



Neutral Citation Number: [2020] EWCA Civ 1104

Case No:A3 2020 0784
A3 2020 0827

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES IN
BIRMINGHAM
INSOLVENCY AND COMPANIES LIST (ChD)
HHJ McCahill QC sitting as a High Court Judge
Claim Nos: CR-2020-BHM-000301 and CR-2020-BHM-00019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/08/2020

Before:

LORD JUSTICE LEWISON
LORD JUSTICE FLOYD
and
LADY JUSTICE ASPLIN

Between:

(1) **IVY LOVERIDGE**
(2) **ALLDEY LOVERIDGE**
(3) **LESA LOVERIDGE**
- and -

Appellants

ALLDEY MICHAEL LOVERIDGE

Respondent

Lance Ashworth QC and Dan McCourt Fritz (instructed by **Messrs Thursfields**) for the
Appellants

David Stockill and Raghav Trivedi (instructed by **Silverback Law**) for the **Respondent**

Hearing date: 29 July 2020

Approved Judgment

Lord Justice Floyd:

1. The Loveridge family own and operate a very successful caravan park business in Worcestershire, Warwickshire and Shropshire. They do so in part through five companies and in part through three oral partnerships at will. The appellants, referred to for convenience of identification as “Ivy” and “Alldey”, started the business, but the next generation, including the respondent “Michael” and his brother “Audey” became involved in the business over time. Regrettably, from May 2019 onwards, irreconcilable differences have arisen within the family between Michael on the one hand and Ivy, Alldey and Audey on the other. So much so that the judge, HHJ McCahill QC, sitting in the Business and Property Courts in Birmingham, found that it was “now utterly impossible for both sides to work together for the common good of the businesses”.
2. This appeal arises out of interim orders made by the judge in two sets of proceedings. The first in time (“the partnership proceedings”) related to the winding up of the three partnerships. The second in time (“the company proceedings”) related to the five family companies. In the company proceedings Michael sought orders under sections 994 and 996 of the Companies Act 2006 (unfair prejudice) and for the winding up of the company on the just and equitable ground (section 122(g) of the Insolvency Act 1986). In the broadest possible outline, the judge made orders until trial in the partnership and company proceedings designed to place Michael in sole charge of all the partnerships and all the companies, and restraining any interference in the businesses of those legal entities from Ivy, Alldey and Audey.
3. At the conclusion of the hearing of the appeal, having risen to consider our decision, we informed the parties that (i) the appeal in the partnership proceedings would be allowed and the judge’s order in those proceedings discharged, and replaced with an order which we will make (the replacement order); (ii) the discharge of the judge’s order would be suspended until 24 August 2020 (or earlier if agreement can be reached on the replacement order); (iii) the replacement order would be to the effect that Alldey and Ivy should be placed in charge of the Riverside partnership, Michael should be placed in charge of the Redstone partnership and Lesa should be placed in charge of the Oversley Mill partnership. The reason for the suspension of the order was to enable the parties to agree the necessary undertakings and cross undertakings to be included in the replacement order.
4. We also informed the parties that the judge’s order in the company proceedings would be discharged, and that our reasons for these decisions would follow in writing. My reasons for joining with my Lord and my Lady in both those decisions are set out in this judgment.

The partnerships

5. The three partnerships are the following:
 - i) Riverside. This is the first and oldest of the partnerships (and not to be confused with the company Riverside Caravan Park (Stourport) Limited (see below). Its business includes Riverside Park, and 5 other parks which are managed from the office at Riverside Park. The current partners are Ivy,

Alldey and Michael. Ivy and Alldey live at Riverside's principal site ("Riverside, Bewdley").

- ii) Redstone. This is the second largest in terms of value, running the site at Redstone, Stourport on Severn. The current partners are Ivy, Alldey and Michael.
- iii) Oversley Mill. This is a more modest operation, involving one site only. There is a dispute about who the partners are. Michael claims he is an equal 25% partner with Ivy, Alldey and Lesa. Ivy says it was never intended that Michael or Alldey should be partners, which was always intended to be Lesa's "own" site.

The companies

6. The companies are described in the introduction to the petition. They are:

- i) Kingsford Caravan Park Limited ("Kingsford"). Michael, Ivy and Alldey each hold one third of the issued share capital and are its directors. Its principal business is owning and operating a caravan park near Wolverley in Worcestershire.
- ii) Breton Park Residential Homes Limited ("Breton Park"). Michael and Ivy each hold 50% of the issued share capital. Ivy and Audey are its directors: Michael is not a director. Its principal business is owning and operating a caravan park near Telford in Shropshire. Ivy says that Michael's shares in Breton Park are held for the benefit of Audey.
- iii) Quatford Park Homes Limited ("Quatford"). Michael and Ivy each hold 50% of the issued share capital and are its directors. The company is a holding company of two subsidiaries (with the same directors), whose businesses are the owning and operating of a caravan park near Bridgnorth in Shropshire.
- iv) Riverside Caravan Park (Stourport) Limited ("Riverside, Stourport"). Michael, Ivy and Alldey each own one third of the issued share capital and are its directors. At the date of the petition it was not actively trading but owned a caravan park near Stourport in Worcestershire which was under development.
- v) Bewdley Caravan Sales Limited ("Sales"). Michael, Ivy and Alldey each own one third of the issued share capital and are its directors. The principal business of Sales is trading in caravans and mobile/residential homes.

7. Apart from these companies, and the partnerships I have described above, individual family members own some sites of their own.

Accountants

8. The family have used an accountancy firm Cognitor for a number of years to manage (but not audit) the accounts of the partnerships and the companies and the tax affairs of the partners and directors. Mr Warman was, and had been for a few years, the partner responsible at Cognitor. He gave evidence in the proceedings below supporting some aspects of Michael's case. Steps were subsequently taken to call a

meeting of the company to remove Cognitor as accountants of Kingsford and Sales, and to replace them with a new firm, Haines & Watts. In the result the meeting was restrained by a without-notice order made by HHJ Barker QC, and continued by the judge's order below. Such a change was effected, however, in the case of Breton Park, by a resolution of Ivy and Audey, the only directors of that company.

The role of Michael in the businesses

9. The role played by Michael in these businesses is the subject of hot debate. In the petition he alleges that “the efforts in building the businesses have been [Michael’s] to the exclusion of his parents” and that it was his enthusiasm, energy and business acumen which is and has been the driving force in building the respective businesses. Michael says that he ran the partnerships and the companies on a day to day basis. He downplays the role of his parents and Audey. He alleges that Ivy’s role was only to hold the banking mandates for most of the companies, but it was Michael who gave her directions as to what to do. He alleges, further, that Alldey did very little.
10. That account of matters is not accepted by Ivy and Alldey. She says that she and Alldey were responsible for the creation of the partnerships, the assets of which grew from some £9,000 in 1973 to some £0.75 million in 1990, long before Michael was involved. The success of the partnerships she contends, is due to the efforts of all members of the family. Michael did not have sole or exclusive responsibility for the day to day running of the sites.

The falling out

11. In May 2019, Audey encountered irreconcilable differences with his wife. Michael became involved in what the judge called a heated discussion with Audey. Michael’s wife, Suehelen was concerned at developments and called the police. The act of calling the police was regarded by some in the family, particularly by Ivy, as an act which was not consistent with the family ethic of resolving matters themselves rather than involving outside agencies. The arguments between the brothers Michael and Audey, and between Michael and his mother, Ivy, got worse.
12. In the second half of 2019 Michael decided that he wanted to purchase a new caravan park called Weir Meadow, in Evesham, in his own name and using his own money. There is a dispute as to the manner in which the opportunity to purchase this site arose, and in particular whether it was an opportunity belonging to the partnership, which Michael would not be free to exploit in his own name. The purchase price was £3.15 million. According to paragraph 50 of Michael’s Petition, “Ivy was particularly vocal in her opposition to the purchase in [Michael’s] own name”. To fund the purchase, Michael decided to withdraw £1.25 million from the account of Sales to which he had access. These sums were removed in December 2019 and January 2020 in two separate tranches of £650,000 and £600,000. Michael claims that he did so because Ivy had refused to release to him funds from the partnerships to which he was entitled. He says that he intended that the sums taken from Sales would be properly accounted for in due course, and that he notified Mr Warman of what he was doing. He relies on the fact that, according to him, other members of the family had in the past withdrawn money from the accounts, and duly accounted for them in year-end reconciliations.

13. In his first witness statement in the partnership proceedings Michael simply adverted, at paragraph 18, to the fact that his desire to purchase the Weir Meadow site had contributed to a change in attitude on the part of his mother. He made no mention of his subsequent decision to use funds withdrawn from Sales to finance his purchase of Weir Meadow. In paragraphs 10 and 11 of his second witness statement in the partnership proceedings, in response to Ivy's accusation that he had misappropriated these funds, he said that he had withdrawn the money because Ivy was denying him access to capital to effect the purchase. He stated further that he believed that Ivy was trying to prevent the purchase out of resentment and spite. In consequence he had withdrawn the money from Sales. A similar account was given by Michael in his witness statement in the company proceedings, at paragraph 15, adding that the withdrawal had been notified to Sales' accountant, Mr Warman.
14. Michael's reply and defence to counterclaim in the partnership proceedings, which was not before the judge, gives a more extended account. First, it is said (at paragraph 14) that Ivy and Michael learned of the Weir Meadow opportunity at or about the same time. It is alleged that, originally, Weir Meadow was to be purchased by a corporate vehicle to be owned 50% each by Michael and Ivy, and that a company, MLIL Limited had been incorporated for that purpose in early 2019. At the time, Ivy and other members of the family had been interested in the purchase of a much larger site at Hill Farm in Bewdley. It is said that it was then agreed that in order to leave more partnership funds available for any such purchase, Michael would buy Weir Meadow on his own. Ivy then transferred her 50% interest in MLIL to Michael but remained a director. She then made it clear that she wanted no part of Weir Meadow, and tried to stop Michael buying it by refusing him access to funds in the partnership. On any view, therefore, the purchase of Weir Meadow in Michael's own name was something which Ivy strongly opposed.
15. As a result of the discovery of the removal of the £1.25 million from Sales, Michael was removed from the banking mandates of Kingsford, Sales and the Redstone partnership.

The partnership proceedings

16. On 17 March 2020 Michael served notice of dissolution of the Riverside and Redstone partnerships on his fellow partners Ivy and Alldey. No notice was served on Lesa who was a partner in Oversley Mill. If Michael was a partner of Oversley Mill, however, the commencement of the partnership action by claim form dated 19 March 2020 would have been an effective notice. Michael made a without notice application for injunctive relief which came before the judge on 20 March. The application was supported by a witness statement from Michael, and by witness statements from the two wardens at Redstone, namely Richard Waite and Linda Brierley. These witnesses said that they predominantly dealt with Michael in their roles at Redstone, and recounted incidents at that site which they attributed to the conflict within the family. There was also video footage of lively encounters between the family members, which the judge examined, which showed Ivy and members of her faction in a bad light.
17. As a result of reviewing that evidence and hearing what was alleged by counsel, the judge granted a without-notice order placing Michael in sole charge of each of the three partnerships. The material before the judge made no mention of the fact that a

part of the reason for the fall out between the partners had been Michael's withdrawal of £1.25 million from Sales to fund a purchase of a caravan site on his own account.

18. The matter came before the judge again with the other side present on 3 April. A part of the argument heard on that day concerned the non-disclosure of the removal of the £1.25 million from Sales. There was also argument about whether the injunctions should be maintained. The judge gave an oral judgment on 7 April 2020, of which we have only an unapproved note prepared by the appellants' solicitors. The judge held that the non-disclosure of the removal of the £1.25 million from Sales was material, not only because it was a large amount, but also because Michael had made allegations against his parents and Audey in his witness statement amounting to accusations that they had themselves used partnership money without his consent. Nevertheless, he rejected the argument based on material non-disclosure because "it was merely a different facet of the same conflict". Had the matter been disclosed it would not have affected his overall assessment of the case. He mentioned the video evidence in particular as explaining why Michael was not being allowed access to funds by Ivy.
19. The judge discounted the possibility of appointing a third party, by which he meant a receiver or manager, to manage the businesses of the partnerships, but concluded that to do so would involve unjustified expense and there was, in addition, no time for that to be done. Accordingly, the question for him was "which of the two factions had to have sole control". He recognised that Ivy and Alldey had created the business and had nurtured it into a thriving business. The business they had created before Michael's involvement was however a different order of business from where it was now. He considered it necessary to decide "who was the driving force behind this business and growth", because if he did not decide that question, "there is a real risk that I could put the wrong party in control and damage the business more than allowing them to run it together".
20. The judge approached the question of interim relief by reference to the well known, three-stage *American Cyanamid*¹ approach. He recorded that there was agreement before him that there was a serious question to be tried, in that the parties were established to be in partnership. He next considered whether damages were an adequate remedy for either of the factions. He decided that they would not, because the damage to the businesses which were ultimately to be sold would, as a result of the breakdown of relations, be substantial and incalculable. He accordingly moved to consider the balance of convenience, to which he considered the following factors to be relevant:
 - i) The video evidence gave him a strong indication that Michael displayed more professionalism than the other protagonists, even allowing for the fact that Michael may have orchestrated the videos and engaged in a certain amount of playing to the gallery.
 - ii) Mr Warman's evidence had provided some limited support for the view that the expansion of the business, particularly the recent expansion, had been driven by Michael, and for other aspects of Michael's case.

¹ [1975] AC 396

- iii) The evidence of Richard Waite and Linda Brierley supported Michael's case.
 - iv) Michael had given substantial undertakings in relation to the conduct of the partnerships' businesses.
 - v) In relation to the partnerships before dissolution, Michael would have been regarded as the managing partner.
 - vi) The fact that Michael had been the driving force behind the recent expansion supported Michael's case.
 - vii) There was a degree of intemperance in Ivy's witness statement.
 - viii) These factors outweighed the fact that Ivy and Aldey had put an enormous amount into the business.
21. By his order of 7 April, the judge accepted undertakings from Michael, amongst other things:
- i) to apply to join Lesa Loveridge as a fifth defendant;
 - ii) until trial or further order:
 - a. to carry on the business of the respective partnerships in the ordinary course of business as they have hitherto been carried on;
 - b. to keep proper accounting records relating to his carrying on of the partnerships' business;
 - c. to instruct the partnerships' accountant to prepare
 - i. a list of the expenditure of the partnerships every calendar month such to be served on Messrs Thursfields solicitors before 14 days have expired following the month end, the first such List being for the month ending 30th April 2020;
 - ii. management accounts for the monthly successive three months periods to 30th June, 30th September, 31st December and 31st March each year, the first being due on 30th June 2020 and in each case to ensure that such accounts are served on Messrs Thursfields within 28 days of the period end;
 - d. to instruct the said accountant and otherwise to give reasonable access and/or copies as reasonably requested in writing from Messrs Thursfields and as soon as reasonably possible of any documents vouchers or records utilised in preparing the said list and / or management accounts;
 - e. to keep safe the capital assets of the partnership or partnerships and not to dispose of or otherwise encumber any such capital assets other than in the ordinary course of business;
 - f. to use the funds standing to the credit of the partnership or partnerships at the partnership's or partnerships' bank only in the ordinary course of business as

hitherto used except that for the avoidance of doubt the claimant is able to take out from the partnerships as drawings for his own use the total sum of up to £2450 per week (£350 per day);

g. to indemnify the defendants from any liabilities arising out of the claimant's conduct of any business of the partnership or partnerships other than pursuant to the normal day-to-day trading of the partnerships in accordance with these undertakings.

22. The relevant parts of the judge's order are as follows:

“1. Until trial or further order the defendants and each of them are restrained from:

(1) Interfering in the businesses of the partnerships;

(2) Harassing or otherwise contacting:

(a) the claimant and/or his wife;

(b) the employees, servants and agents of the partnership or partnerships including the site managers particularly Richard Waite and Lisa Brierley;

(c) the other residents on the respective sites;

(3) removing, interfering with or otherwise damaging or destroying the property of the partnership or partnerships) save that

(a) the claimant will permit the first and second defendants to utilise the funds in the Riverside, Bewdley account

(i) in the combined total sum of £500 per day (£3,500 per week) plus whatever moneys are going into any of the partnerships' accounts by way of pensions of the first and second defendants to meet ordinary living expenses

(ii) plus a combined maximum total of £60,000 plus VAT in respect of the costs of obtaining legal representation or such other increased amount of which the claimant has agreed in writing to be paid directly to Messrs Thursfields solicitors upon their written request (and such sum to be reviewed of the Court's own motion at the Costs and Case Management Hearing)

(all such sums as are mentioned here are to be accounted for as the drawings of the first and/or second defendants in due course).

(b) the claimant, insofar as it is within his power to do so and following his taking of control of the bank accounts, is to ensure that such funds are available and/or provided to the defendants through a bank account of their nomination or as they direct (including if requested an account of their solicitors;

(4) (In the case of the third and fourth defendants) entering or remaining on any of the properties owned by the partnership or partnerships without the written consent of the claimant save for access to and as relates to the ordinary daily living and occupation of their respective homes on the Riverside site in Bewdley and the home of Leesa Loveridge on the Doverdale site. For the avoidance of doubt but without prejudice to the other terms of this Order, the first and second defendants have, as partners, access to all of the partnerships' properties;

(5) Purchasing any item or entering into any financial or other commitment on behalf of the partnership or partnerships without the written consent of the claimant;

(6) (Without prejudice to the aforesaid provisions) utilising any monies or funds of the partnership save those used for the ordinary business purposes of the partnerships and even then, only with the consent of the claimant, and save and on the same terms as aforesaid, namely, that the defendants may utilise the funds in the Riverside, Bewdley account in the combined total sum of £500 per day to meet ordinary living expenses plus a combined maximum total of £60,000 plus VAT in respect of the costs of obtaining legal representation.

2. Paragraph 2 of the Order of 20 March 2020 as varied by Order of 24 March 2020 is continued

(1) insofar as there remains terms to be complied with;

(2) without prejudice to any antecedent breaches;

(3) as continuing and continuous obligations; and

(4) only in the terms set out in the next paragraph.

3. The defendants and each of them shall (unless otherwise agreed in writing by the claimant):

(1) By 2pm on 30 March 2020 return to the claimant, or to where he directs, all books, papers, books of account, computer and IT equipment, data stores of any description belonging to the partnership or the partnerships;

(2) By 2pm on 30 March 2020 deliver up to the claimant any keys of items in the aforesaid list and inform the claimant of

any passwords necessary to access any computer or IT equipment, any data store or data;

(3) By 2pm on 30 March 2020 the first and second Defendants shall use their best endeavours to ensure that any relevant documentation for the change of bank mandates in respect of each partnership account are lodged with the relevant bank, so that the claimant is the sole signatory thereon.

4. The defendants are to deliver up to the claimant by 3pm on Wednesday 8th April 2020 (subject to his undertakings given herein) the heavy plant including a JCB, Hymack and a Dumper truck together with the keys thereof.”

23. The judge refused permission to appeal, but permission was granted by Carr LJ on 25 June 2020.

The company proceedings

24. The main events leading to the service of the company proceedings were the following. On 17 April 2020 Cognitor received a letter informing them of a decision to replace them as accountants.
25. On 29 April 2020 notice was given of a general meeting of Sales on 3 June 2020 with a view to removing Michael as a director, founded on his removal of the £1.25 million from that company.
26. On 4 May 2020, notices were given of general meetings of Kingsford and Sales with a view to terminating the appointment of Cognitor and appointing Haines Watts, in their place. The notices were received by Michael on 5 May, and the meetings were to be convened for 10 am and 10.05 am on 6 May.
27. On 5 May 2020 Breton Park passed a resolution to remove Cognitor and replace them with Haines Watts, signed by Ivy and Audey, its only directors
28. On 5 May 2020 a statutory demand was served on Michael on behalf of Sales demanding the repayment of the £1.25 million he had removed from the account of Sales.
29. Also on 5 May 2020 Michael made an urgent without notice application to HHJ Simon Barker QC sitting in the Companies Court in Birmingham in proceedings naming Ivy, Alldey and Audey and the five companies as defendants. The material before HHJ Simon Barker QC included a partly-drafted petition claiming relief under sections 994-996 of the Companies Act 2006 and a winding up order on the just and equitable basis. HHJ Simon Barker QC granted injunctions over the hearing of the application restraining Ivy, Alldey and Audey from (a) holding board meetings of Kingsford and Sales to remove Cognitor as accountants; and (b) removing Cognitor as accountants from any of the companies and from appointing any other firm as accountants of any of the companies.

30. The application came before the judge on notice on 18 May 2020. In his judgment of 28 May 2020 the judge summarised the case being made in the Petition as follows:

“28. The Petition is based upon the attempts by Ivy and Alldey to appoint new accountants and to remove Michael as a director, the service of the statutory demand on Michael by [Sales] in respect of the £1.25m he withdrew and upon an alleged failure by Ivy to provide cheques to pay outstanding corporation tax liabilities of £198,551.14 in relation to [Sales] and £153,467.37 in respect of Kingsford, despite requests to do so by Michael’s solicitors and Cognitor. It is alleged that this failure has exposed those companies to the risk of a fine or potentially of being struck off. Ivy’s case is that she is willing to issue cheques for those tax bills, but first wants Haines Watts to check them. Those sums said to be owed by way of Corporation Tax to HMRC feature specifically in the draft accounts (dated February 2020) of Bewdley Sales and Kingsford to 31 July 2019.

29. The Petitioner also relied upon alleged misconduct by the three individual Respondents (Ivy, Alley and Audey), which Michael characterised as breaches of my Order dated 7 April 2020 in the partnership action. It is alleged that those breaches were by their very nature harmful to the businesses as a whole and to the interests of the companies, and consequently to Michael as a shareholder.”

31. Having summarised the parties’ submissions, the judge said at [66] that he found the respondent’s submissions more persuasive and compelling. Under the heading “Serious issues to be tried and balance of convenience”, the judge listed a number of provisional and overarching views, which he said amounted at least to arguable issues. These were:

- i) Making all relevant allowances, the video evidence showed Michael to be calm, composed, balanced and professional in contrast to the behaviour of Ivy, Alldey and Mersadie (another sister of Michael and Audey), which displayed high levels of volatility, unpredictability and unprofessionalism.
- ii) Michael was the person who had exercised day to day control of the business of the companies and had been principally responsible for their strategic development.
- iii) A likely outcome of the petition was a sale of the businesses to outsiders or a winding up order. “I simply do not see Ivy and Alldey, at this stage in their careers, wishing to or being able to run these businesses successfully without Michael’s input. This was, accordingly, not a case like *Re Canterbury Travel (London) Limited* [2010] EWHC 1464 where it was plain what form the final resolution would take. It was not decisive that the petition asked as the first form of relief sought that Michael’s shares be bought out. It was specifically alleged in the prayer for relief on the just and equitable basis that a winding up

order would be required. The judge's current assessment was that neither side would be able to buy the other out.

- iv) Notwithstanding the stark conflict of evidence, the businesses would suffer serious harm and their goodwill and value would be damaged if Michael were to be removed as director.
 - v) The judge was "of the view that, until unhappy differences arose in May 2019, all the family members operated on the assumption and expectation, shared and relied upon by Michael, that he was and would remain in charge of operations, and exercise sole management and control, and they would discharge their more limited roles."
 - vi) His assessment of the relative commercial strengths of Michael, Ivy and Alldey was sufficient to persuade him that Michael must remain "solely at the helm".
 - vii) The partnerships and the companies were inter-related. It was inconceivable that one person could run the partnerships and another the companies. The judge then went on to relate the various incidents and threats in relation to the partnerships which demonstrated, in his view, that Ivy, Alldey and other members of the family were seeking to obstruct Michael and see him fail in the sole management of the partnerships. The incidents pointed to hostility towards Michael from some source.
 - viii) There was further evidence of ill-judged and unprofessional conduct by Ivy, through telephone calls made to Michael's witnesses. He rejected a submission that these matters had nothing to do with the company dispute on the basis that it was artificial to draw a distinction between the partnership and company proceedings. "They involve the same family and the same fundamentally family enterprise of running caravan parks, which has been carried on historically through two different business structures. The personalities, dispositions, temperaments, attitudes and conduct in relation to one side of the business are clearly relevant considerations in the other."
32. In a long passage from [105] to [120] the judge dealt with the withdrawal of the £1.25 million from Sales. The judge said:

"113. I cannot and do not overlook the fact and the amount of the funds withdrawn by Michael in December 2019 and in January 2020. Nevertheless, it does not shake me from my view that only Michael alone can now promote the well-being and best interests of these partnerships and companies and that irreparable harm would befall them if Mike were to be removed from any of those in which he is a director. If he were to be declared bankrupt, he could not take part in the management or control of a limited company.

114. The money has not been squandered; it has been invested in land, Weir Meadow in Evesham. This will inevitably form part of the partnership and or company litigation, because of

the allegation that Michael had improperly diverted this corporate or partnership opportunity to his own sole benefit. It is paradoxical, given the dispute about whose opportunity the purchase of Weir Meadow was, that the funds removed from [Sales] went towards its purchase anyway.

115. It is not immaterial, in my view, that Ivy and Alldey, the majority of the board and shareholders in [Sales] have caused the company to serve the statutory demand when it is seriously arguable that their own alleged wrongdoing in denying Michael his capital caused or contributed to Michael's actions.

116. According to the various partnership and company accounts, Michael is asset rich. The risk of the £1.25 million being dissipated is minuscule, given both its investment in land and Michael's successful track record in developing businesses. Moreover, I am not aware of Ivy and Alldey [the] taking any steps to recover this money before my Order dated 7 April 2020. All the partnerships and companies are manifestly solvent. There is no creditor pressure apparent to me.

117. In my judgment, it is not now in the best interests of [Sales] to seek to pursue the statutory demand served in this case and to bankrupt Michael, if there exists some alternative way of protecting or securing those funds to the satisfaction of the court.

118. I am not persuaded that the service of the statutory demand, in all the circumstances of this case, is a bona fide arm's-length commercial decision taken in the best interests of [Sales]. It strikes me more of an act of hostility and bitterness towards Michael designed to secure a tactical advantage in the litigation as a whole.

119. Moreover, even if Michael were compelled to make an application to set aside the statutory demand, I cannot imagine that any judge would be better positioned than I am now to consider whether that demand should be set aside, in all the circumstances of the extensive litigation and cross-claims between the parties.

120. For the moment, the served statutory demand is extant, but I am satisfied that no further action should be taken on it in the name of [Sales] without further order of the court. However, I shall hear further submissions on how the £1.25m can be secured or protected pending trial."

33. The next topic tackled by the judge was the removal of Cognitor as accountants. The judge rejected submissions that Mr Warman was open to criticism for incompetence and lack of even-handedness, including his failure to inform Ivy, and Alldey and others of the withdrawal of £1.25 million from Sales, of which he was aware. He

considered that it would be destabilising, expensive and unproductive for accountants to be changed at this stage, given the undertakings provided as to the supply of regular accounting information. There was therefore no justification for disturbing what he described as the *status quo*.

34. The judge then turned to the payment of outstanding corporation tax to HMRC. He had not seen any rational basis for challenging these sums, which had been specifically identified in the accounts. He characterised Ivy's evidence in relation to these liabilities as wanting "Haines Watts to check the calculations before making the payments to HMRC". He said that, in the light of her hostility, this did not seem to be an obviously acceptable explanation.

35. The judge stated his conclusions as follows:

"151. Having considered all the documents, materials and the submissions of counsel, I am persuaded that: (i) there are serious issues both of Unfair Prejudice and relating to the just and equitable basis for winding up to be tried in the Petition; (ii) damages are not an adequate remedy for Michael because of the incalculable damage the Respondents are causing or might cause to the businesses of the companies; (iii) the balance of convenience and the balance of least risk of irremediable harm, prejudice and injustice all favour the grant of interim relief. Without such relief, I am satisfied that there is a risk that the final relief to which Michael will be entitled at trial will be frustrated. The interim relief will also be tailored to maintain the reality of the status quo."

36. By his order dated 28 May 2020 the judge again accepted undertakings by Michael similar in terms to those which he had accepted in respect of the partnerships, but with two additions of which one, requiring the grant of a charge over the assets of the corporate vehicles used by Michael to purchase Weir Meadow, is material:

"(h) to grant or cause the grant of a second charge as soon as reasonably practicable to [Sales] over the assets or a particular asset owned by Far Forest Limited and/or AMLO Limited as good and effective security for repayment of the sums of money amounting to £1.25 million taken from [Sales] in December 2019 and January 2020 and used in the purchase of Weir Meadow Caravan Park. Whether the proffered security is good and effective shall be determined to the reasonable satisfaction of Messrs Thursfields or in default determined by the Court. This undertaking is without prejudice (1) to the question of whether the petitioner's taking of such moneys constituted a breach of fiduciary duty and (2) his obligation to repay the same."

37. The relevant operative parts of the order read as follows:

“2. Until trial or further order the first to third respondents and each of them are, in respect of any of the Companies in which they are a director or shareholder, restrained from:

(1) Removing Cognitor, accountants of Bromsgrove, Worcestershire as the accountants to any of the Companies;

(2) Removing the petitioner as director of any of the Companies;

(3) Pursuing further a statutory demand served on or about 5 May 2020 purportedly on behalf of the eighth respondent on the petitioner reclaiming sums due from the petitioner;

(4) Interfering in the businesses of the Companies save for formal matters including the signature and approval of statutory Accounts and other formal business as reasonably requested by the Cognitor accountants subject to the variation provision below;

(5) Harassing:

(a) the petitioner and/ or his wife and family;

(b) the employees, servants and agents of the Companies;

(c) the other residents on the respective sites owned and operated by the Companies;

(6) Removing, interfering with or otherwise damaging or destroying the property of the Companies;

(7) Entering or remaining on any of the properties owned and/ or operated by the Companies without the written consent of the petitioner;

(8) Purchasing any item or entering into any financial or other commitment on behalf of the Companies or any one of them except with the written consent of the petitioner.

3. The first to third respondents and each of them shall (unless otherwise agreed in writing by the petitioner):

(1) Subject to the variation provision below, in respect of each and any of the Companies of which they are directors promptly sign and approve any formal Accounts, Returns or other formal document as reasonably required and put to them by Cognitor accountants;

(2) By 2pm on 4th June 2020 deliver up to the petitioner or to where he directs, all books, papers, books of account, computer and IT equipment, data stores of any description belonging to the Companies;

(3) By 2pm on 4th June 2020 inform the petitioner of any passwords necessary to access any computer or IT equipment, any data store or data;

(4) By 2pm on 4th June 2020 the first to third respondents shall use their best endeavours to ensure that any relevant documentation for the change of bank mandates in respect of each of the Companies banking accounts are lodged with the relevant bank, so that the petitioner is the sole signatory thereon.

4. The Court directs the first and third respondents to do all such things and sign all such documents so as to remove Haines Watts as accountants to Breton Park Limited and to do all such things and sign all such documents to re-appoint Cognitor as accounts to this company. If this has not been done by 2pm on 4th June 2020 then the Court, in an interim exercise of its powers under section 996 Companies Act 2006, removes Haines Watts and appoints Cognitor as accountants to Breton Park Limited.

38. Permission to appeal was refused by the judge, but granted by Carr LJ on 25 June 2020. After a remote oral hearing on 6 July 2020 she granted a stay of the company injunction, and expedition of both appeals.

Legal principles

39. The statutory provisions relevant to unfair prejudice are to be found in section 994 to 996 of the Companies Act 2006. Section 994 provides in part:

“(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

(a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(1A) For the purposes of subsection (1)(a), a removal of the company's auditor from office—

(a) on grounds of divergence of opinions on accounting treatments or audit procedures, or

(b) on any other improper grounds,

shall be treated as being unfairly prejudicial to the interests of some part of the company's members.”

40. The deeming effect of subsection (1A) has no application here, because Cognitor were not auditors of the companies. Section 995 relates to petitions on this ground by the Secretary of State, and is also not relevant. Section 996 provides for the powers of the court where the petition is well founded:

“(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.”

(2) Without prejudice to the generality of subsection (1), the court's order may—

(a) regulate the conduct of the company's affairs in the future;

(b) require the company—

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.”

41. A number of uncontroversial propositions can be derived from the authorities cited to this court:

- i) For a petition to be well founded the acts or omissions of which the petitioner complains must consist of the conduct of the affairs of the company: *Hawkes & Cuddy (No 2)* [2007] EWHC 2999 at [202] per Lewison J;
- ii) The conduct of those affairs must have caused prejudice to the interests of the petitioner as a shareholder: *ibid*;
- iii) The prejudice so caused must be unfair: *ibid*;

- iv) A minority shareholder cannot normally complain of conduct which is in accordance with the company's constitution unless he can establish a breach of the rules on which it is agreed that the affairs of the company should be conducted, or the use of those rules in a way which equity would regard as contrary to good faith: *O'Neill v Phillips* [1999] 1 WLR 1092 at 1099 A-B per Lord Hoffmann;
 - v) Although the term "legitimate expectation" has been used in connection with establishing equitable restraint on the exercise of constitutional power, that expression does not have "a life of its own", supplanting traditional equitable principles: *ibid* at 1102 B-F.
42. The just and equitable ground of winding up is to be found in section 122(f) of the Insolvency Act 1986 which states:
- "A company may be wound up by the court if—
- ...
- (g) the court is of the opinion that it is just and equitable that the company should be wound up."
43. Section 32 of the Partnership Act 1986 provides for the dissolution of partnerships at will:
- "32. Subject to any agreement between the partners, a partnership is dissolved—
- (c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.
- In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice."
44. It was common ground that if a dissolution action is commenced by a partner, service of the claim form will be treated as an immediate notice to dissolve: see *Lindley and Banks on Partnership*, 20th Edn. (2017) para. 24.28.

The appeals generally

45. Before embarking on the arguments in the individual appeals it is worth observing, first, that business people are free to choose the legal entities through which they operate their businesses, whether that be through partnerships of various kinds or through limited companies. The corollary of that freedom is, however, absent some agreement or understanding to the contrary, that they accept the legal principles which the law applies to the entities which they have chosen. In deciding a dispute of this nature it is necessary, therefore, to consider separately the partnerships at will and the companies, and to distinguish further between the individual partnerships and the individual companies insofar as there are relevant differences between them. It

should not come as a surprise if the application of the relevant principles produces a different result in respect of the partnerships and the companies as groups, or in respect of individual partnerships or individual companies.

46. Secondly, the different legal principles which apply between partnerships and companies are of significance in this case because, at least in respect of the Riverside and Redstone partnerships, there is no dispute that the partnerships are dissolved by Michael's notice and must be wound up. The way forward for these partnerships is therefore relatively clear, and the interim remedy must be tailored in the light of that fact. In the case of Oversley Mill and of the companies, in contrast, one must have in mind the range of possible outcomes of the litigation, and tailor the interim relief with the likely outcomes in mind.

The companies appeal

47. The appellants in the companies appeal are Ivy and Alldey. Mr Lance Ashworth QC, who appeared for them with Mr Dan McCourt Fritz, submitted, first, that the judge had been wrong to hold that Michael had an arguable case on his unfair prejudice petition. The petition had contained no allegation that Michael had any equitable entitlement to sole management and control of any of the companies, and there was no basis for such a constraint. In those circumstances it had not been open to the judge to hold, as he had done at paragraph 75 of his judgment, that the family members operated on the assumption and expectation, shared and relied on by Michael, that he was and would remain in charge of operations, and exercise sole management and control.
48. Mr David Stockill, who appeared with Mr Raghav Trivedi for Michael, submitted that the objection to the manner in which the case was pleaded in the petition was met by a proposed amendment, which he set out as a footnote in his skeleton argument, but which we were told has in substance been made the subject of an application to amend in the court below. The amendment is to add the following paragraph 49A:

“Given the history and the circumstances set out in this Petition, the petitioner had the legitimate expectations, giving rise to equitable constraints on the respondents’ use of majority control, that he had (cumulatively) (a) the right to be involved in management; (b) the right to manage the Companies solely; and (c) the right to manage the companies without interference and/or destructive interference of the individual respondents;

and further that the individual respondents’ entitlements only amounted to an investment from which they had some, but not immutable, expectation of benefit.

(Whether the same categorises the companies as quasi-partnerships (a matter of legal taxonomy) is neither here nor there – the ultimate control and input into these companies by the petitioner is far more than the usual partnership position, unless the individual partners were to be classed, at best, as “silent” partners).”

49. I would be reluctant at the interim stage to hold Michael to the form of petition which was before the judge if the facts credibly alleged in the petition or in the evidence supported the existence of some equitable constraint of the kind now contended for by paragraph 49(A). I am, however, entirely unpersuaded that the petition or evidence did support the existence of such a constraint. First, it is to be noted, as Lewison LJ pointed out in the course of argument, that the equitable constraint is said to arise from the history and the circumstances set out in the petition. We asked Mr Stockill to identify the paragraphs of the petition on which the equitable constraint was founded. He pointed us to paragraphs 43 to 49. These paragraphs recite the history of the development of the business. I hope I do not do injustice to these paragraphs if I summarise them as allegations that Michael was the driving force behind the more recent expansion of the business through the corporate vehicles of Kingsford (from 2004), Breton Park (from 2014), Riverside, Stourport (from 2016) and Quatford (from 2017). His efforts in expanding the business were “to the exclusion of his parents” who are and were not so business minded. These efforts included sourcing sites, liaising with local authorities on planning and building regulations and licensing, arranging finance and dealing where necessary and appropriate with professionals such as solicitors and accountants. Further, Michael ran the companies on a day to day basis, including the organising, maintenance and servicing of the sites, liaising with staff, employees and contractors and arranging for the collection of rents.
50. All this is of course the subject of challenge. What matters for present purposes is whether, taking these allegations at their highest, they are capable of supporting the existence of the right to continue to carry on these functions if a company, acting through its constitutional rules, wishes to change those arrangements. Mr Stockill accepted that there was no express agreement or understanding that Michael would have that right, but submitted that such an understanding was to be inferred. In my judgment, no such agreement or understanding or any form of equitable restraint can properly be inferred from these facts. It is not the law that progressive and energetic managers, however well they perform their duties to the benefit of the company, acquire entrenched rights not to be removed from their positions if the constitution of the company permits their removal. Such a principle would act as a significant but unjustified restriction on countless companies with dynamic executives from operating their companies in accordance with their constitutions.
51. Mr Ashworth coined the phrase “the driving force fallacy”, by which he meant that the fact that an individual has played an important, and even a leading part in the development of a company’s business, does not entitle him as of right to special treatment under the company’s constitution. I agree that the fact that an individual has had such a role is not a sufficient indication that he is entitled to maintain it in the face of constitutional rules which permit it to be terminated.
52. Accordingly, I would hold that it was not open to the judge to find an arguable case of the equitable restraint on the companies’ powers. As such a constraint forms an essential part of Michael’s section 994 petition, I would accept Mr Ashworth’s contention that Michael has not demonstrated an arguable case under sections 994-996.
53. There is, however, a second remarkable feature of the petition in the present case. As I have said, a petitioner under section 994 must show that there is something in the conduct of the affairs of the company which is prejudicial to the interests of the

petitioner as a shareholder, and that the prejudice is unfair. Apart from the attempts (in one case successful) to change the accountants, in the case of three of the companies concerned, Breton Park, Quatford and Riverside, Stourport there is no allegation at all of anything done by the majority which consists of the conduct of the affairs of the company.

54. The judge thought that the decision to change the accountants was motivated by Mr Warman's involvement in the case on Michael's side. Given that a company may, by a decision taken in accordance with its constitution, change its accountants without justification, I cannot see how the decision in the present case unfairly prejudices Michael's interests as a shareholder, even if the decision was taken for the reason given by the judge. I cannot refrain from observing, however, that it would be surprising if Ivy did not feel she had ample justification for changing accountants when Mr Warman had not notified her of the removal from Sales of the £1.25 million to fund a personal transaction by Michael which she vigorously opposed.
55. The allegation concerned with non-payment of tax liabilities to HMRC is made only in respect of Kingsford and Sales. On this point the judge misunderstood Ivy's evidence. Her evidence at paragraphs 78 to 82 of her witness statement was that she wanted Haines Watts to deal with these liabilities as part of their engagement. Taking that course was, however, frustrated by the grant of the injunction. She has made it clear that she has never had any intention of preventing these payments from being made, and it is impossible to see why she would. No seriously arguable case of unfair prejudice can be founded on this evidence.
56. That leaves only the decision to remove Michael as a director of Sales, and to pursue him by way of statutory demand for the money he has removed from that company. That allegation of unfairly prejudicial conduct cannot of course impact on the four other companies, and therefore support the judge's broad order to place Michael in charge of those.
57. The judge's treatment of this aspect of the unfair prejudice cause of action seems to be bound up in his treatment of the balance of convenience. Before he came to that question, he needed to ask himself whether it was arguable that the decision to remove Michael as a director and pursue him for the money removed from Sales was conduct of the affairs of Sales which was unfairly prejudicial to Michael as a shareholder. In my judgment, if he had addressed that question, the answer would have been in the negative.
58. First, whichever of Michaels' accounts of the Weir Meadow purchase one accepts, by the time of the removal of the £1.25 million Michael was aware that the purchase of that site, which he was proposing to enter into on his own account, was opposed by Ivy, a fellow director and shareholder. It is no answer, therefore, for Michael to say that there was a culture of abstracting moneys from companies and partnerships without prior authorisation. He needs to establish that the culture extended to abstracting moneys in direct contravention of the wishes of his fellow shareholders and board members. I regard that hurdle as insuperable.
59. Secondly, it is no answer to say that he only removed the money because Ivy had wrongly refused him access to money to which he was properly entitled from the partnerships. If he had a right to money from the partnerships, his proper course was

to take steps to enforce that right, not to help himself to the assets of a limited company of which he was a director and in respect of which he owed fiduciary duties. Company law does not have a special rule whereby two wrongs make a right.

60. It follows that, at least on the evidence before us, Michael has no seriously arguable defence to an action by the company for breach of fiduciary duty, and the judge should have so found. I would not go further, as we were urged to by Mr Ashworth, and conclude that the removal of money was dishonest, but dishonesty is not a component of breach of fiduciary duty. The proposition that his removal as director could possibly amount to *unfairly* prejudicial conduct is therefore, in my judgment, unarguable. I would add that I find it difficult to understand how a shareholder can be prejudiced by the action of its board in seeking to restore its assets after a misappropriation. To my mind, recovering those assets can only amount to a benefit.
61. The judge went further and held that the presentation of the statutory demand should be restrained, largely because of Michael's importance to the business and the consequences of a possible bankruptcy. The judge said (see paragraph 117 quoted in paragraph 32 above) that it was not in Sales' interest to pursue the statutory demand. But the court's view of what is in the company's best interests is irrelevant unless the directors are acting in bad faith; and he could not make such a finding on an interim application. He considered that he was in as good a position as any other judge to consider the setting aside of the demand. In the light of Michael's clear breach of fiduciary duty, which the judge failed to find, I would leave any question of restraining the taking of steps on, or setting aside the statutory demand to any application which Michael may choose to make to that end at first instance.
62. The judge understandably formed a highly unfavourable view of the way Ivy and other members of the family had behaved in the video evidence. We were provided with a memory stick and were able to view for ourselves sufficient of that material to show that the judge's view was entirely justified. Ivy's faction have done themselves no service by venting their feelings in this unseemly and physical fashion. To the extent that the judge regarded this material as supplementing the allegations of unfair prejudice in relation to the companies he was wrong to do so. The most it could do is to support the undoubted fact of the irreconcilable differences between those involved in the companies.
63. Faced with the difficulties of attempting to relate any of the scattergun allegations made in the evidence to the conduct of the affairs of any particular company, Mr Stockill reminded us that the judge had found Michael to have an arguable, alternative case based on the just and equitable ground. I regret to say that I found the pleaded and evidential basis for a winding up order based on the just and equitable ground to be somewhat hard to discern either from the judgment or from Mr Stockill's submissions. Although this wide jurisdiction is not to be fettered by reference to particular categories (*Ebrahimi v Westbourne Galleries* [1973] AC 360 at 374,) one would expect a petition by a minority shareholder for a winding up order based on this ground to identify the relevant facts which are relied on, and to explain the basis on which those facts led to the conclusion that it was just and equitable to wind up the company.
64. To the extent that Michael's case under this heading relies on the same equitable constraint on his removal as he relies on for his section 994 petition, it appears to me

to be no more promising. Moreover, a simple breakdown in relations between minority and majority is not sufficient to invoke the ground, absent a deadlock between equal shareholders of the kind dealt with in *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch. 426. In the present case there is no such deadlock, as Michael is in the minority at either shareholder or board level in each of the companies apart from Quatford. I was not persuaded that the just and equitable ground had anything to add to Michael's section 994 petition.

65. Even if I am wrong, and there is some arguable basis under either section 994 or the unfair prejudice ground, Mr Ashworth had a further argument as to why the judge had been wrong to grant the interim relief which he did. He pointed out that none of the final relief sought by Michael would leave him in sole control of the companies. He submitted that, whichever way the petition was decided the overwhelming likelihood was that the majority would remain in control of these companies. He continued that it was therefore wrong in principle for the court to grant an interim remedy which excluded the majority from control in the period until trial, which could be a substantial period, and placed the minority shareholder in control when there was no prospect that the minority would be left in control at trial. The judge had failed to take this consideration into account.
66. In support of this contention Mr Ashworth relied on *re Canterbury Travel Ltd* [2010] EWHC 1464 a company was owned as to 51 per cent by Mrs Collins and as to 49 per cent by her husband, Mr Collins. The company's business was that of a specialist tour operator in Finland for customers from the British Isles. Mr Collins was in charge of the operations in Finland, operating through Finnish companies as subsidiaries, whilst his wife managed the business from its headquarters in England. Prior to the falling out they were both directors with an accountant as a third director. The couple fell out, and Mrs Collins secured a majority on the Board by making new appointments and by the resignation of the accountant. Mrs Collins then proposed resolutions to remove Mr Collins from the boards of the Finnish subsidiaries and appoint herself and her daughter instead. Mr Collins sought to restrain these meetings by interim injunction. Briggs J, as he then was, considered a range of possible interim regimes before concluding at [29] to [30]:

“In conclusion, all interim relief in circumstances of this type needs to be addressed by reference to the possible final outcome and to the duration of the likely interim period. In the present case the interim period is, so far as I can see, of wholly uncertain duration...

The final result at least so far as the perception of the Companies Court is concerned is as follows. Either Mrs Collins succeeds on the petition in which case she will resume, if injunctioned in the meantime, or otherwise continue, undisputed majority shareholder control of the companies and their businesses, or Mr Collins wins, but with the prospect of obtaining most likely a remedy not of being kept indefinitely in control of the Finnish business, but of being given proper compensation. In other words, whichever way the matter were to turn out in the Companies Court, the overwhelming likelihood is that Mr Collins would not be left in control of any

part of the business, whether that of the company itself or its subsidiaries. It follows that if that is the overwhelmingly probable final outcome whether Mr Collins succeeds or fails on his petition, an interim regime designed to prolong the opposite state of affairs namely that he does remain in control of the business, is on the face of it not a very attractive one.”

67. Briggs J went on to say that there was no point in delaying the handover to Mrs Collins where he had not found that there was a risk of irreparable damage to the value of the Mr Collins’ shareholding beyond that which could be compensated in damages.
68. The judge distinguished *re Canterbury Travel* on the basis that in that case the majority shareholder there was a very capable businesswoman, and the damage by exclusion of Mr Collins was measurable. In the present case, the majority were unable to run the companies, whilst Michael was, and the business, and accordingly the value of Michael’s shares, would be prejudiced by allowing the majority to be involved.
69. I do not accept that there is a general principle that a petitioner cannot obtain interim relief designed to place him in charge to the exclusion of the majority in an appropriate case. As Briggs J recognised, if the irremediable damage to the petitioner’s interest is so great that it would be beyond that which could be compensated for by an assessment of damages in the proceedings, then it is in principle possible to grant interim relief even though the final relief is only about money. The distinction which the judge is making is therefore a theoretically valid one. Where I part company with the judge is how, on the evidence before him, he could conclude that a business of this nature, in which Ivy and Alldey had been involved for many decades, could be so seriously damaged by their retaining control of it, as to justify the conclusion that Michael could not be compensated properly in damages for any loss in value of his shares.
70. As Mr Ashworth pointed out, the businesses of the companies are not complex. With the exception of Sales, it involves owning and operating sites, collecting rents and general site maintenance. There is no evidence that these companies have plans to expand, requiring Michael’s claimed expertise in growing businesses, nor is there any evidence that the current conflict has caused any damage to the companies.
71. So far as the damages calculation is concerned, there is no doubt that it will be possible to estimate the value of the companies now. If there is a sale of the companies to a third party at a lower figure, that will provide a measure of the damage, if any, caused by the interim administration of the majority. A similar calculation applies if the ultimate outcome is a buyout by the majority, a possibility that I cannot reject as readily as the judge did.
72. It follows that even if I had upheld the judge on the existence of an arguable case, I would not have considered this to be a case where it would be just or convenient to grant an injunction, in the absence of any plea in the petition for relief which would leave Michael in control.

73. It was for those reasons that I joined in the decision to discharge the judge's order in the company proceedings. The effect will be to restore normal company law rules to the conduct of the affairs of the companies.

The partnerships appeal

74. The appellants in the partnerships appeal are Ivy, Alldey and Lesa, Lesa having been joined to the proceedings in accordance with the judge's directions, albeit subsequent to the hearing before him.
75. The first thing to note in relation to the partnerships appeal is that the different legal regime which applies to partnerships means that, at least in the case of Riverside and Redstone, the outcome of the proceedings, namely a winding up of the partnerships, is not really in doubt. The task for the court in respect of those two partnerships is how they should be managed pending their winding up. In the case of Oversley Mill there is at least the possibility that Michael's claim to be a partner will be defeated, in which case the partnership will continue without his involvement.
76. The second thing to note is that the partnerships are indeed separate entities from one another and from the companies. They draw up separate sets of accounts, have separate bank accounts, separate employees and each has a separate register of assets and they have distinct income flow and liabilities. I would add that the sites managed by the partnerships are geographically separated.

Oversley Mill

77. Oversley Mill is run, on a day to day basis by Lesa. Michael makes no complaints about the conduct of Lesa in his pleadings or in his evidence. Michael has at most a 25% interest in the Oversley Mill partnership, if indeed he is a partner at all.
78. Mr Ashworth submitted that the judge had failed to have regard (both in the case of this partnership and Riverside and Redstone) to the principle of majority rule. He submitted that absent exceptional circumstances, and if the court is not going to appoint a receiver or manager, an order which placed a minority partner in charge of a business pending its winding up was wrong in principle. The reason for such a principle would be that the majority partners, by definition, have the most to lose from mismanagement of the partnership.
79. I cannot accept that submission in its full breadth. Nevertheless, there is force in what Mr Ashworth says is the underlying rationale. For the reasons he gives, the court needs to take account, in fashioning an interim remedy, of where the majority share in the partnership lies.
80. Mr Ashworth goes on to submit that the judge was wrong to create a requirement for unitary control which he extended not only to the partnerships but also to the companies. I have, of course, come to a different conclusion from the judge as to where interim control of the companies should lie, so the unitary control point, if it is a good one, would assist the majority partners, and not Michael. However, I think the judge was wrong to start from the assumption that unitary control was a given. The three partnerships are treated as very separate businesses, arrangements which seem to have worked satisfactorily before the unhappy events of the recent past.

81. Mr Ashworth also focused on the judge's use of the driving force fallacy (see above) to guide his selection of who should run the partnerships. As Riverside and Redstone were inevitably to be wound up, there could be no question of their businesses expanding. In the case of Oversley Mill, there was no evidence that its management pending trial required someone with particular expertise in driving the growth of businesses, and it too would be wound up if Michael establishes his case that he is a partner. Its business, like the business of the companies, is not complex. There was no reason to disrupt the *status quo* by taking all control away from Lesa, Ivy and Alldey. Whilst Michael's skills as a businessman were not irrelevant, it was wrong in my judgment to single him out as the only person capable of running any individual partnership, based on his historical role in growing the businesses. His historical role had at most tangential relevance.
82. Mr Ashworth also submitted that Michael had shown himself to be wholly unsuited to managing a partnership by reason of his breach of fiduciary duty in relation to Sales, which he submitted this court should characterise as dishonest. I have already explained why I could not decide that Michael's conduct was dishonest. It remains material that he had removed a very large sum of money from one of the companies against the express wishes of his fellow directors and shareholders, and displayed a distorted and self-interested approach to the principles of corporate governance, but I do not think it would be fair to say that the judge did not appreciate this. The upshot is that both sides would appear to have valid criticisms of the general conduct of the other.
83. I would add that the judge appears to have discounted altogether the potential outcome in which Michael fails to establish that he has an interest in Oversley Mill at all, in which case he would have no say in the future of that partnership. In those circumstances a regime which places Michael in sole control of Oversley Mill pending the trial of the partnership proceedings would be, to borrow Briggs J's phrase from *re Canterbury Travel Limited*, not a very attractive one. This is of course not a case where one can say that that outcome is overwhelmingly likely, but the judge ought to have borne it in mind.
84. For all these reasons I think the judge's approach to the management of Oversley Mill pending trial was flawed. I would therefore set aside his order so far as it related to Oversley Mill. Looking at the matter afresh, to my mind, of the available options, by far the most attractive is to put Lesa in sole day to day control of the site pending trial of Michael's claim.

Riverside and Redstone

85. Mr Ashworth makes similar submissions in relation to Riverside and Redstone. The judge was strongly influenced here by the unitary control approach in placing the same person in charge of all the partnerships and companies and, in selecting that person, relied on the driving force fallacy. He should have had regard to the separate nature of the two partnerships.
86. I agree that the judge's approach was flawed in these ways. Looking at the matter afresh it seems to me that sole control of Riverside should be given to Ivey and Alldey and sole control of Redstone to Michael.

Conclusion

87. It was for those reasons that I joined in the decision to allow the appeals and make the orders I have identified in paragraphs 3 and 4 above.

Lady Justice Asplin:

88. I agree.

Lord Justice Lewison:

89. I also agree.