage that Mr Elias, on behalf of Tudor, drew particular attention to, Snowden LJ said this:

> *"…The potential breadth of what is now Section 994 has been limited and kept within manageable bounds by the express statutory requirements that the acts complained of must either (i) be an act or omission of the company, or (ii) be conduct of the company's affairs rather than acts done in the conduct of a shareholder's personal affairs.*
>
> *Satisfaction of these requirements should not be overlooked or minimised. Petitions and statements of case in unfair prejudice cases should make it clear which limb of Section 994 is being relied upon and should contain a concise statement of the facts upon which the petitioner relies to make out*

> *that requirement. On the basis of the majority judgments in Graham v Every, it may be legitimate for a concise statement of personal acts of the respondents which are causally connected to an act or omission of the company, or causally connected to conduct of the company's affairs, to be included to support the primary allegation. There is, however, no such justification for allowing other allegations of personal conduct of the respondents, which are not causally connected to an act or omission of the company, or not causally connected to conduct of the affairs of the company, to be included in a statement of case under Section 994."*

37. Accordingly, *Re Kings Solutions* at [61]-[67] is clear recent authority for the proposition that it is essential for the pleader to focus closely on the statutory requirement that an act or omission of the company, or some conduct of its affairs, must be identified. When pleading that part of the cause of action, it is permissible to plead the personal conduct of the respondents or third parties only if there is a causal connection between that conduct and some act or omission of the company or conduct of its affairs.

38. Turning to the second of the recent Court of Appeal authorities relied upon by Tudor, *Loveridge v Loveridge (No 2)* also emerged from a complex procedural history. So far as relevant to the matters in issue today, a petition seeking relief from unfair prejudice in relation to five companies was before the court. The respondents to the petition appealed from the order of His Honour Judge Cooke (sitting as a High Court judge) granting permission to the petitioner to amend the petition and declining to strike it out in whole or in part.

39. Mr Elias submitted that *Loveridge v Loveridge (No 2)* supported Tudor's objections to the inclusion in the Petitions of matters involving companies other than the company that was the subject of each Petition. Giving the only reasoned judgment (with which Nugee and Bean LJJ agreed), Falk J (as she then was) took the following approach to the separate identities of the companies at [67] in a passage particularly relied upon by Tudor:

> *"…it is necessary to consider the various business entities through which the family have decided to carry on business separately. This includes the individual companies insofar as there are relevant differences between them. Whilst a blinkered approach which ignores the wider factual context is clearly inappropriate, questions of unfairly prejudicial conduct and whether it is just and equitable to wind a company up must be determined by reference to each individual company, and* [the petitioner's] *interest as a member of it. The fact that the affairs of one entity may have been conducted in an unfairly prejudicial manner, or that the facts are such that it is just and equitable to wind that entity up, does not by itself justify a similar conclusion in respect of other entities even if they are in some senses regarded as part of the same overall business."*

40. The facts of *Loveridge v Loveridge (No 2)* were very different from those before the court today and it is relevant to record the context in which Falk J made the foregoing observations. As I have said, the petition concerned five companies and relief arising from unfair prejudice was sought in relation to all five of them. One of the companies, Quatford, had been indebted to two of the other

companies in the total sum of £5.3 million. At first instance, the judge had refused to strike out the petition and had granted an injunction to restrain the creditor companies from demanding repayment or other enforcement of the intercompany loans. The judge had held that, although it was necessary to consider the position of each company, it was arguable that a course of conduct across a wider business may be relied on as evidence that acts in relation to a particular company are sufficiently serious to justify relief, even if such acts otherwise would not have been. In the case of Quatford in particular, the judge considered that the pleading of the exclusion of the petitioner from other directorships as part of a strategy of excluding him from management of the overall wider business was arguably sufficient, together with the threat to enforce the intercompany loans, to establish unfair prejudice in relation to Quatford.

41. Falk J rejected this analysis and the appeal was unanimously allowed and the petition struck out. In the case of Quatford, the petitioner remained a director and the uncontradicted evidence was that he was in *de facto* control of that company. All that was left in relation to Quatford were the allegations concerning the intercompany loans, and Falk J held that it was not realistically arguable that the parties had a common understanding that the loans would not be called in unless everyone agreed. The position was perhaps even more stark in the case of another of the five companies, Breton Park, where there was no intercompany loan, no sufficiently pleaded basis of a right to participate in its management, and no evidence that the petitioner's exclusion from management of any other company prejudiced his position in relation to Breton Park. Accordingly, the substance of the position in *Loveridge v Loveridge (No 2)* was that the petitioner sought relief in relation to two of the five companies simply because they were part of a wider family group and without any allegation of any act or omission by either of those two companies or any conduct of their affairs. This was held to be insufficient to maintain a cause of action in unfair prejudice. I do not, however, detect any indication in Falk J's judgment that it was impermissible to allege that a common understanding or agreement involving mutual confidence between family members had extended to more than one corporate entity. Rather, the objection was that it was necessary to identify a relevant act or omission, or some conduct of the affairs, of each individual company that was said to be subject to such a common understanding or agreement and this had not been done. As discussed at §25 above, the existence of a common understanding or agreement is a distinct element of the unfair prejudice cause of action from the need to identify an act or omission or some conduct of the affairs of the company, notwithstanding that these may be inter-related. It is evident from Falk J's judgment in *Loveridge v Loveridge (No 2)* at [114]-[118] that her Ladyship had this distinction well in mind. Had it been part of the Court of Appeal's decision that it was impermissible in every case as a matter of principle for a common understanding or agreement to extend to more than one corporate entity, then it is likely that Falk J's judgment would have mentioned this.

42. Drawing the material set out at §20 to §41 above together, the following principles relevant to the Applications emerge:

i) Although they are inter-related, it is necessary to satisfy each of the elements of an unfair prejudice claim, i.e. (a) that the petitioner complains of some act or omission of the company or conduct of its affairs; (b) that those matters have caused prejudice to the petitioner as shareholder; and (c) that the prejudice so caused is unfair.

ii) Unfairness in the conduct of a company's affairs may be found where the shareholders have agreed that their relations should be subject to an agreement or understanding, such as a quasi-partnership, that means that the insistence on strict legal rights would be unconscionable.

iii) When pleading the relevant acts or omissions of the company or conduct of its affairs:

a) it should be made clear which limb in s.994(1) is relied upon and the petition should contain a concise statement of the facts upon which the petitioner relies to make out that requirement;

b) personal acts of the respondent shareholder(s) or of a third party may be pleaded if they are causally connected to acts or omissions of the company, or conduct of its affairs, to support the primary allegation but not otherwise; and

c) each company must be considered separately, even if they are in some sense part of the same overall business.

43. Having identified the principles relevant to the pleading issues, I now turn to address the specific pleading objections made by Tudor to the Petitions. As I have said, these are identified as numbered Issues in the Schedules. The Petitions largely mirror each other and consequently so do the Schedules, although there are a small number of issues that are unique to each of the Petitions. There are gaps in the numbering of the Issues, as certain previous objections have now fallen away as a consequence of the proposed amendments to the Petitions: see §12 above.

Striking out the entirety of the Petitions

44. Although the primary relief sought by the Applications is for the Petitions to be struck out in their entirety, this was not the focus of the written or oral submissions of either party. This was unsurprising, because the Petitions identify the following features to which no objection is raised by any Issue in the Schedules: a common understanding based on a quasi-partnership (TGBM Petition: paragraphs 13 and 14; ESG Petition: paragraphs 14 and 15); various allegations of the conduct of the Companies' affairs (TGBM Petition: paragraphs 17; 25 to 27 and 31 to 34; ESG Petition: paragraphs 18; 24 to 25; 27 to 28; and 30 to 33); an allegation of a breach of the common understanding based on a quasi-partnership (TGBM Petition: paragraphs 36 and 37; ESG Petition: paragraphs 35 and 36); and an allegation of unfair prejudice within the meaning of s.994(1)(a) of the CA 2006 (TGBM Petition: paragraph 38; ESG Petition: paragraph 37). In my judgment, there is a sufficiently pleaded cause of action in unfair prejudice disclosed by paragraphs in the Petitions that are not

the subject of any challenge. Accordingly, I decline to strike out the Petitions in their entirety.

45. I turn now to deal with the specific objections raised by the numbered Issues in the Schedules. I deal first with the TGBM Petition and then with the ESG Petition. Where extracts from the Petitions are set out, the underlined material indicates the proposed amendments, which as I mentioned at §12 above have been agreed by the parties subject to the Applications. I do not deal in this section with the Issues in the Schedules where they are concerned with delay or acquiescence, which I deal with separately at §150 below.

TGBM Petition

TGBM Issues 1 and 2: Heading; paras.4 and 7.1

46. TGBM Issue 1: Tudor submits that the party identified as the Second Respondent (*"The Michael Griffiths Settlement (by its trustees, Mr Tudor Griffiths and Mr Stuart Haynes)"*) has no separate legal personality and so cannot be a party.

47. TGBM Issue 2: Tudor submits that paragraph 4 and sub-paragraph 7.1 of the TGBM Petition refer respectively to the Michael Griffiths Settlement and the Family Trust themselves owning shares, which a trust (having no legal personality) cannot do.

48. Decision on TGBM Issues 1 and 2: In my judgment, this objection is well-founded.

49. Mr Elias relied on the notes in *White Book 2022* at 19.1.2, which provide that parties to a claim must be persons. He also referred to CPR r.64.4(1)(a), which provides that in proceedings to which Section I of Part 64 applies, *"all the trustees must be parties"*. That Section appears to apply to the Petitions, in that they include *"…claims relating to…trusts"* within the meaning of r.64.1(a)(ii).

50. Mr Campbell submitted that the trustees were sufficiently joined because the description of the second respondent specifically states that the trusts act by their trustees. Further, the trustees themselves had indicated their neutrality on the Applications and had raised no complaint about the way the proceedings were constituted. During oral submissions, however, Mr Campbell indicated that Joy would request an opportunity to apply to amend the proceedings to address this aspect, if the court considered that to be something that should be done.

51. In my judgment, although it is plain that no confusion has been caused to any party and the trustees themselves have taken no point on it, the trustees have not been identified as respondents in the way that they really should have been. The second respondent is identified as the Michael Griffiths Trust, rather than the trustees themselves, and Mr Elias's objections based on the CPR are strictly correct. I did not hear submissions specifically directed at what the consequences should be for the proceedings in the event that TGBM Issues 1 and 2 were well-founded. Accordingly, in my view, the appropriate course is

for Joy to consider with her advisers whether to seek to amend the Petitions to address the consequences of this part of the judgment. To the extent that the parties cannot reach agreement I will hear any application and argument on this aspect on another occasion.

TGBM Issues 8 to 11: para.15.1

52. Objection is taken by TGBM Issues 8 to 11 to sub-paragraph 15.1 of the TGBM Petition. Before turning to these, it is necessary to set out Paragraphs 13 and 14 (which introduce the *"Fundamental Understanding"*) and the introductory words of paragraph 15, in order to put sub-paragraph 15.1 in its context:

> *"13. At all times since their respective incorporations, there has been a common understanding between the members of the Griffiths family who have been the ultimate beneficial owners ~~shareholders~~ of ESG and TGBM that: (i) those companies will be run subject to an overarching quasi-partnership, with equal rights to management and control being held by members of the Griffiths family who are shareholders; and (ii) each member of the Griffiths family who is also a shareholder will be entitled (though not obliged) to be represented on the boards of directors and to be involved in the making of major or strategic decisions affecting the companies' affairs ("the Fundamental Understanding").*
>
> *14. The Fundamental Understanding arose and has persisted in the context of ESG and TGBM being at all times small, closed family companies. It has been passed down through generations and has been reflected over time by the appointment of various family members and shareholders as directors of each company, and their participation in the conduct of the overall business conducted by both companies. In particular, it was reflected as regards TGBM by: (i) the fact that none of Tudor, Joy or Michael (i.e. the current generation) was granted a majority shareholding when they became members; and (ii) the appointment of each of Tudor, Joy and Michael as directors in January 2000 upon the retirement as directors of their parents.*
>
> *15. Despite that Fundamental Understanding, Tudor over recent years has made a concerted effort to acquire sole personal control over the various companies in the Family Group, to the exclusion of other members of the Griffiths family. In particular:*
>
> *15.1 In around 2007 Tudor arranged, pursuant to a power of attorney granted to him by Michael (on Tudor's initiative and without, so far as Joy is aware, any proper advice or discussion with lawyers or other independent third parties seeking to safeguard Michael's interests), for two of Michael's four shares in TGBM to be sold back to the company. As a result, the total shares were reduced from 12 to 10. As far as Joy is aware, Tudor used the power of attorney to establish the Michael Griffiths Settlement, into which Joy believes Michael's two remaining shares were transferred. Joy is unaware of*

any consideration having been provided for this transfer. Joy has not seen the trust deed."

53. TGBM Issue 8: Tudor submits, firstly, that the grant by Michael to Tudor of a power of attorney is not an act or omission of TGBM or any conduct of its affairs and, secondly, that it is not properly particularised what relevant interest (if any) Joy has in that transaction.

54. TGBM Issue 9: This objection is in two parts: firstly, Tudor submits that Joy signed a written resolution on 6 January 2009 expressly approving the purchase of two of Michael's four shares by TGBM; and, secondly, Tudor submits that the acquisition of those shares by TGBM did not prejudice Joy, nor did it enable Tudor to gain control of TGBM; in fact it increased both their respective shareholdings from 33.33% to 40% and sub-paragraph 15.1 accordingly does not support the opening words of paragraph 15. The first part I leave to one side for the present and shall address it together with Tudor's other submissions about delay and acquiescence from §150 below.

55. TGBM Issue 10: Tudor submits that the establishment of the Michael Griffiths Settlement is not an act or omission of TGBM or any conduct of its affairs; if there is any complaint to be made, it would be a matter for Michael.

56. TGBM Issue 11: Tudor submits that there is no pleaded explanation why (as is said to be implied) Joy should be entitled to see a copy of the trust deed.

57. Decision on TGBM Issues 8 to 11: I decline to strike out or enter summary judgment in relation to sub-paragraph 15.1 on the basis of the objections raised by TGBM Issues 8 to 11.

58. In my judgment, the objection to sub-paragraph 15.1 rests on a mischaracterisation of the function of paragraph 15 in the context of the TGBM Petition as a whole. Paragraphs 13 and 14 set out the nature and content of the Fundamental Understanding, which is a pleading of a quasi-partnership, being an allegation of a common understanding on the basis of which the shareholders of the Companies agreed that the affairs of those companies should be conducted.

59. The function of paragraph 15 is to identify the ways in which it is alleged that Tudor has achieved control of the Family Group, including TGBM and ESG, contrary to the Fundamental Understanding. (I interpolate here that *"the Family Group"* is defined in paragraph 6 of the TGBM Petition as *"an informal group of companies owned by, or on behalf of, members of the Griffiths family"*, of which TGBM, ESG and TGL were *"principal companies"*.) This allegation then supports the further allegation at paragraph 16 that Tudor has achieved effective majority control of all companies in the Family Group, including TGBM and ESG, and has caused TGL to operate as the head office of the Family Group. Paragraph 15 also supports further allegations later in the TGBM Petition, at paragraphs 36 and 37, that the Fundamental Understanding has been breached. I accept Mr Campbell's submission that the particulars given under paragraph 15, including sub-paragraph 15.1, go to the allegation that Tudor has

caused a breakdown of trust and confidence in relation to each of the Companies, which goes to the court's discretion to grant relief.

60. Accordingly, in my judgment, paragraph 15.1 goes to the alleged failure by Tudor to follow the Fundamental Understanding and thus to the *"unfairness"* element of the unfair prejudice cause of action. That is a different stage of the inquiry from that of identifying a relevant act or omission of TGBM or some conduct of its affairs, as I explained at §25 above. For this reason, the objections raised by Issues 8 and 10 do not succeed: paragraph 15.1 is there to plead Joy's case that Tudor went from being a one-third shareholder to being in a position to control the majority of shareholder voting in TGBM. That is a pleading of a want of adherence to the Fundamental Understanding, giving rise to a breakdown in trust and confidence in the conduct of TGBM's affairs.

61. I should make clear that I accept that if the TGBM Petition simply pleaded the Fundamental Understanding and its breach and did not then go on to plead any act or omission specifically of TGBM or any conduct of its affairs, then a complete cause of action would not be pleaded. But that is not the case. As I mentioned at §44 above, such allegations are present in the TGBM Petition and, in relation to some of them, Tudor has raised no objection.

62. Further, the suggestion made by the second part of TGBM Issue 9 (i.e. that Joy was not prejudiced and her position as shareholder was in fact improved by the transactions) is only available if one ignores paragraphs 15.4 and 16 of the TGBM Petition, which allege that Tudor's co-trustee in the Michael Griffiths Settlement and the Family Trust, Mr Haynes, is Tudor's associate and is accustomed to act in accordance with Tudor's recommendations. Mr Elias emphasised that Tudor's case is that Mr Haynes is an independent trustee and indicated that Joy's allegations on this aspect will be firmly resisted. That is a perfectly proper position to adopt and an understandable submission to make. The difficulty, however, is that the point is contested and there is no evidence, beyond the statement of truth supporting the Petitions as issued, addressing it before the court. Even if there were, as a dispute of fact, it would be unlikely to be a point suitable for summary determination. In my judgment, this point cannot fairly be resolved on the material before the court today.

63. I would add that if it were necessary to show a causal connection between the matters alleged by paragraph 15.1 of the TGBM Petition and the conduct of TGBM's affairs, then in my judgment there is such a connection. At the heart of the allegations of unfair prejudice against Tudor is the allegation that he has used his ability to control the majority of shareholder voting to conduct the affairs of TGBM so as to cause it to do various things that have harmed Joy's interests as a shareholder, such as paying only limited dividends and causing TGBM to pay what are alleged to be inflated head office charges to TGL. Setting out the way in which Tudor became, on Joy's case, able to control or influence the majority of shareholder voting has in my judgment a clear causal connection with such conduct of TGBM's affairs, notwithstanding that reference is made to acts of Tudor or of third parties. Although the mechanics are not identical, it is analogous to the position in *Re Kings Solutions* that I summarised at §33 to §34 above, where the respondent's breach of a pre-emption agreement enabled the respondent to increase his influence over the

company, which was sufficiently causally connected to the subsequent conduct of that company of which complaint was made by the petitioner.

64. Finally, as to TGBM Issue 11, I do not read the final sentence of paragraph 15.1 as carrying any implication that Joy is entitled to see the trust deed. In my view, it is there as an explanation (comprising just seven words) for the pleading in the preceding two sentences of Joy's lack of specific knowledge. The drafter may well have included it to pre-empt a complaint about a lack of particularity. I do not consider that it should be struck out.

TGBM Issues 12 to 13: paragraph 15.2

65. Objection is taken by Tudor to sub-paragraph 15.2, which reads as follows (I do not repeat the opening words of paragraph 15 set out at §52 above, which contain the principal allegation of which sub-paragraph 15.2 is a particular):

> *"On 6 January 2009, Tudor arranged for the shares in ESG issued to Michael (being at that time one quarter of the issued share capital) to be bought back by ESG. Accordingly, the issued share capital of ESG decreased from 10,000 to 7,500 shares, with Joy, Tudor and the Family Trust each holding one third."*

66. TGBM Issue 12: Tudor submits that these matters relate to ESG and are not acts or omissions of TGBM or conduct of its affairs.

67. TGBM Issue 13: This objection mirrors Issue 9 (summarised at §54 above), i.e. that Joy acquiesced in and was in any event not prejudiced by the transactions in that her shareholding in ESG increased from 25% to 33.33%.

68. Decision on TGBM Issues 12 and 13: I decline to strike out or enter summary judgment in relation to sub-paragraph 15.2 on the basis of the objections raised by TGBM Issue 12 and the second part of TGBM Issue 13.

69. Sub-paragraph 15.2 should not be struck out in my judgment for essentially the same reasons as I gave at §58 to §61 above in relation to sub-paragraph 15.1. Paragraph 15 concerns the allegation that the Fundamental Understanding has not been adhered to, which is a distinct stage of the inquiry from that of identifying an act or omission of TGBM or conduct of its affairs, as I explained at §25 above.

70. In any case, I also note that the recently available Spreadsheets show that Tudor's position is that various elements of the head office fees charged by TGL to the Companies are calculated on the basis of the attribution to each of them of percentage shares of a common liability. To take two examples from the Spreadsheet headed *"TG Group Management Charge Calculation April 2021 to March 2022"*, the salary of the group finance manager is attributed 37% to TGBM and 20% to ESG (and 37% to TGL); and the overall computer costs are attributed 25% to TGBM and 6% to ESG (and 59% to TGL). This arrangement indicates that the level of such fees paid by each of the Companies is causally affected by the Companies (as well as TGL as the entity rendering those fees) being under common control. On the basis of the Spreadsheets, it appears that

the head office fees charged to and paid by the Companies rise and fall together: the precise sum that TGBM is caused to pay to TGL for any particular head of cost is causally affected by the fact that ESG is part of the same scheme and shares the same costs.

71. Accordingly, were it necessary for there to be a causal connection between the references to Tudor's acquisition of control of ESG in sub-paragraph 15.2 and the conduct of TGBM's affairs, then Tudor has now placed material before the court to support the existence of one.

72. Before departing from sub-paragraph 15.2, I would observe that the objection to the reference to ESG raised by TGBM Issue 12 is in my judgment a pleading point of the utmost technicality. This is not a case like *Loveridge v Loveridge (No 2)*, where relief was sought in relation to a group of companies without regard to their separate corporate personality and where, in relation to some of the companies, there was simply no allegation in relation to any act or omission of those companies or conduct of their affairs. In this case, there are separate petitions for each of TGBM and ESG and there are pleaded allegations of the conduct of the affairs of each of them. There has never been any suggestion other than that the Petitions would be case managed and tried together, which means that all the allegations in relation to both Companies will inevitably be heard together in a single trial.

73. Mr Campbell submitted, and I accept, that the kinds of matters pleaded and objected to in the petition in *Re Kings Solutions* were a world away from those in the Petitions: see §31 above. In my judgment, the potential hazards identified in the cases summarised by Snowden LJ in *Re Kings Solutions* (see §35 above) such as a tendency to lead to excessive disclosure, a lengthy trial, unpredictability, heavy costs or resource-intensiveness, are not present in the same way in the instant case. As I mentioned earlier, the pleading in *Re Kings Solutions* was 69 pages long and contained 260 paragraphs. In comparison, the TGBM Petition is 13 pages long and has 38 paragraphs, which means that prolixity could hardly be a concern in this case.

74. I note that Falk J conditioned the observations in *Loveridge v Loveridge (No 2)* at [67] on which Tudor places particular reliance with the words *"Whilst a blinkered approach which ignores the wider factual context is clearly inappropriate…"*. In my judgment, the objection raised by TGBM Issue 12 to paragraph 15.2 of the TGBM Petition (and the equivalent objections raised to the mention of TGBM in the ESG Petition raised by ESG Issues 7 and 9) can fairly be said to fall into this category.

75. As to TGBM Issue 13, my reasoning is the same as in relation to TGBM Issue 9: see §54 and §62 above.

TGBM Issues 14 and 15: paragraph 15.4

76. Objection is taken to sub-paragraph 15.4, which reads as follows (I do not repeat the opening words of paragraph 15 set out at §52 above, containing the principal allegation of which sub-paragraph 15.4 is a particular):

> *"Also around 2009, Tudor proposed the appointment of Mr Stuart Haynes, his long-standing associate, as a trustee of the Family Trust, replacing Mr David Butler upon his retirement. As far as Joy is aware, Billy as the other trustee agreed to Mr Haynes' appointment without fully understanding the implications, in terms of the ability of Tudor and his associates to exercise control over the Family Group to the exclusion of Joy. Since then, My Haynes has kept considerable control over the trust, in close association with Tudor."*

77. TGBM Issue 14: Tudor submits that the matters complained of concern the Family Trust, which are not acts or omissions or conduct of the affairs of TGBM; it is pointed out that the trustees of the Family Trust are not even, in that capacity, shareholders of TGBM (because they are shareholders of ESG).

78. TGBM Issue 15: Tudor submits that the allegation that Billy agreed to Mr Haynes' appointment *"without fully understanding the implications"* is irrelevant to the affairs of TGBM and is in any event not properly particularised.

79. Decision on Issues 14 and 15: I decline to strike out or enter summary judgment in relation to sub-paragraph 15.4 on the basis of the objections raised by TGBM Issues 14 and 15.

80. The objection raised by TGBM Issue 14 that sub-paragraph 15.4 does not concern TGBM is answered in the same way as Issues 8, 10 and 12 as set out at §58 to §61 and §69 to §71 above. Further, and in any event, Tudor's alleged control over the Family Group is causally connected to his ability to cause TGL to render and to cause TGBM (and ESG) to pay the head office charges that are a principal area of complaint in the Petitions.

81. I also do not accept the objection raised by TGBM Issue 15 that Billy's alleged lack of understanding is unparticularised. By way of the proposed amendment (i.e. the underlined text at §76 above) it is set out what it was that Billy did not understand. In my judgment, this is sufficient for Tudor to plead in answer.

Issues 16 to 18: sub-paragraph 15.5

82. Objection is taken to sub-paragraph 15.5, which reads as follows (I do not repeat the opening words of paragraph 15 set out at §52 above, containing the principal allegation of which sub-paragraph 15.5 is a particular):

> *"In around 2013, Tudor acquired his father Billy's shares and voting rights in TGL, on terms of which Joy is unaware."*

83. TGBM Issue 16: Tudor submits that the acquisition of shares in TGL is not an act or omission or conduct of the affairs of TGBM.

84. TGBM Issue 17: Tudor submits that there is no pleaded explanation why (as is said to be implied) Joy should be entitled to be aware of the terms of a transaction between Tudor and Billy.

85. TGBM Issue 18: Tudor submits that TGL is not a company to which the Fundamental Understanding (see §52 above) applied, so sub-paragraph 15.5 could not support the allegation made in the opening words of paragraph 15.

86. Decision on TGBM Issues 16 to 18: I decline to strike out or enter summary judgment in relation to sub-paragraph 15.5 on the basis of the objections raised by TGBM Issues 16 to 18.

87. It is convenient to take TGBM Issue 18 first. I accept that TGL is not a company to which the Fundamental Understanding applies: see §52 above. I note, however, that the relevant allegation in paragraph 15 is not confined to the Fundamental Understanding but, rather, also refers to Tudor having sought to control *"the various companies in the Family Group"*, of which TGL is alleged to be a member. Accordingly, sub-paragraph 15.5 does, subject to the other objections to it, support the allegation in paragraph 15.

88. The objection raised by TGBM Issue 16 is that the allegation in sub-paragraph 15.5 is not an act or omission of TGBM or conduct of its affairs. I accept that, by reason of the Fundamental Understanding not extending to TGL, it is necessary to show a causal connection between the allegation at sub-paragraph 15.5 (i.e. Tudor's acquisition of the shares in TGL) and an act or omission of TGBM or conduct of its affairs. In my judgment, a causal connection is established between the allegation of Tudor's acquisition of the shares and voting rights in TGL and the relevant allegations of conduct of TGBM's affairs. The objection raised by TGBM Issue 16 overlooks the following:

    i) by paragraph 16, it is alleged that as a result of the matters alleged in paragraph 15, Tudor has achieved effective majority control of *inter alia* TGL;

    ii) by paragraph 18, it is alleged that TGL charges very substantial fees to TGBM, which are particularised (since 2010) in Schedule 1 to the TGBM Petition;

    iii) by paragraph 19, it is alleged that such fees do not represent the value TGBM receives from TGL;

    iv) by paragraph 22, the court is invited to infer that large sums of TGBM's funds have been diverted by means of the charges to TGL for Tudor's personal benefit;

    v) by paragraph 23, it is alleged that sums have been lent by TGBM to TGL; and

    vi) by paragraph 25, it is alleged that purchases and borrowings by TGL have been secured using TGBM's assets for the sole benefit of TGL and for Tudor personally.

89. In my view, the conduct of TGBM's affairs that is complained of includes causing TGBM to pay head office charges, make loans to TGL and grant security for its benefit. It seems to me that there is a sufficient causal connection

between Tudor's control of TGL and those allegations of conduct of TGBM's affairs: without control of TGL, Tudor could not have caused TGL to render charges to TGBM, which TGBM then paid. Similar reasoning applies to TGL taking loans and security from TGBM.

90. The objection raised by TGBM Issue 17 fails for the same reason as TGBM Issue 11 set out at §64 above.

TGBM Issue 21: paragraphs 18 to 22 inclusive

91. Objection is taken to paragraphs 18 to 22 inclusive of the TGBM Petition. Those paragraphs plead the head office charges that TGBM has paid to TGL since 2010 as follows:

> *"18. TGL charges very substantial administrative fees to TGBM, as well as to ESG and WMGF (as set out in the accompanying petition regarding ESG). The annual charges levied on TGBM since 2010 are set out in Schedule 1 to this Petition. TGBM was charged £800,000 in 2021, having been levied charges ranging from £250,000 since 2010.*
>
> *19. So far as Joy is aware, such charges do not represent the value TGBM received from the services provided by TGL.*
>
> *20. Tudor has persistently refused to provide an itemised breakdown of the charges levied on the various entities in the Family Group by TGL, including upon requests being made by Joy in formal pre-action correspondence.*
>
> *21. Most recently, Joy raised the question of TGL's charges in a meeting of the TGBM board on 2 December 2021. She was told by TGBM's Company Secretary, Carla Jackson, that these were* "mainly staffing costs". *That explanation, however, is impossible to square with the fact that large numbers of TGL staff were furloughed in 2020, but in that year the total charges paid by ESG, WMGF and TGBM to TGL rose from £970,000 to £1,020,000 (between 2019 and 2020), and appear to have remained at the same level in 2021.*
>
> *22. Pending disclosure herein, the court is invited to draw the reasonable inference that large sums of TGBM funds have been diverted into excessive and unjustified 'head office' charges, retained by TGL for Tudor's personal benefit."*

92. TGBM Issue 21: This objection is in two parts: firstly, Tudor submits that the head office arrangements have been in place since 2010 without complaint from Joy until 2021; secondly, that to the extent Joy is unhappy in continuing with the arrangement then those are decisions of a majority of the board and it is not relevantly unfair to Joy if she is outvoted. The first part I leave to one side for the present and shall address it together with Tudor's other submissions about delay and acquiescence from §150 below.

93. Decision on TGBM Issue 21: I decline to strike out or enter summary judgment in relation to paragraphs 18 to 22 on the basis of the objection raised by the second part of TGBM Issue 21.

94. I reject the second part of the objection because it essentially pre-judges Joy's claim. It is alleged by Joy against Tudor that he has acted contrary to the Fundamental Understanding to take control of TGBM and used his ability to control a majority of its shares to cause it to conduct its affairs in a way that Joy alleges have occasioned unfair prejudice to her. Self-evidently, composition of the board of TGBM is determined by the majority of its shareholders. As discussed at §28 above, unfair prejudice may exist even where a respondent is acting in accordance with their strict legal rights, so it is no answer to Joy's claim simply to point out that certain matters complained of have been reached by the application of majoritarian governance. In my judgment, the question of whether or not there are equitable restraints on the governance of TGBM is the heart of the matter and cannot be determined summarily.

TGBM Issues 22 and 23: paragraph 18

95. Further objection is taken to paragraph 18 of the TGBM petition on two additional grounds. Paragraph 18 was set out at §91 above.

96. TGBM Issue 22: Tudor submits that the allegation concerning fees paid by ESG and WMGF is not an act or omission of TGBM or conduct of its affairs.

97. TGBM Issue 23: Tudor submits that if such conduct were relevant, then it should be properly set out and not incorporated by reference to the ESG Petition.

98. Decision on TGBM Issues 22 and 23: I decline to strike out or enter summary judgment in relation to paragraph 18 of the TGBM Petition on the basis of the objections raised by TGBM Issues 22 and 23.

99. Objection is taken by TGBM Issues 22 and 23 to sixteen words, which do no more than record that parallel allegations are made in relation to ESG and WMGF in the ESG Petition. The observations I made at §72 to §74 above apply equally here. Striking out these words from the TGBM Petition would make no difference to the extent of the matters in issue at trial, for they would remain in the ESG Petition. For this reason, the inclusion of these words does no harm and may, if anything, be helpful for the trial judge and anyone else with occasion to refer to the TGBM Petition, who may see at a glance that there is a similar allegation raised in the ESG Petition. In any event, Tudor has recently put the Spreadsheets before the court indicating that there is a mutual causal connection between the level of fees charged to and paid by each of the Companies, to which I referred at §70 and §71 above.

TGBM Issue 24: paragraph 19

100. Further objection is taken to paragraph 19 of the TGBM petition. Paragraph 19 was set out at §91 above and is not repeated here.

101. TGBM Issue 24: Tudor submits that no particulars are provided in support of Joy's assertion that the charges levied by TGL on TGBM do not represent the value TGBM has received from the services provided by TGL. Tudor contends that Joy, as a director of TGBM, is entitled to inspect the books and records of TGBM and so provide such particulars.

102. Decision on TGBM Issue 24: I decline to strike out or enter summary judgment in relation to paragraph 29 of the TGBM petition on the basis of the objection raised by TGBM Issue 24.

103. As with Issue 21 discussed at §94 above, Tudor's objection raised by Issue 24 pre-judges the case made against him. One of the allegations made by Joy is that Tudor has excluded her *"from management and information as a director of TGBM"* (paragraph 17) and has *"persistently refused to provide an itemised breakdown of the charges levied on the various entities in the Family Group by TGL"* (paragraph 20). Although limited breakdowns for the last four years were provided by Tudor on 24 November 2022 in the form of the Spreadsheets, those breakdowns do not contain any underlying methodology or working to show how they have been calculated. If anything, the late provision of this material, without working, tends to support rather than undermine Mr Campbell's submission that the Petitions could not be pleaded with greater particularity on this aspect than they have been. Joy did not have any breakdown at all until 24 November 2022 and the Spreadsheets provide breakdowns by reference only to a few very broad categories: see §14 above. There is no information presently available to show how the various percentages attributed to the Companies and others have been arrived at. In any event, I consider there to be considerable force in Mr Campbell's submission that any access Joy may have had to the records of TGBM in her capacity as a director of TGBM could not provide the answer to the calculation of head office charges, as these are said to represent the passing on of costs incurred by TGL, not TGBM.

TGBM Issue 25: paragraph 24

104. Paragraph 24 of the TGBM Petition alleges that Joy was notified in May 2011 that funds had been lent by the Companies to TGL to prevent TGL from exceeding its overdraft. It is said by Joy that she is unaware whether or not this has been repaid.

105. TGBM Issue 25: This objection is in two parts: firstly, the suggestion that Joy acquiesced in the loan, having been aware of it since 2011; secondly, that the loan has long since been repaid. The first part I leave to one side for the present and will address it together with Tudor's other submissions about delay and acquiescence from §150 below.

106. Decision on TGBM Issue 25: I decline to strike out or enter summary judgment in relation to paragraph 24 on the basis of the objection raised by the second part of TGBM Issue 25.

107. Mr Elias points to the fact that the publicly filed accounts for 2012 and 2013 do not record any outstanding loan as evidence going to support his submission that the loan has been repaid. Against that Mr Campbell submits that in the

absence of particulars of the loan or its repayment the point cannot be determined summarily. In the absence of any real particularity on what the loans were or when Tudor says they were repaid, and without any evidence on the matter beyond the filed accounts, the second part of TGBM Issue 25 is not a point that is suitable for summary disposal in the face of these competing positions, which cannot be resolved summarily on the material before me.

TGBM Issue 29: paragraph 28.1

108. Objection is taken to paragraph 28.1, which reads as follows:

> *"Tudor has gradually excluded Joy from meetings at which major or strategic decisions affecting TGBM's affairs are taken. In 2009, regular group coordination meetings were replaced by individual division review meetings. These were attended by Tudor, John Seaward and the relevant division manager, but Tudor did not allow Joy to attend."*

109. TGBM Issue 29: This objection is in two parts: firstly, the suggestion that Joy acquiesced in these arrangements, which go back to 2009; secondly, Tudor submits that the allegation that Tudor *"did not allow Joy to attend"* various meetings from 2009 onwards is wholly unparticularised and cannot be properly responded to. The first part I leave to one side for the present and will address it together with Tudor's other submissions about delay and acquiescence from §150 below.

110. Decision on TGBM Issue 29: I decline to strike out or enter summary judgment in relation to paragraph 28.1 on the basis of the objection raised by the second part of TGBM Issue 29.

111. In my judgment Tudor may plead in defence to the allegation in sub-paragraph 28.1 without obvious difficulty. Paragraph 28.1 makes an allegation that in 2009 regular group coordination meetings were replaced by individual division review meetings, which specified persons are alleged to have attended: that is a sufficiently particularised allegation to be pleaded to in answer. The next part of the allegation is that Tudor (personally) did not allow Joy to attend those meetings. In my judgment, Tudor should be in a position to plead in answer to that: given that the allegation of exclusion is directed specifically against Tudor personally, then if such meetings took place, Tudor ought to be able to engage with the allegation by way of admission or denial or otherwise to set out why he cannot plead to the allegation.

TGBM Issue 30: paragraph 30

112. Paragraph 30 of the TGBM Petition reads:

> *"29. Since 2010, as detailed in Schedule 1 hereto, TGBM has generated very substantial net annual profits, measured consistently in the hundreds of thousands of pounds; consistently exceeding £1m since 2015; and growing to nearly £3m in 2021.*

> *30. Despite that position, Joy as a 40 per cent shareholder has been allocated only very modest dividends, in only three years: £10,000 in 2017, £10,000 in 2018 and £24,000 in 2019, together with an annual salary of between £40,000 and £60,000 (paid through other Family Group companies until 2015, and from TGBM alone since 2016). Further, such dividends have all been allocated, gross of tax, against notional rent charged to Joy for her use of Hisland House, owned by ESG. Such allocation is directed by Tudor, who further dictates the sums of notional rent, without taking into account the very substantial improvements Joy and her husband have made to the property."*

113. TGBM Issue 30: Tudor submits that the allegation regarding the level of rent charged to Joy by ESG in respect of Hisland House and the alleged failure to take into account any alleged improvements are not acts or omissions of TGBM or conduct of its affairs.

114. Decision on TGBM Issue 30: I decline to strike out or enter summary judgment in relation to paragraph 30 of the TGBM Petition on the basis of the objection raised by TGBM Issue 30.

115. In my judgment, this objection is misconceived. The gravamen of the allegation is focused on TGBM, not ESG. Joy's complaint concerns her low level of economic return from TGBM in her capacity as shareholder. As to that, Joy does not point in isolation to the fact that the level of notional rent charged by ESG is *"dictate*[d]*"* by Tudor, but rather to a series of alleged facts in combination, i.e. that Tudor controls each of (a) the low level of dividends declared by TGBM; (b) the direct appropriation of such limited dividends as are declared by TGBM to the notional rent charged by ESG for the use of Hisland House; and (c) the level of notional rent charged by ESG to which the dividends are appropriated. In my judgment, this paragraph as pleaded contains an obvious causal connection between Tudor's control of ESG as Joy's landlord and the direct application by TGBM of Joy's dividends against the rent due to that landlord.

ESG Petition

116. Most of the objections raised to the ESG Petition mirror the objections raised to the TGBM Petition. Many of the ESG Issues are either identical to a TGBM Issue or the same save that reference is made to ESG rather than TGBM. Where that is the case, I deal with them only briefly and by reference *mutatis mutandis* to the reasons given above in relation to the TGBM Issues. Where an ESG Issue is without an equivalent in the TGBM Petition, I deal with it separately.

ESG Issues 1 and 2: Heading, paras.4 and 8.1

117. These Issues mirror TGBM Issues 1 and 2, save that the second respondent is identified in the ESG Petition as *"The WM Griffiths Settlement (by its trustees Mr William Griffiths and Mr Stuart Haynes)"*, i.e. the Family Trust. I propose to deal with the objections raised by ESG Issues 1 and 2 in the way as that set out at §51 above.

ESG Issues 7 to 10: sub-paragraph 16.1

118. These Issues raise objections to sub-paragraph 16.1 of the ESG Petition, which is identical as a matter of substance to sub-paragraph 15.1 of the TGBM Petition. ESG Issues 7 to 10 correspond to TGBM Issues 8 to 11, save that the additional point is made (by ESG Issues 7 and 9) that the references to past dealings with the shares in TGBM are still more remote from being an act or omission of ESG, or conduct of its affairs, than they are from being that of TGBM.

119. I decline to strike out sub-paragraph 16.1 of the ESG Petition on the basis of the objections raised by ESG Issues 7 to 10 and apply the same reasoning *mutatis mutandis* as that set out at §58 to §64 above.

ESG Issues 11 and 12: sub-paragraph 16.2

120. These Issues raise objections to sub-paragraph 16.2 of the ESG Petition, whose first two sentences are identical to sub-paragraph 15.2 of the TGBM Petition. The additional third sentence of sub-paragraph 16.2 of the ESG Petition reads:

> *"…As far as Joy is aware, Michael did not receive any payment for his shares and the transaction was carried out by Tudor using his power of attorney and without consulting Michael."*

121. ESG Issue 11 fails for the same reason as ESG Issue 8, which failed for the same reason as TGBM Issues 9 and 13. My reasoning is the same *mutatis mutandis* as that set out at §62 and §75 above.

122. ESG Issue 12 has no equivalent in the objections raised to the TGBM Petition, so I must deal with it separately.

123. ESG Issue 12: Tudor submits that whether Michael received payment for his shares and how this transaction was carried out as between Michael and Tudor is not an act or omission of ESG or conduct of its affairs.

124. Decision on ESG Issue 12: I decline to strike out or enter summary judgment in relation to sub-paragraph 16.2 on the basis of the objections raised in ESG Issue 12.

125. ESG Issue 12 fails for similar reasons *mutatis mutandis* to those given in relation to TGBM Issues 8 and 10 set out at §58 to 63 above. Sub-paragraph 16.2 relates to the allegation that Tudor has breached the Fundamental Understanding by assuming control of the Companies. The matters set out at Sub-paragraph 16.2 set out the way that Joy alleges Tudor acquired control of ESG.

ESG Issues 13 and 14: sub-paragraph 16.4

126. These Issues raise objections to sub-paragraph 16.4 of the ESG Petition, which is identical to sub-paragraph 15.4 of the TGBM Petition. ESG Issue 13 is identical to the first sentence of TGBM Issue 14; and ESG Issue 14 is identical to TGBM Issue 15, save that it refers to conduct of the affairs of ESG rather than those of TGBM.

127. I decline to strike out sub-paragraph 16.4 of the ESG Petition on the basis of the objections raised by ESG Issues 13 and 14 for the same reasons *mutatis mutandis* as those set out at §80 and §81 above.

ESG Issues 15 to 17: sub-paragraph 16.5

128. These Issues raise objections to sub-paragraph 16.5 of the ESG Petition, which is identical to sub-paragraph 15.5 of the TGBM Petition. ESG Issues 15 to 17 are identical to TGBM Issues 16 to 18 respectively.

129. I decline to strike out sub-paragraph 16.5 of the ESG Petition on the basis of the objections raised by ESG Issues 15 to 17 for the same reasons *mutatis mutandis* as those set out at §87 to §90 above.

ESG Issue 20: paragraphs 19 to 21

130. This Issue raises objections to paragraphs 19 to 21 of the ESG Petition. Paragraph 19 of the ESG Petition makes in substance similar allegations to those made by paragraphs 18 and 19 of the TGBM Petition, although the drafting is different. Paragraph 20 of the ESG Petition is identical to paragraph 20 of the TGBM Petition. Paragraph 21 of the ESG Petition is identical to paragraph 22 of the TGBM Petition, save that it refers to funds of ESG rather than those of TGBM. ESG Issue 20 is identical to TGBM Issue 21, save that it refers to the board of ESG rather than that of TGBM.

131. I decline to strike out or enter summary judgment in relation to paragraphs 19 to 21 of the ESG Petition on the basis of the objections raised by ESG Issue 20 for the same reasons *mutatis mutandis* as those set out at §94 above.

ESG Issues 21 to 23: paragraph 19

132. These Issues raise objections to paragraph 19 of the ESG Petition. As I have mentioned, paragraph 19 of the ESG Petition makes in substance similar allegations, although the drafting is different, to those made by paragraphs 18 and 19 of the TGBM Petition. ESG Issue 21 raises a similar objection to that made by TGBM Issue 22, save that it refers to fees paid by TGBM, rather than by ESG and WMGF. ESG Issue 22 mirrors the objection raised by TGBM Issue 23, i.e. that matters mentioned in the TGBM Petition should not be sought to be incorporated into the ESG Petition by reference. ESG Issue 23 is in substance the same as TGBM Issue 24, save that there is no suggestion that Joy is a director of ESG.

133. I decline to strike out paragraph 19 of the ESG Petition on the basis of the objections raised by ESG Issues 21 to 23 for the same reasons *mutatis mutandis* as those set out at §99 and §103 above.

ESG Issue 24: sub-paragraph 19.2

134. This Issue does not have an equivalent in the objections raised to the TGBM Petition so I must deal with it separately. An objection is taken to sub-paragraph 19.2 of the ESG Petition, which reads as follows:

> *"WMGF was charged an estimated £100,000 in 2021, based on the figures for 2020. Joy has been forced to estimate this figure given that Tudor has refused to provide her with up-to-date information, on the purported grounds that Joy is not a director of ESG (but, it is averred, for the true reason that he does not wish her to understand the true position as regards the dealings in question). This charge has doubled since 2009, with no clear justification, particularly given that WMGF is merely a property agency vehicle with little business activity beyond the collection of rents on what is largely ESG land. As a result, substantial sums collected from renting out ESG land do not flow back to ESG, but instead is retained by TGL."*

135. ESG Issue 24: Tudor submits that it is a matter of fact that Joy is not a director of ESG and there is no pleaded claim that she is one. Accordingly, this is a perfectly proper ground (i.e. not a *"purported ground"*) for Joy not to be given information about ESG beyond that which shareholders are entitled to receive.

136. Decision on ESG Issue 24: I decline to strike out or enter summary judgment in relation to sub-paragraph 19.2 on the basis of the objection raised by ESG Issue 24.

137. In my judgment, this objection is based on a misreading of sub-paragraph 19.2. Fairly read in context by a disinterested reader (by which I mean a reader not straining to find ambiguity to support an application such as the one before the court), it alleges that the reason that was given by Tudor for his refusal to provide up-to-date information in relation to ESG (i.e. that Joy is not a director of ESG) was not the true reason for that refusal. It does not allege (as ESG Issue 24 takes as its premise) that the facts supporting the reason that was given are untrue.

ESG Issue 25: paragraphs 22 and 23

138. This Issue raises objections to paragraphs 22 and 23 of the ESG Petition. Paragraph 22 of the ESG Petition is in substance identical to paragraph 24 of the TGBM Petition. Paragraph 23 has no equivalent in the TGBM Petition and pleads allegations concerning a loan *"by ESG through WMGF"* to TGL and the *"transfer of two senior members of staff from TGL to ESG's payroll"*.

139. ESG Issue 25 is identical to TGBM Issue 25, save that there is no suggestion that any loan has been repaid. Accordingly, ESG Issue 25 concerns solely an allegation of acquiescence, which I deal with at §150 below.

ESG Issue 28: paragraph 26

140. This Issue has no direct equivalent in the objections raised to the TGBM Petition so I must address it specifically. An objection is taken to paragraph 26 of the ESG Petition, which reads as follows:

> *"Further, as indicated above, there is no practical reason why ESG could not licence out the land it owns without this being administered by WMGF. This simply provides a mechanism for sums to be retained by ~~the latter~~ TGL*

> *by way of excessive charges levied against WMGF as well as ESG itself, disproportionately burdening ESG and its members."*

141. ESG Issue 28: Tudor submits that the allegation that charges are *"excessive"* is unclear and is in any event unnecessary if it is a repeat of the allegations regarding head office charges.

142. Decision on ESG Issue 28: I decline to strike out or enter summary judgment in relation to paragraph 26 on the basis of the objections raised by ESG Issue 28.

143. I do not regard the word *"excessive"* as having an unclear meaning. It is an ordinary word that carries its ordinary meaning. The meaning in its context is obvious, given the matters pleaded earlier in the ESG Petition at paragraph 19. I also do not consider paragraph 26 simply to be a repeat of the allegations concerning head office charges; it builds on the matters pleaded in relation to the land owned by ESG set out at paragraphs 24 and 25 to introduce the additional allegation that there is no reason why ESG could not license out its land itself without this being mediated through WMGF, which arrangement provides for excessive head office fees to be charged in this respect.

ESG Issue 33: paragraph 29

144. This Issue also has no equivalent in the objections raised to the TGBM Petition. An objection is taken to paragraph 29 of the ESG Petition, which reads as follows:

> *"Joy has been excluded from the management of ESG, despite having played an active role in the management of the Family Group over the years, including as IT and Telecommunications Manager between 1995 and 2008, and as a director of TGBM since January 2000 (although in the latter role she has more recently been excluded from management and information, as set out in the accompanying petition regarding TGBM)."*

145. ESG Issue 33: Tudor submits, firstly, that Joy's previous involvement in an unspecified company between 1995 and 2008 does not give her a current right to be involved in the management of ESG; and, secondly, that Joy's directorship of TGBM does not give her a right to be involved in the management of ESG.

146. Decision on ESG Issue 33: I decline to strike out or enter summary judgment in relation to paragraph 29 of the ESG Petition on the basis of the objection raised by ESG Issue 33.

147. I accept Mr Campbell's submission that Joy does not allege by paragraph 29 that her previous involvement in other parts of the Family Group entitles her to be involved in ESG. Her claim to an entitlement is derived from her allegations in relation to the Fundamental Understanding. Instead, paragraph 29 is relevant because it alleges that Joy is willing to be and is capable of being engaged in business matters when she is permitted to be.

Date of Tudor's directorship of ESG

148. In oral submissions, Mr Elias pointed out that Tudor had only been appointed a director of ESG in 2017 and submitted that, as a consequence, Joy could not hold him responsible for anything that happened before then. Mr Elias suggested that nothing that happened prior to the commencement of ESG's accounting year on 1 April 2017 could be alleged against him by the ESG Petition. This was a distinct point from Tudor's case on delay and acquiescence. In answer to it, Mr Campbell frankly accepted that it appeared, on the face of it, to be a good point. Mr Campbell submitted, however, that it had been mentioned for the first time in oral submission by Mr Elias; there had been no mention of it in correspondence, or the Schedules, or in the skeleton argument.

149. Although Mr Campbell did not criticise Mr Elias for coming to appreciate a new point on his feet, he submitted that, had it been raised before the hearing, Joy would have sought permission to amend the ESG Petition to allege that Tudor had been a shadow director of ESG prior to his *de jure* appointment and that Billy had given Tudor effective authority in this respect. In circumstances where the Applications have been on foot for many months and the points to be taken have been fully particularised and engaged with by both sides, in the interests of fairness to all parties I do not propose to entertain in this judgment a point taken for the first time in oral submissions. It may well be that Joy will wish to seek permission to amend the ESG Petition in light of this further point, rather than waiting to see if Tudor decides to make an application for summary disposal on the basis of it. If such permission is sought, then it would seem sensible for this to be dealt with along with any other consequential matters following hand-down of this judgment.

DELAY AND ACQUIESCENCE

150. Mr Elias submitted on behalf of Tudor that Joy had delayed too long in raising various of her complaints and, in a number of respects, had acquiesced in matters about which she now sought to raise allegations of unfair prejudice. The following such matters were identified:

    i) Joy signed a written resolution on 6 January 2009 approving the purchase by TGBM of two of Michael's shares in TGBM;

    ii) Joy signed a written resolution on 6 January 2009 approving the purchase by ESG of 2,500 of Michael's shares in ESG;

    iii) the head office charging arrangement has been in place since 2010 and Joy delayed for a long period before complaining about it;

    iv) on her own case, Joy knew in 2011 about the loans by the Companies to TGL and there is no pleading that she objected to them or asked for them to be brought to an end; and

    v) Joy's pleaded complaint about the arrangements for meetings in relation to TGBM goes back to 2009.

151. Tudor's position is that if the Petitions are not struck out in their entirety, then no challenge to the head office charges should be permitted pre-dating the

financial year commencing on 1 April 2020 onwards, to coincide with the point at which Joy first raised her complaint.

152. In support of Tudor's position, Mr Elias made submissions on the decisions of David Richards J (as he then was) in *Re Woven Rugs Limited* [2010] EWHC 230 (Ch) and Sir Donald Rattee in *Re Grandactual Ltd* [2005] EWHC 1415 (Ch), [2006] BCC 73. Mr Elias pointed out that in *Re Woven Rugs*, David Richards J held at [17] that a petitioner who had been removed as a director and waited over five years to bring a petition could no longer rely on that point "*as being by itself a ground for relief"*. Similarly, in *Re Grandactual*, Sir Donald Rattee held at [19] that the court should not entertain a petition *"based on conduct of the company's affairs in which the petitioner participated without protest nine years before the presentation of the petition."*

153. Mr Elias submitted that Joy had known of and been content with the way things had been run for many years. As a director of TGBM, she was not only entitled to information but was under a positive duty to keep herself informed. Having not done so, it was hardly fair for complaints to be raised now.

154. In answer to this, Mr Campbell sought to distinguish *Re Woven Rugs* and *Re Grandactual* on the basis that both cases concerned what he described as a *"one-off event"*: *Re Woven Rugs* concerned the removal of a director and *Re Grandactual* a share issue. There was no decided case where a cut-off had been introduced in a case where ongoing defalcations over a period of time were alleged. There was a danger, Mr Campbell submitted, in *"plucking out decisions on particular facts and extrapolating them into a judge-made limitation period."* In my judgment, there is considerable force in these submissions, particularly where summary disposal is sought.

155. Mr Campbell further submitted that Joy should be given an opportunity to plead by way of reply to any defence of delay or acquiescence that Tudor may advance. It should not be inferred, submitted Mr Campbell, that simply because Joy had not pleaded in reply to this line of defence (which she had not yet had a chance to do because Tudor had not yet pleaded a defence) that she had no answer to it. Mr Campbell referred in his submissions to the recent decision of the Court of Appeal in *Re Cherry Hill Skip Hire Limited* [2022] EWCA Civ 531, [2022] 2 BCLC 300. In that case, the delay appeared on the face of it to be extensive: the petitioner was removed as a director in 1999, had subsequently instructed solicitors to correspond with the company between May 2001 and March 2003 about his complaints, and indicated that proceedings for unfair prejudice would be commenced absent a satisfactory response. Only in July 2020 was the petition issued. At first instance, His Honour Judge Stephen Davies (sitting as a High Court judge) found that the petitioner had known enough by 2003 at the latest to have been able to take proceedings in respect of the matters of which he now complained and decided that the petition should be struck out for delay and acquiescence

156. The Court of Appeal allowed the petitioner's appeal and gave directions for the petition to be re-amended. Giving the only reasoned judgment (with which Lewison and Snowden LJJ agreed), Andrews LJ held at [48] that:

> *"Whilst there may come a time when even misfeasant directors are entitled to say that it is too late to complain about past wrongdoing, I consider that if the petition were reformulated along the lines indicated by* [the petitioner's counsel]*, one could not properly form the view that it was plain and obvious that, even if all* [the petitioner's] *complaints were proved at trial, a judge would refuse to grant him equitable relief because of the delay. That might still happen, indeed, I consider that there is a significant risk that it would, but much would depend on the way in which the evidence pans out at trial; it is by no means a foregone conclusion."*

157. Other than the statement of truth in support of the Petitions as issued, I have really no evidence at all to support either side's competing oral submissions on the factual explanation for the elapse of time between certain of Joy's allegations and the presentation of the Petitions. In the absence of evidence, and without having seen any statements of case setting out or responding to a defence of delay and acquiescence, I am unable to resolve this point summarily. Whether any delay by Joy in raising her complaints is attributable to a passive failure by her to take an interest in the Companies' affairs, positive acquiescence on her part, a failure by Tudor to provide information, or something else altogether is simply at large based on the available evidence. In my judgment, similar considerations apply to the case before me as applied in *Re Cherry Hill Skip Hire*, i.e. on the basis of the material I have seen, I conclude that this case is not a foregone conclusion and it is not clear and obvious to me that a judge would refuse to grant equitable relief by reason of delay. Accordingly, I decline to strike out or enter summary judgment on any part of the Petitions on the basis of delay or acquiescence.

OFFER TO ACQUIRE SHARES

158. Mr Elias also sought striking out of the petitions on the ground that Tudor has long since, and before the Petitions were issued, agreed in principle to purchase Joy's shares in the Companies at a fair value with no minority discount. He submitted that the opposing parties had each instructed a property valuer and a company valuer, with both sides proceeding on the same basis of valuation. Mr Campbell did not accept that matters were as advanced as Mr Elias suggested. In particular, submitted Mr Campbell, the basis of valuation was not agreed.

159. The submission on behalf of Tudor was based on the *obiter* observations of Lord Hoffmann in *O'Neill v Phillips* [1999] 1 WLR 1092. In that case, his Lordship observed at 1107C that in cases of unfair prejudice:

> *"…the unfairness does not lie in the exclusion alone but in exclusion without a reasonable offer. If the respondent to a petition has plainly made a reasonable offer, then the exclusion as such will not be unfairly prejudicial and he will be entitled to have the petition struck out. It is therefore very important that participants in such companies should be able to know what counts as a reasonable offer."*

160. Lord Hoffmann then identified at 1107D to 1108B five criteria whose presence would support a reasonable offer. His Lordship plainly envisaged by the first of his five criteria that the archetypal *"reasonable offer"* would be an offer to

purchase at a fair value without minority discount; the second and third criteria provided that the price should be determined, if not agreed, by a single competent expert.

161. In my judgment, any suggestion that the Petitions should be dismissed on similar grounds to those in *O'Neill v Phillips* falls at the first hurdle: there is no evidence of any firm commitment by Tudor to buy Joy's shares and no agreement has been reached over the mechanism to be used to value them. The offer discussed by Lord Hoffmann in *O'Neill v Phillips* at 1106D had been made pursuant to an undertaking to the court in terms scheduled to a consent order. It was to purchase the shares at a price to be agreed or in default fixed by a chartered accountant as valuer. There is no similar binding offer in this case; rather, it has been repeatedly emphasised on behalf of Tudor that his offer to purchase is subject to contract and that certain points remain to be worked out. For instance, Tudor's solicitor's witness statement dated 23 March 2022 mentions at least four times that the negotiations are subject to contract. More recently, the skeleton argument prepared by Mr Elias shortly before the hearing mentions at paragraph 7(4) that *"…the process of determining an appropriate value is continuing…"* and adds in a footnote that *"…there are ongoing issues with valuation and the extent of any land that should be transferred…"*. Without a concluded agreement, there is nothing to prevent Tudor from withdrawing from the negotiations (for that is all there is at the moment) as soon as any order dismissing the Petitions is sealed. That observation is not meant as any criticism of Tudor or his advisers; it is simply in the nature of an offer that remains avowedly subject to contract, which is what it is.

162. This is sufficient in my judgment to dispose of the point, although I should also record that there was no evidence before the court that would have enabled Lord Hoffmann's fourth (equality of arms in relation to access to relevant information for valuation purposes) or fifth (costs of the petition) criteria to have been addressed had it been necessary to do so. I heard no submissions on either point.

163. I should mention for completeness that Mr Campbell also referred me to the decision of Mr John Brisby QC (sitting as a deputy High Court judge) in *Re Belfield Furnishings Ltd* [2006] EWHC 183 (Ch), [2006] 2 BCLC 705. The point Mr Campbell derived from this case is that where an unfair prejudice petition includes an allegation that there has been a misapplication or diversion of assets, it would not necessarily be an abuse to continue with the petition, even where an offer to purchase the shares had been made, unless the defalcations were either *de minimis* or the respondent to the petition had conceded that the valuer would be entitled to take into account any assets the company would have had but for the acts of defalcation complained of. Mr Campbell emphasised that an *"as is"* valuation, as at a date post-dating any defalcations that did not add back the value attributable to those defalcations, would not be a sufficient remedy. It is not necessary to deal with this further point given my reasoning above. In any event, it would not be possible to go into the point on its merits because of the lack of any evidence from either side as to whether or not their preferred valuation methodology deals with the alleged historic matters and, if so, how it does that. I observe that this lack of evidence on valuation methodology or any agreement in that respect serves further to underline my

earlier point that, as things stand, the proposal that Tudor should buy Joy's shares falls short of the kind of concluded arrangement that Lord Hoffmann had in contemplation in *O'Neill v Phillips*.

CONCLUSION

164. I consider that the objections raised by TGBM Issues 1 and 2 and ESG Issues 1 and 2 are well-founded and I propose that matters should be dealt with in the way I have identified at §51 above. Other than that, the Applications fail.

165. A number of matters remain to be dealt with:

i) Joy requires permission to amend the Petitions in the form of the drafts to which Tudor has agreed on the terms summarised at §12 above;

ii) any application by Joy to amend the Petitions to engage with my decision on TGBM Issues 1 and 2 and ESG Issues 1 and 2 (see §51 above);

iii) any application by Joy to amend the Petitions to address the point about the dates of Tudor's directorship of ESG (see §148 and §149 above);

iv) the timing of the remaining statements of case (Tudor's defences and any replies by Joy), as to which Tudor has indicated he seeks a six month stay to enable the valuation process to make further progress;

v) relisting of the CCMC vacated by the order of Judge Prentis; and

vi) costs of the Applications and the amendments to the Petitions.

166. The parties are invited to reach agreement on the outstanding matters as far as possible. To the extent that they are unable to reach agreement, a consequentials hearing may be listed before me on a date convenient to counsel.