THE HIGH COURT

[2022] IEHC 475

Record No. 2021 No. 34 COS

Record No. 2021 No. 141 COS

IN THE MATTER OF SECTION 212 AND SECTION 797 OF

THE COMPANIES ACT, 2014

AND IN THE MATTER OF LEECH PAPERS LIMITED

BETWEEN

CHRISTINE COATES

APPLICANT

AND

JOSEPH LEECH, MAGDALENE LEECH AND LEECH PAPERS LIMITED

RESPONDENTS

JUDGMENT of Ms. Justice Stack delivered on the 22nd day of July, 2022.

Introduction and background

1. The proceedings come before the court by way of three separate motions, namely,

(a) Proceedings/a petition issued 23 February, 2021 seeking relief pursuant to s. 212 of the Companies Act, 2014 on the grounds of oppression and disregard of the applicant's interest as shareholder;

(b) A petition to wind up the Company presented 24 June, 2021, which is moved primarily on just and equitable grounds;

(c) A motion for attachment and committal of the first and second respondents, issued 24 June, 2021, for failure to comply with orders of this Court (O'Regan J.) made on 10 May, 2021 and 21 June, 2021, which ordered the first and second respondents to make available to the applicant the books and records of the third respondent ("the Company").

For the reasons set out below, the motion for attachment and committal was not proceeded with.

2. The Section 212 Petition seeks a variety of relief but the applicant pursued only the following relief:

(a) declaration that the affairs of the Company are being conducted or the powers of the Directors are being exercised in a manner oppressive to the applicant and in disregard of her interests as a member,

(b) an order pursuant to section 212(3) of the 2014 Act cancelling the Companies Registration Office Form B10 bearing submission no. 13665005/1, filed on 31 July 2019, purporting to remove the applicant as a Director and authorising the Registrar of Companies to remove the said Form B10 from the file of the Company, and

(c) damages for intentional interference with the applicant's economic interests.

She also sought the usual ancillary relief of interest and costs.

3. I did not understand the claim for damages to have been seriously pursued and the main relief actually sought was one to wind up the company under either s. 569 (1) (f), if the court was satisfied that the company's affairs were being conducted or the powers of the directors were being exercised in a manner oppressive to the applicant or in disregard of her

interests and that winding up would be justified, or alternatively under s. 569(1)(e) on just and equitable grounds.

4. In seeking to have the Company wound up, the applicant submitted that it was not possible to give meaningful relief pursuant to s. 212 of the Companies Act, 2014, in circumstances where the Company appears to have completely inadequate books and records and the applicant therefore claims that her share cannot be meaningfully valued, so that an order for the purchase of her shares would be futile as that shareholding cannot be valued.

5. The factual background to the proceedings is that the company is a family company and traditionally operated as a manufacturer of paper and packaging products, although in more recent years it moved into the business of secure shredding of confidential paper documents. The applicant said it was founded by her father, but the first respondent, who is the applicant's brother says that he set up the company, with his father subsequently becoming involved as a director and, when his father died on 4 July, 1988, the applicant was appointed as director on that date. Nothing turns on this save to point out that this is a family company which has traded in the same business for many decades.

6. The applicant was an employee of the company since 1983, acting as bookkeeper. She has been a member of the company since 1999, holding 1,716 of a total of 20,661 ordinary shares of €1.00 each in the capital of the company. As such, she holds approximately 8% of the shares. The first respondent is a director of the company as well as its secretary and holds 10,296 or 50% of the shares. The second respondent, who is the wife of the first respondent, is a director and holds 8,649 or approximately 42% of the shares. (There was some dispute between the parties as to the total number of shares and therefore the percentage shareholdings held by the members, and I have taken these figures from the 2016 Annual Accounts, but nothing turns on this in any event as the differences between the parties were so slight).

7. The Company traded until 2016 from its premises at Shamrock Place, North Strand, Dublin 1 ("the Premises") which were sold by the Company in 2016 and occupied thereafter by way of a sale and leaseback. The purchaser was a developer, who was initially refused planning permission on foot of a 2017 planning application, but lodged a fresh application in 2019, which was granted on 25 August, 2020.

8. The applicant has asserted an affidavit that perhaps the developer contracted to pay an additional sum in the event that it was successful in obtaining planning permission, but this has been denied by the respondent, albeit that the conditions of sale have not been exhibited. As the notices to cross examine served by both sides were abandoned at hearing and the matter proceeded on an affidavit basis only, the applicant has therefore failed to prove this.

9. The respondents say that the applicant absented herself from the company for several years and they put this down to certain personal difficulties which she had, and which she does not specifically deny, though she denies that these difficulties resulted in conduct which caused the breakdown in her relationship with the first and second respondents. However, the key point is that the applicant, though she has been a director for many years, does appear to have absented herself from taking any role in the general governance of the Company. The respondents complain that this application has come out of the blue in circumstances where the applicant had no interest in the Company for many years.

10. I discuss the ramifications of this further below. However at this stage, it is only necessary to make a preliminary remark that, given that the Premises were the main asset of the Company, it is perhaps not surprising that a shareholder would, on discovering that the Company was about to "move premises", as it is put by the first respondent in his affidavits, enquire as to the proceeds of the sale of those Premises, which, as the most significant asset of the Company, were critical to the value of her shareholding.

11. As already stated, the attachment and committal motion was not proceeded with. It was issued in circumstances where appropriate books and records of the Company were not made available to the applicant in compliance with a High Court order, which it should be noted was made on consent. The applicant retained an accountant who attended with the Company's auditors on 2 July, 2021, but the meeting was somewhat rushed, and the documentation is not available. The applicant's accountants then did up a report setting out exactly what was required, and a fresh meeting was set up for 9 July, 2021. However, appropriate books and records were still not made available.

12. Essentially, it has become clear that the Company has grossly inadequate books and records and on one interpretation has failed to comply with the High Court Orders or alternatively could be said to be incapable of compliance. That does not take from the very significant default of the Company and its officers in failing to maintain those books and records, but it has rendered any enforcement of the Order futile. In those circumstances, that third motion was not proceeded with, and I heard only the s. 212 application and the winding up petition.

13. I propose to deal with the issues by reference to the various matters raised by the applicant in support of both petitions, first for the purpose of considering whether the requirements of s. 212 have been made out and whether the applicant is entitled to relief on foot of that section, before then considering whether, in lieu of the usual relief under s. 212 which is to order that the applicant's shareholding be valued and purchased by the remaining shareholders, the Company should instead be wound up on the basis of either s. 569 (1) (e) or (f) as was urged upon me by the applicant.

Whether there has been *"oppression"* or disregard of the applicant's interests as a member

14. A wide variety of matters were put forward as evidence that the applicant had been subjected to *"oppression"* and that her interests as a member were being disregarded and I will consider these in turn.

i. Alleged director's loan by the applicant to the Company

15. The applicant asserts that the Company is insolvent and refers to the alleged provision by her of a loan in the sum of €50,000 to the Company in or about 2007 or 2008. She says this was paid over to the Company at the request of the first respondent in two tranches of €25,000 each. Apparently, at least one of these tranches was her husband's redundancy money.

16. I would not be prepared to grant any relief based on this alleged loan, because, as the respondents point out, if there were such a loan – and there appears to be no documentary evidence of it whatsoever – then it may well be statute barred. The applicant has not exhibited any corroboration of the making of this loan, any demand for its repayment, or any written reference to its existence. While she has said that its existence should be demonstrated in the Company's bank statements, apart altogether from the difficulties arising in relation to this particular Company's books and records, it is highly unlikely that bank statements from approximately fifteen years ago would still be available.

17. There is too much uncertainty about the existence of this loan, and I find that the applicant has failed to prove its existence and I would not be prepared to grant any relief on the basis of her complaints in relation to it.

ii. Filing of a Form B10 recording the applicant's resignation as director when she had not resigned

18. The applicant complains that a Form B10 was filed with the CRO on 31 July, 2019, unknown to the applicant, which purported to record her resignation as director with effect from 19 July, 2019. It appears that the applicant only found out about this in mid to late 2020. By letter dated 7 October, 2020, her solicitors wrote to the Company's auditors asking them to clarify the circumstances in which the Form B10 had been filed. By replying email dated 14 October, 2020, they said that they had taken their client's instructions, and by further email of 20 November, 2020, they said that the Form B10 had been filed *"in error"* and suggested that, rather than putting the company to the expense of High Court proceedings, the applicant would be reinstated as director with effect from the day after the purported resignation, so as to avoid costs.

19. The applicant has refused to accept this offer, stating that the B10 should never have been filed, and should be rectified by order of this Court.

20. I have significant concerns with regard to the filing of the B10, which was certified by the first respondent as correct. Furthermore, in his replying affidavit of 9 July, 2021, he stated that the B10 was *"not false.*" However, the only justification given on affidavit is the first respondent's averment that he attempted to visit the applicant on multiple occasions *"to discuss her directorship and shareholding in the company".* It is said that all attempts at contact were refused *"in an aggressive manner."*

21. However, this seems to contradict the statement made by the Company's auditors' statement, by email in late 2020, apparently on the instructions of the first respondent, that the B10 was filed *"in error"*. Furthermore, there is no evidence of any resolution for the purposes of s. 146 of the Companies Act, 2014, removing the applicant, nor has there been

any express reliance on s. 148 (2)(e) which provides that, save to the extent that the Company's constitution provides otherwise, the office of director shall be vacated if the director is for more than six months absent, without the permission of the directors, from meetings of the directors held during that period.

22. In order to rely on that provision, there would have to be proof of such absence, and indeed proof of notification of directors' meetings and therefore the first respondent's averment does not meet the rather specific requirements of s. 148 (2)(e).

23. I therefore infer that the Form B10 was filed in circumstances where the applicant had not resigned in fact, nor had she been deemed to have resigned, and it was therefore filed in breach of the Companies Act. Given the circumstances in which this was filed, as the Company was about to vacate its Premises and in light of the matters discussed below as to the uses to which the proceeds of sale were put, I am of the view that the filing of the B10 was an act of "*oppression*" within the meaning of s. 212.

24. The applicant makes various additional complaints to the effect that the furnishing of the B10 amounts to the provision of false and misleading information contrary to s. 876 of the Companies Act, 2014 and is a scheduled offence which would require a mandatory report to be made to An Garda Síochána pursuant to s. 19 of the Criminal Justice Act, 2011. I do not think that these provisions add much to a consideration of whether the filing of the inaccurate – to use a neutral phrase – B10 constitutes *"oppression"*. I do not, therefore, propose to consider further the provisions of s. 876 or s. 19 of the 2011 Act.

25. It is settled that it is possible for a single act of oppression to justify relief under s. 212: see for example *Re Vantage Resources Ltd* [2015] IEHC 195 at para. 30.

26. However, before considering whether the single act of oppression is sufficient to grant relief in this particular case, I think it is more appropriate to see if the other matters of which

the applicant complains constitute *"oppression"*, as it may not be necessary to decide the application solely by reference to this issue.

iii. Exclusion of the applicant from governance of the Company

27. As regards this broader complaint, that the applicant was excluded from the governance of the Company and from meetings, the applicant has not satisfied me of this fact, at least to the degree which would be required in order to categorise it as "*oppression*" for the purposes of s. 212.

28. *Re Clubman Shirts Ltd* [1983] ILRM 323 is authority for the proposition that mere irregularities in the holding of meetings and the maintenance of books and records does not necessarily constitute "*oppression*" and may be evidence simply of negligence and non-compliance generally with the Companies Act. As stated by O'Hanlon J. in that case, the evidence may be such that it can be said that a series of defaults does not form part of a deliberate scheme to deprive the petitioner of his rights or to cause him loss or damage.

29. Similarly, in this case, it seems to me that the evidence does not establish that the applicant was deliberately excluded. The first respondent has stated on affidavit on numerous occasions that the applicant simply absented herself and did not respond to communications. He further says that she was not excluded from financial information, though this appears to be in the nature somewhat of a bare assertion as it does not appear that the Company has maintained sufficient financial information. The respondent's position is that the applicant absented herself and then suddenly started demanding information about meetings and financial information which had not been of interest to her previously.

30. It appears that, after the applicant left her employment, she did not seek to take any active part in the governance of the Company notwithstanding that she was still a director.

She did not really dispute the first respondent's statements in affidavit, and he was not cross examined.

31. I am satisfied on the balance of probabilities that the applicant voluntarily absented herself from her role as director after she left the Company's employment. I do not believe, as previously stated, that the first and second respondents have established that s. 148 (2)(e) applied, because there is no evidence that this was anything other than consensual. It seems to me that the first and second respondents were quite happy to go ahead and run the Company without the participation of the applicant, and it is not the case that they were notifying the applicant of Directors' meetings and requesting her to attend, and she was refusing to participate, such as to engage s. 148(2)(e) of the 2014 Act.

32. However, for the reasons already stated, I do not believe that the applicant has established that she was excluded from meetings and governance of the Company.

33. Similarly, I do not think that the failure to convene annual general meetings amounts to *"oppression"* albeit that it is yet another example of the entirely unsatisfactory failure of the respondents to comply with company law.

iv. Failure to maintain adequate financial records, to file accounts and to circulate financial statements

34. The petitioner submits the failure of the respondents to ensure that accounts are prepared, that financial statements are laid before the members at annual general meetings and the failure to comply with a statutory demand pursuant to s. 797 of the Companies Act, 2014, dated 20 October, 2020, and lists, *inter alia*, the following defaults:

i. Failure to submit annual returns and audited abridged financial statements contrary to s. 343 of the 2014 Act;

ii. Failure to convene annual general meetings from 1983 to date contrary to s. 175 of the 2014 Act;

iii. Failure to circulate relevant financial statements of the Company to the applicant as a shareholder, contrary to s. 338 of the Companies Act, 2014;

iv. Failure to furnish full audited accounts from 31 August 2007, onwards, contrary to s. 339 of the 2014 Act;

v. Failure to lay financial statements before the Company in general meetings contrary to s. 341 of the 2014 Act.

Further complaints are made about the B10 and the consequent offence contrary to s. 876 of the 2014 Act and the mandatory reporting requirements in s. 393 of the 2014 Act and s. 19 of the Criminal Justice Act, 2011 and I have dealt with these above.

35. Again, on the authority of *Re Clubman Shirts*, while this litany of defaults discloses an entirely unsatisfactory situation, I do not believe these matters, even taken cumulatively, amount to *"oppression"* within the meaning of section 212 and they therefore do not give rise to relief under that provision.

36. While the applicant also complains that she has been excluded from the financial management of the Company, the respondents have made allegations of financial irregularity against the applicant and her husband and have stated that this is the reason why she has not been afforded any control of the Company's finances. As none of the parties were cross examined on their affidavits, and given that the respondents' evidence is to the effect that the applicant simply absented herself from the Company some years ago, I find that the applicant has not proven that her exclusion amounts to *"oppression"* (though neither am I making any finding that these allegations, which were vigorously contested by the applicant, are well founded).

v. Failure to pay dividends

37. The applicant complains that she has never received a dividend, but the respondents point out that this actually affects the first and second respondents more than the applicant, as they each have a much larger shareholding. Furthermore, that appears to have been the position since the incorporation of the Company, and I cannot see how the failure to pay a dividend would therefore constitute an act of "*oppression*", or somehow justify the winding up of a Company on just and equitable grounds at this stage.

38. In my view, the principal relevance of the failure to pay dividends is that the use by the respondents of the assets of the Company must be viewed against the background of a failure to declare a dividend. In other words, the applicant's shareholding derives its value from an expected share in the assets of the Company should it be liquidated, and her shareholding would have no value, in the absence of any dividends, if those assets are not appropriately dealt with and safeguarded in the *bona fide* interests of the Company as a whole. The failure to declare a dividend, therefore, is relevant as context for the consideration of other matters to which I now turn, but it does not, in my view, justify the grant of any relief in its own right as it does not seem to me to be in itself something for which the respondents can be criticised.

vi. Sale of Premises and failure to account for proceeds

39. This issue is critical both to the s. 212 application and the winding up petition. The Company sold the Premises in 2016, and thereafter occupied them on a sale and leaseback arrangement. The proceeds of sale were €1 million, and a significant issue in the application is whether the respondents have properly accounted for these monies. As the Premises

comprised the major asset of the Company, the applicant's shareholding is effectively worthless if these proceeds have been dissipated. It is therefore important to assess whether it can be said that the proceeds of sale have been fully and properly accounted for, and whether the uses to which it was put are ones of which the applicant can complain.

40. The 2016 accounts of the Company record that, in the previous year, 2015, the tangible assets of the Company were €1,073,741, demonstrating that this Premises was at that point a significant asset of the Company. By 2016, that figure had reduced to €62,816 and the 2016 accounts showed *"administrative expenses"* of €650,637, and then *"exceptional item (disposal of premises)"* of €643,919.

41. A Statement of Account was provided in April, 2016, by the Company's solicitors, who had handled the sale. This showed that they had received, on behalf of the Company, the sum of €1 million, and had paid out the following:

- Leech Paper €889,862,95.
- Solicitors' professional fee €44,586.85.
- Dublin City Council €32,737.63.
- Auditors' professional fee €32,502.00.
- Discharge of outlay €310.57.

This statement shows that after the deduction of fees and outgoings, the Company received the sum of €889,862.95.

42. There was considerable dispute at hearing as to what had happened this very significant sum of money and whether the Company was in fact able to account for it. The applicant's complaint about the failure to account for the proceeds is linked to the other allegations of oppression. In particular, she asserts that the notification to the CRO that the applicant had resigned as director was filed as the first respondent was seeking to oust her as company director in advance of the demolition of the Premises. This is denied in the first

respondent's affidavit, and he then states that *"the sum of €1 million was not received by the Company and the correct figure was €450,000.00."*

43. However, it seems from the solicitors' statement of account that this is simply not the case and that the Company received the sum of €889,862.95. I am satisfied on the balance of probabilities that the Company received the sum of €889,862.95.

44. As regards the use to which those proceeds were put, it is clear that, in 2016, the Company paid €400,000 into a pension fund for the sole benefit of the first respondent, and this may explain the looseness in the language of his affidavit, but the affidavit is nevertheless inaccurate because the Company got that money and then paid it into a pension. It certainly received the sum of €889,862.95, and then assigned €400,000 to the first respondent's pension.

45. Even if one regarded the sum of €400,000 as not having been received by the Company – which I think cannot be correct - it seems to me that the Company is not, in any event, able to account for the remaining €489,862.95, which is itself a somewhat larger sum than stated by Mr. Leech in his affidavit.

46. In response to a request to account for proceeds, made by the applicant's solicitors, the Company has produced a draft statement headed: *"Draft: Leech Papers Ltd sale of Property and Pension Fund summary"*. It is unclear who exactly prepared this draft statement, and two payments of €50,000 each, made on 12 April, 2016 and 20 April, 2016, are said to have been made to the Company's solicitors, reducing the sum received to €789,837.55. It is not clear to what this relates as that firm appear from their own statement to have deducted their fees in connection with the sale before forwarding the proceeds. It may have been payments on account in respect of other fees which they were owed but this is not explained.

47. This draft statement then indicates that a *"bespoke trustee payment to pension"* was made via cheque no. 41666 of €400,000, reducing the proceeds to €389,837.55. This is obviously the amount paid into a pension fund for the benefit of the first respondent.

48. The draft statement further indicates that the sum of €200,000 was used to pay off *"term loan and overdraft".* This contrasts with the bank statement in respect of a term loan account enclosed by the respondents' solicitors with a letter of 31 January, 2022, which shows the entire amount outstanding as of 29 April, 2016 was €74,316.08, being a balance of €73,391.74 plus interest of €924.34, being paid by credit transfer on the 29 April, 2016. There is a very significant discrepancy between this figure and the sum of €200,000 which is mentioned in the draft document purporting to account for the proceeds and no bank statement in relation to any other loan or overdraft has been put in evidence.

49. In relation to capital gains tax, no documentation to support the figures supplied has been furnished to the applicant's solicitors, and indeed the respondents' solicitor's letter of 21 January, 2022 says that they are still awaiting a letter from the Revenue. By letter dated 31 January, 2022, as well as the bank statement referred to above, the respondents' solicitors sent the plaintiff's solicitors a *"Corporation Tax Statement evidencing payment of the Capital Gains Tax on the sale of the property."* This shows a sum of €36,866.29 being paid by the Company by way of corporation tax in the accounting period 1/9/2015 to 31/10/2016. Most of the payments were actually made in 2018. This does not tally with the draft statement of account, which indicates that the sum of €50,000 was paid in capital gains tax.

50. The applicant complains that the sum of €400,000 being paid to the credit of the second respondent's pension is itself a misuse of company funds, but leaving that aside, it simply does not seem to be the case that the Company can now account for the proceeds of sale. There is complete uncertainty as to what loan was paid off and in what amount, what the capital gains tax was and what happened the rest of the proceeds.

51. In my view, the sale of the Company's largest asset was a very significant step in its corporate history, and the applicant as a shareholder was entitled, at the very least, to a full account of the proceeds and quite possibly to be consulted: see *Re Clubman Shirts* at p. 4. However, the Company neither consulted with the applicant nor accounted for its use of the proceeds of sale. The actions of the applicant in generally absenting herself from any active role in the Company does not mean that the distribution of the proceeds of the sale of the premises from which the Company was trading was not a matter on which she should not have been consulted or in relation to which she was not entitled to an account.

52. The Company has had ample time to account for the proceeds, and should have bank statements available to it to corroborate the application of the monies, and I am somewhat concerned about the statement by the Company's auditors as recently as 26 November, 2021 that: *"we have some information on what happened to the €889,000 which may be of assistance."* The language seems a little general in the circumstances and, if the Company's auditors are not certain what happened to the proceeds, there certainly would seem to be a deficiency in the Company's ability to account for them.

53. Where a large sum of money is lodged to the Company's account, as is evidently the case, it seems to me that it should be possible to trace that money in quite a precise way as it should be possible to identify the transactions by which it left the Company's bank account and therefore to identify on what it was spent. That has not been done.

54. As previously stated, while the situation in relation to the Company's books and records and compliance with regulatory matters under the Companies Acts was wholly unsatisfactory in this case, I do not believe it goes beyond what was described in *Re. Clubman Shirts* as negligence and non-compliance, and, as already stated, I do not believe that, in itself, these compliance issues meet the threshold of "*oppression*".

55. However, the sale of the primary premises owned by the Company and the failure to account to the applicant for the proceeds prejudices her ability to realise anything out of her shareholding. In this case, therefore, I find that there is an act of "*oppression*" which, while of a different nature from that in *Re Fuerta*, is present and that there is existing prejudice to the applicant, in that it looks as if her shareholding has been rendered worthless without any consultation with her or indeed any accounting to her of the most significant asset of the Company.

Conclusion on s. 212 application

56. I am of the view that, whether taken on its own or together with the filing of the erroneous Form B10, the actions of the respondents relating to the sale of the Premises and the distribution of the proceeds without reference to the applicant or the provision of any proper account amounts to *"oppression"* sufficient to justify the grant of relief to the applicant.

57. I am also satisfied that, given that the entire proceeds of sale appear to have been dissipated, the affairs of the Company were, so far as the use of the proceeds are concerned, in disregard of the applicant's interests as a member. This arises because a large portion of the proceeds, a sum of €400,000 which is almost 50% of the net proceeds, was used for the first respondent's pension but the remainder cannot be properly accounted for and it seems probable that the applicant's shareholding has been either significantly reduced in value or rendered valueless.

58. The question then becomes what relief should be granted to the applicant.

Appropriate remedy: whether winding up is appropriate

59. A common order where oppression of a minority shareholder is found to exist is to direct the purchase of his or her shares. The difficulty with this in this instance, in circumstances where the Company's books and records are obviously inadequate, is that, as the applicant complains, it is going to be impossible to value her shareholding. She says the usual remedy pursuant to s. 212, whereby the other parties would be directed to purchase her shareholding, so that they can all go their separate ways, is of no use to her here, as she will never be able to get proper valuation of it. She says that it is necessary to appoint a liquidator in order to investigate these matters and that this is available as a remedy for oppression or disregard of her interests, or on just and equitable grounds.

60. It is clear from the authorities that liquidation is very much a last resort and only where no other alternative remedy would be available. This was stated by the Court of Appeal in *Re Lanskey Ltd.* [2022] IECA 34, and by Charleton J. in *Re. Fuerta Ltd* [2014] IEHC 12, at para. 7 where he stated that winding up on just and equitable grounds was a last resort not lightly to be taken and should only be engaged in the most intractable situations. Where other avenues were available, winding up on this ground should not be invoked. He stated (at p. 3) that there must be *"a most serious lack of compliance coupled with an absence of reasonably available alternative steps and in the context of existing or impending prejudice".*

61. Ordinarily, I would order that the applicant's shareholding would be purchased and that it would be valued by an appropriate independent expert. However, in this case as it is not possible, it does not seem that there is an adequate remedy under s. 212, save to wind up the Company either as a remedy for the oppression and disregard of the applicant's interests or on just and equitable grounds.

62. In *Re Kilcurrane Business Centre Ltd* [2021] IEHC 701, at para. 54, Butler J. stated, in finding that a company should be wound up on just and equitable grounds, that it was crucial to her decision to wind up the Company that not only had there been a breakdown in relations between the parties, but that had been accompanied by the transfer of the Company's debt to the petitioner out of the jurisdiction to its parent without notice to or consent of the petitioner.

63. Similarly, in this case, it is crucial to my finding that the Company would be wound up that the Company appears to have dissipated a very significant sum of money, almost €900,000, without any reference to the plaintiff as either director or shareholder, and this in my view constitutes an act of "*oppression*" for which she is entitled to relief. Because there is no adequate alternative remedy, the appropriate order therefore is to wind up the Company and such an order is justified by reference to either s. 586(1) (e) or (f) of the 2014 Act.

Other grounds on which winding up on just and equitable grounds was sought

64. Although I do not think it is necessary for my decision, I will refer to some of the other grounds on which winding up was sought, in particular the allegation that the company was now deadlocked and incapable of governance, and the allegation that there had been a failure of substratum.

65. The applicant relied on the alleged corporate deadlock which she said was now arising given the breakdown in relationship between the Directors. This argument is based on her submission, which is correct, that she herself remains a Director of the Company. However, I do not think deadlock exists and the remaining Directors can make decisions by simple majority and indeed in their capacity as shareholders can pass both general and special

resolutions. I am therefore of the view that deadlock has not been established and that no relief can be granted under this heading.

66. It was also claimed that there was a failure of substratum, that the Company had reached *"end of life"*, and it was asserted that it had ceased to trade, the business in fact being transferred to Leech Papers Conversion Limited. In the winding up Petition, the matters referred to under the heading of *"end of life"* and failure of substratum relay various deficiencies in compliance with the Companies Act, notably the failure to provide the applicant with financial information. I do not believe that these amount to a failure of substratum which Courtney, *The Law of Companies,* 4th. ed., (Bloomsbury, 2016) describes (at para. 24.130) as occurring where the purpose for which a company was formed is no longer pursued, or where the Company pursues a different venture to that originally envisaged.

67. Insofar as it is intended to rely on the assertion that the business of the Company is being transferred to Leech Paper Conversion Limited, I do not believe this has been proven. Notwithstanding the suspicions that may arise from the fact that the first and second respondents are also directors of it, along with their son, and even from its name, no evidence that the Company's business has in fact been transferred to it has been tendered. I therefore would not order that the Company be wound up for failure of substratum.

68. The first respondent has said on affidavit that while the Company's fortunes have declined in recent years due to his own ill health, it will continue to trade and will in the near future enhance its financial position. He has also denied that it is his intention to move trade from the Company to Leech Papers Conversion limited.

69. He was not cross examined on these averments which, although some of them are very general in nature, I think are sufficient to establish that the Company is still trading and therefore this has not been proven by the petitioner. While it is somewhat unsatisfactory that

the first respondent has asserted on affidavit that the Company is simply moving premises without saying where, I do not think the applicant has discharged the onus of proof on her in this regard.

70. I do not think it is necessary to deal with the issue of insolvency, which I also understood to be put forward as a ground for winding up, and will simply point out that the Department of Social Protection is supporting the petition to wind up.

Conclusion

71. The actions of the respondents in relation to the sale of the Premises and the consequent failure to account for the proceeds are sufficient, in my view, to justify an order for the winding up of the Company on just and equitable grounds or as a remedy for the oppression and disregard of the applicant's interests such that paras. (e) and (f) of s. 569 (1) of the 2014 Act both apply and I will therefore direct that the Company be wound up. I will also hear counsel as to the precise order which should be made.