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Case No: CL-2020-000044

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 25/09/2020

Before :

DANIEL TOLEDANO Q.C.
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

HENRY JOHN MARRIOTT

Claimant

- and -

- 1) MICHAEL JOHN FRESSON**
(2) TOMÁS VAQUER DOMÉNECH
(3) PARQUE ECOLOGICO VALLDEMOSSA SL

Defendants

Mr Meuli (instructed by **Adams and Remers LLP**) for the **First and Third Defendants**
Mr Roger ter Haar Q.C. (instructed by **Phillips Lewis Smith Limited**) for the **Claimant**

Hearing date: Thursday 17 September 2020

Approved Judgment

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Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:00 am on 25 September 2020. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the judge's Clerk

DANIEL TOLEDANO Q.C:

Introduction

1. This judgment concerns an application by the First Defendant (“Mr Fresson”) and the Third Defendant (“PEV”) challenging the jurisdiction of the court pursuant to an application dated 27 April 2020. The Second Defendant (“Mr Vaquer Doménech”) has not made a similar application. The application relies on Article 24 of Regulation (EU) No. 1215/2012 also known as the Recast Brussels Regulation (the “Recast Regulation”). It is common ground that the Recast Regulation governs jurisdiction in this case notwithstanding the Brexit process.
2. Mr Fresson and PEV contend that Article 24 of the Recast Regulation applies to the proceedings brought against them and that, as a result, the courts of Spain have exclusive jurisdiction. They contend that Article 24(2) applies because the object of the proceedings is the “*validity of the decisions of [the] organs [of PEV]*”, a company with its seat in Spain. In addition, they contend that Article 24(3) applies because the object of the proceedings is the “*validity of entries in public registers*”, namely the books and records of PEV and/or the Business Register for Mallorca, which are kept in Spain.
3. So far as Article 24(2) is concerned, Mr Fresson and PEV do not suggest that the proceedings directly call into question the validity of any specific decision of the organs of PEV. Rather, they contend that the proceedings are principally concerned with a claim to the legal ownership of shares in PEV which impacts upon the composition of the shareholders of PEV and prospectively therefore upon the validity of decisions of the shareholders as an organ of that company.

Factual Background

4. PEV is a company registered and incorporated under the laws of Spain, with its registered office in Palma de Mallorca. It is a property investment company which has invested in another company which in turn owns a property in Mallorca. It is common ground that PEV has its seat in Spain. Mr Fresson, however, is domiciled in England.
5. Initially, Mr Vaquer Doménech, a Spanish lawyer, was the sole registered shareholder of PEV but, in March 2020, 50% of the shares were transferred to Mr Fresson. Mr Vaquer Doménech continues to hold the other 50% as nominee for Mr Fresson. As well as being a registered shareholder, Mr Vaquer Doménech is also the registered Administrator of PEV, which I am told means that he is a representative of that company responsible for its internal management.
6. In January 2020 Mr Marriott issued the Claim Form in these proceedings. This was accompanied by Particulars of Claim. Mr Marriott seeks a variety of relief. First, he seeks the transfer of one third of the issued shares in PEV into his name and a declaration that, prior to the transfer, one third of the shares are held on trust for him. Secondly, he seeks a number of orders seeking to perfect the transfer such as the issue of a certificate recording the transfer and the recording of the transfer in PEV’s statutory records and on the Mercantile Register for the Balearic Islands. Thirdly, he asks for effect to be given to his alleged right to appoint a director of PEV.

7. Mr Marriott's claims are based on two agreements which the parties purported to enter into on 12 July 2018. First, a Minute of Agreement between Mr Fresson, Mr Marriott and Mr Vaquer Doménech which recorded in clause 1 that Mr Vaquer Doménech would transfer the shares in PEV into the ownership of Mr Fresson as to two thirds and Mr Marriott as to one third. Secondly, a Shareholder Agreement between Mr Fresson, Mr Marriott and PEV which recorded the two thirds/one third split in Recital B and which set out how relations between the parties and the affairs of PEV would be regulated.
8. Each of these agreements was expressly governed by English law and contained an exclusive jurisdiction clause in favour of the courts of England.
9. The Particulars of Claim alleges that, in breach of the Minute of Agreement, Mr Vaquer Doménech has not transferred any shares in PEV to the Claimant. The Particulars of Claim also refer to instructions given by Mr Fresson to Mr Vaquer Doménech not to transfer the shares to Mr Marriott. These instructions are said to have been given by Mr Fresson in breach of implied terms in the Minute of Agreement and in breach of an obligation of utmost good faith in the Shareholder Agreement. Mr Fresson's conduct was also said to have amounted to the tort of procuring a breach of contract and to the tort of conversion.
10. The Particulars of Claim also contains a heading "*Management of PEV*" which includes, in particular, Mr Marriott's complaint about not having been able to appoint a director and a request for an account of PEV's affairs from 12 July 2018. The parties agree that these claims are ancillary to, and parasitic upon, the main claims referred to above.
11. The Particulars of Claim quotes at some length from Mr Vaquer Doménech's letter to Mr Marriott's solicitors dated 4 December 2019. This letter explained that Mr Vaquer Doménech had not made the transfer of shares to Mr Marriott because he had received instructions from Mr Fresson not to do so. Mr Vaquer Doménech stated that this would remain his position until an agreement was reached between the parties or there was a judicial resolution that ordered him to effect the transfer. Mr Vaquer Doménech's letter as quoted in the Particulars of Claim referred in turn to an attestation made by him before a notary on 6 September 2019.
12. This attestation was included in the evidence before the court and I was taken to a translation of it. It describes Mr Vaquer Doménech's understanding of the dispute that had arisen between Mr Marriott and Mr Fresson. The dispute appears to have had its origin in a separate property investment involving Mr Marriott and Mr Fresson through an entity called Benham Valence LLP. Mr Fresson's contention as described in the attestation is that he required the proceeds of the Benham Valence transaction in order to progress the PEV investment but that Mr Marriott had not transferred the appropriate share of those proceeds to him. Mr Fresson contends that, in order to obtain the Benham Valence proceeds, he had to agree to Mr Marriott obtaining one third of the shares in PEV, but that he did so under "*alleged coercion*".
13. On 28 April 2020 Mr Fresson served a Defence and Counterclaim without prejudice to his jurisdiction challenge. In essence, Mr Fresson claimed that he was not bound by the Minute of Agreement or Shareholder Agreement dated 12 July 2018 because he was induced to enter into them "*as a result of unlawful threats made by Mr*

Marriott (amounting to economic duress) to the effect that, unless Mr Fresson entered the said agreements, Mr Marriott would not release funds due to a company beneficially owned by Mr Fresson in respect of an earlier UK property investment, which funds Mr Fresson urgently required in order to complete a property investment opportunity in Mallorca”.

14. The Counterclaim sought a declaration that the Minute of Agreement and Shareholder Agreement, and a third agreement called the Deed of Arrangement, were voidable and had been rescinded.
15. There is a dispute between the parties to the present application as to whether the court is entitled to have regard to the content of the Defence and Counterclaim when considering Article 24 of the Recast Regulation. Mr Edward Meuli for Mr Fresson and PEV contends that the court is only entitled to have regard to the Claim Form and Particulars of Claim but not to the Defence and Counterclaim. Mr Roger ter Haar Q.C. for Mr Marriott contends that the court can have regard both to the Claim Form/Particulars of Claim and to the Defence and Counterclaim. I will return to this issue later in this judgment.

Recast Regulation

16. Article 4 of the Recast Regulation sets out the general principle that, subject to the Regulation, persons domiciled in a Member State should be sued in the courts of that Member State.
17. However, jurisdiction based on domicile is subject to the provisions of Section 6 of the Regulation which is entitled Exclusive Jurisdiction.
18. Article 24 of Section 6 provides as follows:

“The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) ...

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

(3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

(4) ...

(5) ...”

19. Article 27, in Section 8, provides:

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

20. Recital (15) provides the following guidance:

“(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well- defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

21. Section 7 of the Recast Regulation is entitled Prorogation of Jurisdiction. Article 25, which deals with contractual jurisdiction clauses agreed by the parties, makes it clear that agreements conferring jurisdiction have no force if another court has exclusive jurisdiction by virtue of Article 24. It follows that, although the 12 July 2018 agreements I have referred to above contain jurisdiction clauses in favour of the courts of England, those clauses will not assist Mr Marriott if Mr Fresson and PEV are correct about the application of Article 24 and the resulting exclusive jurisdiction of the courts of Spain.
22. Similarly, Article 26 confers jurisdiction on a court before which a defendant entered an appearance but this rule does not apply where another court has exclusive jurisdiction by virtue of Article 24. This is relevant because, prior to issuing the present application, Mr Fresson had filed an acknowledgment of service without ticking the box that he intended to challenge jurisdiction. This might have given rise to a debate about whether Mr Fresson had thereby (and/or by seeking additional time for his Defence and/or by serving that Defence) entered an appearance so as to confer jurisdiction on the English court. However, if Mr Fresson and PEV are correct that Article 24 applies, then the English court does not have jurisdiction and Mr Fresson's failure to tick the box challenging jurisdiction is immaterial.
23. It follows that the critical question is whether these proceedings fall within the scope of Article 24. If they do, then Article 24 takes priority over all other matters dealt with by the Regulation and the courts of Spain have exclusive jurisdiction. The priority afforded by the Recast Regulation to situations of exclusive jurisdiction was confirmed by the Supreme Court in the **Koza Ltd v Akçil** case referred to below (see Lord Sales at paras 24 and 25).
24. Before addressing the issue of whether the proceedings fall within the scope of Article 24, I will refer to the relevant authorities.

The Authorities

(1) Case law of the European Court of Justice (ECJ)

25. In **Hassett v South Eastern Health Board** Case C-372/07 which was decided by the ECJ in 2008 in relation to a predecessor of Article 24 (namely, Article 22(2) of Regulation 44/2001 which was in materially the same terms as Article 24) the ECJ confirmed (paras 18 and 19) that the situations of exclusive jurisdiction were to be interpreted strictly because they were an exception to the general rules governing the attribution of jurisdiction and deprived the parties of the choice of forum which would otherwise be theirs. The ECJ referred (in paras 20 and 21) to the Jenard Report on the Brussels Convention which indicated that, in the case of exclusive jurisdiction in relation to companies, the essential objective is one of centralising jurisdiction in order to avoid conflicting judgments being given and also to allocate jurisdiction to the courts best placed to deal with such disputes.
26. **BVG v JP Morgan Chase Bank NA** Case C-144/10 which was decided by the ECJ in 2011 (also in relation to Article 22(2) of Regulation 44/2001) concerned a swap contract entered into between JP Morgan and BVG, a German company with its seat in Berlin. The swap contract contained a clause conferring jurisdiction on the English courts. JP Morgan brought proceedings in England designed essentially to enforce the swap contract, to recover payments due under it and for declarations as to its validity. BVG opposed the action, inter alia, on the basis that the swap contract was not valid because BVG had acted ultra vires when the contract was concluded and that the decisions of its organs which had led to its conclusion were therefore null and void. BVG also brought a parallel action in the German courts and requested that the English court decline jurisdiction in favour of the German courts which it said had exclusive jurisdiction under Article 22(2) of Regulation 44/2001.
27. The matter was referred to the ECJ which again required a strict interpretation of Article 22(2) which did not go beyond what was required by the objectives pursued by it (para 32). The ECJ pointed out that, unless a strict interpretation was adopted, there was a real risk that almost all legal actions brought against a company would come within the jurisdiction of the courts of the Member State in which the company had its seat. All that would be needed for this to happen would be for the company to plead as a preliminary issue that the decision of its organs that led to the conclusion of a contract or to the performance of an allegedly harmful act were invalid. The ECJ stated (in para 38):
- “in a dispute of a contractual nature, questions relating to the contract's validity, interpretation or enforceability are at the heart of the dispute and form its subject-matter. Any question concerning the validity of the decision to conclude the contract, taken previously by the organs of one of the companies party to it, must be considered ancillary. While it may form part of the analysis required to be carried out in that regard, it nevertheless does not constitute the sole, or even the principal, subject of the analysis.”*
28. The ECJ made it clear (in para 44) that Article 22(2) would only cover proceedings *“whose principal subject matter comprises the ... validity of the decisions of its organs.”*
29. It followed that the ECJ did not consider that Article 22(2) applied to the proceedings between JP Morgan and BVG.

(2) English case law

30. In **Grupo Torras SA & Anor Sheik Fahad Mohammed Al Sabah & Ors** [1995] CLC 1025 the claimant companies brought proceedings for damages for fraudulent conspiracy and breach of duty by its directors, professional advisers and certain offshore companies. The defendants challenged the jurisdiction of the English courts, arguing (inter alia) that since the claimant had its seat in Spain, the Spanish courts had exclusive jurisdiction under Article 16(2) of the Brussels Convention (which was the equivalent provision to Article 24 of the Recast Regulation). The Court of Appeal held that the subject matter of the dispute did not concern any decisions of the claimant's organs within Article 16(2) but rather frauds alleged to have been practised on the claimants. In reaching its conclusion, the Court of Appeal stated as follows:

“The appellants submit that art. 16(2) governs all questions which are concerned, with the internal management of a company, and that this extends to all disputes which arise out of the relationship between the company and its officers or shareholders or between its shareholders and officers, and possibly even between its shareholders inter se. This submission is far too wide. Whether an action falls within art. 16(2) depends upon its subject matter the nature of the dispute not upon the relationship between the parties. A claim by an officer of a company for wrongful dismissal, for example, does not fail within the article, though a claim that the decision to dismiss him had been taken by a meeting of the board which was inquorate would do so.”

31. In **Speed Investments Ltd and Anor v Formula One Holdings Ltd and Others (No 2)** [2004] EWCA Civ 1512; [2005] 1 WLR 1936 the claimants brought proceedings to dispute the validity of the appointment by the second defendant of the third and fourth defendants as directors of the first defendant, an English company. The claimants and the first and second defendants were parties to a shareholders' agreement which set out, inter alia, the terms for the appointment of the directors. This agreement was governed by English law but had an exclusive jurisdiction clause in favour of the courts of Geneva, Switzerland. The claimants sought a declaration as to the identity of the directors and rectification of the register of directors. The second defendant commenced proceedings in Switzerland and applied to the English court for a declaration that the English court had no jurisdiction.
32. The Court of Appeal (affirming the decision of Lewison J) held that the real subject matter of the dispute was the composition of the board of the first defendant, the determination of which was essential for the validity of future decisions. Accordingly, the subject matter of the dispute was, at least prospectively, the validity of decisions of the first defendant and the English court therefore had exclusive jurisdiction under Article 22(2) of Regulation 44/2001.
33. Carnwath LJ (with whom Neuberger LJ and Sir William Aldous agreed) acknowledged (in para 26) that the Court of Appeal's interpretation involved some expansion of the language of the article. This was because the issue was not the validity of any actual board decision but rather the determination of the composition

of the board which was essential for the validity of future decisions. Nonetheless, Carnwath LJ considered this to fall within the scope of Article 22(2).

34. In reaching his conclusion, Carnwath LJ rejected the submission made on behalf of the second to fourth defendants that (i) the real subject matter of the dispute was the effect of the shareholders' agreement and (ii) the result, in terms of composition of the board and amendments to the register, were purely consequential. Although Carnwath LJ agreed that the interpretation and effect of the shareholders' agreement was "*central to the issues in the case*" (para 30), he was unable to accept that "*merely because the main area of live dispute may be as to the effect of the agreement...it ceases to be within article 16(2).*"
35. In **Ferrexpo AG v Gilson Investments Limited and ors** [2012] EWHC 721 (Comm) the proceedings concerned a company with its seat in Ukraine. The claimant claimed to own 98% of the shares in that company but the defendants disputed the claimant's shareholding or their right to retain it. The defendants challenged jurisdiction, *inter alia*, on the basis of a reflexive application of Articles 22(2) and 22(3) of Regulation 44/2001 such that the courts of Ukraine had exclusive jurisdiction.
36. One issue that arose was whether the court should look only to the relief sought in the particulars of claim when determining the subject matter of the dispute or whether the court could go beyond that. Andrew Smith J considered that the court "*must look realistically at what is the real nature of the dispute that is to be litigated*" (para 147). That said, the judge declined to decide whether the application of Article 22 might depend upon the issues raised in a defence because, in **Ferrexpo**, no defence had actually been pleaded.
37. Andrew Smith J (at para 150) accepted the defendants' submission that the proceedings had as their object the validity of the resolutions of the company's general meeting of shareholders, an organ of that company (in particular, specific resolutions passed at a meeting on 20 November 2002). If necessary, he would also have concluded (at para 153) that the proceedings had as their object the validity of entries in a public register in Ukraine. The Judge was therefore willing to grant a stay of the proceedings based on a reflexive application of Article 22.
38. In **Blue Tropic Limited and Coppella Ventures Limited v Ivane Chkhartishvili** [2014] EWHC 2243 (Ch) the claimant alleged that the defendant had caused assets belonging to the claimant companies to be transferred to entities associated with the defendant for no or no adequate consideration. The defendant accepted that SP Trustees was then the legal owner of the shares in the claimant companies but contended that he was the sole beneficial owner of those shares. As such, he contended that the decisions of the boards of directors of the claimant companies to bring the proceedings were liable to be set aside. The defendant contended that the court lacked jurisdiction because the courts of the BVI had exclusive jurisdiction by reason of a reflexive application of Articles 22(2) and (3) of Regulation 44/2001.
39. Newey J held (in para 24) that the principal subject matter of the proceedings was not the validity of the decisions made by the companies' boards nor the validity of entries in their share registers. Rather, the dispute was essentially about the beneficial ownership of the companies' shares. It therefore fell outside of Article 22. Newey J did not think that the position was altered by the mere inclusion in the defendant's

draft counterclaim of a declaration of entitlement to have his name entered in the register as the owner of the shares. This did not make the validity of the registers the principal subject matter of the proceedings.

40. In **Re Zavarco plc** [2015] EWHC 1898 (Ch) the claimant claimed to have purchased a 6.66% holding in a UK plc. Relying on this holding, the claimant asked the directors to call a general meeting but they refused to do so on the basis that the shares were unpaid. The claimant therefore served its own notice to call a meeting. The company then informed the claimant that the company had issued further shares to another shareholder, diluting the claimant's shareholding. The claimant commenced two actions, one for a declaration that the notice served by him was valid and the other for an order rectifying the company's register of members so as to delete the additional share issue. The company sought a stay of the actions and the claimant responded by saying that no stay was available where the proceedings fell within the exclusive jurisdiction of the English court under Article 24.
41. So far as the first action was concerned (the action seeking a declaration that the notice calling a meeting was valid), the company accepted that, viewed on its own, the claim fell within Article 24 (see judgment para 19). The company's argument was that the court should view matters more widely and focus on the defence that the shares were not paid up, which turned on whether the provisions of a share purchase agreement had been complied with, which was a matter outside Article 24. David Donaldson Q.C., sitting as a deputy High Court judge, rejected this argument (at para 20) which he considered to be difficult to square with the logic and scheme of the Regulation. He considered that the application of Article 24 should be determined by the nature and basis of the claim rather than of the defences. In any event, the Deputy Judge considered (para 26) that the proposed defence was not purely contractual and raised an issue of corporate governance falling within Article 24.
42. So far as the second action was concerned (the action seeking an order rectifying the company's register of members so as to delete the additional share issue), the company accepted that, on its face, these proceedings fell within Article 24(3) but argued that the proposed defence was again contractual in nature. The Deputy Judge rejected this argument (at paras 29-30) and concluded that the essential nature of the action was one that related to rectification of the register.
43. Finally, in **Koza Ltd and another v Akçil and others** [2019] UKSC 40 the Supreme Court held that, where two distinct claims were brought which were not inextricably bound up with each other, one which fell within Article 24(2) and one which did not, it was not legitimate to use an overall evaluative judgment so as to conclude that both claims fell within the exclusive jurisdiction of the English court. It followed that the English courts only had exclusive jurisdiction under Article 24(2) over the Turkish company in respect of its notice which was alleged to have been served in breach of the English company's articles of association.
44. In the course of his judgment, Lord Sales JSC (with whom the other Justices of the Supreme Court agreed) referred in detail to the judgments of the ECJ in relation to Article 24 and its predecessors, including the **Hassett** case and the **BVG** case. So far as the BVG case is concerned, Lord Sales stated (at para 32):

“In other words, in relation to a claim based on a contract and brought in England pursuant to an exclusive jurisdiction clause in which an ultra vires defence was advanced, which was inextricably bound up with and hence ancillary to the underlying claim, a narrow interpretation of article 22(2) meant that the ultra vires defence did not have the effect of pulling the whole proceedings or any part thereof into the exclusive jurisdiction of the German courts. In that context it could not be said that the ‘principal subject matter’ of the proceedings comprised ‘the validity of the decisions of [BVG’s] organs’ as would be required if article 22(2) was to have any application (para 44 of the judgment).”

Does Article 24(2) apply?

45. As the authorities make clear, the word “*object*” in Article 24(2) must be understood as meaning “*the principal subject matter*” of the proceedings. This is very similar to the wording in Article 27 which refers to “*a claim which is principally concerned with...*”. I do not regard there to be any, or any material distinction, between these formulations.
46. Mr Meuli contended the principal subject matter of the proceedings and the matter with which they are principally concerned is the legal ownership of shares in PEV, the composition of the shareholders of PEV and therefore (prospectively) the validity of the decisions of the shareholders as an organ of the company. He also contended that the principal subject matter of the proceedings could be viewed as Mr Vaquer Doménech’s refusal to transfer shares to Mr Marriott, a decision which he took as administrator of PEV and therefore as one of its organs. Mr Meuli contended that the court should not have regard to the Defence and Counterclaim when applying Article 24 and that, even if it did, it was clear that Article 24(2) was engaged.
47. Mr ter Haar Q.C. submitted that the principal subject matter of the proceedings was the validity of the 12 July 2018 agreements and that all other matters were ancillary. He submitted that Mr Vaquer Doménech’s refusal to transfer shares was merely the consequence of the dispute about the validity of those agreements and that Mr Vaquer Doménech would simply abide by whatever result the court reached on this issue. Mr ter Haar contended that the court was entitled to have regard to the Defence and Counterclaim but that it did not need to do so in order to arrive at the conclusion that the proceedings did not fall within Article 24(2).
48. Despite the impressive submissions advanced by Mr Meuli, I have reached the clear conclusion that Mr ter Haar Q.C.’s arguments are to be preferred. I set out my reasoning below.
49. As the ECJ judgments emphasise, I must apply a strict interpretation to Article 24. If Mr Meuli’s submissions were correct, all disputes between shareholders or those claiming to be shareholders, even those otherwise covered by an exclusive jurisdiction clause in favour of the courts of country A, would fall within the exclusive jurisdiction of the courts of country B if the company in question had its seat in country B. This would seem to result in an overly broad and potentially far reaching application of Article 24. A strict interpretation is important especially in a case such

as the present where, if Article 24 applies, it would deprive the parties of the choice of jurisdiction that they purported to make in their agreements. I consider that Mr Meuli's submissions are "*far too wide*", echoing the words of the Court of Appeal in the **Grupo Torras** case.

50. Next, despite the points made by Mr Donaldson Q.C. in the **Zavarco** case, I am not persuaded that, when deciding on the application of Article 24, the court is required to put out of its mind the content of a Defence in a case where one has been served. I do not think that is what the ECJ did in a case such as **BVG** where it took into account what **BVG** asserted by way of defence but considered that this was ancillary to the main subject matter of the proceedings, which was the swap contract's validity, interpretation and/or enforceability. I do not, however, need to decide this point one way or the other. That is because the fact that the first defendant is seeking to invalidate the 12 July 2018 agreements based on coercion is clear from the attestation of Mr Vaquer Doménech that I described above, which is itself referred to in the Particulars of Claim. I can therefore form a realistic view of the real nature of the dispute by looking at the Particulars of Claim and the documents referred to in it without any need to look additionally at the Defence and Counterclaim.
51. In my judgment, it is clear from the Particulars of Claim and the attestation (and reinforced by reference to the terms of the Defence and Counterclaim if I am entitled to have regard to them) that the principal subject matter of the proceedings and the matter with which they are principally concerned is the validity and enforceability of the 12 July 2018 agreements, and not the validity (even prospectively) of any decisions of the organs of PEV.
52. This is not a case like **Speed Investments** where D2 had already purported to appoint D3 and D4 as directors of D1 but C disputed the appointments. In such a case, it is obvious that a challenge to the appointments will inevitably also mean a challenge to the validity of every decision taken by those directors as an organ of the company. In the **Speed Investments** case the entire subject matter of the proceedings was the validity of the appointments.
53. In the present case, no decision of the shareholders, whether actual or prospective, is being challenged and there is no evidence before the court to suggest that any decision of the shareholders will be invalidated even if Mr Marriott succeeds in his claim.
54. Indeed, as Mr ter Haar Q.C. pointed out, Mr Marriott does not challenge the current composition of the shareholders of PEV. Mr Marriott accepts that the legal owners of the shares are at present correctly identified as Mr Fresson (as to 50%) and Mr Vaquer Doménech (as to 50%). Rather, Mr Marriott's case is that the 12 July 2018 agreements are valid and enforceable and that, if he succeeds in making that good, he will be entitled to receive one third of the shares. Accordingly, the proceedings relate to the validity and enforcement of those agreements. If they are valid and enforceable, then they will have to be given effect to and one third of the shares transferred. As things currently stand, there is no dispute about the steps that will need to be taken to give effect to the agreements if valid and enforceable.
55. Accordingly, it seems to me that the present case is far closer to the **Blue Tropic** case than to the **Speed Investments** case. In **Blue Tropic**, Newey J held that the principal subject matter of the proceedings was whether the defendant was the beneficial owner

of the shares, everything else was ancillary to that. Similarly, in the present case, the claim is principally concerned with whether effect must be given to the 12 July 2018 agreements. Everything else (including the additional claim asserting the right to appoint a director) is ancillary to that.

56. One way of testing the position is to ask what the position would have been had Mr Fresson brought a claim for a declaration that the 12 July 2018 agreements were voidable as a result of economic duress. Such a claim would not have fallen within Article 24 because it would not have challenged the validity of any decision of any organ of PEV. It is very difficult to see why this claim should fall outside Article 24 but the claim in the present action should fall within Article 24 when they would be principally concerned with the same subject matter.
57. I do not consider that Mr Fresson and PEV's case is assisted by reference to the actions of Mr Vaquer Doménech. As he says in his attestation, he took the decision not to transfer the shares pro tem as a result of the dispute between Mr Marriott and Mr Fresson and viewed himself simply as a "*holder*" of the shares willing to abide by any agreement between the two individuals and/or a judicial resolution. I do not consider that Mr Vaquer Doménech's decision was taken as an organ of PEV and in any event, even if it was, I do not consider that the principal subject matter of the proceedings is his decision.
58. In consequence of the matters set out above, I do not regard the subject matter of the proceedings to display a particularly close link with the courts of the seat of PEV. Moreover, I do not consider that any of the objectives of Article 24 such as centralising jurisdiction or ensuring legal certainty would be undermined by the conclusion that the requirements for exclusive jurisdiction under Article 24 are not met in the present case.
59. In light of the above, I have concluded that the proceedings do not fall within Article 24(2).

Does Article 24(3) apply?

60. I proceed on the basis that the Mercantile Register for the Balearic Islands is a public register and that the books and records of PEV may themselves be open to public inspection. However, for reasons which closely follow those applicable to Article 24(2), I do not consider that the proceedings are covered by Article 24(3). In my judgment, the principal subject matter of the proceedings is not the validity of the entries in the public register. Mr Marriott does not seek to challenge any entry currently on any register. He accepts that the register is correct as it stands. His case is that the register will have to be changed if he is right that the 12 July 2018 agreements are valid and enforceable. The proceedings are principally concerned with the validity and enforcement of those agreements. The relief that would flow from a finding (if made in due course) that they are valid and enforceable is not the principal subject matter of the proceedings (indeed, there is at present no dispute about the nature of the relief or how it would be implemented).

Conclusion

61. I reject the arguments of Mr Fresson and PEV based on Article 24 of the Recast Regulation. Since that was the only basis on which jurisdiction was challenged, I must therefore dismiss the challenge to jurisdiction.