

COMMODITIES | JANUARY 2022

HFw LITIGATION: UNFAIR PREJUDICE PETITIONS - ITS NOT PERSONAL

In a recent judgment, the Court of Appeal has confirmed that, for personal actions to be pleaded in support of an unfair prejudice petition, there must be a causal link between these actions and the company's affairs. The judgment, from England and Wales's second highest court, provides important guidance to potential claimants on the scope of unfair prejudice petitions.

What happened?

The Court of Appeal's judgment¹ concerns an appeal from a decision of the High Court, *King v Kings Solutions Group Ltd*² during an unfair prejudice petition (the **Petition**) under section 994 of the Companies Act 2006 (**s.994 CA 2006**).

S.994 CA 2006 provides that unfair prejudice petitions can be brought by a shareholder only where they relate to the "company's affairs" or an "actual or proposed act or omission of the company".

The Petition forms part of a complex dispute between the shareholders of Kings Solutions Group Limited (**KGSL**) which initially concerned alleged misrepresentations made during negotiations for the sale of shares in KGSL from its founders (the **Minority Shareholders**) to its new owners (the **Majority Shareholders**), although the Minority Shareholders discontinued their misrepresentation claim during the trial. As one judge has colourfully put it, "[f]rom these basic facts has sprung a multiplicity of litigation which must inevitably put any observer with a taste for nineteenth century fiction in mind of the infamous *Jarndyce case*."³

In support of their Petition, the Minority Shareholders presented a 68-page Points of Claim document claiming, among other things, that the Majority Shareholders had pursued a "Campaign" to obtain their shares in KGSL "for as small a cost as possible" and to exclude them from the business of KGSL.

The alleged Campaign involved actions (such as the misapplication of KGSL's resources), which would constitute conduct of KGSL's affairs. However, it also included actions, which were 'personal' and did not, of themselves, amount to such conduct (the **Personal Actions**), e.g.:

the rejection of the exercise of a put option; and

steps taken to recover legal costs awarded against the Minority Shareholders.

The Majority Shareholders applied to have parts of the Points of Claim struck out on the grounds that they were not related to the conduct of KGSL's affairs and did not fall within the scope of s.994 CA 2006.

First Instance decision

At first instance in the High Court, the judge accepted that the Personal Actions, when "viewed in isolation", did not constitute affairs of KGSL.

¹ Primekings Holding Ltd & Ors v King & Ors (Re Kings Solutions Group Ltd) [2021] EWCA Civ 1943

² [2020] EWHC 3130 (Ch)

³ See the comments of Mrs Justice Cockerill in *King v Stiefel* [2021] EWHC 1045 (Comm).

⁴[2014] EWCA Civ 191

However, the judge recognised the principle in *Graham v Every*⁴ that personal actions, when combined with actions or omissions or other conduct on the part of the relevant company, may legitimately fall within the scope of an unfair prejudice petition so long as there is a "clear link or causal connection".

The judge held that, as the Personal Actions were pleaded to have formed part of the "Campaign", this amounted to a "sufficient causal connection". Therefore, the Majority Shareholders' application was rejected.

The Majority Shareholders appealed.

The Court of Appeal decision

The Court of Appeal, in a unanimous decision, allowed the appeal and held that:

- personal actions which are "causally connected" to the conduct of the company's affairs may be included in a statement of case under s.994 CA 2006;
- however, there is "no such justification for allowing other allegations of personal conduct [...] which are not [so] causally connected".

As the Personal Actions themselves were not causatively connected to any conduct of the affairs of the KGSL, the relevant sections of the Points of Claim were struck out.

The Court of Appeal considered that although the judge at first instance had correctly analysed the principle in *Graham v Every*, he had incorrectly applied his analysis to the disputed paragraphs of the Points of Claim. The court commented that "even if two actions are each said to have been part of an orchestrated plan, it does not follow that both would amount to conduct of the affairs of [KGSL], and nor does it follow that one would be causative of the other."

What does this mean for potential petitioners?

This judgment provides welcome clarification on the scope of unfair prejudice petitions.

Unfair prejudice claims are often messy, personal and hard fought. The Court of Appeal even noted the "clear tendency for petitions [...] to raise myriad grievances and complaints of diverse forms of misconduct".

The decision at first instance threatened to allow irrelevant personal grievances that have nothing to do with the company in question to be 'crowbarred' into petitions via a vague reference to a "Campaign" against the petitioner. However, the decision of the Court of Appeal is a welcome clarification confining shareholder claims to their proper application, i.e., whether the affairs of a company are conducted in a manner, which is unfairly prejudicial to the interests of members generally, or of some part of its members.

In light of this decision, potential petitioners in unfair prejudice claims should try and rise above any personal acrimony with their fellow shareholders and confine their petitions to the affairs of the company.

Pursuing an action for unfair prejudice under s.994 CA 2006 should be the last resort. Potential petitioners should seek legal advice at an early stage and consider if there are any viable alternatives to legal action, such as exercising rights under a shareholders' agreement.

If you have any questions relating to the above or require advice in relation to a potential shareholder dispute, please contact the authors of this briefing.

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