



Neutral Citation Number: [2025] EWHC 4 (Ch)

Case No: CH-2024-BRS-000005

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
ON APPEAL FROM THE HIGH COURT IN BRISTOL
ORDER OF DISTRICT JUDGE WALES DATED 19 MARCH 2024
CASE NO: BL-2023-BRS-00005

Bristol Civil Justice Centre,
2 Redcliffe St, Bristol, BS1 6GR

Date: 06/01/2025

Before :

THE HONOURABLE MR JUSTICE MICHAEL GREEN

Between :

**KEY CHOICE FINANCIAL PLANNING
LIMITED
- and -
TIMOTHY EVOY**

Appellant

Respondent

John Churchill (instructed by **JMW Solicitors LLP**) for the **Appellant**
Theo Pangraz (instructed by **Direct Access**) for the **Respondent**

Hearing dates: 25 October 2024
Further Written Submissions: 15 November 2024
Draft Judgment circulated: 19 December 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE MICHAEL GREEN

Mr Justice Michael Green :

Introduction

1. This is an appeal, brought with permission of Zacaroli J (as he then was), from the Order of District Judge Wales (the “Judge”) dated 19 March 2024 whereby he allowed the CPR Part 8 claim of the Respondent, Mr Timothy Evoy (who was the Claimant below), and made the following declaration:

“**IT IS DECLARED** that the purported forfeiture by the First Defendant acting on behalf of the Second Defendant of the Claimant’s shareholding of 57 fully paid ordinary shares in the Second Defendant was ineffective.”

2. The Appellant, Key Choice Financial Planning Limited, was the Second Defendant. The First Defendant was Mr Karl Dickenson, and he is now the sole director and a shareholder of the Appellant. The Respondent was previously a director of the Appellant but he ceased to be a director on 14 January 2019. There has been litigation between the parties since then, culminating in steps being taken by the Appellant to forfeit the Respondent’s shares for non-payment of a large costs liability owed to the Appellant.
3. The issue below and on this appeal concerns the lawfulness of the Appellant’s purported forfeiture of the Respondent’s shares in the Appellant. Those shares were not partly paid; nor was there any sum due in respect of those shares. The Appellant says that on the proper construction of the Articles of Association of the Appellant, in particular Article 25.1, that it was able to forfeit the shares if any debt owed to the Appellant by the Respondent had not been paid when demanded.¹
4. After hearing the trial on written evidence alone, which was sensibly agreed between the parties as it turned on the construction point and the facts were uncontroversial, the Judge held that forfeiture was only available for the non-payment of amounts due in respect of the shares. The Appellant says that the Judge misconstrued the Articles, which deviated from the Model Articles for Public Companies, so as to allow, it is suggested, a broader right to forfeit when any sums due to the Appellant had not been paid.
5. I should mention a point at the outset because I am afraid that I set the parties off on a fruitless exercise, as it turned out. On the day before the appeal hearing, I raised a matter that had occurred to me in reading through the papers and conducting a little bit of research. This was whether, in the light of what was said in *Gore-Browne on Companies* at [26-14] that “*a forfeiture of shares for non-payment of debts other than calls is invalid, whatever the articles may say...*” this impacted on whether the Articles could be construed in the way being contended for by the Appellant. This issue had not been raised below; nor was it the subject of a Respondent’s Notice.
6. The industriousness of the Appellant’s Counsel, Mr John Churchill (who did not appear below) led to him preparing a supplemental skeleton argument overnight together with a new bundle of authorities. He then made some submissions to the effect that the

1. References to an “Article” in this Judgment are to the Appellant’s Articles of Association.

passage in *Gore-Browne* was based on a reading of *Hopkinson v Mortimer, Hartley & Co Ltd* [1917] 1 Ch 646 which was not supported in the Australian case of *Bundaberg Sugar Ltd v Isis Central Sugar Mill Co Ltd* [2006] QSC 358 (albeit that this case was also referred to in *Gore-Browne*). Mr Theo Pangraz, appearing for the Respondent (who also did not appear below) had not had time to consider the point at the hearing. I decided that I would give the parties further time to consider the matter and directed further written submissions, if they wished to do so, within 21 days of the end of the hearing of the appeal.

7. On 15 November 2024, Mr Churchill filed extensive further submissions on the matter. He also suggested that this should not be considered as it formed no part of the judgment below or the appeal and there was no Respondent's Notice to such effect. Mr Pangraz's submissions were essentially to agree to that latter point and he made it clear that the Respondent did not wish to argue it.
8. Accordingly, while I think that it does raise interesting issues about the validity of such a forfeiture right that the Appellant is contending for, I must bow to the parties' wishes and confine myself to the grounds of appeal that are properly before me. I will say nothing more about that matter, save that I am grateful to Counsel, particularly Mr Churchill, for dealing with it in the way that they did.

Background

9. I can take the largely uncontentious background from the Judge's Judgment.
10. The Appellant was incorporated on 31 October 2014 under the Companies Act 2006. Both Mr Dickenson and the Respondent were appointed as directors on incorporation. Also on that day, the Appellant adopted its Articles of Association which incorporated the Model Articles for Private Companies Limited by Shares, but these were substantially modified. The relevant Articles will be set out and dealt with below.
11. All the shares in the Appellant were fully paid up. In a confirmation statement dated 31 October 2020, the shareholdings had become the following:
 - (1) The Respondent – 57 ordinary shares
 - (2) Mr Dickenson – 76 ordinary shares and 65 A ordinary shares
 - (3) Mr Dickenson's mother – 57 ordinary shares and 35 A ordinary shares.
12. After the Respondent had left office as a director on 14 January 2019, he issued a contributory's winding up petition in the High Court against the Appellant. Following a 5-day hearing, HH Judge Rawlings, sitting as Judge of the High Court, dismissed the petition and ordered the Respondent to pay the Appellant's costs on the indemnity basis.
13. On 14 May 2021, a default costs certificate was issued against the Respondent in the sum of £162,419.76 payable by 28 May 2021. Interest has accrued on that debt at the judgment rate. The Respondent has acknowledged that he owes this debt but he has not paid anything towards it. As of 10 March 2023, the liability had risen to £186,129.36 (and it is now more than £211,111.00).

14. On 28 September 2021, Mr Dickenson caused the Appellant’s solicitors to send a “call notice” pursuant to Article 25.2 requiring payment of the sum of £162,419.76, failing which the Appellant would exercise its rights to forfeit the Respondent’s shares. On 20 October 2021, the Appellant’s solicitors served a Notice of Intended Forfeiture of the Respondent’s 57 ordinary shares. And on 12 November 2021 the Appellant’s solicitors served a notice that the Appellant, pursuant to Article 30, had forfeited the Respondent’s 57 ordinary shares and that he had ceased to be a shareholder in the Appellant. They also confirmed that the forfeiture did not affect the Respondent’s liability to pay the outstanding costs debt.
15. There was then a year of silence. On 7 November 2022, the Respondent wrote to the Appellant’s solicitors asserting that the “Call” and forfeiture of his shares were illegal. On or around 23 February 2023, the Respondent issued the CPR Part 8 proceedings.

The Appellant’s Articles of Association

16. Before turning to the Grounds of Appeal, I will set out the important Articles for the purposes of this appeal. The focus of the argument below, and on this appeal, has been on Articles 1, 25 and 26, and these were set out in the Judgment. But it seems to me that further Articles are also relevant to the proper interpretation of the power of forfeiture.
17. The first point to note is that the Appellant adopted the Model Articles for Private Companies Limited by Shares, save for certain specific modifications or exclusions – see Article 1.6. Those Model Articles do not include any provisions for forfeiture. There was some reference in the submissions and in the Judgment to the Model Articles for Public Companies, which do have provisions for forfeiture and which the drafter of the Appellant’s Articles was said to have adopted in an importantly modified form. I will deal with this below.
18. Article 1.1 defines some terms used in the Articles. It states: “*call* has the meaning given to that term in Article 25.1”; and “*call notice* has the meaning given to that term in Article 25.1”.
19. Articles 23 and 24 provide for the Appellant to have a lien over its shares. Article 23 is in the following terms:

“23 Company’s lien over shares

The company has a lien (**company’s lien**) over every share, whether or not fully paid, which is registered in the name of any person indebted or under any liability to the company, whether he is the sole registered holder of the share or one of several joint holders, for all monies payable by him (either alone or jointly with any other person) to the company, whether payable immediately or at some time in the future and whether or not a call notice has been sent in respect of it.

23.1 The company’s lien over a share:

- 23.1.1 takes priority over any third party’s interest in that share, and

23.1.2 extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

23.2 The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part."

20. As can be seen, the lien in Article 23 purports to provide security to the Appellant over a person's share in respect of "*all monies payable by him (either alone or jointly with any other person)*", not seemingly limited, as is normally found, to the unpaid amount on partly paid shares. The means of enforcement of the lien are contained in Article 24, including the ability to enforce against jointly owned shares. I would comment that the priority granted to the Appellant's lien (Article 23.1.1) and the enforcement against jointly owned shares only really make sense in relation to partly paid shares. Furthermore if the lien is enforced and the share sold, the owner of the share is entitled to the net proceeds of sale after payment of the owner's liability to the Appellant.

21. Articles 25 and 26 are central and they are set out in full below, with underlining added:

"25 **Call notices**

25.1 Subject to the articles and the terms on which shares are allotted, the directors may send a notice (**call notice**) to a shareholder requiring the shareholder to pay the company a specified sum of money (call) which is payable by that member to the Company at the date when the directors decide to send the call notice.

25.2 A call notice:

25.2.1 must be in writing;

25.2.2 may not require a shareholder to pay a call which exceeds the total amount of his indebtedness or liability to the company;

25.2.3 must state when and how any call to which it relates it is to be paid; and

25.2.4 may permit or require the call to be paid by instalments.

25.3 A shareholder must comply with the requirements of a call notice, but no shareholder is obliged to pay any call before fourteen days have passed since the notice was sent.

25.4 Before the company has received any call due under a call notice the directors may:

25.4.1 revoke it wholly or in part, or

25.4.2 specify a later time for payment than is specified in the notice,

by a further notice in writing to the shareholder in respect of whose shares the call is made.

26 Liability to pay calls

26.1 Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

26.2 Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

26.3 Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them:

26.3.1 to pay calls which are not the same, or

26.3.2 to pay calls at different times.”

22. The underlined passages in Article 26 only make sense in relation to calls on partly paid shares. Article 27, which provides for when a call notice does not need to be issued, also can only, on its terms, apply to a call in respect of partly paid shares.

23. Articles 28 to 32 provide for the enforcement of a call notice and forfeiture. Article 28 gives power to the directors to issue a notice of intended forfeiture if a call notice is not complied with. It also provides for interest to be payable on outstanding calls and for the relevant interest rate, including “*the rate fixed by the terms on which the share in respect of which the call is due was allotted*”, which can only be a reference to a call in respect of partly paid shares.

24. Articles 29 and 30 were not set out in full by the Judge, but they are important, in my view (underlining added).

“29 Notice of intended forfeiture

29.1 A notice of intended forfeiture:

29.1.1 must be in writing;

29.1.2 may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

29.1.3 must be sent to the holder of that share (or, in the case of joint holders of a share in accordance with Article 56.3) or to a transmittee of that holder in accordance with Article 56.4;

29.1.4 must require payment of the call and any accrued interest and all expenses that may have been incurred by the company by reason of such non-payment by a date which is not less than fourteen days after the date of the notice

- 29.1.5 must state how the payment is to be made; and
- 29.1.6 must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

30 Directors' power to forfeit shares

If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.”

25. Article 31 sets out the effect of the forfeiture which is that all rights and interests in the forfeited shares are extinguished and they are deemed to be the property of the Appellant which can sell or re-allot them or otherwise dispose of them as the directors think fit. The Appellant has to send a notice to the owner of the forfeited shares telling them that they had ceased to be a shareholder but they remain liable “*for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest...*” Article 31.4 stated (underlining added):

“At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit”.

26. Article 32 provides for a disposal of forfeited shares by the Appellant. Article 32.4 is in the following terms (underlining added)

“32.4 If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which:

32.4.1 was, or would have become, payable, and

32.4.2 had not, when that share was forfeited, been paid by that person in respect of that share,

but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.”

The Judgment below

27. The Judge produced a clear and thorough Judgment. He set out the uncontroversial principles of construction, citing extensively from a recent Court of Appeal authority concerning the interpretation of articles of association – *DnaNudge Limited v Ventura Capital GP Limited* [2024] 1 BCLC 263, [2023] EWCA Civ 1142 (“*DnaNudge*”) – in which Snowden LJ helpfully summarised the relevant principles. The Judge also set out in full paragraphs [17] to [23] of the judgment of Lord Neuberger in *Arnold v Britton* [2015] AC 1619, [2015] UKSC 36 (“*Arnold*”).

28. The Judge accepted in [15] that “*strictly and literally construed, as a matter of dictionaries, grammar and syntax, Articles 1 and 25.1 potentially apply to any debt owed by a member and is not expressly confined to a debt arising in respect of the shareholding.*” However he went on to hold that interpretation of the relevant Articles required the court to establish:

“the natural and ordinary meaning that the relevant provision conveys to a reasonable person with the requisite background knowledge in relation to the other provisions of the articles of association, the overall purpose of Article 25 and the articles of association in general, the circumstances known or assumed by the parties at the time of entering into the articles, together with the application of commercial common sense, but disregarding the subjective evidence of any party’s intentions.” [16]

That is a reasonable summary of the interpretative process.

29. The Judge rejected the reliance that the Appellant sought to place on the intentions of the drafter of the Articles and the deviation from the Model Articles for Public Companies. Instead the Judge adopted an iterative process of interpretation, taking into account what he concluded was the natural and ordinary meaning of the word “call” in Article 25 and the difficulties that arise in respect of jointly held shares under Article 26.2 and the effect of the forfeiture in Articles 31 and 32. He held in [24(4)] that “*forfeiture of a shareholding for non-payment of a debt arising outside the shareholder / company relationship does offend against commercial common sense, because it enables the Company / its remaining shareholders to benefit from the value of the forfeited shareholding without accounting to the debtor for all or any of its value... In the circumstances, the effect of forfeiture is taking something for nothing, and it therefore looks like a penalty.*”

The Grounds of Appeal

30. There are five Grounds of Appeal relied on by the Appellant but they all concern the Judge’s construction of the Articles. They are as follows:
- (1) The Judge was wrong to find that the word “call” in Article 25 “*naturally and ordinarily import[s] the notion of a call for sums due in respect of the shares in question in the nature of unpaid capital*” (see[19]);
 - (2) The Judge was wrong to find that an iterative process supported an interpretation of Article 25.1: “*applying only to sums due in respect of the shareholding itself*”;
 - (3) The Judge was wrong to find that: “*...literally construed, as a matter of dictionaries, grammar and syntax, Articles 1 and 25.1 potentially apply to any debt owed by a member and is not expressly confined to a debt arising in respect of the shareholding*”;
 - (4) The Judge was wrong to find that the definition of call was “*circular*”;
 - (5) The Judge was wrong to find that the Defendants’ advocated construction of Article 25.1 would make “*commercial nonsense*” ([21]).

Discussion

31. Despite the five different Grounds of Appeal, the issue on this appeal, as it was below, is whether the Appellant’s power to forfeit the Respondent’s shares is limited to calls in respect of those shares or whether it extends to any sums of money owed by the Respondent to the Appellant. Mr Churchill submitted that Articles 1.1 and 25.1 define what is meant by a “call” and even if a “call” in the context of a company’s articles of association would conventionally be understood to mean a call on unpaid capital in respect of its shares, these Articles specifically and deliberately expand the meaning of “call” to include any sums outstanding from the shareholder to the Appellant. He placed reliance on the clear wording of Article 25.1 and the departure from the wording in the Model Articles for Public Companies.
32. As to the principles of interpretation, there was broad agreement but differences of emphasis. Mr Churchill took me to some other paragraphs of Lord Neuberger’s judgment in *Arnold* namely [75] to [77], where, after quoting from Lord Clarke’s judgment in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 at [21] – “*the exercise of construction is essentially one unitary exercise*” – Lord Neuberger said at [77]: “*This unitary exercise involves an iterative process by which each of the rival meanings is checked against the provisions of the contract and its commercial consequences are investigated.*” This was picked up by Snowden LJ in *DnaNudge* where he said:
- “45. Conducting an iterative process may also assist the court to identify that, when considered in its proper context, the disputed wording genuinely has more than one possible meaning: see eg *Britvic*² at [68]-[69] per Nugee LJ. In such a case, the court may give effect to the interpretation which is most consistent with business common sense. That point was made by Lord Neuberger in his judgment in *Sigma*³, and was made explicitly in *Rainy Sky* at [21] and *Wood*⁴ at [11].”
33. The Appellant’s argument is that Article 25.1 is clear and unambiguous and it can bear only one meaning, namely that a “call” is defined as including any sum of money owing by the shareholder to the Appellant. Mr Churchill submitted that the iterative process cannot give rise to any other meaning, so there is never any need to decide which rival meaning best accords with commercial common sense. Mr Churchill also submitted that it was unclear whether the Judge had recourse to the “*natural and ordinary*” meaning of the word “call” because he considered that it is a legal term of art or because it has a customary meaning. In any event, it was wrong for the Judge, he said, to have looked outside the wording of Article 25.1 to find the meaning of “call” because a combination of Articles 1.1 and 25.1 are clearly defining the word “call”, which only appears in Article 25.1 in parenthesis as being the defined term.
34. Mr Churchill said that the Judge was right to rely on [49] and [50] of Snowden LJ’s judgment in *DnaNudge* for the proposition that, by contrast with other documents, the “*relevant background facts for the purposes of interpretation of articles of association must be very limited*”. This is because articles of association will apply to different shareholders over time and the meaning must therefore be gleaned from the publicly

² *Britvic plc v Britvic Pensions Ltd* [2021] EWCA Civ 867

³ *Sigma Finance Corp, Re* [2008] EWCA Civ 1303. Lord Neuberger’s dissenting judgment in the Court of Appeal was upheld in the Supreme Court: [2009] UKSC 2

⁴ *Wood v Capita Insurance Services Ltd* [2017] UKSC 24

available documents, namely the articles themselves. But Mr Churchill then also criticised the Judge for placing little weight on the difference between the Articles adopted by the Appellant and the Model Articles for Public Companies. He suggested that the differences would be apparent to any individual viewing both documents and therefore should be accorded weight by the court.

35. I do not accept this, and consider the Judge was entitled to come to the view that the subjective intentions of the drafter of the Articles and what was omitted or changed from the Model Articles do not assist. I do not think it is reasonable to assume that a person considering the Articles of the Appellant which specifically adopts, with modifications, the Model Articles for Private Companies, would compare their provisions with a different set of Model Articles, namely those for Public Companies.
36. That point can be taken a stage further. The Model Articles for Private Companies do not contain provisions for forfeiture. That seems to me to be because those Model Articles require all shares to be fully paid up (see Article 21). That Article was specifically disapplied in relation to the Appellant and there does not appear to be any other restriction on the Appellant issuing partly paid shares. As it has the power to issue partly paid shares, there would need to be Articles dealing with calls on the outstanding amount on such shares, and for there to be a lien and power of forfeiture to enforce compliance with any such calls.
37. It is fair to say that the drafter of these Articles does seem to have used the Model Articles for Public Companies as a basis for the lien and forfeiture provisions. But there are problems with what the drafter has done, leading, in my view, to there being ambiguity in the meaning of Article 25.1 and perhaps more importantly in relation to the power of forfeiture. One example of this is the curious change in some instances, of the word “*member*” in the Model Articles to “*shareholder*” in a number of the Appellant’s Articles, but not consistently and not always. It is unclear why this was done and I do not think it would be right to draw any conclusions from this, as the Judge appeared to do – see eg [22] of the Judgment.
38. More significantly, as I have highlighted above in setting out the relevant Articles, although the words “*in respect of shares which that member holds*” were removed from the Model Article 54 in Article 25.1, the same words, or words to similar effect were retained in Articles 26.1, 26.2, 29.1.2, 29.1.6, 30, 31.3.4 and 31.4. They even appear in Article 25.4 itself: “*in respect of whose shares the call is made*”. All those Articles tie in the call or forfeiture to the shares in respect of which there is a sum outstanding. That is because the Model Articles are limited to dealing with such sums, not sums outstanding in general and unrelated to the specific share in question. This is replicated in the Companies Act 2006 which assumes that forfeiture will only be available where there is a call on partly paid shares. For instance, s.617(5) of the Companies Act 2006 refers to: “*the forfeiture of shares...in pursuance of the company’s articles, for failure to pay any sum payable in respect of the shares*” – and see also ss.659(2)(c) and 662(1)(a) which are in the same terms.
39. So there is an inconsistency between Article 25.1, which does not refer to “*in respect of shares which that member holds*”, and the Articles following it which provide for the actual exercise of the power of forfeiture and all have that extra phrase or some form of it. It cannot be the case that call notices can be issued in respect of any debt of a shareholder, but that can only be enforced by forfeiture if it was a call on the amount

owed in respect of that share. They must be consistently construed and I believe that the iterative process requires the court to consider the meaning of Article 25.1 by reference to and tested against other Articles and then the rival meanings resolved by looking at commercial common sense.

40. The difficulties with the Appellant's construction of Article 25.1 is demonstrated by the call notice and the notice of intended forfeiture. The call notice purportedly sent pursuant to Article 25.1 was a letter from the Appellant's solicitors dated 28 September 2021. They referred to the Respondent's costs liability and said that this was the subject matter of the call notice. They did not refer to the Respondent's shares in respect of which the call was being made, but they did refer to the potential consequences of forfeiture to which the Respondent may be subject should he fail to pay. In strained language referring to Article 26.1, the solicitors stated that the Respondent's liability to pay a "Call" would not be extinguished or transferred by "*transferring the shares in respect of which it is required to be paid*". The costs liability which was made by court order is not a liability attached to any of the 57 shares that the Respondent then owned.
41. The notice of intended forfeiture was also in the form of a letter from the Appellant's solicitors dated 20 October 2021. Under Article 29.1.2 such a notice could be sent "*in respect of any share in respect of which a call has not been paid as required by a call notice.*" The notice said that it was sent "*in respect of your 57 Ordinary shares in the Company*". But that is meaningless save for identifying which shares the Appellant wished to forfeit. The notice of forfeiture dated 12 November 2021 does not attempt to identify, as per Article 30, the "*share in respect of which [the notice] was given is forfeited.*" I do not refer to these documents for the solicitors' interpretation of the Articles (that would be impermissible) but to show how the Articles cannot work on the Appellant's construction of them.
42. I recognise that this is not the way it was put by the Judge or Mr Pangraz, but it is, I believe, what they were driving at. The Judge correctly, in my view, was looking at the broader picture, not just the words of Article 25.1 in isolation (see [25] of the Judgment). But even the words of Article 25.1 itself are instructive. Its opening words are: "*Subject to the articles and the terms on which shares are allotted...*" and these indicate that it is dealing with the relationship between the shareholder and the Appellant as set out in the Articles together with any relevant terms upon which the shareholder came to own their shares. With those opening words, the Article would be unlikely to concern an external relationship of creditor and debtor that was not constituted by the Articles or the terms upon which the shares were acquired. This is referred to in [20] of the Judgment.
43. The Judge also considered in [24(3)] that "*non-payment of a sum owed outside the shareholder/company relationship axiomatically does not go to the heart of the shareholder/company relationship and the justification for forfeiture is not clear*". As I have said above, in my judgment, forfeiture under the Articles is limited to shares "*in respect of which a call has not been paid*", thus reflecting the point made by the Judge.
44. So how does one construe Article 25.1 itself? I do not accept the Judge's finding in [23] of the Judgment that the definition of "call" is circular (this is Ground 4 of the appeal). And I take the point made on behalf of the Appellant that where a definition is made in the document being construed, if that definition is clear and unambiguous, it will take precedence over any other suggested meaning of the word.

45. But in the light of the way that the word “call” is used in the Articles following Article 25.1, including in Article 25.4, I have concluded that the definition of “call” in Article 25.1 of a “*specified sum of money*” must be impliedly limited to calls in respect of unpaid capital on specific shares. The only point of serving a call notice, is to set up the possibility of being able to forfeit shares. In my view it is perfectly clear that where the word “call” is used in Articles 25 to 32, it is expressly or impliedly limited to calls in respect of amounts due on specific shares. That is the meaning that would be conveyed to a reasonable person reading those Articles. If one then goes back to Article 25.1, which as I have said, must be construed consistently with this if the forfeiture power is to be sensibly understood, the definition of “call” there provided for must be similarly limited to sums of money payable in respect of shares. That involves reading back in the words that were specifically removed by the drafter of the Articles from the Model Articles but it seems to me that that is necessary for it to make sense and so as to construe these Articles reasonably and as a coherent whole.
46. There are further indications that this is the correct interpretation of the Articles. The Judge referred to the effect on joint shareholders under Article 26.2. I agree with what the Judge says in [21] of the Judgment that if calls are not limited to sums due on specific shares, then a joint owner could be considered a guarantor of their co-owner’s liabilities to the Appellant. I have already said that I think that Article 26.2 must be construed as being limited to the joint liability in respect of the shares held by joint owners and that would fit with the ability of the Appellant to forfeit those shares if those sums are not paid. It also informs the definition of call in Article 25.1. Mr Churchill submitted that Article 26.2 is not a problem because on the Appellant’s construction of Article 25.1, a joint owner would not be liable for their co-owner’s non-share related liabilities to the Appellant. However this seems to me to overlook the fact that if the call is not paid by the joint owner, the shares which are jointly owned are liable to be forfeited.
47. Other indications that the definition is limited are:
- (1) Article 26.1 whereby liabilities continue even after a transfer of the relevant shares – this can only sensibly apply to liabilities in respect of those shares;
 - (2) Article 27 certainly only applies to sums outstanding in respect of specific shares;
 - (3) Article 31.3.4 refers to the person remaining liable to the Appellant after forfeiture “*for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest...*” – it does not extend to all sums payable under the call notice and is clearly limited to sums payable on the shares which have been forfeited;
 - (4) Article 32.4 provides for the previous owner of forfeited shares to receive the proceeds of sale if the Appellant sells those shares less “*any amount which...was, or would have become payable, and... had not, when that share was forfeited, been paid by that person in respect of that share...*”; that does not appear to refer to the amounts in the call notice and it does not refer to the call; therefore if the Respondent’s shares were sold, the Appellant would have to pay them over in full net of commission, because the costs debt would not be deductible according to those terms.

48. Forfeiture is a severe and draconian remedy which the law leans against. I understand the point that the Judge was making in [24(4)] of the Judgment that because the Appellant does not have to account to the Respondent for the value of his forfeited shares, this could amount to a penalty to him and a windfall to the Appellant. However, the answer to it is that the power of forfeiture must be limited in the way I have endeavoured to explain above. I do not think that that unfair outcome makes the Articles commercially non-sensical.
49. The commercially sensible outcome is one that fits with the wording of the Articles as a whole and limits the ability of the Appellant to issuing call notices and exercising its right of forfeiture to sums outstanding in respect of specific shares.
50. As to the various Grounds of Appeal, I would respond as follows:
- (1) Ground 1 concerning the Judge's adoption of the "*natural and ordinary*" meaning of "call" is perhaps an unfair summary of what he was doing. The Judge was right to say that the word "call" in the context of articles of association would normally apply to a call on unpaid share capital. (See for example the definition of "*called up share capital*" in s.547 of the Companies Act 2006.) But as he made clear this was but one part of the iterative process that he was embarked on.
 - (2) Ground 2 concerns the iterative process. I have described where I believe the correct iterative process leads in this case, and even if the Judge and I may have relied on some different factors, he was right to approach the matter in the way that he did, looking at the meaning of the relevant Article by reference to and consistently with the scheme of the Articles as a whole and so as to arrive at a consistent and commercially sensible interpretation of the prescribed power of forfeiture.
 - (3) Ground 3 concerns the use of the word "*potentially*" in [15] of the Judgment but this is only correctly expressing the Judge's view that there is an alternative interpretation to the literal one of Article 25.1 in isolation and that is arrived at by a more rounded view of the Articles as a whole.
 - (4) Ground 4 is the circularity point that I have already said I think is a valid criticism of the Judgment.
 - (5) Ground 5 is about the Judge's findings as to the "*commercial nonsense*" of the Appellant's suggested interpretation of the Articles. While I perhaps would not have gone as far as to say that the Appellant's construction leads to a "*commercial nonsense*", it is fair to say that I do not think the Appellant's construction works when applied to all the Articles that are dependent on the definition set out in Article 25.1.

Conclusion

51. In summary then, I dismiss this appeal. The Judge correctly concluded that any call or call notice within Article 25.1 must be limited to sums due in respect of shares and that any subsequent exercise of the power of forfeiture must be necessarily limited to those shares in respect of which such sums, or calls, have not been paid. While our reasoning was different in some respects, we came to the same conclusion and even though there

may have been some merit in one or two of the Grounds of Appeal, that was not enough to affect the fundamental basis for interpreting the Articles in the way that we both did.

52. I am grateful to counsel for their helpful submissions. I would hope that an order can be agreed between the parties, including in relation to costs. If that is not possible, then we can either have a short consequential hearing or I can deal with any outstanding matters in writing.