

Neutral Citation Number: [2024] EWHC 1469 (Ch)  
Claim No:CR-2021-LDS-000639

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

West Gate  
6 Grace Street  
Leeds  
LS1 2RP

Monday, 3 June 2024

BEFORE:

**MR JUSTICE ADAM JOHNSON**

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**IN THE MATTER OF HAGUE PLANT LIMITED (Company Number 01222728)**  
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

BETWEEN:

**(1) MR MARTIN HAGUE**  
**(2) MRS JEAN HAGUE**

Petitioners

-and-

**(1) MR DAVID HAGUE**  
**(2) MS DIANNE HAGUE**  
**(3) HAGUE PLANT LIMITED**

Respondents

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**GREGORY PIPE and MARGARET GRIFFIN** (Instructed by Robert Tranter, in-house solicitor for Martin Hague) appeared on behalf of the Petitioner.

**HUGH JORY KC and ALFRED WEISS** (Instructed by Freeths LLP, Fifth Floor, 3 St Paul's Place, 129 Norfolk Street, Sheffield, S1 2JE) appeared on behalf of the First Respondent.

The Second Respondent, **DIANNE HAGUE**, appeared in person

**JUDGMENT**

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JUDGMENT

1. MR JUSTICE ADAM JOHNSON: This is the first day of the trial of an unfair prejudice Petition. The main protagonists are, on the one hand, the First Petitioner, Martin Hague, and on the other hand the First and Second Respondents, David Hague and Dianne Hague. The Second Petitioner, Jean Hague, is the mother of Martin, David and Dianne. Martin, David and Dianne are all siblings.
2. Their dispute relates to shareholdings in the Third Respondent, Hague Plant Ltd. Martin and Jean between them are minority shareholders in Hague Plant (sometimes referred to as “HPL”), and seek an Order requiring David and Dianne to acquire their shares.
3. By his application, the First Respondent, David, seeks directions limiting the case the Petitioners may put during trial to matters which are sufficiently pleaded in the Petition. The application is supported by Dianne, who acts in person. Three areas are focused on as not being properly or sufficiently pleaded.
4. The first to mention is the pleading between paragraphs 153 and 155 of the Petition, which appears under the heading, "*Causing HPL to be run dishonestly*". Allegations are there made concerning the receipt of payments in cash which it is said were not properly accounted for by Hague Plant, and separately there is an allegation concerning receipt of an amount of £50,000 as payment for submission of a tender, said to have been intentionally drafted so as to be unlikely to be accepted. The Respondents' complaint is about the former allegation, i.e.. concerning payments received by Hague Plant in cash.
5. The second area of complaint concerns paragraph 98 of the Petition. That involves an allegation that David and Dianne as directors of Hague Plant caused Hague Plant to act contrary to advice provided by Hague Plant's legal advisors in two earlier sets of litigation involving the same parties known as Hague 5 and Hague 6.
6. The third area concerns paragraph 185.2.1 of the Petition where particulars are set out, by cross-reference to paragraph 185.1, of an allegation concerning failure to promote

the success of Hague Plant under section 172 of the Companies Act 2006. I will explain this further below.

7. As I say, the application made by the Respondents is in effect that the Petitioners have failed adequately to plead a case in respect of the three matters I have mentioned, and so should be prevented in the course of trial from putting forward any case on such matters, either by way of submission and/or by way of cross-examination. Let me take the points in turn, in the order in which I have mentioned them.
8. I turn first then to the allegations between paragraphs 153 and 155 of the Petition.
9. Paragraph 153 of the Petition, as presently formulated, reads as follows:

*"In breach of each of his duties as a director as pleaded in paragraph 50 above, David has caused and/or permitted with, Martin and Jean infer, Dianne's knowledge and approval, HPL [i.e. Hague Plant] to provide benefits to third parties for cash which has not been dealt with through the Company in the normal way and which Martin and Jean infer has not been passed to HPL nor put through its books. Full particulars cannot be derived from disclosure to date, but the benefits include the cash sale of stone, tiles, wood and other reclamation assets from demolition sites operated by HPL, and/or Prospect Farm when it was occupied by HPL and/or Claywheels Lane and/or Cliffe House Farm."*

10. Paragraph 154 then contains the specific allegation concerning a cash payment to submit a tender intentionally drafted so as to be unlikely to be accepted. That is referred to as a payment to CMEC. As noted, it is accepted by the Respondents that that particular allegation is properly particularised and they make no challenge to it, but the Petition then carries on at paragraph 155 as follows:

*"Martin and Jean infer that in so acting, David and/or Dianne has caused or permitted HPL to be run dishonestly, and in such a way that tax has been evaded, and it is inferred and averred, David and/or Dianne and/or William have taken undeclared cash from HPL. In so doing, David and Dianne have managed HPL in breach of duty which has caused HPL loss in respect of which David and/or Dianne are liable to account."*

11. As regards the requirement for pleading allegations of dishonesty, I was referred to the statement of Buckley, LJ in *Belmont Finance v Williams Furniture* [1979] Ch 250. At page 268B, Buckley, LJ said:

*"An allegation of dishonesty must be pleaded clearly and with particularity. That is laid down by the rules and it is a well-recognised rule of practice."*

That rule of practice has not changed since the decision in *Belmont Finance v Williams* and it is the rule of practice I must apply in this case.

12. I have come to the view, having considered submissions from Mr Jory KC on behalf of the First Respondent and from Mr Pipe on behalf of the Petitioners, and having heard brief submissions also from the Second Respondent Dianne, that the case set out on this topic is not sufficiently particularised. I take the view that I should therefore make a direction in the form sought by the First Respondent.
13. Mr Pike in arguing the contrary case relied on a number of points. One was that he referred to Hague Plant, the company we are concerned with, having had a prior practice of taking payments in cash. That is referred to earlier in the Petition at paragraph 34.1. Mr Pipe also referred to the fact that that practice has been recognised in two earlier Judgments involving the same parties, namely the Judgment of HHJ Behrens in what has been referred to as Hague 1, and the later Judgment in 2016 of Norris J. (as he then was) in proceedings referred to as Hague 5. Mr Pipe has also referred to the fact that Witness Statements served in the present action from a Mr Crocker and a Mr Westley contain evidence by those individuals that they were involved in the taking of payments in cash at various times. Taking those points together, Mr Pipe's broad submission was that the case is sufficiently clear or should be sufficiently clear to the Respondents, and in effect he says that we should all accept the obvious reality which is staring everybody in the face. Mr Pipe says the Respondents simply must understand the case made against them, having previously been involved in the practice complained of (as the Court has already found).
14. I see the force of those arguments but it seems to me that I have to fall back, nonetheless, on the guidance given by Buckley LJ I have referred to. I need to look at

paragraphs 153 and 155 of the Petition on their own terms, albeit in the broader context of the Petition, and I find it difficult to read into paragraphs 153 and 155 sufficient particulars to warrant the case going forward on the basis there described. Looking first of all at paragraph 153, its language is of almost unlimited generality. No clear description is given, for example, of the nature of David's involvement; no clear description is given of the source of Dianne's alleged knowledge; and no specific instances are referred to of particular sales by way of example or otherwise. It is true that further information is given in the Witness Statements but those Statements have their own limitations because neither witness is able to give evidence about what actually happened to cash once it was handed over to the relevant individuals at Hague Plant. Neither can say it was not properly accounted for. In any event, it seems to me unsatisfactory in pleading terms to have to try and piece together the case made against the Respondents from a number of different sources. There are simply too many gaps in the story to be plugged.

15. Paragraph 155, which I have also read out, is if anything even more generalised in its allegations of tax evasion, if indeed it adds very much to the basic allegation of dishonesty made in paragraph 153.
16. As regards Mr Pipe's allegation that one should be realistic in one's construction of the pleading, I am sympathetic to that in a general sense, but the point cuts both ways, and it seems to me that being realistic about paragraphs 153 and 155, I am simply unable to say that the case there set out is sufficiently particularised as an allegation of dishonest conduct.
17. Another one of Mr Pipe's arguments was that this is only phase one of the present action and is concerned only with the question of liability, and so the full scope of any dishonesty can be left over to be determined in phase two which will deal with quantum. Mr Pipe relies on that general context as providing comfort to the Court should it feel, as I do, that there is some inadequacy in the pleading. A number of responses, however, occur to me in connection with that. First of all it does not, to my mind, address the basic concern about fairness to the Respondents and them being given before the present trial starts a sufficiently clear view of the case they have to meet. Second, even allowing for the fact that the present is a trial on liability only, one

might have expected some specific instances to be given, at least by way of example, so that the general proposition of dishonesty could be fairly tested, but no specific instances are given. A trial on liability this may be, but all the same, it is still a trial and not a dry run.

18. As a further point, Mr Pipe has referred to some historic difficulties over production of documents by way of disclosure. He relies on that as explaining the current state of the pleadings. However, that simply provides part of the background and the broader context is also relevant. The origin of the present claim lies in events which occurred as long ago as 2009, now about 15 years ago. There has been plenty of time for interrogation and investigation. However we have arrived at where we presently are, the proper approach, it seems to me, is to assess the existing Petition fairly on its own terms. In my opinion, applying that test, the Petition is not adequately particularised as regards the allegation of dishonesty arising out of receipt of cash payments.

19. I turn next to the case advanced at paragraph 98 of the Petition. That is the allegation that David and Dianne caused Hague Plant to act contrary to advice. As presently drafted, paragraph 98 reads as follows:

*"David and Dianne caused HPL to act contrary to advice provided by HPL's legal advisors in Hague 5 and/or Hague 6 including by pursuing an appeal against the judgment of Norris J. in the Preliminary Issue. The aforesaid conduct by David and/or Dianne set out at paragraphs 93 to 98 was in breach of their duties to HPL pleaded at paragraph 50 hereinabove and caused HPL substantial losses in terms of time, costs and professional fees."*

20. The Respondents take objection to the inclusion in the first sentence of paragraph 98 of the word "*including*", which is pregnant with the implied assertion that there may be other instances, besides the specific example given, of David and Dianne acting contrary to advice provided by Hague Plant's legal advisors.

21. Again, it seems to me the correct approach is the one applied in connection with the first issue above. It is unsatisfactory at this stage for the pleading to contain a suggestion that there may be other possible instances of a failure to act in accordance with legal advice, which might appear at some point during the course of the trial. The

Respondents are entitled to know the case they have to meet, whether put as an allegation of dishonesty or not, and here again, there has been plenty of opportunity over a long period of time to investigate the background and articulate a case.

22. One allegation only is sufficiently particularised. It seems to me that there is nothing at all unfair in the Petitioners being restricted in the way they put their case to focusing on that example and not others which they have not yet been able to identify. There are many other detailed allegations made in the pleadings. A line has to be drawn at some point, and even if there are other instances of a failure to act on advice which might, with further investigation, emerge from the detailed disclosure that has been given, it seems to me that it is now too late for the Petitioners to be raising them.
23. The third area of complaint concerns the allegation that David and Dianne acted contrary to the duty imposed on them by section 172 of the Companies Act 2006. As is well known, section 172 provides that a director of a company must act in the way he considers, in good faith, would be most likely to promote a success of the company for the benefit of its members as a whole.
24. It has been said that failure to act in good faith involves a version of dishonesty: see for example the comments of Millett J in *Armitage v Nurse* [1998] Ch 241, where he said at p. 251 that a trustee who:

*"... acts in a way which he does not honestly believe is in [the] interests [of the beneficiaries] ... is acting dishonestly."*
25. That view was adopted in a case under section 172, namely *GHLM v Maroo* [2012] EWHC 61 (Ch) at [203] by Newey J (as he then was). So the question here is whether a sufficiently clear case of dishonesty in the sense I have described is set out in the pleadings.
26. In my view, a sufficiently clear case on this point is made out. I think one needs to look beyond the confines of paragraphs 185 and 185.2.1 to identify what it is, but nonetheless it seems to me that on a fair reading of the pleading as a whole a sufficiently clear case is advanced.

27. One can see the point reflected in the narrative set out at paragraphs 53 to 56 of the Petition, and then in paragraphs 62 to 70. At paragraphs 53 to 56, the point made is that David and Dianne were deeply upset and concerned at the result of the proceedings known as Hague 1, in which HHJ Behrens refused to acknowledge a claimed beneficial interest by them in another company known as MHH. The allegation is then that, in light of that finding by HHJ Behrens, David and Dianne began a lengthy campaign of victimisation against Martin. Particulars are given in the sections which follow paragraph 56, and those particulars include, between paragraphs 62 and 65, the allegation that David and Dianne terminated the trading relationship between Hague Plant and MHH, and then between paragraphs 66 and 70, the allegation that David and Dianne terminated Martin's directorship of Hague Plant and forced Martin out of the business.
  
28. In both instances, it seems to me a fair reading of the pleading is that in acting as they did initially, and thereafter in failing to re-establish the trading relationship between Hague Plant and MHH, and in failing to resurrect the individual relationship with Martin, David and Dianne were not acting in good faith in the interests of Hague Plant but instead were motivated principally, if not entirely, by the personal animus each of them felt towards Martin arising from the outcome of the Hague 1 proceedings. It seems to me that is a sufficiently clear allegation of a failure to act in accordance with the section 172 duty, as I have described it.
  
29. In response to this, Mr Jory KC made a number of points. One of them was that the cases dealing with section 172 are largely, if not entirely, concerned with instances where company directors have entered into transactions and have had to make a specific decision at a specific point in time as to whether to conduct themselves in a particular way. That may be so, but I do not myself see that the language of section 172 is confined in that manner. As I have indicated already, it requires a director of a company to act in a way that he considers in good faith would be most likely to promote the success of the company for the benefit of its members as a whole, and it seems to me that duty is apt to describe a situation in which, as is alleged here, there was an ongoing failure by David and Dianne over an extended period to re-engage either with MHH, the company controlled by Martin, or with Martin as an individual. So I reject that point.



30. Another point of detail was raised by Mr Jory, which is that the particulars of the alleged breach of the section 172 duty are set out at paragraph 185.2.1 of the Petition. That in turn simply cross-refers to paragraph 185.1, including paragraph 185.1.2, where the campaign of victimisation said to have been carried out by David and Dianne is described. Paragraph 185.1.2 itself also contains a number of cross-references to earlier parts of the Petition, but not to paragraphs 62 and 70, which are the paragraphs I have referred to concerning the decision to terminate the relationship with MHH and to terminate Martin's directorship.
31. I see that point. However, it seems to me that one needs to take a realistic view of the Petition looked at in the round. As will be apparent from the description found at paragraphs 53 to 56 and 62 to 70 of the Petition, which I have already given, it seems to me that the essential nature of the case on the failure to reinstate the trading relationship with MHH and the failure to reinstate Martin is sufficiently clearly set out and is readily understandable. It is that David and Dianne were motivated by personal animosity and not by legitimate business concerns. I do not accept, therefore, that on this point the Respondents do not know the case they have to meet. I think it is sufficiently clear and therefore conclude that they should have to meet it in its present form.
32. Accordingly and in conclusion, although I will give the direction sought in connection with the first two aspects of the Respondents' application, I decline to give any direction in connection with this final aspect.