



Neutral Citation Number: [2024] EWHC 528 (Ch)

CR-2023-000067; CR-2023-000068; and CR-2023-000069

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

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

Date: 11/03/2024

Before :

I.C.C. JUDGE JONES

CR-2023-000067

**IN THE MATTER OF INTERACTIVE MEDIA GROUP LIMITED (IN
LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 2006**

B E T W E E N:

RICHARD PADUN

Petitioner

and

**(1) NEIL DICKINSON
(2) INTERACTIVE MEDIA GROUP LIMITED (IN LIQUIDATION)**

Respondents

CR-2023-000068

**IN THE MATTER OF PHILHARMONIC AUDIO VISUAL LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006**

B E T W E E N:

RICHARD PADUN

Petitioner

and

**(1) NEIL DICKINSON
(2) PHILHARMONIC AUDIO VISUAL LIMITED (IN LIQUIDATION)**

Respondents

CR-2023-000069

**IN THE MATTER OF ARCSTREAM LTD (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 2006**

B E T W E E N:

RICHARD PADUN

Petitioner

and

(1) NEIL DICKINSON
(2) ARCSTREAM LTD (IN LIQUIDATION)

Respondents

Mr Phillips (instructed by **Gannons Solicitors**) for the **Petitioner**
Ms Powers (instructed by **Kennedys**) for the **First Respondent**

Hearing dates: 27 February 2024

Approved Judgment

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

This judgment is handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Monday 11 March 2023

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I.C.C. JUDGE JONES

I.C.C. Judge Jones

A) Introduction

1. This is a case for which one could be forgiven for thinking it concerned directors' disqualification proceedings rather than consisting of three unfair prejudice petitions seeking the purchase of shares that the petitioner claims are his. That is because the Court needs to grapple with the fact that during the period relevant to the unfair prejudice conduct alleged, the Petitioner and the First Respondent decided they could take the shares of two of the parent company's subsidiaries and (according to the petitioner, Mr Padun) their dividends as their own. Furthermore, that they could proceed to liquidate the parent absent ownership of its subsidiaries without any regard to its creditors or to the prohibitions against reduction of capital.
2. This even occurred in the context of the parent having paid £170,000 for the shares of one of those subsidiaries with deferred consideration of some £255,000 to be paid in equal amounts over the next three years. The only, potentially, positive aspect for the vendors (although not necessarily the other creditors) being the existence of a debenture over the parent's and that subsidiary's assets to secure the deferred consideration.
3. Those circumstances and the facts and matters surrounding them addressed below cause me to require this judgment to be shown to Interactive Media Group Limited's ("IMG") liquidator and to the Insolvency Service, acting on behalf of the Secretary of State. It will be for them to decide what, if anything flows.

B) The Applications

4. The three, *s.994 Companies Act 2006* ("*the CA*") petitions concern IMG and its two subsidiaries, Arcstream Ltd ("*Arcstream*") and Philharmonic Audio Visual Limited ("*Philharmonic*"). The three applications ("*the Applications*") before me, issued on behalf of Mr Dickinson, the First Respondent, ask the court to strike out the petitions pursuant to *CPR Rule 3.4(a)*, and/or to grant reverse summary judgment under *CPR Part 24*.
5. The grounds for the Applications are contained within the witness statement of Mr Dickinson. It would have been preferable for grounds to be specifically identified in the application notice rather than merged (as is unfortunately common practice) with the evidence but they are helpfully summarised at paragraphs 3-4 of the skeleton argument of Ms Powers. They are essentially that:
 - a) IMG was insolvent and facing inevitable entry into a formal insolvency process immediately prior to the alleged unfair treatment suffered by Mr Padun, with the consequence that its shares were and are valueless, and he cannot have suffered any prejudice, even on his own case.
 - b) Mr Padun is not, and has never been, a member of Arcstream or Philharmonic. IMG owns both companies.

- c) If Mrs Padun holds shares and intends to bring a claim, she must be a petitioner.
6. The approach to be applied to the Applications can be summarised as follows: The burden is upon Mr Dickinson to satisfy me in respect of each petition individually: (i) Applying my case management powers, that I should strike out a petition because it discloses no reasonable grounds for bringing it or is an abuse of process; or (ii) Applying the reverse summary judgment test, that I should conclude that Mr Padun has no real prospect of succeeding on a petition and be satisfied there is no other compelling reason why the petition should be disposed of at trial.
 7. I will first address the ground that Mr Padun is not a member of either Arcstream or Philharmonic and, therefore, has no standing to present a petition in respect of those companies, applying *sections 112 and 994 CA*.

C) Ownership of the Subsidiaries

8. The material facts are these:
 - a) None of the companies, subsidiaries or parent, have complied with *section 113 of the CA*, which requires each company to keep a register of its members and provides for a criminal offence in the event of default.
 - b) Arcstream was incorporated on 17 July 2019. IMG was the sole subscriber.
 - c) On 16 April 2021, IMG entered into a Share Sale and Purchase Agreement with Mr and Mrs Turner, and Mr Harper, pursuant to which Mr and Mrs Turner, and Mr Harper sold their shares in Philharmonic to IMG. On the same day, a Stock Transfer Form was executed, which set out that the 1,176 shares in PAV were being transferred by Mr and Mrs Turner, and Mr Harper to IMG for consideration of £170,000. IMG paid that sum to Mr and Mrs Turner and the debentures over the assets of IMG and Philharmonic were later executed on 16 September 2021 and 14 February 2022 respectively.
 - d) Documents filed at Companies House on 20 April 2021 recorded that Mr Padun and Mr Dickinson were the persons in control of Philharmonic in the circumstance that each held 500 issued ordinary shares.
 - e) On 4 January 2022, a Form “CS01” was filed at Companies House which stated that the shares in Arcstream were held equally by Mr Padun and Mr Dickinson, and on 1 October 2021, a Form PS07 was filed which stated that IMG had ceased being a Person with Significant Control.
 - f) On 17 March 2022, the date Mr Padun claims he was excluded from management, confirmation statements were filed at Companies House in respect of both Arcstream and Philharmonic, recording (Mr Padun denying involvement) that Mr Padun and Mr Dickinson had each transferred 5% of their respective shareholdings to Mr Harper. It was also recorded that Mr Harper had been made a director of Arcstream and Philharmonic.

- g) General meetings held on 19 April 2022, at which Mr and Mrs Padun were not present, purported to remove Mr Padun as a director of Arcstream and Philharmonic.
- h) On or around 15 July 2022, Mr Dickinson caused confirmation statements to be filed at Companies House in respect of Arcstream and Philharmonic, purporting to record the transfer of all of Mr Padun's shares in each company to Mr Dickinson in reliance upon compulsory transfer provisions within clause 11 of a Shareholders' Agreement dated 16 April 2021 entered into between IMG and Mr Harper.
9. Those facts show that IMG purchased Philharmonic, was the only subscriber for Archstream's shares, and should be the owner of their shares subject to any lawful transfer for good consideration. It is incumbent upon Mr Padun (and indeed Mr Dickinson so far as he is to assert an interest in the shares) to identify the agreement with IMG and the resolutions passed lawfully entitling him to be a shareholder. The absence from his witness statement of any evidence concerning the terms of any agreement to buy the shares from the parent was stark. The requirement being all the more apparent when he was not registered as a member and needed to obtain an order for rectification of the share register relying upon a case that he was entitled to such registration.
10. On instructions I was informed by Mr Phillips, his counsel, that the transfer of shares relied upon was part of the plan to disassociate the subsidiaries from the parent in the context of its financial difficulties, and that there were no terms for the payment of consideration and no consideration paid.
11. It is plain in those circumstances that, even had share transfer certificates been signed and the names of Mr Padun and Mr Dickinson been entered as members, they would have held the shares on constructive trust for IMG. Directors cannot simply transfer a company's assets to themselves for no consideration whether the company is solvent or insolvent or the subject of imminent insolvency. They cannot make distributions to members unless permitted to by *the CA*. In the insolvency context they owe a duty to have regard to the interests of creditors which would not include a transfer of assets for no consideration. The transfer was/would have been an obvious misfeasance or misappropriation contrary to their fiduciary duties.
12. Those facts make clear that the petitions concerning the two subsidiaries must be dismissed. Potentially, the absence of any share registers for the subsidiaries can be resolved (as with the parent) by orders requiring them to be rectified (potentially retrospectively) under *s125 CA* (see *Re Contingent & Future Technologies Ltd* [2023] EWHC 1451 (Ch), ICC Judge Greenwood) but not for the purpose of establishing Mr Padun as a member or, indeed Mr Dickinson.
13. This fundamental problem was discussed during the hearing and the result is that Mr Padun has given instructions to discontinue the Arcstream and Philharmonic petitions. That would be inevitable but for my decision to dismiss the petitions to avoid the need for a notice.

14. That leaves the petition in respect of IMG and the issue of whether its financial position means, as asserted by Mr Dickinson, that its shares have no value due to its balance sheet and cash flow insolvency, whatever the date chosen for valuation.

D) The IMG Petition

D1) The Allegations

15. The following is a summary of the facts and matters pleaded within the IM petition to allege unfair prejudice, to be read in the circumstance of them not being in dispute for the purpose of the Applications:
- (a) IMG is equally owned by Mr and Mrs Padun and Mr and Mrs Dickinson. Mr Padun and Mr Dickinson are by agreement entitled to share in the management of the businesses as directors and, effectively, business partners. The company's business is concerned with audio-visual systems.
 - (b) IMG was incorporated on 2 February 2009 by Mr and Mrs Dickinson. Its initial business involved installing interactive solutions and display systems, trading as "Arcstream". During 2015, Mr Padun and Mr Dickinson agreed to form a quasi-partnership, initially intending to use Mr Padun's company, Paper 2 Pixel Limited. That plan changed and by May 2016 Mr Padun was managing IMG's sales.
 - (c) On 16 May 2017 Mr Padun was appointed a director and by 2018 was effectively running IMG as Mr Dickinson stood back. During September 2018, Mr Weeks was appointed a part-time external financial director.
 - (d) Following Arcstream's incorporation (17 July 2019) as a wholly owned IMG subsidiary, IMG transferred its business to it and became a non-trading parent.
 - (e) The subsequent pleading that Arcstream's shares were transferred to Mr Padun and Mr Dickinson and that on or around 1 October 2021, IMG ceased to be Arcstream's "person with significant control" as recorded at Companies House by the filing of a confirmation statement recording that Mr Padun and Mr Dickinson had 50 issued shares each now requires amendment to address the true ownership of the shares. So too the pleading that Philharmonic was acquired by Mr Padun and Mr Dickinson on 16 April 2021, each holding 500 ordinary shares. Also that Mr Harper, an employee, holds 15% of the shares, although his shareholding should be diluted to 10% as agreed upon the company's purchase [by IMG].
 - (f) During 2021 and 2022 the working relationship between Mr Padun and Mr Dickinson deteriorated. On 17 March 2022 Mr Dickinson purported by email to suspend Mr Padun as a director of Arcstream and Philharmonic and cut off his access to the companies' accounts and systems. Plainly as one of four directors, he had no power to do so. Accompanying the emails were **s.303** and **s.312** notices for a general meeting to remove Mr Padun as a director of Arcstream and Philharmonic.

- (g) On 17 March 2022 confirmation statements were filed at Companies House in respect of both Arcstream and Philharmonic, falsely recording that Mr Padun and Mr Dickinson had each transferred 5% of their respective shareholdings to Mr Harper. In addition filings at Companies House falsely recorded that Mr Harper had been made a director of Arcstream and Philharmonic.
 - (h) The purported general meetings were held on 19 April 2022 and were plainly invalid meetings at which Mr and Mrs Padun did not attend.
 - (i) On or around 15 July 2022, Mr Dickinson caused confirmation statements to be filed at Companies House in respect of Arcstream and Philharmonic, purporting to record the transfer of all of Mr Padun's shares in each company to himself in reliance upon compulsory transfer provisions within clause 11 of a Shareholders' Agreement dated 16 April 2021 entered into between IMG and Mr Harper but not applying to Mr Padun's shares. In any event, the clause would not have been activated because Mr Padun had not (lawfully) ceased to be a director as required.
 - (j) Those matters amount to acts of unfair prejudice. Exclusion from management has also resulted in loss of income and Mr Padun's offer to sell "his" shares in Arcstream and Philharmonic, made on 11 April 2022, was rejected.
 - (k) A wholly owned subsidiary of IMG, Integrated Logic Limited, has been placed into liquidation by Mr Dickinson for his own benefit having obtained a £50,000 business "bounce-back" loan used to finance a showroom with equipment which is still in use under his ownership.
 - (l) Mr Padun suspects that Mr Dickinson is causing assets to be moved to other entities (and is purporting to place certain entities into liquidation) in an attempt to divert assets for his benefit.
 - (m) IMG is now in Creditors' Voluntary Liquidation pursuant to a resolution passed on 17 June 2022 without Mr Padun's or his wife's attendance. Philharmonic is now in Creditors' Voluntary Liquidation pursuant to a resolution purportedly passed on 17 November 2022 but without Mr Padun or his wife having been given notice as shareholders and without their attendance.
 - (n) Mr Padun prays for the purchase of the shares of himself and his wife at a valuation to take account by fair adjustment of the unfairly prejudicial conduct including breach of his employment contract.
16. If the petition proceeds, as explained above, there will be no dispute that the shares of the two subsidiaries were wrongfully treated by Mr Padun and Mr Dickinson in their management of IMG as their own shares. Nor that IMG's business was transferred to those subsidiaries leaving it as a holding company. Nor will it be disputed, based upon the evidence before the Court, that such manoeuvring to remove those subsidiaries and, therefore, their businesses from the ownership of IMG was to its detriment and to the detriment of its creditors. In addition, that documentation filed at Companies House to be placed on the public register, as mentioned above, was false. There also appears (although I have not been asked to make a finding and do not do so) that Mr

Dickinson may have played “fast and loose” with the constitutional requirements of the articles of IMG’s two subsidiaries when seeking to exclude Mr Padun.

D2) Remedy – Share Valuation

17. For the purpose of considering the Application’s “no share value” ground, the starting point is to consider the date of valuation. Understandably, Mr Phillips did not commit to a final date, but based upon the pleaded facts, proceeded with his submissions on the basis that the earliest date will be 17 March 2022, the day when Mr Padun was excluded from management.

D3) Submissions for Mr Dickinson and his Application

18. Ms Powers submitted for Mr Dickinson that it is plain from the following evidence that the IMG shares had no value at the material time:
- a) An email sent on 12 January 2021 by Mr Padun and Mr Dickinson to a debt collection agency used by a creditor stated that IMG had ceased trading and *“has no assets and is in the process of filing for liquidation”*.
 - b) Correspondence from IMG’s principal lender identified as at 21 May 2021 a sum due of about £370,000 subject to an informal time to pay agreement for monthly repayments of some £8,000 a month.
 - c) IMG’s 2021 management accounts’ cash flow record by February 2022 shows a cumulative shortfall of (£119,402) reflecting regular shortfalls before July 2021 and consistent shortfalls from that month.
 - d) Mr Dickinson’s note of a directors’ meeting he attended with Mr Padun on 25 January 2022, records amongst other matters, the plan to liquidate IMG but ensure that Arcstream and Philharmonic would survive and prosper but, by implication, with themselves as the shareholders.
 - e) There is also evidence that IMG’s employees had been transferred to Arcstream in about February 2022 because of its inability to meet its liabilities.
 - f) Email correspondence recording that Mr Padun was expecting an insolvent liquidation of IMG on 7 March 2022.
 - g) IMG’s statement of affairs as at 6 June 2022 signed by Mr Dickinson records a net deficiency of £655,011.86. The only assets consist of computer equipment valued at £37,094 and included within the creditors is a loan of £370,000, trade and expense creditors of just under £100,000 and liabilities owed to HMRC totalling in the region of £130,000.
19. Ms Powers acknowledged within her oral submissions (in the context of the standard of the tests applied for the Applications) that a potential problem with the financial evidence relied upon was that Mr Padun and Mr Dickinson were treating Arcstream

and Philharmonic as their own companies. This would potentially affect IMG's balance sheet and might have prevented cash flow funding for IMG whether by loan or otherwise. Her counter to this was that:

- a) This was not as such pleaded in the petition.
- b) Arcstream's filed accounts for the year ended 31 July 2020 approved by the board on 16 April 2021 reveal a small operating loss (£3,800) on a some £400k turnover and a balance sheet deficiency of some (£60k) despite cash of some £198k and debtors of some £88k. There were no fixed assets.
- c) Arcstream had not been paying its liabilities owed to HMRC and as at 24 January 2022 had liabilities amounting to £82,874.37 which had arisen for payment in the period from 7 May 2020 to 13 November 2021. Email correspondence from Mr Padun evidenced that as at January 2022, Arcstream had been seeking to agree a payment plan with HMRC for months.
- d) The statement of affairs for Arcstream's Creditors' Voluntary Liquidation signed by Mr Dickinson on 4 November 2022 recorded a net deficiency of just over £178,000 being mainly liabilities owed to HMRC.
- e) As at 30 November 2021, the year end for Philharmonic, it had fixed assets of motor vehicles, fixtures and fittings and computer equipment with a book value of some £54,200. There was some £151,000 in the bank and further current assets of some £54,000. The net current assets were positive, some £87,000 after some £129,000 of creditors falling due within one year, but creditors falling due after more than one year totalled £142,500 with the consequence that net assets totalled only £648.
- f) A filed statement of affairs for Philharmonic showed a £353,000 odd deficiency as at 9 October 2023 and its Creditors' Voluntary Liquidation began on 9 October 2023.
- g) The liquidator of IMG, having ascertained it was the owner of Philharmonic, was only able to sell its shares to Mr Dickinson for par value.

20. As to IMG's other subsidiaries she observed in her skeleton argument:

- a) As at 30 November 2020, Integrated Logic Limited had net liabilities of £111,572 and it went into creditors' voluntary liquidation on 18 November 2022. Its shares could only be sold to Mr Dickinson at par.
- b) As at 31 October 2021, Arcstream Systems Ltd had net liabilities of £150. Its shares could only be sold to Mr Dickinson at par.
- c) HD Golf UK Ltd never traded and was dissolved via compulsory strike-off on 20 December 2022.

D4) Submissions in Response for Mr Padun

21. Mr Phillips recognised that the key point to be made for Mr Padun in the light of that evidence is that the financial position of IMG depended upon the value of its shares in Arcstream and Philharmonic.
22. His starting point for Philharmonic was that there is market value evidence of its share value as at 16 April 2021, when IMG agreed to pay £170,000 plus deferred consideration of £85,000 in April 2022, 2023 and 2024. In addition, he drew attention to the fact that Mr Dickinson stated in his evidence that the deferred consideration had been paid, indicating value must remain, although the date of the witness statement (13 March 2023) suggests that was referring to the April 2022 instalment only (unless the two further payments were made ahead of time). In any event, Mr Phillips submitted, no-one would pay even just the April 2021 instalment if the shares did not have value.
23. Mr Phillips then turned to Mr Dickinson's note of a directors' meeting he attended with Mr Padun on 25 January 2022. It includes the plans for the trading of Arcstream and Philharmonic, as purportedly owned by Mr Padun and Mr Dickinson, whilst and after IMG was being placed into insolvent liquidation. The expectation recorded by Mr Dickinson was that Arcstream and Philharmonic would both achieve £1m turnover, with gross profit of 45% in the case of Philharmonic and 60% in the case of Arcstream. His reliance upon this as evidence of value recognised that there is evidence from Mr Weeks challenging the note in regard to Arcstream but submitted such criticism would be a matter for trial and expert evidence. He pointed to the absence of criticism or challenge in respect of Philharmonic.
24. Mr Phillips further submitted that the evidence that the businesses of and shares in Arcstream and Philharmonic were likely to prove profitable and valuable is supported by the fact that Mr Dickinson has now acquired them and is operating them successfully through Arcstream Systems Limited in the case of Arcstream's business. There is, however, little evidence addressing that operation.

D5) Discussion

25. The evidence of insolvency relied upon for the Application suffers from the disadvantage that Mr Padun and Mr Dickinson wrongly treated Arcstream and Philharmonic as their own companies for the purpose of separating them from IMG, their true owner before IMG's liquidation. For example:
 - a) The content of the email to the debt collection agency was simply false insofar as it asserted that IMG "*has no assets*". The truth, which should have been stated, was that it was no longer a trading company but continued business as a parent company for trading subsidiaries.
 - b) The statement of affairs, sworn as true, signed by Mr Dickinson on 6 June 2022 makes no reference to Arcstream, Philharmonic or any other subsidiary nor to any claims IMG may have as a result of the treatment of Arcstream and/or Philharmonic in breach of fiduciary duty including the recovery of

dividends which belonged to IMG but were paid to Mr Padun and (presumably) Mr Dickinson and his wife.

26. Nevertheless IMG plainly had substantial creditors as at 17 March 2022. The statement of affairs shows, as at 6 June 2022, debts owing to unsecured creditors in the total sum of £655,011.86, including £130,000 odd due to HNRC.
27. It is not entirely clear what was happening to the repayment of the debt owed to the principal lender, which was subject to an informal time to pay agreement. However, the cash flow record showed IMG was haemorrhaging cash and did not have enough income to cover its day to day debts and liabilities. The evidence as a whole requires IMG to be treated as insolvent on an “unable to pay debts” basis applying the test for the purpose of a creditors’ winding up petition as at the proposed date for share valuation.
28. Therefore, the “Issues for Valuation” as at 17 March 2022 will be:
 - a) What were the group’s assets, including goodwill, and liabilities as at 17 March 2022;
 - b) Which of those assets and liabilities are relevant to the valuation of IMG’s shares taking into consideration, for example: (i) any security provided by IMG to subsidiary company creditors or between the subsidiaries themselves; and (ii) whether a sale of specific subsidiaries may produce a better return and IMG valuation, than the sale of the group as a whole.
 - c) Having established the contents of the valuation for IMG’s shares, what is a fair value based upon the reality of their nature and content, and choosing the appropriate basis for and date of valuation (see the guidance of Lord Millett in *CVC v Demarco Almeida* [2002] B.C.C. 684 at [37-38] and the helpful commentary within Chapter 8 of “Hollington on Shareholders’ Rights” from 8-45 to 8-46 and continuing).
29. It is fair to observe that neither side has specifically addressed such matters. Mr Dickinson has not exhibited management, profit and loss and balance sheet accounts to assist and Mr Padun’s position is that he does not have access to the necessary financial information. It can be observed that as a matter of case management, the normal approach should be not to allow petitions to proceed without directions which will enable at least a rough guide to valuation; not least because potentially huge costs should not be incurred without knowing what is in issue. That is why the standard directions require a valuation to be given.
30. For the purpose of the Application, however, the question is whether there is no real prospect of value being established and no other compelling reason why the petition should be disposed of at trial (it being sufficient to address reverse summary judgment).
31. For that purpose Mr Phillips is plainly correct when he submits that consideration must be given to the purchase price of Philharmonic just under a year earlier and to the payment of the first tranche of deferred consideration. He also relies upon Mr Dickinson’s note of the 25 January 2022 directors’ meeting. That is a note which

causes concern because of its implementation of the scheme to remove the subsidiaries from IMG but it also provides evidence of the contemporaneous, subjective assessment of Mr Padun and Mr Dickinson concerning the prospects for Arcstream and/or Philharmonic (albeit from their perspective absent IMG). It is worth copying the following parts:

“Timeline

- *Finish off detachment of IMG from all internal systems and create separate setups for Philharmonic, Arcstream, HD and IL. HD Golf and Integrated Logic alone until the end of Q1 when we can review.*
- *Staff Meeting on Monday 14th of February to explain the relocation plan based on sales and marketing expansion which is the narrative being used.*
- *Warehouse prepared for departure but ability to be quickly reassembled to deliver a job at short notice. (Subject to Canada Life Response)*
- *Staff to leave the building and work permanently from home as of Monday 28th February until new locations are occupied.*
- *Liquidation of IMG / Interax - Monday 7th March 2022*

Following Liquidation Date

- ... *No negotiation required with Canada Life as not extending lease or renewing regardless of deal.*
- *Funding Circle to be left to discover IMG insolvency post event without warning and await their response.*
- *Barclays Overdraft/ Credit Cards to be left close to max out levels. Allow Barclays to pursue and eventually come to an arrangement for repayment via Arcstream.*
- *HMRC will do what they do.”*

32. Pausing there, this is a clear recognition of the fact that the business was to be divorced from IMG and of the approach of Mr Padun and Mr Dickinson that the consequences of doing so could be hidden from creditors and in any event be left to a “wait and see what occurs in the liquidation” approach. Creditors were not only to be kept in the dark but, at least with regard to Barclays Bank Plc, there was a specific intention to keep as close to IMG’s credit facility limits as possible. This approach was being addressed within the context of Mr Padun and Mr Dickinson pursuing the following aims for the companies they claimed to own and when, as Mr Padun put it in his evidence: *“It was obviously a necessary part of this plan that Arcstream was under separate ownership and was not a subsidiary of IMG, which was to be liquidated”*:

“The Desired Result

Philharmonic

- *Central London Marketing & Sales office location on initial one year lease,*
- *Hardware Storage Facility already secured and been in use since moving from the High Wycombe office.*
- *5 Strong staff through Q1 with possibility of 6th and 7th in Q2*
- *Steve Harper targeted with 900k turnover for FY21/22*

- *additional 300k+ targeted via Service Contracts, Existing Client Upgrades and HD Golf Sim Sales, RP & ND contributions.*
- *PAV to deliver 1m turnover with 45%+ Project GP with 3k per month marketing spend*

Arcstream

- *Central London Marketing & Sales office location to be secured in conjunction with PAV. Arcstream to pay a 30% to 40% monthly contribution.*
- *SW London suburbs Workshop for Arcstream project delivery. Initial 1 year deal.*
- *Dave Hearn targeted with 900k turnover. Harri to move to sales later in the year so £225k to 450k target expected for FY2022.*
- *Arcstream to deliver 1m turnover with 60%+ Project GP with 3k per month marketing spend*

Integrated Logic

Left dormant for 1st half 2022 once final payments are received. To be reviewed at the end of Q2.

HD Golf

1 sale to deliver in 2022. Deposit paid with another 40k to come.

Currently under VAT threshold.

Further sales expected but will drive through PAV if possible.

No 2022 target unless Canada provide 1 to 3k per month marketing matched funding.

33. As previously mentioned, Mr Phillips emphasised the expectation recorded by Mr Dickinson that Arcstream and Philharmonic would both achieve £1m turnover, with gross profit of 45% in the case of Philharmonic and 60% in the case of Arcstream. He is entitled to do so for the purposes of Mr Padun's opposition to the Application.
34. Mr Weeks in his statement for Mr Dickinson disputes the accuracy of that minute, even though it was made by Mr Dickinson. He denies, for example, saying that Arcstream had an EBITDA of £1m.. He also in effect pours scorn on its contents. His credibility must be in issue, however, on the basis (assumed for these purposes) that he was part of the plan to misappropriate the subsidiaries from IMG for the purpose of its liquidation. In any event the issues he raises are matters of dispute to be tested by cross-examination and cannot be relied upon to resolve the Application.
35. On the other hand, Mr Weeks exhibits Arcstream's management accounts' profit and loss for nine months ended 30 September 2021. They identify a profitable company (£51,038.55 after taxation) but it is difficult to see as at that date that they have any value sufficient to impact significantly upon a valuation of IMG's shares. However, that in itself cannot be determinative because it does not address Arcstream's share valuation multiplicand or the future prospects for the company clearly envisioned by Mr Padun and Mr Dickinson. The extent to which those prospects would be relevant to a purchaser and to the value has not been addressed but clearly they have potential to be relevant.
36. The submissions of Ms Powers concerning Arcstream and in particular the liabilities owed to HMRC are plainly relevant and potentially significant. However, they have to

be made in the context of a lack of financial information and specifically management accounts for the relevant date of valuation. There is no explanation for this that I have heard and in any event this too must be addressed within the context of Mr Dickinson's note of the 25 January 2022 directors' meeting. Mr Dickinson clearly had reason to agree to what was proposed for the future and his evidence does not explain why (if that is so) it was baseless. Whilst the statement of affairs signed 4 November 2022 is powerful evidence of indebtedness, it too cannot be determinative in the absence of the management accounts for the relevant period.

37. It is notable, as Mr Phillips submitted, that Mr Weeks says nothing concerning Philharmonic. This supports Mr Phillips's submissions that the note can be relied upon at least with regard to Philharmonic and that it provides evidence for the case that the Philharmonic shares will have a significant value to the benefit of IMG's share valuation based upon its anticipated, significant improvement in trading performance.
38. The obvious question concerning Philharmonic, as Mr Phillips in effect raised rhetorically is: what happened to the business, the shares for which were purchased for a total consideration near to half a million pounds albeit in part deferred? The 30 November 2021 accounts are not exactly fantastic for the purpose of valuation and the vendors of its shares have a debenture to secure the deferred consideration. However, Mr Dickinson's note of the 25 January 2022 directors' meeting shows he had reason to believe the future was bright and, therefore, that the shares must have had value. Although the statement of affairs for the Creditors' Voluntary Liquidation shows a different picture, it was signed about one year and seven months after Mr Padun's exclusion and cannot be directly linked for the purposes of valuation to the financial position at the date of exclusion on 17 March 2022.
39. The petition (see paragraph 14 (l) above) and Mr Phillips in his submissions also raise the concern that what may have happened is that the business of Philharmonic was in effect raided by Mr Dickinson during the period between exclusion and its liquidation and that diverted assets have been retained for the purpose of the businesses he now successfully manages. However, although Mr Dickinson's credibility as to fitness to be a director has to be very low in the light of the matters above, there is no specific evidence of this and I do not consider that it takes the position further than the rhetorical question.
40. There is also the value of the other subsidiaries to consider and the allegation within the petition concerning Integrated Logic Limited. However, these matters did not feature in the submissions and I consider that reflects the lack of real evidence concerning them to either support or undermine the submissions that the Application should succeed or fail.
41. Finally I mention two matters that have not yet been touched upon. The first is the claim for loss relevant to Mr Padun's loss of income. The court's jurisdiction to grant relief is recognised to be extremely wide and does extend to a power to order wrongdoing directors to pay compensation to a petitioner without them owing a fiduciary or statutory duty to the member (see *Re Hut Group Ltd* [2021] EWCA Civ 904, [2021] BCC 970 at [61 and 65]). It has been held, for example, that a common law claim for wrongful dismissal may be incorporated in an unfair prejudice petition (see *Woolliff v Rushton-Turner* [2016] EWHC 2802 (Ch) and the authorities carefully considered).

42. This is not a matter which was subject to extensive argument and I have not been taken to the employment proceedings to consider whether any form of estoppel arises. As a matter of proportionality, I understand why but this discussion and my decision must be viewed in that limited context.
43. It seems to me (applying the summary judgment test) that exclusion as an employee is to be treated for the purposes of the Application as co-extensive with his exclusion from management in breach of Mr Padun's existing legitimate expectation. In that circumstance, the Court may consider the only appropriate remedy to be a share purchase but that depends upon the facts and circumstances applying the established principles of fairness. It can consider compensation even though no specific duty was owed to him by the offending director.
44. As a result, it is right for me to follow the conclusion of the (now) Chief I.C.C. Judge in *Wootliff v Rushton-Turner* (above) and accept that the exclusion pleaded enables Mr Padun to claim as relief compensation for breach of his employment contract attributable to his exclusion as a member applying the summary judgment test.
45. The second is the position of Mrs Padun. There is evidence that she is a beneficial owner of 25 IMG shares. She is not the "full" legal owner in the absence of a share register. Its absence, however, is to be cured by the completion of a share register. Insofar as Mrs Padun becomes a member of IMG and if she is able and wishes to pursue this *s.994 CA* petition, she must decide to be joined as a co-petitioner. If she does not and the petition remains extant, subject to further directions, she can be named as a party being served assuming she is content to remain neutral or otherwise be added as a Respondent. Mr Harper's position should also be considered, although I assume from his absence to date that he does not wish to participate and has agreed to be bound by the result.

E) Decision

46. It cannot be concluded on the current evidence that the shares of IMG had no value as at March 2022. There simply is insufficient evidence for such a decision to be made. The impact of the value of the subsidiaries needs to be addressed within the context of the Issues for Valuation (identified in paragraph 28 above). What is required are management accounts at or around that period not only for IMG but for its subsidiaries. In addition there needs to be consideration of how the value of the subsidiaries would be maximised for the purpose of valuing the IMG shares, whether by a valuation based upon only selling specific subsidiaries or their assets rather than the group or otherwise.
47. That, however, is not the test for the Application. For the purposes of reverse summary judgment (which it is sufficient to address) the question is not whether Mr Dickinson can prove there is no value but whether Mr Padun has a realistic (as opposed to fanciful) prospect of success based upon the written evidence and without holding a mini-trial. As to that test, the burden of proof is upon Mr Dickinson but the matters relied upon by Ms Powers in her submissions are sufficient to establish a belief by him based on credible evidence that Mr Padun has no real prospect of

success. That shifts the evidential burden to Mr Padun but he has not established an estimated valuation even at a real prospect of success level.

48. What the “discussion” above shows in the context of the identified evidence of IMG’s insolvency that whilst Mr Padun can rely upon facts in particular concerning Philharmonic which establish a real prospect of succeeding with a case that one or some of the subsidiaries had value (including added back value) at the relevant time, his evidence does not go so far as to establish a real prospect of succeeding with the claim that IMG’s shares had more than nominal value taking into consideration its liabilities.
49. That absence of evidence arises, at an early procedural stage of the petition and in any event in the circumstance of Mr Padun not apparently having access to the relevant management accounts of IMG and its subsidiaries. There has not been disclosure to enable him potentially (and the potential should be considered to be there) to present his quantification to sustain a claim of incurred prejudice and to quantify the compensation required.
50. I am satisfied that it is reasonable in all the circumstances of the “accepted” unfair prejudice and financial evidence to provide the opportunity to investigate information and documentation which should be available and ought to be considered but is in practice only available in the course of the litigation. I consider that to be a compelling reason (noting the importance of that word which was introduced to limit the previously far wider ambit of the summary judgment alternative test) why the petition should not be disposed of without further directions providing an opportunity for such investigation.
51. In those circumstances I have decided:
 - a) There being no share register, neither Mr Padun, his wife (if appropriate) or Mr Dickinson and his wife are members of IMG in accordance with the requirements of *section 112 of the CA*. I have already directed that this statutory breach be cured and this judgment is handed down on the premise that it will be.
 - b) Assuming that to be done, this is a case where the IMG petition should be allowed to proceed because there is some other compelling reason why it should not be disposed of at this stage.
 - c) That is subject, however, to the case management conclusion that a time frame must be set for Mr Padun to seek such directions and to make such amendment to the petition as is necessary to identify a valuation which will satisfy the requirements for permission to amend in the context of pleading both prejudice and relief.
 - d) This was indirectly discussed with Mr Phillips during submissions and it was clear that he was not in a position to advocate either directions or amendment during the hearing. That must change for two reasons: (i) the parties cannot incur reasonable and proportionate costs without knowing what the “end game” may be; and (ii) currently he has not over-turned the shifted, evidential burden to establish a real prospect of succeeding with the claim that IMG’s

shares had more than nominal value taking into consideration its liabilities. Absent appropriate amendment (if this can be achieved) this petition will not establish unfair prejudice.

e) As a result I will stay the petition for three months subject to compliance with the following directions:

(i) During that period, Mr Padun may make such requests for information and documentation and any necessary applications as advised to enable him to comply with the following direction; namely

(ii) At the end of that period, Mr Padun must issue an application for permission to amend and file and serve a draft amended petition addressing: the fact that he did not own shares in Philharmonic and Arcstream; and pleading the bases for the purposes of *sections 994 and 996 CA* for valuing IMG's shares at more than a nominal value together with such documentation as he requires to support that pleading;

(iii) For the purposes of the Respondents, the stay is subject to such steps as they may take in response to any steps taken by Mr Padun under sub-(i) above.

(iv) If Mr Padun does not comply with sub-paragraph (ii) above, the petition will be left purely to claim as relief compensation for breach of his employment contract attributable to his exclusion as a member. Whether a petition based solely upon that relief should proceed can be considered further at a case management conference if appropriate to do so in the circumstances then existing.

(v) following expiry of the stay, whether on the basis of compliance with sub-paragraph (ii) or in the circumstance of sub-paragraph (iv), the parties shall enter into alternative dispute resolution as soon as practical thereafter and may seek directions concerning that process if required (although it is emphasised that the parties should always be considering settlement).

(vi) if Mr Padun is to continue with the petition (whether on the basis of compliance with sub-paragraph (ii) or in the circumstance of sub-paragraph (iv)) and Mrs Padun is a member who wishes to claim unfair prejudice and *s.996 CA* relief, she must be added as a petitioner. Mr Harper's position should also be addressed.

(vi) the parties should obtain a listing for a half day CCMC not before the expiry of the period for alternative dispute resolution by lodging dates to avoid not before a day which they can negotiate.

52. As soon as practicable after delivery of this judgment, the solicitors acting for Mr Padun and Mr Dickinson, as officers of the court, shall ensure that this judgment in final form is sent to the liquidator of IMG and to the Insolvency Service. The purpose being to enable them to address the defaults identified and to consider what, if any, steps they wish to take. It may be that the liquidator has been unable to investigate due to lack of funds. If that is the case, the need for a compulsory liquidation should be considered.

53. I will not repeat the defaults identified above but draw attention in particular to the following concerns with regard to the conduct of Mr Padun and Mr Dickinson as directors: treating the shares of IMG's subsidiaries as their own; receiving dividends payable to IMG as shareholder; the email to a debt collection agency on behalf of a creditor misstating IMG's financial position; intending to place IMG into liquidation having misappropriated its subsidiaries' shares; the failure to keep share registers; lodging false information at Companies House for registration.
54. I emphasise with regard to paragraph 53 that those defaults have been identified from the written evidence before me but without Mr Padun and Mr Dickinson having been asked to address them as defaults and without having heard what they would wish to say when presented with the criticisms I have made. I also repeat that it is for the liquidator and the Insolvency Service to decide what, if anything, they may wish to do.

Order Accordingly