Case No: 3LV30344

[2015] EWHC 2121 (CH)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LIVERPOOL DISTRICT REGISTRY

Liverpool Civil & Family Courts
35 Vernon Street
Liverpool L2 2BX

Wednesday 17 June 2015

BEFORE:

HIS HONOUR JUDGE HODGE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

BETWEEN:

BARRIE PETER BRIDGE

Claimant

- and -

(1) KEITH DALEY
(2) JOHN WILSON
(3) NOAH FRANKLIN
(5) SIMON ACLAND
(7) ELEKTRON TECHNOLOGY PLC

Defendants

BARRIE BRIDGE appeared in person

SEB ORAM (instructed by Birketts LLP) appeared on behalf of the 7th Defendant

HUGH MIALL (instructed by Marshalls Solicitors) appeared on behalf of the 1st, 2nd, 3rd and 5th Defendants

Approved Judgment

(Approved in London on 17 July 2015 without reference to any documents and without checking any references or citations)

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JUDGE HODGE QC:

1. This is my substantive extemporary judgment on the hearing of Mr Barrie Peter Bridge's application for permission to continue a derivative claim against the four remaining individual defendants – Mr Keith Daley, Mr John Wilson, Mr Noah Franklin and Mr Simon Acland - on behalf of Elektron Technology plc, a company in which Mr Bridge holds 1.83 per cent of the shares. The company is a public limited company listed on the Alternative Investment Market of the Stock Exchange.

2. On this application Mr Bridge appears as a litigant as a person; Mr Hugh Miall (of counsel) appears for the four remaining individual defendants, instructed by Marshalls; and Mr Seb Oram (of counsel) appears for the company, instructed by Birketts.

3. In an extemporary judgment I delivered before the luncheon adjournment yesterday (Tuesday 16 June 2015), dismissing in part an application by Mr Bridge to rely upon further evidence in support of his application, I set out the procedural and the evidential background to the present application. I do not propose to repeat those matters in this extemporary judgment. This judgment should be read in conjunction with the extemporary judgment I delivered yesterday.

4. I have previously delivered two other extemporary judgments in this matter. The first was on Wednesday 1 October 2014 when this application to continue the derivative claim first came before me sitting in Liverpool. At that time the representation for the defendants was as it is today; but on that occasion Mr Bridge was not a litigant in person but was represented by Mr Graeme Halkerston, instructed by DMH Stallard. Mr Bridge dispensed with the services of those solicitors and has been a litigant in person since about the end of November 2014. Mr Bridge had been a litigant in person at the time that he issued the present claim form on 27 November 2013.

5. The other extemporary judgment I have delivered was in London on 26 January 2015 when I gave case management directions intended to lead to the hearing which was listed for a day and a half, with half a day set aside for pre-reading, commencing yesterday. In fact, because of the need to address Mr Bridge's application to rely upon further evidence, the half day set aside for pre-reading was taken up with that application, and I had to content myself with some three hours pre-reading before the matter came on at 10.30 yesterday.

6. It is appropriate at this point, and against the evidential and procedural background I summarised in my judgment of yesterday, to address the legal background to the present application. As Lewison J explained in his judgment in the case of Iesini v Westrip Holdings Ltd [2009] EWHC 2526 (Ch), reported at [2011] 1 BCLC 498, at paragraph 73, a new statutory code has replaced the old common law derivative action. A derivative claim may now only be brought under the Companies Act 2006. A derivative claim is one in which the cause of action is vested in the company but where the claim is brought by a member of the company.

7. By section 260 (3) a derivative claim may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director (which includes a former director of the company).

By section 261 (1):

> "A member of a company who brings a derivative claim… must apply to the court for permission… to continue it."

By section 261:

> "(2) If it appears to the court that the application and the evidence filed by the applicant in support of it do not disclose a prima facie case for giving permission (or leave), the court -
>
> (a) must dismiss the application, and
> (b) may make any consequential order it considers appropriate.
>
> (3) If the application is not dismissed under subsection (2), the court -
> (a) may give directions as to the evidence to be provided by the company, and
> (b) may adjourn the proceedings to enable the evidence to be obtained.
>
> (4) On hearing the application, the court may -
> (a) give permission (or leave) to continue the claim on such terms as it thinks fit,
> (b) refuse permission (or leave) and dismiss the claim, or
> (c) adjourn the proceedings on the application and give such directions as it thinks fit."

8. One of the issues that has been raised is whether the court has already taken the view that Mr Bridge has disclosed a *prima facie* case for being given permission. That is because at the first procedural hearing in this case before Deputy District Judge Green on 25 February 2014 the Deputy District Judge listed the application for permission to continue the claim before a High Court judge. I am by no means satisfied that in so doing the Deputy District Judge proceeded on the footing that Mr Bridge had already disclosed a *prima facie* case for being given permission for the purposes of section 261(2). My reason for that doubt is that the first of the Deputy District Judge's procedural directions was for the claimant to file and serve any further evidence on which he intended to rely. That suggests to my mind that the District Judge was not already satisfied on the evidence that he had seen to date that a *prima facie* case had been disclosed. I can understand why the Deputy District Judge may have directed the filing and service of further evidence by the claimant because, since Mr Bridge was then a litigant in person, it is not entirely easy to follow the two sets of Particulars of Claim on which he was seeking to place reliance.

9. Be that as it may, it seems to me that I should proceed in the way in which His Honour Judge Pelling QC had proceeded in the case of Stimpson v Southern Private Landlords' Association [2009] EWHC 2072 (Ch), reported at [2010] BCC 387. At paragraph 3 of his judgment in that case Judge Pelling said that in the proceedings before him the first stage had not taken place and there had been instead just the contested hearing before him, at which all parties had been represented, and for which a substantial volume of written evidence had been filed by all parties. Although the

defendants had suggested that the judge should stick to the two-stage process and start by asking himself whether a *prima facie* case had been made out, Judge Pelling considered that to be unduly elaborate in the circumstances of the case. He preferred to approach the application by reference to section 263 of the 2006 Act as if the case had been considered initially because that reflected the procedural as well as the practical reality and would yield a fair and proper result. It seems to me that that was a pragmatic approach which I should adopt in the present case, and I proceed to do so.

10. I therefore turn to the provisions of section 263 of the Companies Act 2006 which govern the question whether permission is to be given. By subsection (2):

> "Permission… must be refused if [so far as material for present purposes] the court is satisfied-
>
> (a) that a person acting in accordance with section 172 (duty to promote the success of the company) would not seek to continue the claim."

That is a mandatory ground for refusing permission.

11. By subsection (3):

> "(3) In considering whether to give permission (or leave) the court must take into account, in particular-
>
> (a) whether the member is acting in good faith in seeking to continue the claim;
>
> (b) the importance that a person acting in accordance with section 172 (duty to promote the success of the company) would attach to continuing it;
>
> (c) where the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be-
>
> (i) authorised by the company before it occurs, or
>
> (ii) ratified by the company after it occurs;
>
> (d) where the cause of action arises from an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;
>
> (e) whether the company has decided not to pursue the claim;
>
> (f) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in his own right rather than on behalf of the company."

I emphasise that those are matters which the court is directed to have regard to in particular, but they are not exhaustive.

12. By subsection (4), in considering whether to give permission the court is required to have particular regard to any evidence before it as to the views of members of the company who have no personal interest, direct or indirect, in the matter. That is the statutory framework within which this court must operate.

13. I have already referred to Lewison J's decision in the Iesini case. At paragraph 79 Lewison J said that in order for a claim to qualify as a derivative claim at all the court must be in a position to find that the cause of action relied on in the claim arose from an act or omission including the fault or breach of duty by a director. The judge did not consider that the second stage was simply a matter of establishing a *prima facie*

case, as had been the case under the old law because that formed the first stage of the procedure.

14. Lewison J considered that at the second stage something more must be needed. He referred to an earlier judicial observation that on an application under section 261 it would be quite wrong to embark on anything like a mini-trial of the action. Lewison J considered that that was no doubt correct; but, on the other hand, not only was something more than a prima facie case required, but the court would have to form a view on the strength of the claim in order properly to consider the requirements of sections 263(2)(a) and (3)(b). He recognised that any view could only be provisional, because the action had yet to be tried; but the court must do the best it could on the material before it.

15. At paragraphs 85 and 86 Lewison J expressed his view, in agreement with earlier authority, that the mandatory bar in section 263 (2) (a) would only apply where the court was satisfied that "no director", acting in accordance with section 172, would seek to continue the claim. If some directors would, and others would not, seek to continue the claim, the case was one for the application of the discretionary bar in section 263 (3) (b). Many of the same considerations would apply to that paragraph too.

16. The judge therefore concluded (at paragraph 88) that even if he were not satisfied that no director acting in accordance with section 172 would seek to continue the claim, the importance that such a director would attach to continuing the claim was a relevant discretionary consideration.

17. At paragraph 85 Lewison J also proceeded to identify a number of factors that a director acting in accordance with section 172 would consider in reaching his decision. They would include the size of the claim; its strength; the cost of the proceedings; the company's ability to fund the proceedings; the ability of the potential defendants to satisfy a judgment; the impact on the company if it lost the claim and had to pay not only its own costs but the defendants' as well; any disruption to the company's activities while the claim was pursued; whether the prosecution of the claim would damage the company in other ways, such as losing the services of a valuable employee or alienating a key supplier or customer; and so on. Lewison J emphasised that the weighing of all these considerations was essentially a commercial decision which the court was ill-equipped to take except in a clear case.

18. At paragraph 130 Lewison J proceeded to consider the application of section 263 (4). It seemed to him that in order for the court to be in a position to have particular regard to the views of certain members of the company it must be as satisfied as it could be on an interim application that they were not financially interested in the outcome beyond their interest as shareholders in the company.

19. Mr Miall submitted - and I accept - that the court must be satisfied that the claim raises more than a *prima facie* case, in the sense that it must be merely arguable. The court must be satisfied that there is a sufficiently serious case, and that there is some appropriate neglect or default from which the company has suffered loss and damage. Whilst the court could not determine the particular allegations on their merits, the applicant for permission must show more than a merely arguable case.

20. Mr Miall also submits that the particular regard which the court is required (by section 263 (4)) to have to any evidence before it as to the views of members of the company with no personal interest (direct or indirect) in the matter derives from the consideration which applied under the former law of whether the claimant is being improperly prevented from bringing a claim. Mr Miall submitted that the court should be exceptionally slow to interfere with the expressed views of disinterested members of the company. He referred me in particular to observations on the old law by Knox J in the case of Smith v Croft (No 2) [1988] Ch 115, in particular at page 185 beginning just above letter B. The question which had to be answered in determining whether the former rule in Foss v Harbottle applied to prevent a minority shareholder seeking relief as plaintiff for the benefit of the company was whether the plaintiff was being improperly prevented from bringing the proceedings on behalf of the company. If it was an expression of the corporate will of the company, by an appropriate independent organ, that was preventing the plaintiff from prosecuting the action, he was not improperly, but properly, prevented, and so the answer to the question would be no.

21. The judge was unconvinced that a just result was to be achieved by a single minority shareholder having the right to involve a company in an action for the recovery of compensation for the company if all the other minority shareholders were, for disinterested reasons, satisfied that the proceedings would be productive of more harm than good.

22. Mr Miall accepted that the common law test of wrongdoer control was no longer a complete bar to a derivative action; but, nevertheless, because of the provisions of section 263 (4) it remained an important factor. It should be for disinterested members of a company to decide whether the company should bring a claim. There was no reason to believe that apparently disinterested shareholders were expressing their views otherwise than for the company's benefit, provided of course that the court was satisfied, or as satisfied as it could be on an interim application, that the allegedly disinterested shareholders were not financially interested in the outcome of the proceedings beyond their interest as company shareholders.

23. Mr Miall submitted that where the defendant directors were very much in the minority of shareholders, the views of disinterested shareholders were a factor to be given particular weight. He took me to observations of Judge Pelling in the Stimpson case (previously cited) at paragraph 46. There Judge Pelling identified one final factor as being of significance:

> "Under the old law if there was no wrongdoer control of the company, permission would be refused for the obvious reason that in the circumstances there was no need for derivative proceedings to be commenced. It was submitted on behalf of the claimant that these principles do not appear in the statute and therefore are no longer relevant. I am doubtful if that is correct. If the statute is followed strictly, the court is required to consider whether a *prima facie* case is established - see section 261(2). In considering that question, the court is bound to have regard, not merely to the factors identified in sections 263(3) and (4), but to any other relevant consideration since sections 263(3) and (4) are not exhaustive. It is open to the first claimant to

requisition an EGM, obtain if he can a replacement Board and that Board can if it judges it appropriate to do so, applying the duties imposed upon them by section 172, authorise the litigation. This factor is at least a powerful one that negatives the giving of permission and may be overwhelming."

24. Mr Bridge in the course of his submissions has identified the decision of the Inner House of the Court of Session in Wishart v Castlecroft Securities Ltd [2010] SC 16. That authority was considered by Roth J in the case of Bamford v Harvey [2012] EWHC 2858 C(h) at paragraph 27 and following. Roth J had previously cited the observations of Judge Pelling in Stimpson to which I have just referred. Roth J referred to the submission of counsel in the case and (at paragraph 29) he accepted that wrongdoer control was not an absolute condition for a derivative claim. If it were, it would have been specified as such in section 263(2). Although Wishart v Castlecroft Securities Ltd was not technically binding upon him, Roth J considered it to be a very strong persuasive authority, and something he would respectfully follow; but he did not see anything in the opinion in the Wishart case to suggest that the potential for the company itself to commence proceedings was not a relevant consideration in the exercise of the court's discretion. It therefore seems to me that the views of Judge Pelling remain good law.

25. The views of a disinterested body of the company's members are a relevant consideration to be taken into account, as is the fact that there is no wrongdoer control of the relevant company. That I think is sufficient by way of legal background.

26. I have had the benefit of detailed written submissions from Mr Bridge and from counsel. Mr Bridge has produced a written skeleton argument extending to 37 paragraphs and dated 9 June 2015. He has also produced a document dated 31 May 2015 which is described as Further and Better Particulars of Claim. It was accepted before me that regard could be had to that as a way of elucidating the terms of the two sets of Particulars of Claim which accompanied the original claim form.

27. It is appropriate at this stage to say a little about the way in which the claim is formulated. I refer to the set of Particulars of Claim that was served following service of the claim form and which is dated 10 December 2013. At paragraphs 11 and 12 Mr Bridge outlines the basis of his claim. Quoting from paragraph 11:

> "In the last seven years the claimant believes the first defendant has attempted to take control of the company, by removing and replacing management in order to protect his position. The first defendant has gone on a reckless acquisition spree which has cost the company a considerable amount of money and sought to hide the exact costs from investors. The market has been misled as to the availability of their new products. The claimant has uncovered misleading and or false statements made by the directors, there is evidence of share price manipulation which is illegal and further illegalities with regards to company affairs not least of which is dissemination of information to select shareholders. The company have attempted to make a claim against various members for alleged defamation against the first defendant the Chairman, such action was without merit and the claimant believes the directors have unlawfully used company funds in the process. The directors have implemented unfair bonus schemes, and railroaded them through without

proper consultation and failed to seek a shareholder resolution. There is evidence the company has been defrauded. The structure of the company has been rigged in an attempt to prevent shareholders from taking action against the directors through the normal organs of the company. The shareholder base has been corrupted by the first defendant the Chairman. The directors have failed to provide a fair and proper market in Elektron stock; the shares are illiquid. As a consequence of all the aforesaid actions the claimant has no other course than to seek the court's intervention in these matters. As the matter is extremely complex the claimant thinks it is important for the court to have a better background of the matter, this is outlined below."

At paragraph 12 the claimant makes it clear that he would rely on a Draft Particulars of Claim sent to the company on around 24 June 2013.

28. At paragraph 36 of the December Particulars of Claim the claimant provides a further overview, he says that:

> "The company directors are not conducting the affairs of the company in a fair, transparent and lawful manner. There is overwhelming evidence of the company providing false and misleading information to the market; one or more of the defendants have been deceitful. There has been reckless conduct on behalf of the defendants; the company has been mismanaged, and the company finances placed at risk. The company has suffered considerable loss and damage. The board of directors are not acting independently for the benefit of the company and all its members. One of the defendants, the CEO has been made a director of the Chairman's private company; the claimant believes this has been done to protect each other's positions. The directors are paying themselves excessively for their poor performance. When the complainant made representations to the company in 2011, and warned investors what was happening in the company, the claimant was met with threats of a claim for defamation. The claim was later abandoned after the claimant responded that it was without merit and an attempt to prevent the claimant from speaking out. The defendants in this matter have and are treating shareholders in the company with contempt."

The claimant has provided more detail in the Draft Particulars of Claim.

29. Remedies are addressed at paragraph 47:

> "The claimant seeks:
>
> (1) An order that the affairs of the company be placed in the hands of the court pending a hearing for the removal of a number of directors and or appointment of a temporary chairman or CEO.
>
> (2) An order for full disclosure of the terms of the JSOP; minutes of board meetings and any other inquiry necessary to establish the loss and damage to the company;
>
> (3) An order that the company must not buy back shares, or permit the Employee Benefit Trust to buy or sell any shares, save without leave from the court.

(4) An order that the directors do correct any false or misleading information which has been placed in the market or on its website or any other literature therein whether it be broker reports or other financial statements and sales and marketing literature or any product information.

(5) An order for payment to the 'company' of such sums as shall be found to be due on the taking of any inquiry;

(6) Such further consequential or other accounts or inquiries as may be necessary;

(7) An order that the JSOP be suspended and or made to be unlawful; the directors to compensate the company for the costs of its implementation;

(8) An order for suspension or made to be unlawful other share option schemes which have been implemented unfairly or unlawfully.

(9) An order for the termination of a director or directors' contract of employment for any said breach of a fiduciary duty and or gross negligence, deceit, and or unlawful or illegal conduct; and or the directors be disqualified under the directors' disqualification act.

(10) An order that the AGM in July 2012 and July 2013 be made unlawful.

(11) An order for payment to the 7th Defendant, the 'company', of equitable compensation, or alternatively damages for breach of duty;

(12) An order for payments to the company of interest on the said sums at such rate and such a period as the court shall think fit;

(13) Further or other relief;

(14) An order that the Claimant be indemnified out of the assets of the Company in respect of the legal costs of the derivative claim;

(15) That provision is made for costs of the action."

30. In his recent Further and Better Particulars of Claim Mr Bridge itemises the breaches on a non-exhaustive basis in the following terms:

> "(Inaudible) or unfair share purchase; dissemination of information; failure to supply and wrongful supply of company information; mismanagement of companies within the Group; sale of companies and shares at an undervalue; wrongful misappropriation of company time and money; breach of directors' service contracts; market manipulation; loss and damage caused and restitution sought." [quotation unchecked]

31. Mr Bridge summarises, and concludes, at paragraph 41 by stating that he has particularised as much as is possible with regards to any wrongdoing by the

defendants with the restrictions placed upon him by his personal problems and health issues, bearing in mind his litigant in person status. The extent of the wrongdoing by the defendants has been too considerable to cover every single act.

32. As I have mentioned, Mr Bridge produced a detailed written skeleton argument which I have pre-read and which I read again during the course of his opening address. Following on from the application by Mr Bridge to admit further evidence, the hearing began at 2.00 yesterday afternoon. Mr Bridge addressed me orally for about two and a half hours. During the course of his address, he submitted that the court could not rely on the votes of members because the voting base or structure of the company had been compromised. He asserted that Mr Daley, the 1st defendant, had been to see another signification shareholder, Mr Slater, and had provided him with price sensitive confidential insider information, in breach of the Companies Act and AIM rules. Mr Bridge believed that Mr Daley had done the same with other shareholders. In reply he likened it to bribery. Mr Bridge believed that the company directors were not acting independently because the matters which he [Mr Bridge] had raised were so serious that they could not properly be ignoring them.

33. It was impossible for Mr Bridge to propose any resolution for consideration by the shareholders: first, because it was impossible to know how many shareholders had been contacted, and thus had become tainted; and, secondly, because Mr Bridge had been portrayed by the company in an extremely bad light. It was said that a number of directors had increased their voting power through buying shares when they had price sensitive information.

34. It was asserted that the 1st defendant, Mr Daley, and another large shareholder, had formed a concert party to prevent a bid for the company from going ahead. The share capital of the company had been reorganised in such a way that selective shareholders had a far bigger stake. The company was not being run for the ordinary shareholders but for that selective group of shareholders, the majority of whom were against Mr Bridge's claim proceeding.

35. Mr Bridge specifically submitted that he could not call an Extraordinary General Meeting because the shareholder base had been corrupted and the share capital had been reorganised so as to prevent him from raising effectively these serious issues through the constitutional organs of the company. He also posed the rhetorical question: how could ordinary shareholders comprehend the issues?

36. There had been a fund raising which had involved market manipulation in order to keep the share price high. There had been oppression by large shareholders against the smaller shareholders, and important information was being conveyed only to selected shareholders, and not all of the shareholders, contrary to the rules of the AIM. He emphasised that although the Board was supposed to have considered the issue independently of the defendant directors, there was no evidence of what advice the company had received from its lawyers or of what the company had effectively done.

37. The JSOP had been implemented without any shareholder resolution and there had been no good reason for this. He suggested that the defendant directors who remained in the action, and, indeed, the whole Board, were running the company like a private

company, ignoring the interests of shareholders. He emphasised that allowing the claim to go on would put pressure upon the company to right these wrongs. Once permission to proceed was given, the company's insurers would want to get the claim settled.

38. As for suggested damage to the company's reputation, that had already been caused because the City had lost faith in the company. As I say, Mr Bridge addressed me for about two and a half hours.

39. Mr Miall began his response for the remaining individual directors at just before 4.30 yesterday afternoon, and he addressed me until 5.20 and then again from about 25 to 11 this morning until about 10 to 12. Mr Miall addressed me for two hours in all.

40. It was his contention that the application should be dismissed at this stage. Aside from being incoherently pleaded, he submitted that the claimant had failed almost entirely to substantiate the numerous, and often very serious, allegations vaguely contained within the pleading, and he had provided less, if any, cogent evidence of wrongdoing. It was also said to be equally difficult to see how the claimant claimed that specific loss had been caused to the company, as opposed to claiming that its shareholders had been prejudiced by poor management, or what that loss might be.

41. Mr Miall contended that permission must be denied on the mandatory ground under section 263 (2) (a) on the basis that a reasonable director, acting in accordance with section 172 of the Companies Act, would not continue the claim. That was said now to be borne out by the recent decision of the independent board.

42. Alternatively, permission should be denied in any event, taking into account the factors present in this case under subsections (3) and (4) of section 263, and, most particularly, because a significant majority of all independent shareholders who had been consulted had stated their opposition to the litigation continuing, and not one of them supported it.

43. With reference to Mr Bridge's two existing Particulars of Claim, Mr Miall said that apart from being largely repetitive, but not identical, both sets of Particulars consisted of vague, and often rambling, allegations. The case against any of the defendants, and particularly the 2nd, 3rd and 5th defendants, was said to be at times unintelligible, and certainly not coherent, due to the absence of particularity. The further particulars of loss were said not to assist much, although at least now headings of types of claim were provided.

44. There was said to be no attempt by the claimant to explain how he believed losses due to the company of several million pounds might be established. The Particulars were said largely to fail to identify specifically what breaches of duty were alleged to have been carried out by the named defendants, and which of them. That was said to be not just a pleading matter but fundamental in the light of section 260. Absent a claim based upon a breach of duty by a director, no derivative claim could be brought at all; and it was incumbent on the claimant only to identify specifically the claims being made. That had not been done. By way of example it was said that it was not sufficient simply to state that the claim to (inaudible) the approval of the JSOP was in

breach of the defendant's duties to the company. He must say precisely why that was so, and then deal with resulting causation and loss.

45. It was recognised that Mr Bridge was obviously aggrieved at what he sees as the unrealised reduction in the value of his personal investment in the company owing to a share price which was currently lower than it had been in the past; but the point was made that a reduced share price did not of itself demonstrate any breach of duty by a director. Further, the case was said to be unusual in that the company was a plc. Share prices were affected by numerous factors, many of which were said to be outside the control of the Board; and a fall in share price could not of itself mean that the company had suffered a loss. Indeed, the assets of a plc might increase while share prices decreased.

46. The court should be particularly astute to the fact that the claimant had seldom attempted to show how the company had in fact suffered loss, or how any such loss might be quantified. The court was invited to note that in so far as the claimant was actually aggrieved at the state of his investment in the company, he had failed to prevent any potential loss by selling his shares at any stage in the years when the price was much more favourable than it currently is. In any event, it was said that a derivative claim could not properly be used by a shareholder to seek personal redress for the loss in value of his own shareholding merely because he considered, in hindsight, that the Board might have done a better job.

47. Mr Miall submitted that the court should be satisfied that no director acting in accordance with section 172 would seek to continue the claim. He addressed first the merits of the claim against specific defendants. He said it was improper for the claimant to commence proceedings against (now) four individual defendants unless each was accused of a clear and separate breach of duty. That was because it was a fundamental right of the defendant to know the case against him. The fact that allegations were made against one director did not mean that another was liable merely by having been on the Board. Equally, if the accusation was that the Board as a whole was in breach of duty, such allegation must be made expressly in relation to each member of the Board at the relevant time, and explaining how such liability arose. It was said that identifiable and/or pleaded claims were almost entirely absent as against the defendants other than the first, Mr Daley.

48. Mr Miall proceeded to address the claims against each of Mr Wilson, Mr Franklin and Mr Acland. He submitted that there was no adequately pleaded case against any of them, and therefore no basis upon which any director acting in accordance with section 172 would seek to continue the claim against any of them. He submitted that it was virtually impossible to try to extract from Mr Bridge's voluminous documents the true nature of his case so that the merits could be considered with any comprehension. He submitted that the defendants should not be required to attempt to decipher what was being alleged against them and what evidence, if any, supported those allegations.

49. In his oral submissions Mr Miall began by submitting that permission should be refused, first because the claimant had not made out a reasonably arguable claim against the 2nd, 3rd and 5th defendants; and, secondly, because the court was mandated to refuse permission under section 263 (2). That was because there was an absence of

prima facie merits, particularly in relation to questions of loss and damage to the company, the views of shareholders, the views of independent directors, the likely financial cost to the company of proceedings, the adverse effect on the reputations of the individual defendants and of the company, and the effect of this action in the market place, and, finally, the likely effect on staff and future employees. Mr Miall elaborated on those submissions in his written skeleton argument.

50. Alternatively, the claim should not be permitted on discretionary grounds. In addition to the factors relied upon in support of the mandatory bar, Mr Miall also relied upon the absence of any challenge to the Board through the proper constitutional channels of the company, and the availability of alternative relief.

51. He addressed in detail the pleaded claims against Mr Franklin, Mr Acland and Mr Wilson; and he pointed to the fact of a settlement agreement which had been concluded when Mr Franklin left the company on 8 October 2013. Clause 11.4 of the agreement had the effect of releasing Mr Franklin from these claims, particularly in the light of the fact that the settlement agreement had been entered into after, and with knowledge of, the terms of the Draft Particulars of Claim which had been dated 24 June 2013. Mr Miall pointed to the absence of any challenge by Mr Bridge to the settlement agreement. He said that since the company could not proceed against the 3rd defendant in any event, the claimant would be in no better position.

52. He specifically addressed the matters in relation to each of Mr Acland and Mr Wilson separately relied upon in the Particulars of Claim. He submitted that none of them amounted to any proper breach of duty owed to the company which had caused any loss to the company. When he came to reply, Mr Bridge referred me to the terms of paragraph 10 of the original Draft Particulars of Claim which asserted that one or more of the directors was in clear breach of their duty to the company under the Companies Act 2006 and were jointly and severally liable to the company in respect of those breaches and that the company had suffered considerable damage. That, he said, made it perfectly clear that if there was wrongdoing by any particular director, the other directors should be held jointly liable, particularly if they had knowledge of what was going on at the time. Whatever Mr Daley had done was said to be the responsibility of the entire Board; they were all said to be acting together, so it was not appropriate in relation to defendants 2, 3 and 5 for the court to disregard the allegations directed to Mr Daley himself.

53. I think I have adequately summaries Mr Miall's submissions yesterday afternoon. This morning he went through each of the allegations identified in the recent Further & Better Particulars of Claim. The thrust of his submission was that whilst the court could not conduct a mini-trial, it could take a view on the merits of the pleaded claim in the light of the evidence adduced by the company, and it should form a view to the relative strength of the claim when deciding whether to apply the mandatory bar in section 263 (2), or refuse to allow the claim to go forward by reference to the factors identified in section 263 (3) and (4), and in accordance with the court's general discretion in all the circumstances of the case.

54. Mr Miall emphasised that much of what Mr Bridge had said in his submissions, both oral and written, had ignored the evidence put in by each of the individual defendants, and by and on behalf of the company, as to the strength and merits of Mr Bridge's

claims. Mr Bridge was also said to ignore the difficulties in establishing relevant loss to the company, as distinct to himself and other individual shareholders.

55. Mr Oram had also had produced a detailed written skeleton argument. The thrust of it was that the court ought to refuse permission to continue the claim essentially for six reasons, although two of them could be treated together. The first was that the members were against the claim continuing. The shareholders had expressed their views in general meeting and also in specific consultations by the company. They did not support the action continuing. Mr Oram elaborated on that at paragraphs 9 through to 27 of his written skeleton argument.

56. The largest shareholders had been consulted by the company in April 2014. The process had been described in Mr Reeves's witness statement. A letter drafted by the company's legal advisors had been sent initially to selected shareholders, and then to all of the largest shareholders, holding at that time more than 1.9 per cent of the issued shares. The consulted shareholders represented 63 per cent of the entire issued shares. Holders of 49 per cent of the entire issued share capital did not support the continuance of the claim. If the shares held by the claimant and the defendant directors were excluded, the consulted shareholders represented holders of 83 per cent of the remaining issued share capital. Of those shares, holders of 56 per cent did not support the action. None of the consulted shareholders supported the claim.

57. Secondly, the members had also expressed their views at the last Annual General Meeting of the company on 31 July 2014. As a result of this litigation, the 1st and 2nd defendants, Mr Daley and Mr Wilson, had put themselves up for re-election as directors. (The 3rd and 5th defendants, Mr Franklin and Mr Acland, had by then already ceased to be directors of the company.) Each of Mr Daley and Mr Wilson was elected with overwhelming support. Their re-election was supported by more than 97 per cent of the votes cast. Further, voting turnout was higher than in recent years, with 69 per cent of issued shares being voted compared to percentages lower in more recent years. The way the shareholders had exercised their votes at the Annual General Meeting on 31 July 2014 was said to corroborate the validity and the outcome of the consultation exercise. Not only, therefore, was there a numerical majority of the independent shareholders against the continuation of the action, but they also supported the current directors in their posts. That was said to be a powerful factor, and almost a conclusive one, against the grant of permission to continue the claim.

58. In the course of his oral address, Mr Oram took me to the minutes of that Annual General Meeting. It was quite apparent from those minutes that Mr Bridge had asked a great many questions which raised many of the concerns he seeks to pursue by way of this derivative action. Indeed, such was the number of questions that Mr Bridge posed of the Board that the minutes record that a named shareholder expressed the view that it was patently obvious from the proceedings that no response given would satisfy Mr Bridge. He had commented that Mr Bridge had already instigated legal action which would cost the company time and money and which disturbed him greatly. The shareholder said that he was as disgruntled as anyone with the company's share price over the previous few years but that it was his opinion that if the shareholders wanted to support the Board, they should do so and let it get on with the job of improving the business. Mr Oram pointed to the fact that that in fact was

what the shareholders voting at the AGM had done in terms of re-appointing the 1st and 2nd defendants to the Board.

59. The second reason advanced by Mr Oram, on behalf of the company, for refusing permission to continue the claim was that the company, through its independent board, was against it continuing. Following the release from this claim of the 4th and 6th defendants, a quorate independent board had considered whether to continue the claim. They had met on 5 May 2015, and the company's chief financial officer, Mr Weatherstone, had exhibited the minutes of that meeting to his witness statement. The chairman, Mr Weatherstone, had explained that the purpose of the meeting had been for the Board - which for this purpose comprised Mr Weatherstone, Mr Harris and Mr Piper (the latter two being then executive directors of the company) - to review the different elements of Mr Bridge's Particulars of Claim and to consider whether it was in the company's best interests to continue the claim against Mr Daley, Mr Wilson, Mr Franklin and Mr Acland in the light of the evidence in response from the directors, the professional advice received by the company, the views of shareholders, the likely length of the proceedings and the implications for the business.

60. At paragraph 3 the Board minute recorded that much of the contents of the claim was incoherent, but it sought to consider the claim by reference to identified categories of complaint by Mr Bridge. These were summarised as involving complaints about control of the company and its Board, the mismanagement of the company's business, the issuing of shares, and dividend policy and miscellaneous complaints, including misleading the market and market abuse, insider dealing by the directors, the fact that Mr Wilson was a director of Mr Daley's private company, fraud on the company and excessive pay for poor performance.

61. The conclusion was expressed at paragraph 6 of the Board minute:

> "It was AGREED, given the close proximity to the court hearing on 16th and 17th June 2015, that the best course of action was for the Board not to pass any resolution to discontinue the claim, but to defer to the court the question whether or not the proceedings should continue. That said, the Board noted that if a Court date for the permission hearing had not already been scheduled, the Board would, based upon the professional advice received and their discussions above, and in the absence of any further or better evidence from Mr Bridge, have decided that it was not in the best interests of the Company that the Claim should continue."

Mr Oram submitted that that conclusion was arrived at, and was cogently expressed, and constituted a reasoned decision on the part of the company.

62. Mr Oram's third and fourth submissions were that the company was not being improperly prevented from bringing the action, and that the defendant directors were not in control and had shareholder support. Those matters were addressed at paragraphs 30 through to 36 of Mr Oram's written skeleton argument: there was no wrongdoer control.

63. Mr Oram's fifth reason for invoking the mandatory bar to the continuation of the claim was that, on the evidence, there would be no clear benefit from the claim which would override the potential risks and costs of the litigation; and there would be lost management time inherent in pursuing the litigation. That was expanded upon at paragraphs 37 through to 45 of Mr Oram's written submissions.

64. In fairness to Mr Bridge, it is appropriate to record that the company is insured against the costs of pursuing the claim, even as a derivative claim; although in fairness to the defendants, that insurance does not extend to any award of costs, or indemnity for costs, to which the defendant directors (individually named) may be entitled.

65. Mr Oram submitted that for the reasons given in his written skeleton, this was a difficult claim where a real prospect of recovery for the company was not obvious on the face of the papers. He also emphasised that the challenge being advanced by Mr Bridge is in many respects essentially one to the commercial judgment of the directors, in relation to which they are entitled to a margin of appreciation. Moreover, the relief which he seeks in his Particulars of Claim is ill-targeted and unclear.

66. The sixth, and final, reason advanced by Mr Oram for the court to refuse permission to continue the claim is that from the claimant's previous conduct, the carriage of any proceedings cannot be entrusted to him. He has been unable to show moderational judgment in the allegations that he pursues, he has fallen out with lawyers (as he himself mentioned in the course of his application to rely upon further evidence), and he has demonstrated that his health and family circumstances have, at least in part, not permitted him to devote the time and effort necessary to pursue the litigation.

67. Mr Oram submitted that, for all of those reasons, the company should not be required to lend its name to this claim. The balance is said to fall heavily against the continuance of the action. Any benefit that it might bring to the company was insufficient, or insufficiently clear, to outweigh the costs and disruption that it would entail. It was also not an action that had gained the support of the company's members, even those disinterested members.

68. It is, in fairness to Mr Bridge, appropriate to record that in addition to his 1.83 per cent shareholding, Mr Bridge has always had the support of Robert and Susie King, who between them hold some 0.05 per cent of the shares in the company; and he has recently produced evidence of support from Mr Peter Jones, holding 0.16 per cent of the shares, and Mr Andrew Robinson, holding 0.24 per cent of the shares; in other words he has the support of 2.28 per cent of the shareholders in the company. That, however, has to be set against the fact that no other shareholder is known to support Mr Bridge, and there is active opposition to his claim from shareholders holding shares in the percentages I have already outlined earlier in this judgment.

69. Mr Oram addressed me for about an hour in total from about 11.50 to 12.50 this morning. During the course of Mr Miall's address, Mr Bridge had interrupted to indicate that Mr Miall's submissions on the merits of the claim had presented him with a problem as a litigant in person, and had placed him at a significant disadvantage. I indicated that the matter did need to be concluded this day. One and a half days had been set aside for the hearing, and no more. I would need to be in a position to deliver judgment this afternoon. I am not scheduled to be sitting in

Liverpool again until the middle of August; and, in any event, the state of my diary is such that I simply have no ability to hear an adjourned hearing of this matter, which in itself was adjourned from 1 October last year. I have no space in my diary until August. I indicated that I would rise early, at ten to one, which would allow Mr Bridge a little over an hour to gather his thoughts, and that he should expect to be allowed to address me for an hour this afternoon. In the event, Mr Bridge did address me for an hour and ten minutes before I began delivering judgment at ten past three.

70. He made a number of points during his reply. I have already identified one point he made, specifically in relation to the individual defendants other than Mr Daley. During the course of his address he repeated many of the points that he had made yesterday, including the allegations of manipulation of the market in the company shares by its directors, and unfair discrimination against individual shareholders, including himself.

71. He made a point which had previously been made by Mr Oram, which was that an extraordinary feature of this case is that the company in question is not a private one but a public limited company. He emphasised that shareholders had to be protected from what he described as deceit, insider dealing and fraud. He asserted that the major shareholders were set to benefit considerably if this action was not pursued because there was the possibility that, if the present litigation were to be continued, their shares might be confiscated. He concluded by saying that he had already said enough to satisfy the court that no reasonable director in their right mind would seek to do anything other than support the continuation of this action in view of the amount of wrongdoing on the part of the defendants. Those were the submissions.

72. I am entirely satisfied on the evidence and arguments advanced to the court that this is a clear case in which the court should refuse permission to continue this derivative claim. I do so essentially for the reasons advanced by Mr Oram.

73. This is a clear case in which, on the evidence, I am satisfied that the disinterested members of the company, other than the minority shareholders (Mr and Mrs King, Mr Robinson and Mr Jones) who support Mr Bridge, are against the continuation of this action. I reject Mr Bridge's submissions that those who supported the position of the Board are interested in the outcome of this litigation. I am not satisfied that they are interested in resisting the claim in any relevant sense.

74. Moreover, what I am satisfied of is that an independent board of directors has properly considered the claim and has decided that it should not be pursued. As Mr Miall has accepted, the court is unable to undertake a mini-trial. Nevertheless, I am satisfied, having heard all that Mr Miall has said, both yesterday afternoon in relation to Mr Franklin, Mr Acland and also Mr Wilson, and again this morning in relation to the claims generally, that the nature and strength of the claims, when viewed in the light of the evidence filed by the defendants and the difficulties in establishing loss to the company, are such that no reasonable directors would support the continuation of this litigation.

75. It is inappropriate for me to go into the merits of the claim generally. It is sufficient for me to say that, in relation to Mr Franklin, I can see absolutely no answer to the provisions of the settlement agreement, which operate as an absolute bar to the claim

against him. And in the case of each of Mr Acland and Mr Wilson, I do not consider that there are any pleaded allegations specifically directed to them which amount to any *prima facie* case of breach of duty which has caused loss to the company in any actionable sense.

76. The claims against those individual directors were analysed at paragraph 36 of Mr Miall's witness skeleton, and were developed by him in oral submissions yesterday. I can simply see no answer to the points that he made. There is no *prima facie* case against any of Mr Franklin, Mr Acland or Mr Wilson; and in the light of that, no reasonable director could countenance the continuation of the claim against any of them. I do not consider that it is sufficient for Mr Bridge to say that "they are all in it together". I accept the submission that the claim against each of the directors has to be viewed individually, and has to be specifically pleaded with sufficient particularity against each of the directors. It has to be specifically pleaded in relation to each of them individually as to what they knew about any asserted wrongdoing on the part of Mr Daley, and that has not been done.

77. So far as the claims generally are concerned, I can take, by way of example, particularly since it was something emphasised by Mr Bridge, the Joint Share Option Programme ("JSOP"). In my judgment Mr Bridge is simply ignoring the evidence that has been provided by the company as to the circumstances in which that programme was initiated. It was not voted on by shareholders; he is right about that. But that does not make it either unfair or unlawful because there is no specific requirement under section 172 to consult shareholders about it. There is no breach merely because shareholders were not consulted. I am satisfied on the evidence of Mr Franklin that the JSOP was implemented after proper consideration by members of an independent remuneration committee, and with the benefit of appropriate advice from reputable professionals in the person of Deloitte. Moreover, Mr Bridge's complaints about dilution of voting rights do not amount to a loss to the company, but are relevant only to the position of himself and others as shareholders.

78. The failure (inaudible) and impartially to consider and evaluate the company's evidence permeates all of Mr Bridge's submissions. I am satisfied that the court should not compel the company to continue this litigation when the disinterested shareholders are not in support of it, but have demonstrated their continuing support for the principal defendant, Mr Daley, the chairman, and also Mr Wilson, another named defendant, the chief executive officer of the company. As Mr Oram submitted - and I accept - that is not necessarily determinative of the outcome of this application; but the court should attach considerable weight to the commercial judgment of an independent board, supported as it is by the views of shareholders.

79. This is a case in which there are alternative remedies which might be available to Mr Bridge. He submits that he could not command sufficient support to requisition an Extraordinary General Meeting, and he certainly could not command sufficient support to procure the passage of any resolution favourable to the continuation of the present claim; but that, it seems to me, is because the disinterested shareholders do not wish this claim to continue.

80. An extraordinary feature of the case is, as Mr Bridge says, that the company in question is a public limited company, rather than a private company; but shareholders

have to be protected from a minor minority individual shareholder seeking to pursue a claim on behalf of the company of which they are shareholders when they do not wish the company's assets to be applied for that purpose. That is the whole purpose of the derivative claim procedure.

81. I am entirely satisfied that on the evidence there is no sufficiently clear and identifiable benefit from the claim that would override the potential risks and costs of this litigation, not just financially in terms of the potential liability to the defendants if they are successful, but also in terms of the reputational damage to the company and the diversion of management time and effort.

82. I am not satisfied that Mr Miall is justified in his submission that this is a claim that is not being brought by Mr Bridge in good faith. I have no doubt that Mr Bridge genuinely feels himself to be aggrieved by the way in which the company has conducted itself through its Board; but those are issues of corporate governance with which the court should not be seeking to interfere. Where I do agree with Mr Miall is that the complaints which Mr Bridge is advancing are more appropriate to relief by way of an unfair prejudice claim than to a derivative claim. The focus of Mr Bridge's complaints (which are accurately enumerated at paragraph 76 of Mr Miall's written skeleton) are not upon breaches of duty owed to the company, but are complaints that he has been disadvantaged as a shareholder by the way in which the company has been managed and operated by the present Board.

83. That is amply illustrated by the letter to which I was taken from Mr Bridge of 4 May 2015 (Bundle C4/31 and 32). There Mr Bridge wrote to the defendants' solicitor saying that he could see no other alternative but to issue an unfair prejudice action to run alongside his derivative action. He summarised his claim as being that the company's business had been mismanaged; that there had been numerous breaches of directors' fiduciary duties; that there had been illegality and failure to comply with Companies Act 2006; there had been an unfair allotment of shares and rights issues; there had been excessive remuneration and bonuses and a failure to pay reasonable dividends; and there had been breaches of the Articles of Association. All of those matters, he said, could be redressed under unfair prejudice proceedings.

84. It would be wrong, in my judgment, to allow a derivative claim to proceed at the expense of the company, and thus of all of its shareholders, when the real focus of Mr Bridge's complaint is appropriate to an unfair prejudice petition. Moreover, I accept Mr Oram's submission that the way in which Mr Bridge has conducted, and continues to conduct, these proceedings means that it would not be appropriate to allow him to have the conduct of a derivative claim. Certainly that is a view which any reasonable director properly directing himself as to the relevant facts would arrive at.

85. I find Mr Bridge to be a highly opinionated individual who is incapable of any objective analysis of evidence placed before him. In his opening he asserted that there had been considerable corruption within the company, and he went so far as to observe that the directors had breached every single section of the Companies Act in one way or another. In his reply he said that it would not surprise him if the directors had misled their own company's bank.

86. True it is that if he were to be given permission to continue the derivative claim, Mr Bridge would receive an indemnity as to costs which would enable him to instruct legal representatives; but I have no confidence that Mr Bridge would act responsibly in accordance with such appropriate professional advice as he might receive from them. To give him the continued conduct of any derivative claim would, in my judgment, be a recipe for disaster.

87. In an extemporary judgment which has now extended for about an hour and fifteen minutes, and when it is now just after 5.00 pm, it is impossible for me to express further reasons for what is, in my view, a clear decision that the mandatory ground for refusal of permission has been made out. If, however, I am wrong in that, then equally this is a clear case, for all the reasons that both Mr Oram and Mr Miall have given, for the court, in the exercise of its discretion, to refuse permission under section 263 (3) and (4) of the Act. Like Judge Pelling in the Stimpson case and Roth J in the Bamford v Hardy case, this is not a case in which the wrongdoers are in control of the company. This is a case in which the disinterested shareholders, and an independent board, are against the claim continuing, and they are all entitled to take the view that they do not wish to adopt this claim being brought in the name of the company.

88. So for all of those reasons, I accept Mr Oram's submission that the balance falls heavily against the continuation of this action, and that the company should not be required to lend its name to this claim going forward. I will therefore dismiss the application to continue the derivative claim.

(Proceedings)

JUDGE HODGE QC:

89. Having delivered my substantive extemporary judgment I now inevitably have to deal with the issue of costs.

90. I record that there has been no application for permission to appeal from Mr Bridge. Naturally he wishes to consider his position; but he is aware that it is open to him, without having asked me for permission to appeal, to approach the Court of Appeal directly, which he can do in an applicant's notice to be filed within 21 days from today.

91. So all I have to address now is the issue of costs. The normal rule is that costs follow the event, although the court may make a different order. One of the matters that has to be considered is the conduct of the parties. Mr Bridge submits that prior to his issue of these proceedings, he had engaged in considerable communication with the company, and the company and its directors had made no concessions to him, thereby making it inevitable that proceedings would follow. The company must therefore, he says, bear some of the responsibility for the resulting costs.

92. Secondly, he makes the point that he did have the support of some other minor shareholders. It was not he alone who supported the continuation of a derivative claim. The court has found that he was not acting in bad faith. He emphasises that he was not seeking a direct benefit for himself, but was litigating for the benefit of the company and its shareholders and, as a result, it would be unfair for him to be penalised by an adverse costs order, or at least that the burden of that costs order should be attenuated.

93. Thirdly, Mr Bridge relies upon his personal circumstances. He is 65 years old; his health is not too good; his income is limited. Although he has received an inheritance recently, he will need to support himself from that over the next five years until he can afford to draw down on a deferred pension. He does have a mortgage, but it is secured over his shares in the company. Moreover, he has two dependent relatives, and any adverse costs order will inevitably affect them as well as himself.

94. Those considerations are relied upon both in relation to the substantive costs order and also in relation to the application by each set of defendants for a payment on account pending detailed assessment.

95. In my judgment it is appropriate to order Mr Bridge to pay the costs of this litigation. He initiated this litigation; it has been unsuccessful. I really cannot see how it could have been avoided given the attitude that Mr Bridge has taken to pursuing a derivative claim.

96. So far as the basis of assessment is concerned, I am invited to order the costs to be paid on the indemnity, rather than the standard basis, if not throughout the proceedings, at least since the hearing last October.

97. In my judgment, it is clearly the case that Mr Bridge should pay the costs in the exercise of the court's discretion, since he has been the unsuccessful party. True it is that he was seeking to bring these proceedings for the benefit of the company, but the court has held that that benefit should not be thrust upon the company against its will; and in those circumstances there is no reason why the company should have to bear the costs, both itself and through its indemnity to the directors, for Mr Bridge having pursued a course of action which the company did not want, and in respect of which the company's position, and that of its directors, has been vindicated.

98. So far as the basis of assessment is concerned, there is no proper basis for ordering indemnity costs before the 1 October hearing; but it does seem to me that, in the light of what has transpired since then, it is appropriate to order the costs to be assessed on the indemnity basis from 1 October. By that time, and with the benefit of legal representation, Mr Bridge should have seen that his claim was doomed to failure. He chose to dispense with the services of his legal representatives and continued to this hearing. As a result of failing to take advantage of the opportunity to engage in constructive dialogue, or limiting his claim, the costs of the January hearing were wasted; case management directions could have been given, up to a final hearing, on 1 October.

99. But it goes further than that. It seems to me that after 1 October the continued pursuit of this application to continue a derivative claim took the case outside the commercial norm for cases of this kind and merits, in the exercise of the court's discretion, assessment of costs on the indemnity basis. That of course does not give the receiving parties carte blanche in the matter; there must still be a detailed assessment, but it does mean that issues of proportionality disappear from the detailed assessment process after 1 October and, in the event of any doubt as to whether sums were reasonably incurred, that doubt will fall to be resolved in favour of the receiving rather than, as is usual, the paying party.

100. So my order is that Mr Bridge should pay the costs of these proceedings, including all reserved costs because there is no reason to differentiate between them and any other costs; and that he should do so on the standard basis up to and including 1 October, but on the indemnity basis thereafter.

101. As to the application for an order for an interim payment on account, by the new CPR 44.2(8) I am now required to order the paying party to pay a reasonable sum on account of costs unless there is good reason not to do so. Here, whilst I have sympathy for the personal circumstances of Mr Bridge and the possible impact upon his dependent relatives, the fact is that he has caused the company to incur costs, including the costs in respect of which it must indemnify the directors, as a result of his actions; and it does not seem to me that there is any good reason not to make an interim payment on account order.

102. I should not order more than it seems to me will be allowed on a detailed assessment. As regards that, I must bear in mind the basis of assessment, including the fact that it will be on the indemnity basis after 1 October. Bearing that in mind, as against the figure (exclusive of VAT) for the individual defendants of some £110,000, it seems to me that the appropriate payment on account should be £50,000; and in relation to the company, as against a figure of £85,000, the appropriate figure should be £40,000.

103. So I will order an interim payment on account to the individual defendants of £50,000 and to the company of £40,000. The normal rule is that that should be paid within 14 days. It seems to me that, given the amounts in question, I should, in the first instance, allow 28 days, which is twice the normal time. If Mr Bridge wants a further extension of time, he must apply to one of the Chancery District Judges on fuller evidence as to his financial circumstances and means.

104. So that means that, since it is now 17 June, the interim payments on account will be payable by close of business on 15 July.

105. What I will invite Mr Oram and Mr Miall to do is to prepare a minute of order that gives effect to all of that, including my limited grant of permission to rely upon certain further evidence, but not other evidence, yesterday and the final outcome of the hearing today.