

Re HLHP Oriental Food Ltd [2024] EWHC 497 (Ch)

Edward Davies KC

The recent judgment of Mr Justice Zacaroli J in *Re HLHP Oriental Food Ltd* (also known as *Maggie Otto v Inner Mongolia Happy Lamb Catering Management Company Ltd*) [2024] EWHC 497 (Ch) is a salutary reminder of the importance of checking the register of members to ensure proper standing to bring an unfair prejudice petition.

Edward Davies KC, who, together with *Stewarts Law LLP* (Sophie Lalor-Harbord and Tom Otter), was instructed in the run up to trial, applied on behalf of the Respondents on the first day of the trial to amend the Defence to challenge three of the Petitioners' standing. The challenge was made on the basis that the Petitioners' names did not appear on the register of members and, further, that they were unable to establish that they had received shares by way of valid transfers pursuant to duly executed instruments of transfer.

In a judgment handed down on 5 March 2024, Zacaroli J granted the Respondents permission to amend, holding that they should be permitted (having regard to the criteria under CPR 14.5) to withdraw the admissions that had been made in the Defence in respect of the Petitioners' shareholdings. It was held, in particular, that it is for the Petitioners to establish standing and that the Court would have to be satisfied that there is standing irrespective of what was said in the Defence, since this is a 'gateway' requirement for the purposes of the statutory jurisdiction under section 994 of the Companies Act 2006. Accordingly, the fact that the Defence had admitted the Petitioners' shareholdings right up to the commencement of the trial was not a reason to prevent the Respondents being permitted to amend so as to plead the position as they now understood it to be.

The Petitioners responded to the Respondents' amendment application by making an application to amend the Petition so as to introduce a claim under section 125 of the Companies Act 2006 to rectify the register of members. That application was dismissed. Zacaroli J gave a number of reasons why the Petitioners would not be permitted to claim rectification of the register within the existing unfair prejudice proceedings, including that the Petitioners' case on when and how they acquired shares was, at best, inadequately particularised and that the evidence and disclosure had not been directed to that issue. There was the additional problem that the Petitioners had not sought to join the persons whose names they were seeking to remove from the register, one of which was a dissolved company.

In the result, the trial, which had been set down for ten days, was adjourned and the proceedings were stayed, with orders being made in favour of the Respondents in respect of their costs 'thrown away' as well as their costs of the applications.

Edward is an experienced commercial litigator, with a strong grounding in company law and corporate insolvency. He has acted in some of the most significant recent actions in these areas, including *ClientEarth v Shell Plc*, *BTI 2014 LLC v Sequana SA* and *Hewlett Packard and Autonomy v Lynch*.