

Neutral Citation Number: [2024] EWHC 2270 (Ch)

CR: 2022-004674

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
IN THE MATTER OF DERMAMED SOLUTIONS LIMITED (Company No.
11192254)
AND IN THE MATTER OF THE COMPANIES ACT 2006

7 Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 4 September 2024

Before:

PENELOPE REED KC
(Sitting as a Deputy High Court Judge)

Between:

BETWEEN:

MOHAMMED SALEEM KHAWAJA

Petitioner

- and -

- (1) STELA STEFANOVA**
(2) BIOTECHNOLOGIESUK LIMITED
(3) DERMAMED SOLUTIONS LIMITED

Respondents

MR GIDEON ROSEMAN (instructed by **Mills Chody LLP**) for the **Petitioner**
MR. DAVID BERKLEY KC (direct access barrister) for the **First Respondent**
THE SECOND AND THIRD RESPONDENTS did not attend and were
not represented

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

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PENELOPE REED KC

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand down is deemed to be 4th September 2024

PENELOPE REED KC:

Introduction

1. On 18 July 2024 I handed down judgment dismissing the application of the Petitioner (to whom I shall refer as I did in the Judgment as Mr. Khawaja) for summary judgment in respect of his Petition brought under s.994 of the Companies Act. I directed that consequential matters be dealt with by written submissions which they have been (albeit that the First Respondent, Ms. Stefanova filed a witness statement rather than submissions but I take no point on that).
2. In essence I have two matters to deal with: costs and an application by the Petitioner for permission to appeal.
3. Since the hearing there have been two developments which Mr. Khawaja has directed my attention to:-

- a. On 19 August 2024, Ms. Stefanova presented her own s. 994 petition in the High Court seeking various items of relief and which relies largely (although not exclusively) on matters which are the subject of the County Court proceedings and the Petition brought by Mr. Khawaja. Mr. Khawaja and others are parties to that petition.

- b. On 29 August HHJ Gerald handed down judgment in respect of Mr. Khawaja's application to lift the stay on the County Court proceedings (which appears from an order I have seen to have been extended) and his further application for HHJ Gerald to recuse himself which was dismissed. I have not seen a copy of that judgment but I have been told that he said: *"This case has all the parties, including counsel, in a procedural pickle because there are proceedings in the County Court and two sets of proceedings in the High Court all of which have the same factual issues, all of which raise different legal approaches, which are incurring huge amount of the court's time and the parties' monies in addressing these various matters."*

4. I will deal first with the matter of costs.

Costs

5. Ms. Stefanova makes the straightforward argument that as the application for summary judgment has been dismissed, she is the winning party and Mr. Khawaja should pay the costs of the application. It is of course the starting point that the successful party should have their costs.

6. On the other hand, Mr. Roseman on behalf of Mr. Khawaja points to the fact that on many of the allegations in support of unfair prejudice I did consider that Ms. Stefanova had no real prospects of succeeding and her behaviour in this litigation has been extremely poor as noted in the main judgment.
7. He argues that no order for costs should be made. Alternatively, he says that Ms. Stefanova should be deprived of a percentage of her costs, perhaps 50%.
8. This is a very unusual case in many ways. As I stated in the main judgment, the width of the powers available to the Court under s. 996 and its ability to fashion a remedy suitable to meet the particular unfair prejudice make it an area particularly unsuitable for summary judgment and it was very much on that basis that I rejected the application. It was not on the basis that I considered that Ms. Stefanova had a good defence to the allegations in the Petition. It seemed to me that there would need to be a hearing for the Court to consider the case in any event and it was inappropriate to make declarations binding on the Judge who was to deal with that.
9. In those circumstances, it seems to me that the appropriate order to make in this case is no order as to costs. While it can be said that this application should not have been brought by Mr. Khawaja when successful applications for summary judgment in s. 994 petitions are very rare, it can also be said that Ms. Stefanova could simply have accepted that unfair prejudice has been established and agreed that the sole question for the Court is the fashioning of the appropriate remedy. She has instead attempted to defend what is indefensible.

Permission to Appeal

10. Mr. Khawaja relies on the following grounds of appeal:-

- a. *The Judge was wrong to find R1 had a realistic prospect of success of defending the allegation she diverted the Company's business to R2 ("Biotech");*
- b. *The Judge was wrong to find P would be unlikely to obtain an award of damages and would be more likely to obtain a share purchase order or permission to bring a derivative claim;*
- c. *The Judge was wrong not to grant summary judgment with respect to R1's misappropriation of the Company's monies;*
- d. *The Judge was wrong not to order R1 to make an interim payment to P;*
- e. *The Judge was wrong not to order the transfer of the County Court proceedings to the High Court; and*
- f. *The Judge was wrong not to order R1 to pay P's costs of the County Court proceedings and the High Court proceedings*

11. Grounds 4 to 6 are (largely) dependent on the success of the first three grounds and so the question is whether there are real prospects of these grounds succeeding on appeal.

12. The first point is that this was a case management decision which is a matter for the discretion of the Court and so it is necessary for it to be shown that the decision was plainly wrong.

13. The second point is that summary judgment is rarely appropriate in respect of a s. 994 petition where the Court has such wide powers to fashion a remedy. In spite of Mr. Roseman's arguments that the only remedy possible here was an award of damages, I do not consider that can be right. Indeed he emphasizes in his skeleton argument that the Court can fashion a remedy in many ways and of course the Petition seeks numerous types of relief. That deals with the second and third grounds.

14. As for the first ground, I accept that HHJ Baumgartner was persuaded that there had been a diversion of business having examined the bank statements in more detail than I did. However, he was looking at the question in a different context, his decision is not binding on me and I was certainly not taken to sufficient factual evidence to form a view that Ms. Stefanova had no realistic prospects of defending this aspect of the Petition. It seemed to me that it was precisely the sort of exercise which required a mini trial.

15. The fourth and sixth grounds are only arguable if the first three grounds succeed.

As to the fifth ground, the transfer of the County Court proceedings to the High Court, it was made clear in oral submissions (as I record in the main judgment) that this was not strongly pursued if summary judgment was rejected. That might have been a material change of circumstances. Mr. Roseman relies on other grounds set out in his skeleton argument and the issue by Ms. Stefanova of her own petition and the comments of HHJ Gerald about the procedural mess as being new evidence which would improve his prospects on appeal.

16. However, this was also a case management decision which has to be shown to be plainly wrong. What has happened since the hearing does not, in my view, materially change matters. The issue of another petition (which may well be an abuse of process) does not alter the fact that the same matters are being litigated in different courts and the County Court proceedings remain stayed with the Judge who made the initial decision on the agreement in the best position to deal with remedy.

17. In the circumstances I decline to give permission to appeal. I would be grateful if I can be provided with a draft order and assume that no other case management directions are sought.