



Neutral Citation Number: [2024] EWHC 1858 (Ch)

CR: 2022-004674

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**IN THE MATTER OF DERMAMED SOLUTIONS LIMITED (Company No.**  
**11192254)**  
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

7 Rolls Building  
Fetter Lane, London  
EC4A 1NL

Date: 18 July 2024

**Before:**

**PENELOPE REED KC**  
**(Sitting as a Deputy High Court Judge)**

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**Between:**

**BETWEEN:**

**MOHAMMED SALEEM KHAWAJA**

**Petitioner**

**- and -**

- (1) STELA STEFANOVA**
- (2) BIOTECHNOLOGIESUK LIMITED**
- (3) DERMAMED SOLUTIONS LIMITED**

**Respondents**

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**MR GIDEON ROSEMAN** (instructed by **Mills Chody LLP**) for the **Petitioner**  
**MR. DAVID BERKLEY KC** (direct access barrister) for the **First Respondent**  
**THE SECOND AND THIRD RESPONDENTS** did not attend and were not  
represented

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# Approved Judgment

**I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic**

.....  
PENELOPE REED KC

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for handdown is deemed to be 10.30 on 18 July 2024

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**PENELOPE REED KC:**

## Introduction

1. This is an application, by the Petitioner of a petition under section 994 of the Companies Act 2006 for:
  - i) summary judgment on the issue of whether he has suffered unfair prejudice for the purposes of section 994 of the Companies Act 2006 (“**the Act**”).
  - ii) an interim payment to P in advance of the court determining P’s relief;
  - iii) the transfer of related County Court proceedings to the High Court to be case managed with the petition; and
  - iv) an order that R1 and Biotech pay P’s costs of both these proceedings and the County Court proceedings incurred to date.
2. The hearing has focussed in the main on the question of whether the Court should award summary judgment to the Petitioner in respect of his s. 994

petition, with the remaining issues only being live if summary judgment is awarded.

## **Background**

3. This case has a long, tortuous and unfortunate history. In April 2018, Mr Khawaja and Ms Stefanova entered into an oral agreement (the “Agreement”) pursuant to which Ms Stefanova was to make Mr Khawaja a 50% shareholder and director of Dermamed. It was intended that Dermamed would buy and sell medicinal beauty products, such as dermal fillers although there appears to be some issue as to whether that was from a specific supplier (Luminera) or more generally. Mr. Khawaja brought proceedings in the Central London County Court seeking specific performance and damages in lieu of or in addition to specific performance. Following a trial of a number of preliminary issues, HHJ Gerald gave judgment on 6 October 2021 which found as follows:

- i) Ms Stefanova was not a credible witness, in that her oral evidence contradicted her pleaded case, the contemporaneous documents and the key surrounding circumstances;
- ii) Ms Stefanova had abandoned her pleaded case, and contradicted her witness statements;
- iii) her tactic was to deny what she had previously admitted, and to rely on a strategy of “dissing” Mr Khawaja and denying the undeniable;
- iv) her counterclaim for damages was “pure invention”; and

- v) she had attempted to deceive Mr Khawaja into believing Dermamed's business was failing.
4. Notwithstanding those findings and while considering that in principle Mr. Khawaja was entitled to specific performance of the contract, the Judge was not in his discretion prepared to award that until he had more evidence before him as to the nature of the business being carried out by Dermamed and whether the initial business of distributing supplies from Luminera was still in place (which it is common ground it is not) or whether a wholly different business was now being carried out.
5. As a result, the Judge made a number of consequential orders, including an order requiring Ms Stefanova to provide a witness statement and specific inspection with respect to her personal financial position and Dermamed's financial position, and an order for her to provide copies of all bank statements for which she had been or was a signatory. Ms Stefanova failed to comply with those orders. On 16 September 2022, His Honour Judge Parfitt made an unless order, which included a penal notice, requiring her to do so.
6. Mr. Khawaja sought a non-party disclosure order against Barclays Bank and as a result it emerged that Ms Stefanova had used significant amounts of Dermamed's monies (something she admits) and had seemingly diverted the business of Dermamed to the Second Respondent.
7. It would appear that as part of an attempt not to answer part 18 requests which had been served but, it is fair to say, made as an open offer, Ms. Stefanova unilaterally, constituted the statutory books for the Company and made Mr.

Khawaja a 50% shareholder with retrospective effect as from 30 April 2018. She informed Mr. Khawaja of that on 5 July 2022.

8. Having been made a shareholder, on 12 December 2022, Mr Khawaja presented this s. 994 petition to the court and applied on an ex parte basis for a freezing injunction with respect to all of the Respondents' assets which was granted by Zacaroli J on 13 December 2022 and which included an order for Ms Stefanova to provide information, including an affidavit, about her assets and bank accounts. On 20 December 2022, Meade J continued the freezing injunction, re-ordered Ms Stefanova to comply with Zacaroli J's order, and made a further order requiring her to provide copies of statements of all bank accounts to which she was a signatory on a weekly basis going forward.
9. As a result of her failure to comply with the various disclosure orders made, contempt proceedings were brought against Ms Stefanova and Richard Smith J found her guilty of 30 separate incidents of contempt, including lying in her responses and breaches of Zacaroli and Meade JJ's freezing orders. The Judge sentenced Ms Stefanova to prison for 8 months in total suspended on condition that she provided copies of "outstanding bank statements", she having, in breach of Meade J and Dame Sarah Worthington KC's orders, failed to provide any bank statements since 28 January 2023.
10. I should say something about the status of the proceedings in the County Court which have not yet been concluded. At a Case Management Hearing held on 24 February 2023 HJJ Gerald made an order directing Mr Khawaja to file and serve a Statement of Case setting out the relief sought and the broad factual basis of it and directed a Milestone Hearing. In the recitals to that order he said: "*in the*

*event that there be overlap between the factual underpinning of the Claimant's claim for relief in this matter and the underlying allegations in [the Petition Claim] the High Court be invited to re-visit the issue of whether these proceedings be transferred to the High Court to be case managed and tried together with that case".* An application to transfer the County Court proceedings to the High Court had been heard by Dame Sarah Worthington DBE KC (Hon) on 7 February 2023 and dismissed.

11. Mr. Khawaja filed a statement of case which HHJ Gerald found not to be compliant which has resulted in a stay of the County Court proceedings. I understand that order has been appealed by Mr. Khawaja on the grounds of bias on the part of HHJ Gerald which has led to a recusal application being made. There appear to have been a number of delays in that application being heard.

### **The Section 994 Petition**

12. The petition relies on the agreement (albeit that it is set out to an extent in different terms from that pleaded in the County Court to include the business of selling all beauty products and not just those from Luminera) and also sets out an agreement (not pleaded in the County Court) that there was an agreement that Ms. Stefanova would receive a salary of £2,000 per month.
13. The grounds of unfair prejudice which are relied upon are firstly that Ms. Stefanova has misappropriated sums from the Company of at least £340,324.53. She admits to receiving the monies but in her Points of Defence states that she took the monies properly in the following way:-

- i) £116,595.03 to pay legal fees in the County Court Proceedings on the basis there was a joint retainer between her and the Company;
  - ii) £67,443.93 to purchase a Mercedes;
  - iii) £4,300 for a handbag;
  - iv) £60,000 for her pension;
  - v) £2,476.23 to pay her personal tax;
  - vi) The remainder to pay her salary, no agreement having been reached as to the £2,000 per month.
14. The second ground is that a few weeks after the issue of the County Court proceedings, Ms Stefanova incorporated the Second Respondent company and diverted the business of the Company into that entity. That is denied by Ms. Stefanova.
15. The petition sets out a number of causes of action against the Second Respondent including conspiracy to misappropriate the monies from the company and diversion of its business; dishonest assistance and knowing receipt.
16. The petition goes on to plead a number of derivative claims on behalf of the Company against Ms. Stefanova, including conspiracy, constructive trust, breach of her director's duties (set out earlier in the petition) and an account and further derivative claims against the Second Respondent.

17. The Prayer (amongst other things) seeks an account as to what sums are owed to the Company and/or the Petitioner; damages for breach of contract against the First Respondent, damages and equitable compensation against the First and Second Respondents; an order for the First Respondent to buy the Petitioner's shares in the Company (taking into account the diversion of funds); a declaration that the First and Second Respondents hold sums on constructive trust for the Company or the Petitioner; damages for conspiracy; permission for the Petitioner to bring a derivative action against the First and /or Second Respondents alternatively an order that the First and Second Respondents and purchase the Petitioner's shares at a fair value and on a particular basis.

18. The breadth of the relief sought is entirely consistent with the very wide discretion which the Court has under s. 996 of the Companies Act 2006.

19. Turning to s. 994, it provides:-

“(1) A member of a company may apply to the court by petition for an order under this Part on the ground:

(a)that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b)that an actual or proposed act or omission of the company (including an act or omission on its behalf is or would be so prejudicial”

20. Section 996 provides:

(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—



- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company–
  - (i) to refrain from doing or continuing an act complained of, or
  - (ii) to do an act that the petitioner has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
- (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
- (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

21. Mr. Roseman on behalf of Mr. Khawaja set out the following principles derived from the cases (and summarised by Patten J as he then was in *Grace v Baglioli* [2006] 2 BCLC 70 at [61]) in respect of the s. 994 jurisdiction and I did not understand there to be any major disagreement on those principles from Mr. Berkley KC on behalf of Ms Stefanova:-

- i) The alleged conduct that complained about must be both ‘unfair’ and “prejudicial” ;
- ii) “Prejudice” will be shown, for example, where the value of the Petitioner’s shareholding has been diminished ;
- iii) The concept of “the interests of members” is interpreted generously and is not limited to strict legal rights under the company’s constitution or collateral agreements ;

- iv) The requirement of “unfairness” is not defined but is also interpreted in a widely and generally;
- v) Section 994 of the Act is applied flexibly to meet the circumstances of the particular case; the said flexibility enabling the court to mould the concepts of unfair prejudice according to the said circumstances;
- vi) Prima facie examples of “unfairness” are where:
  - a) a director has breached the articles of association or their duties as a director;
  - b) the other members and/or directors are subject to equitable constraints thereby rendering it inequitable for them to rely on strict legal rights;
  - c) there has been diversion of corporate business and opportunities;  
and
  - d) there has been misappropriation of property or assets from the company.

22. It is clear from those principles but in particular v) above that the jurisdiction is very flexible indeed.

### **Summary Judgment**

23. There is also no dispute between the parties as to the principles applicable to an application for summary judgment which were set out by Lewison J in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]:

“i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success;

ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;

iii) In reaching its conclusion the court must not conduct a “mini-trial”;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the

question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction ...”.

24. Summary judgment in this case is sought on a number of issues, namely
- (1) the terms of the Petitioner and First Respondent’s agreement as pleaded in paragraphs 6 and 7 of the Petition;
  - (2) the duties owed by the First Respondent to the Third Respondent as pleaded in paragraph 8 of the Petition;
  - (3) the grounds of unfair prejudice as pleaded in paragraphs 15 to 29 of the Petition (save for the allegations at paragraphs 17(v) and 18);
  - (4) the Petitioner’s entitlement to damages to be paid by the First Respondent and Second Respondent with respect to the aforementioned grounds of unfair prejudice;

- (5) the claim that the First Respondent and Second Respondent provide an account in relation to what sums are owed to the Third Respondent and/or to the Petitioner and in respect to the First Respondent's dealings with the property, information and opportunities of the Third Respondent and/or in respect of her dealings with the Third Respondent's affairs generally.
25. It is clear that the summary judgment regime applies to s. 994 petitions. However, in *Hollington on Shareholders' Rights* 10<sup>th</sup> edition at para 9-24, the learned author states "*in some rare cases it may be appropriate for the petitioner to apply for summary judgment on issues of liability (see Dalby v Boddily [2005] BCC 6327) or summary determination of factual issues.*" [my emphasis].
26. That latter authority was a judgment of Blackburne J and was a case where there was a blatant and admitted breach of fiduciary duty on the part of a shareholder who allotted 900 shares to himself and there was no prospect of his contending at trial that his behaviour was not prejudicial conduct. The relief sought in that case was very specific: a buy out of his shares at a value to be determined by an independent chartered accountant to be approved by the Court.
27. This case is not quite so straightforward as demonstrated above in relation to the way in which the draft order is set out.
28. It is clear that there will need to be a further hearing or hearings whatever happens to determine the outcome of the petition. As set out above, the Court has extremely wide powers to determine the applicable relief under s. 996 and that relief will be fashioned depending on the nature of the unfair prejudice. There is, as recognised by the cases, a tension between the width of the

jurisdiction under s. 994 and the rule in *Foss v Harbottle* and whether or not the Court grants relief for the personal benefit of the minority shareholder or for the benefit of the company. Mr. Khawaja has hedged his bets in the Petition by seeking very wide ranging relief including purchase of Ms. Stefanova shares in the Company and the Second Respondent, permission to bring derivative actions on the part of the Company, equitable compensation and an account amongst other things.

29. The flexibility of the jurisdiction and the link between the findings as to liability and the nature of the remedy awarded in my judgment make these cases difficult candidates for summary judgment as recognised by Mr. Hollington even in cases where the prospects of a successful defence of the petition appear weak (as to which see *In the matter of Solid Star Ltd.* [2023] EWHC 93 (Ch)).

## **Conclusions**

30. I have great sympathy for Mr. Khawaja in this case. In spite of his victory in establishing that he was entitled to shares in the Company, his victory has so far been Pyrrhic and in the meantime satellite litigation has burgeoned. Ms. Stefanova has made strenuous and discreditable attempts to hide her activities with the Company from Mr. Khawaja.
31. As concluded by HHJ Baumgartner on 13 October 2023, following a contested hearing,:

*“[The Petitioner] has already succeeded at trial in the County Court as to the existence of the Agreement, which means that, in equity, since April 2018 he has been an equal shareholder of [the Company]. As I mentioned, [R1] made [P] a 50% shareholder in [the Company] with effect from 1 April 2018. She admits, nonetheless, that she has treated [the Company] as if she has*

*been the sole shareholder: she unilaterally decided to only pay to herself substantial dividends, to use over £116,000 of [the Company's] monies to pay her own legal fees, and paid over to herself [the Company's] alleged net profit of £252,054. It is also evident to me that [R1] has diverted the entirety of [the Company's] business to Biotech: she failed to renew [the Company's] ability to trade, which was confirmed by the Medicines and Healthcare products Regulatory Agency on 12 April 2022 (the same day [R1] spent £68,000 on a Mercedes motor vehicle). Her evidence is that Biotech was trading in the period February 2022 to December 2022, although she says Biotech did not commence trading as a pharmacy until sometime in 2023. Moreover, it is evident to me (particularly from the bank account statements referred to during Mr Roseman's submissions, and from her own admissions during the appeal of her sentence for contempt) that Biotech continued dealing with Dermamed's suppliers and clients. [R1] has failed to give any explanation as to what business activities Biotech was carrying out prior to it, allegedly, providing pharmacy services in 2023."*

32. Permission to appeal the order made by HHJ Baumgartner has been refused.

However, it is for me to form a view as to whether as a matter of case management discretion I should award summary judgment on the issues set out in the draft order. That was not something which HHJ Baumgartner was considering.

33. On the first issue (the terms of the Petitioner and First Respondent's agreement as pleaded in paragraphs 6 and 7 of the Petition) I am not prepared to make a declaration on this issue in favour of the Petitioner. That is largely because it seems to me that there remains a question mark over the agreement as to the salary of Ms. Stefanova in respect of which I cannot say that Ms. Stefanova has no real prospects of success. In any event, as Mr. Roseman submitted to me, the terms of the agreement have already been determined by HHJ Gerald, the only remaining question being as to the appropriate remedy and of course even that debate has been narrowed in light of the 50% shareholding now vested in Mr. Khawaja. Leaving aside the question mark as to the agreement regarding salary,

if Ms. Stefanova attempted to argue that the agreement was otherwise, there would clearly be an issue estoppel at the very least. It therefore seems inappropriate to me to make a declaration as to the terms of the agreement when that has already been determined by HHJ Gerald.

34. On the second issue (the duties owed by the First Respondent to the Third Respondent as pleaded in paragraph 8 of the Petition) while the Points of Defence (which do not appear to have been drafted by counsel) do not expressly admit those duties, they are not disputed and indeed it would be difficult for Ms. Stefanova to do so.
35. On the third issue (judgment on the grounds of unfair prejudice as pleaded in paragraphs 15 to 29 of the Petition save for the allegations at paragraphs 17(v) and 18) I do not consider that Ms. Stefanova has realistic prospects of defending the allegations that she has paid monies out of the Company's Bank account to herself and in particular, the legal fees (as the Company was clearly a nominal defendant in the County Court proceedings), the monies used to purchase a car and a handbag for her, and the substantial sums paid into her pension. There is less certainty about the monies she says she has taken as salary but quite clearly she has been in breach of her duties as director and that supports a finding that the affairs of the company have been conducted in a manner which is unfairly prejudicial to Mr. Khawaja. I will come back to what I propose to do in relation to this. In respect of the diversion of business, while I was taken to an analysis of bank statements which lend support to this having happened and appreciate that HHJ Baumgartner was persuaded that there was a strong case, I do not consider that I have seen enough evidence or am in a position to come to a



conclusion that Ms. Stefanova has no realistic prospects of success on this issue without conducting a mini-trial.

36. On the fourth issue (the Petitioner's entitlement to damages to be paid by the First Respondent and Second Respondent with respect to the aforementioned grounds of unfair prejudice) I do not see how I can possibly make such an order. Mr. Roseman submitted to me that it was inevitable whatever relief was granted that Ms. Stefanova would end up paying money to Mr. Khawaja but that does not address the question of what relief should be granted in this case and damages would not seem to be a likely outcome. It is more likely that the Court will order a share purchase and it may be that the relief claimed in the petition for permission to bring a derivative action will be regarded as most appropriate. All those are matters for a future hearing.
37. On the fifth issue (that the First Respondent and Second Respondent provide an account in relation to what sums are owed to the Third Respondent and/or to the Petitioner and in respect to the First Respondent's dealings with the property, information and opportunities of the Third Respondent and/or in respect of her dealings with the Third Respondent's affairs generally) I can see that on the evidence that has been produced Ms. Stefanova may not have realistic prospects of defending a claim to such an order but bearing in the mind the very wide jurisdiction which the Court has under s. 996 and that I am not the Judge who will be dealing with the question of the nature of that relief, it would be wrong to make such an order and indeed it may be considered that a full blown account would be unnecessary.

38. As I have said, on third issue, I do consider that Ms. Stefanova has no reasonable prospects of success of defending the claim that she is in breach of duty in taking sums from the Company even if there might be some question as to the amount (in terms of salary). However, I am mindful of the fact that the granting of summary judgment is a case management decision and I am not at all convinced that granting a declaration on this one limited issue is going to assist in resolving this matter and that bearing in mind that most of the issues in this case are going to have to be resolved by a trial, it would be right to determine that issue at this stage.
39. On an application for summary judgment which is not being granted as a whole, even if the tribunal considers that there is no realistic prospect of a party successfully defending a particular issue, it is a specific case management decision for the Court as to whether to make a declaration which in effect removes that issue from the proceedings, see *Executive Authority for Air Cargo and Special Flights v Prime Education Limited* [2021] EWHC 206 (QB), 2021.
40. I therefore decline to make the orders sought in respect of summary judgment. Consequently, the interim payment issue falls away as does any question of my dealing with the costs of the County Court proceedings.
41. On the subject of transfer of the County Court proceedings, that was not pressed particularly hard before me if summary judgment was refused. An application to that effect has already been considered by Dame Sarah Worthington DBE KC (Hon) and rejected and so there needs to have been some change of circumstances to justify my reconsidering it.

42. It is clearly undesirable for there to be different findings of fact in different courts but I cannot see why that cannot be case managed and I would hope that there could be a conclusion to the County Court proceedings without further delays before this petition is heard.
43. I will hear the parties on consequential matters if they cannot be agreed. I do not wish this judgment to give too much comfort to Ms. Stefanova. She is clearly going to have a very difficult time defending this petition and it is the nature of the proceedings under s.994 which have made this application for summary judgment a difficult one for Mr. Khawaja. There is good reason why successful summary judgment applications in respect of s. 994 petitions are rare.