Neutral citation: [2024] EWHC 1627 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No BL-2024-000559**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Mr M H Rosen KC sitting as a Judge of the Chancery Division
Tuesday, 25 June 2024

B E T W E E N:

(1) PETER WADDELL HOLDCO LIMITED
(2) MR PETER WADDELL

Claimants/Applicants

-and-

(1) BLUEBELL CARS HOLDING LIMITED
(2) BLUEBELL CARS TOPCO LIMITED
(3) REZA FARDAD
(4) ADAM MCLAIN
(5) GILLES GRADASSI
(6) LAURENCE VAUGHAN
(7) JAMES CARTWRIGHT
(8) THOMAS CLARKE
(9) NEIL HODSON
(10) ALEX POTTER
(11) DAVID THORLEY
(12) BLUEBELL CARS MIDCO LIMITED
(13) BLUEBELL CARS BIDCO LIMITED
(14) BAPCHILD MOTORING WORLD (KENT) LIMITED

Defendants/Respondents

JUDGMENT

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(1) Introduction

1. This is the judgment of the Court, following a hearing on 22 and 23 May 2024 of the Claimants' application for interim injunctions under a Securityholders' Deed dated 4 April 2022 ('the SHD') relating to the affairs of the Second Defendant ('TopCo').

2. TopCo's Group of companies is one of the largest car dealerships in Britain. It was founded over some 40 years and developed by the Second Claimant, Mr Peter Waddell, under the name 'Big Motoring World'. The Claimants and the corporate Defendants were among the parties to the SHD, which came into being when Mr Waddell sold a minority interest in his business to a private equity company, Freshstream Investment Partners LLP ('Freshstream').

3. Mr Waddell is the sole director and shareholder of the First Claimant ('PWHL') which is the majority shareholder of TopCo. The First Defendant ('HoldCo') is the minority shareholder of TopCo and is a subsidiary of Freshstream. The Twelfth to Fourteenth Defendants are subsidiaries (direct or indirect) of Topco.

4. The present applications arise from notices given by HoldCo commencing on 7 March 2024 purportedly exercising their 'Step in Rights' following a 'Trigger Event' under Clause 9 of the SHD ('SIRE'), and subsequently on 10 April 2024 following an alleged 'Material Default Event' on the part of Mr Waddell under Clause 19 ('MDE'). The effect of such notices was among other things respectively to disapply rights of approval under Schedule 1 of the SHD and to suspend and then to remove Mr Waddell as a director of all relevant companies.

5. Schedules 1 to 3 of the SHD listed matters which were to be subject to various approvals. Schedule 1, headed 'Key Approval Matters', listed some 30 matters, ranging from corporate reorganisation and refinancing to the incurring of liabilities (including a debt of more than £10,000 for a single transaction). Schedule 2 was a list of six 'Reduced PW Approval Matters'. Schedule 3 was

a list of five ‘Operational PW Approval Matters’ to apply so long as Mr Waddell was an executive. Under clause 24(b) there were also listed twelve categories of information with which Holdco and Mr Waddell were both to be provided.

6. The Claim Form and the application notice were both issued on behalf of Mr Waddell on 12 April 2024. On 16 April 2024 Mr Waddell’s contract of employment with the Thirteenth Defendant BidCo was terminated (and with it his directorship if still subsisting). He appealed against this on 22 April 2024. A further SIRE notice was sent by HoldCo to TopCo on 23 April 2024. Amended Particulars of Claim (challenging that notice as well) were served for Mr Waddell on 3 May 2024.

7. The Claimants contend that HoldCo’s aim has been and is to exclude Mr Waddell from TopCo’s business and that its conduct to that effect was and is in breach of the SHD, and detrimental and prejudicial to Topco and to the Claimants. They have reserved their rights to issue further proceedings pursuant to sections 994-996 of the Companies Act 2006.

8. In the present action and application, the Claimants seek to prevent HoldCo and TopCo from continuing in breach of contract and ‘to restore the previous position which prevailed’. The application thus requested interim injunctions to restrain the Defendants from acting pursuant to the SIRE and MDE notices, and reinstatement of Mr Waddell’s alleged Schedule 1 rights and his former directorship of the relevant companies.

9. The Claimants also sought a speedy trial, saying (in their opening skeleton at paragraph 17) that ‘The impact of any interim relief can be further controlled and mitigated by order for an expedited trial in the circumstances rather than PW’s exclusion. Pending an expedited trial, his position and rights under Schedule 1 should be restored.’

10. Directions were given by Mr Justice Roth on 19 April 2024 which provided for the service of evidence. In the event there were before the Court on the current hearing some 3,000 pages in a main and supplementary hearing bundle, including some pleadings. In addition to the three witness statements in the bundles from Mr Waddell for the Claimants, they sought and were granted permission at the hearing to adduce late a fourth witness statement from him, limited to paragraphs 17 to 42. For the Defendants, various witness statements were served from Messrs Adam McLain, Reza Fardad and Laurence Vaughan, directors of HoldCo and/or TopCo. Others appear to have resigned their directorships and I am told that by Consent Orders of Master Brightwell dated 29 April 2024 and 15 May 2024, all claims against them were dismissed.

11. At the start of the second day of the hearing, 23 May 2024, the Claimants abandoned their application for reinstatement of Mr Waddell as a director. Instead they asked for an order that a Mr David Thomson (who, they said, was a solicitor friend of his) or some other appropriate professional to be appointed a non-executive director. They still pursued interim enforcement regarding the matters listed in Schedule 1, primarily as rights of approval, but also proposed alternatives, so as to treat those as rights instead, in part or in whole, to be given advance notice of the relevant matters and sufficient information to 'appraise' them, and thus enable a veto to be agreed or imposed if he then so requested.

12. There was no real dispute as regards the legal principles applicable to the application, derived of course from the guidelines in *American Cyanamid v Ethicon* [1975] UKHL 1, although the parties cited further authorities on the glosses to be put on it, and as regards the substantive issues sought to be raised.

13. Before summarising the arguments as regards whether there is a serious issue to be tried, and as to the adequacy of damages for the Claimants and the so-called 'balance of convenience', this judgment sets out some of the background, in particular as regards the SIRE notices and the MDE notice allegedly under the SHD, and as regards Mr Waddell's alleged misconduct.

14. The Claimants were represented by Paul Chaisty KC and Nick Taylor; HoldCo by George Spalton KC and Mark Wraith; and TopCo by Edward Davies KC. I am grateful to all counsel for their written and oral submissions.

(2) Background

15. HoldCo acquired its minority interest in TopCo for nearly £70 million in two stages on 4 April 2022 and 30 September 2022, together with an option to purchase further shares in TopCo from PWHL. Following completion, the SHD provided for its right to appoint two directors and a non-executive chairman of any Group ompany; Mr Waddell still had control over the Group including by way of weighted voting rights such that he and directors appointed by him had the majority of votes at board meetings of TopCo.

16. The SHD also contained two sets of provisions which entitled HoldCo to give notice and take control over the TopCo group, subject to Mr Waddell's continuing right to receive information and to veto key business decisions, in the event that:

    (a) it underperformed to a prescribed extent against its defined EBITDA targets for two consecutive quarters unless directly caused by a general economic depression (the 'SIRE rights'); and/or

    (b) Mr Waddell was suspected and found, through a contractual process, to have breached laws relating to discrimination, harassment, bribery, or corruption, likely to have a material adverse effect on the reputation of the Group or HoldCo (the 'MDE rights').

17. As regards the SIRE rights:-

    (i) Clause 9(b) of the Securityholders' Deed provides

    Step-In Rights Exercise Notice. Following the occurrence of a Trigger Event, (i) as soon as reasonably practicable and in any event within

two Business Days following the occurrence of a Trigger Event, the Company shall notify the Investor in writing of such Trigger Event (the 'Trigger Notice') and (ii) the Investor shall be entitled to give the Company written notice … of its intention to exercise Step-In Rights pursuant to Section 9(c).

(ii) the Annual and Quarterly EBITDA Targets were based on business plans and other forecasts provided by Mr Waddell and his advisors during the negotiations with Freshstream. The SHD defines a 'Trigger Event' as when Quarterly Group EBITDA is only 60% or less of the Target for two consecutive quarters and where such underperformance is not directly caused by a 'Force Majeure Event', defined to include a general economic recession in the UK, in turn defined as two consecutive quarters of negative GDP growth.

(iii) in the event that HoldCo serves a SIRE Notice: (a) it can appoint any number of additional directors to the board of TopCo; (b) Mr Waddell and his directors cease to enjoy weighted voting rights; and (c) Mr Waddell continues to have veto rights over certain matters.

18. As regards MDE rights:-

(i) Clause 19(a) of the SHD grants HoldCo the right to:

require that [Topco] commission an investigation by a suitably qualified independent third party into the conduct of any Employee if there are reasonable grounds (in the opinion of Investor (acting reasonably)) to suspect that such Employee has breached any applicable law or regulation in relation to discrimination, harassment, or any ABC Law in each case in connection with their employment, appointment, or engagement with the Group and that such breach is reasonably likely to have (in the opinion of the Investor acting reasonably) or has had a material adverse effect on the reputation of any Group Company and/or the Investor.

(ii) Under clause 19(b), the conduct of an Independent Investigation is a matter for the board of Topco.

(iii) If the Independent Investigation concludes on the balance of probability that a MDE has occurred with respect to Mr Waddell then pursuant to clause 19(i)(i):

(a) *[Topco] shall, on written notice from the Investor (which [HoldCo] may give in its absolute discretion) terminate the rights of [Mr Waddell] to appoint any [directors]... and, automatically upon [Topco] receiving such notice from Investor [Mr Waddell and any director appointed by him] shall be removed as directors or* [sic] *[Topco] and each Group Company..."*; and

(b) Mr Waddell continues to have veto rights over certain matters.

19. Clause 28 of the SHD provided in part that:

any modification, amendment, or waiver of any provision of [the SHD] will be effective if: (i) such modification, amendment, or waiver is approved in writing by [Topco], [HoldCo] and each of [Mr Waddell and PWHL].

20. The EBITDA of the Group has, in every quarter from Q3 2022 (the quarter in which Stage 2 of completion occurred) to Q1 2024, been less than 60% of the target for that quarter. The business performance of the Group deteriorated sharply from Q4 2023 onward, the EBITDA in Q4 2023 being only around 20% of the corresponding target, and the Group's EBITDA in January and February 2024 being less than £1 million, against a target for Q1 2024 of more than £12 million. The Group ran out of cash on hand on occasions during this period, and HoldCo had to advance shareholders' loans to the Group of £18 million, Mr Waddell declining to provide some of the funds needed. According to the Defendants, he became increasingly obstructive and difficult, in their view because HoldCo told him that in the light of the Group's financial performance, it was unwilling to exercise the Call Option in October 2023.

21. Whilst HoldCo was considering the exercise of its SIRE rights, with the least disruption to the day-to-day activities of the Group, it also considered complaints received by the Group's HR department about Mr Waddell's

conduct. A list of alleged racist, sexist, misogynistic, bullying and abusive conduct gave rise to questions whether Mr Waddell had breached laws against discrimination and harassment, such that the reputation of both the Group and HoldCo was likely to be materially affected.

22. On 7 March 2024, HoldCo served on TopCo a SIRE Notice, pursuant to clause 9(b) of the SHD, and a document headed 'Material Default Event – Investigation Notice (the MDE Investigation Notice) requiring Cto commission an investigation into Mr Waddell's conduct pursuant to clause 19(a) of the SHD. On the same day, Mr Waddell was suspended as an employee of BidCo.

23. On 13 March 2024, Mr Waddell purported to appoint a number of individuals to the board of TopCo and the other Group companies. The Defendants contend that those appointed (Mr Waddell's domestic partner, his son, his accountant, and one of his friends) were inappropriate and in any event the appointments were invalid by reason of TopCo's Articles of Association Article 27.3(b) once a SIRE Notice had been served. For its part, on 20 March 2024, HoldCo sought to appoint various employees as additional directors within the Group. Mr Waddell was 'signed off' as ill for 4 weeks from 27 March 2024.

24. TopCo, by the Sixth and Eighth Defendants Messrs Vaughan and Clarke, appointed Nicholas Siddall KC as the independent investigator and on 9 April 2024, Mr Siddall KC submitted a preliminary report regarding a selected number of the allegations against Mr Waddell (based on 6 out of some 25 alleged incidents) and concluded that a MDE had, on the balance of probabilities, occurred. Mr Waddell had, on the grounds of illness, not attended an interview by Mr Siddall or a disciplinary hearing the same day before Mr Vaughan and been refused requests for an adjournment.

25. Messrs Vaughan and Clarke forwarded Mr Siddall's preliminary report to the Third and Fourth Defendants Messrs Fardad and McLain as directors of HoldCo, accompanied by a letter from the Investigation Committee stating that

"*the Independent Investigator has today provided written confirmation that, on the balance of probability, a Material Default Event (as defined in the SHD) has occurred on the part of PW".*

26. On 10 April 2024, HoldCo sent the MDE Notice to TopCo pursuant to clause 19(i)(i) of the SHD, and Mr Waddell's appointment as a director of the Group companies was automatically terminated. As Mr Waddell was no longer a director of any Group company and no longer had the power to appoint any directors of any Group company, there was no longer a need for HoldCo's recent appointees to remain on the Group's boards and, with the exception of Mr Clarke, they resigned on 12 April 2024.

27. On 16 April 2024, Mr Siddall KC produced a final report setting out his findings on all the allegations against Mr Waddell, based on evidence including his interviews of some 22 individuals, and confirming his conclusion that a Material Default Event had occurred; and BidCo terminated Mr Waddell's employment. By a letter of the same date Mr Vaughan set out his disciplinary findings.

28. Following the finalisation of the Group's Management Accounts for Q1 2024, on 17 April 2024, TopCo served on HoldCo a notice under clause 9(b)(ii) of the SHD notifying it that a 'Trigger Event' had occurred and on 23 April 2024, HoldCo served the April SIRE Notice, expressly without prejudice to the validity of the March SIRE Notice.

29. The Defendants contend that the financial performance of the Group improved immediately after the March SIRE Notice. The Group EBITDA for March 2024 (as set out in the monthly management accounts) was just under £900,000, compared to less than £1 million for January and February 2024 combined prior to the March SIRE Notice.

30. According to the Defendants, Mr Waddell continued to misconduct himself after 7 March 2024. Whilst he said that he was too unfit medically (because of stress and other reasons) to work, to attend investigative and other meetings or to take part in the disciplinary process, he appears to have sent various abusive and intimidating messages to Group employees and/or customers whom he perceives as hostile to him, including death threats which he then sought to delete on WhatsApp.

(3) Serious issue to be tried

31. The Claimants submitted that the purported exercise of HoldCo's SIRE rights, of such importance to them, was invalid because:

    (1) as regards the March SIRE Notice, notice of a Trigger Event was not previously given to HoldCo by TopCo, as required on the proper construction of clause 9(b), within two days or at all;

    (2) again as a matter of construction, HoldCo did not have the right to rely on any period prior to 30 September 2022 (the effective date of the second stage of completion) to allege that a Trigger Event had occurred;

    (3) the EBITDA targets in the SHD had been varied and/or HoldCo waived any right to proceed pursuant to clause 9 for the alleged failure to meet such SHD targets; and

    (4) the Force Majeure exception applied as regards Q3 and Q4 of 2023, since the UK economy was in recession during those quarters.

32. The Claimants further submitted that the MDE Notice is invalid under clause 19 of the SHD since (continuing the previous sub-numbering):

(5) HoldCo was obliged to act in good faith, reasonably and for proper commercial purposes in the best interests of TopCo and the Group (rather than in a manner which is arbitrary, capricious or irrational) - and did not do so;

(6) HoldCo was obliged not to conduct (or cause or assist in) any independent investigation which was discriminatory and contrary to the protections of the Equality Act 2010 – but it has done so;

(7) Mr Waddell has been denied natural justice, not having been heard in the displinary processes, not having had proper detail of the allegations raised against him, and not having (yet) access to all the relevant documents.

33. Addressing these seven points briefly in order, first, by the March SIRE Notice, the Claimants say that it was HoldCo which purported to give TopCo notice of a Trigger Event, when it should have been the other way round. Moreover, on 20 March 2024 it stated that the quarters relied on in support of its SIRE Notice were Q3 and Q4 of 2022. The Claimants say that is two years late, and clause 9(b) stipulated a time limit of two days. The Defendants say that notice from TopCo was impractical when it was under Mr Waddell's control and if a Trigger Event indeed occurred, it was unnecessary for HoldCo to act, and was in any event given for the purpose of the April SIRE Notice.

34. Secondly, nor could HoldCo, say the Claimants, rely for its SIRE Notices on the financial position for Q3 of 2022, prior to the second 'effective date' as regards the staged completion of the SHD, and during a period governed by an 'Interim Target Shareholders Agreement' which contained no step-in rights. The Defendants say that there is nothing in the wording of the SHD so to restrict the relevant period of financial performance to periods after final completion.

35. Thirdly, as to variation and waiver, the Claimants say that the 2022 annual targets were varied initially to £24 million and subsequently to £20.9 million – and the 2023 targets were varied initially to £30.2 million and subsequently varied to £20.368 million, and there were thus no two consecutive quarters, as required, when EBITDA was less than the requisite 60% of the target. Moreover, HoldCo conducted itself as if results were satisfactory, without expressing concerns on those points and so encouraging further investment and acquisitions (which might have a negative, short-term impact).

36. The Defendants point to the paucity of particulars and more precise evidence from the Claimants on these points, as to which the Claimants point to the need for disclosure and equality of access to relevant historic information. The Defendants also seek to rely on clause 28 of the SHD but that, say the Claimants, is a deeming provision which does not purport to say that a waiver will be effective "*only*" if in writing and in any event, the leading authority on no-oral modification claims, *Rock Advertising v. MWB Business Exchange Centres Ltd* [2018] UKSC 24 at [16, 24, 26 and 31] makes it clear that there is still scope for applying doctrines of estoppel and unconscionability**.**

37. Fourth, as to force majeure, whilst the UK was technically, just, in a 'general economic recession' as defined, the Defendants dispute that it caused the failure to meet the relevant EBITDA targets, pointing in particular to the performance of the Group before and since, in comparison with the UK's general economic performance.

38. Fifthly, turning to the MDE Notice, again given its great significance to the Claimants, they sought to construe or imply various duties on the part of HoldCo, some in the light of Mr Waddell's alleged disabilities and ill health, which they claim were breached at every turn in order for HoldCo to achieve the objective of ousting him. The existence and extent of such duties, and a separate right on the Claimants' part to 'natural justice', and the alleged breaches thereof, are all put in issue.

39. Sixth, as regards the Independent Investigation, the Claimants say that they were deliberately hamstrung by the sudden, coordinated strategy by the Defendants to launch and pursue with undue haste the step-in and alleged misconduct exercises against Mr Waddell on 7 March 2024 and finalise them up to 17 April 2024, without sufficient advance detail of the allegations and the relevant documents and information or taking account properly of his disabilities (dyslexia and poor hearing) and stress-related illness under the Equality Act.

40. Seventh, the Claimants allege that Mr Siddall lacked independence because of the involvement of HoldCo and TopCo in his instructions, and that Mr Vaughan too was conflicted in his disciplinary role, as a witness (and alleged victim) as regards some of Mr Waddell's alleged misconduct. Apart from their denials and positive case as to the proper conduct of these matters, the Defendants emphasised that the many allegations against Mr Waddell (some admittedly historic and not acted on at the time, even if concerning) have still not been answered or explained, leaving only his general denial, which is implausible, of them all; and thus the result of the Investigation and the dismissal can be treated as fair and reasonable.

(4) Adequacy of damages/balance of convenience

41. The Claimants express fear that without Mr Waddell's control, the Group is being or may be mismanaged. They have pressed for information and explanations but in the meantime, they submit that their 'contractual rights and interests are simply being ignored and by-passed to [their] detriment' and they 'now have no effective power to control what [they] regards as wrong decisions which are adversely affecting the business and therefore [their] investment in the same'.

42. According to the Claimants, if the Defendants are allowed to continue to ignore Schedule 1 of the SHD, Schedule 2 (which indisputably remains in contractual

force) provides less protection and oversight so that the Defendants could cause steps to be taken which will be irreversible, as to:- (1) The creation of securities, re shares; (4) Variation of Articles; (6) and (7) Capitalisation; (9) Capital expenditure; (10) Sale etc of parts of the business; and (13) and (14) Incurring debt and providing guarantees. As for evidence, the Claimants say that 'Information available to Mr Waddell since his removal indicates that the business is in a downward spiral with substantial losses being experienced and a significant reduction of the number of cars available'.

43. It is acknowledged on behalf of the Claimants that the passage of time can be a relevant factor when the Court exercises its discretion, but this should not stop the Court from granting the relief sought in this case. The Defendants have been made aware from the outset of the challenge to the Notices. The *status quo* should be regarded as being that prior to 7 March 2024 so as to restore matters on an interim basis to that position pending trial of this action and/or a Petition under section 994.

44. The Claimants quoted in that regard from *Re a Company* [1985] BCLC 80 at 82-83:

> *... in cases of litigation [under the then s.75 of the 1980 Act] it is most desirable that the position of the company be not altered or disturbed more than is absolutely essential, between the presentation of the petition and the hearing of the petition. The existing share structure, the existing contractual rights, the present service contracts and so forth, should in my judgment be maintained as they are pending the determination of the litigation. There might be circumstances where change is essential, but if possible, the existing position should be preserved. In my judgment, that is a factor which in these matters arising under contributories' petitions is particularly powerful and more so than the normal 'Cyanamid' force in favour of preserving the status quo since it is the very nature of this matter that the status quo must affect the remedy which may be available.*

45. For their part, the Defendants claimed to have taken a stand against Mr Waddell's unacceptable behaviour and it would destroy or at least undermine that position if the relief sought was granted; and that would expose the Group to the risk of loss of, or restriction to, its FCA-regulated business - especially given the findings made against him in the Independent Investigation.

46. The likely outcome of restoration would be serious disruption to the management of the Group, resignations amongst senior management and distress to employees, especially those who have suffered from the abusive behaviour of Mr Waddell or perceived by him to have participated in the investigations into his behaviour; and there would also be the material risk of a breakdown in the Group's relationships with vitally important counterparties, including its bank, NatWest, and one of its key lenders, Black Horse, whom Mr Waddell's misconduct had offended.

47. Even if the Court were prepared to accept that there is an argument to impugn the SIRE Notices and the MDE Notice, that would not avail the Claimants, because Mr Waddell was dismissed as an employee on grounds of gross misconduct, and BidCo had a free-standing right of dismissal under his Service Agreement, which it exercised on 16 April 2024.

48. Mr Waddell's unsupported opinion that the Group is suffering harm due to his absence is rebutted in the detailed evidence provided by Mr Vaughan on behalf of TopCo and in contrast, there are specific reasons for the deleterious effect of Mr Waddell's presence (physical or by proxies or vetos) on the Group and its employees and the jeopardy of reinstating his powers of control. The nature of the damage that would be caused to the corporate Defendants including reputational harm and the distress to employees, could not sensibly be compensated in damages.

(5) Discussion

49. Whilst the materials and submissions before me were voluminous, my analysis of the determinative controversies can be shortly stated, and no more touching on the merits or details than is necessary or appropriate. Whilst the Claimants face an uphill task on their claims under the SHD, I am not prepared at this stage to hold that there are no serious issues to be tried. Their evidence in some respects may be paltry – the absence of explanations for the allegations against Mr Waddell, despite his general and wholesale denial, is certainly striking - and some of their contentions ambitious and even outlandish (and smacking of 'Micawberism') but they narrowly merit further investigation including disclosure.

50. The Defendants were themselves ambitious, perhaps, in seeking to treat this application as a dress rehearsal for a strike out/reverse summary judgment application. The picture may change if the Claimants as threatened bring a section 994 petition, when the Court's powers and jurisdiction may be wider. The legal points made against the contract claims may have appeared strong on all fronts - on the construction of clause 19, the paucity of the pleadings, the implausibility of force majeure, hurdles for a variation/estoppel answer to clause 28 and the lack of support for the attacks based on bad faith/unreasonableness. But ultimately I was not sufficiently persuaded.

51. On the other hand, the Defendants' case as regards adequacy of damages and balance of convenience for refusing the application, seemed to me overwhelming. Both sides at least on paper have the means for satisfying a pecuniary award of some millions. But the Claimants have not shown an adequate risk of irremediable, uncompensatable harm which cannot be remedied at trial absent the injunctions they seek, especially if section 996 relief is available.

52. The suggestions that this could not be quantified if necessary and may require a separate, derivative claim on the behalf of the companies, were undeveloped and unimpressive. Nor does the Claimants' attempt to identify the 'status quo'

as being prior to 7 March 2024, in my judgment, assist. This is one of those many cases in which the 'status quo' changed in the course of the fast-moving and controversial events since 7 March 2024. To identify the 'status quo' as being before 7 March rather than say, the issue of the proceedings on 12 April 2024 seems to me theoretically doubtful and in any event impractical.

53. By contrast the risk of irreversible harm to the Group's companies and to HoldCo if Mr Waddell is restored to any involvement in or influence on management beyond his remaining SHD and shareholder rights was, at least to me, glaring. He has demonstrated himself as highly disruptive, hostile and offensive to many others involved in the Group and its business. The danger to the Group that he alleges is vague, without enough evidence to justify a reversal of its stance.

54. The contention that his previous success and acumen are unchallenged entirely misses his dangerous conduct over the recent past: experience is the safest guide to the near future. I fear that he cannot be trusted (even if he gives undertakings) if he is restored to power as an interim measure, overturning the current regime. Whether or not rational on his part, to impose any greater control in Mr Waddell's favour would for now risk his trumpeting it to wreak attrition and revenge on those within or related to the Group, to its and their serious detriment, in ways which are seriously hazardous, uncontrollable, unpredictable, and unlikely to be quantifiable.

55. This reasoning extends to the alternatives to interim reinstatement which he offered. Mr Waddell has shown himself unable to accept the reality of and the proper process to resolve the changed position in which he had found himself since 7 March 2024. The contractual rights in the SHD which he seeks to retain and enforce are corollaries incidental or additional to directorships and inappropriate for imposition at this point given the alternative narrower and more appropriate rights afforded in the current position by the Schedule 2 and clause 24(b) of the SHD itself. The attempts to fashion alternative injunctions

(as to a proxy director and/or additional information and/or veto rights) in the absence *pro tem* of his directorships, will serve no necessary or legitimate purpose proportionate to guard against the alleged risks.

(6) Conclusion

56. For those reasons, expressed as concisely and discretely as I can manage within the timescale appropriate, the application for interim injunctions will be dismissed. Outstanding issues such as the application for an expedited trial and other directions, and questions of costs, can be the subject of further written submissions, if and insofar as disputed, within 10 days. I would hope they can be resolved on paper but if either side requires a further hearing, they should give notice after the written submissions have been exchanged.

57. By way of postscript, after a draft of this judgment was circulated on 19 June 2024, the Claimants' solicitors wrote to me without previous warning, drawing certain allegations to my attention. To this, the Defendants' solicitors replied objecting to that process and disputing the allegations. For the avoidance of doubt, I have considered that correspondence. The Claimants' allegations are made far too late and would not have changed my decision. Had an application been properly made to adduce further evidence and/or submissions, it would have been liable to refusal.