JCPC 2025/0066

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

On appeal from the Court of Appeal of Guernsey (Civil Division)
Crow JA, Perry JA and Wolffe JA
[2025] GCA 026

On appeal from the Royal Court of Guernsey (Ordinary Division)
Fionnuola A Connolly, Judge of the Royal Court
[2024] GRC 081

B E T W E E N :

ROBERT ARCHIBALD GILCHRIST SINCLAIR

Appellant

-and-

(1) IAN CHARLES DOMAILLE
(2) DEBORAH JOAN GUILLOU
(3) MARK JONATHAN BRIGHT
(4) ARTEMIS HOLDINGS LIMITED

Respondents

STATEMENT OF FACTS AND ISSUES

Relevant Facts

1 Before 2001 Mr Sinclair (the Appellant), Mr Domaille (the First Respondent) and others were partners at Saffery Champness, a Guernsey accounting firm.

2 In 2001 Mr Sinclair, Mr Domaille and others left Saffery Champness and established a new partnership under the name Artemis Chartered Accountants (**ACA**) to provide fiduciary services through a number of operating companies. These included Artemis Trustees Limited, registered in Guernsey (**ATL**), Athena Administration Limited, registered in Guernsey (**AAL**), and Artemis Societé Avec Responsabilité Limitée, registered in Guernsey (**SARL**). The shareholders in ATL, AAL and SARL entered into a shareholders' agreement dated 17 July 2002.

3 At some point prior to November 2007, AAL was wound up, and the business of ACA was continued through ATL and SARL.

4 The Fourth Respondent (the **Company**) was registered in Guernsey under company registration number 47989 on 6 November 2007. The courts below found (and it is not challenged in this appeal) that there was no shareholders' agreement in respect of the Company.

5 The Company's intended function was to operate as the holding company of ATL and SARL in place of the partnership, ACA, which had been dissolved. The Company is the 100% shareholder (through Artemis Nominees Limited and the First Respondent) of ATL, and the 100% shareholder of SARL.

6 Mr Sinclair and Mr Domaille were appointed as directors of the Company on 23 July 2008.

7 The directors of the Company have a power to issue shares, both under section 291 of the Companies (Guernsey) Law, 2008, and under article 2.1 of the Articles of Incorporation of the Company dated 5 November 2007 **[see pages 1042-1060]**.

8 ATL and its subsidiaries are regulated by the Guernsey Financial Services Commission (**GFSC**).

9 From 23 June 2011 to 27 August 2021, Mr Sinclair and Mr Domaille were the shareholders of the Company, with Mr Sinclair holding 49.27% of the Company's issued share capital, and Mr Domaille holding 50.73% of the Company's issued share capital.

10 On 4 June 2019, following a period of ill-health, Mr Sinclair resigned as a director of ATL and certain group companies; on 16 July 2019, Mr Sinclair was removed as a director of the Company and SARL.

11 The parties engaged in discussions with a view to Mr Domaille buying Mr Sinclair's shares. Mr Domaille obtained a draft valuation report from KPMG in March 2020 which estimated the Company's total value at c. £7 million **[see pages 1251-1294]**. Mr Sinclair did not participate in the preparation of that valuation, which is why it remained in draft, but the Court of Appeal proceeded on the basis that it gave a reliable indicative value of the Company at that date. The parties did not reach an agreement.

12 As fiduciary services providers, the Company and its subsidiaries are required to set up bank accounts and conduct similar tasks on behalf of the clients of the group. In that connection, banks and other organisations regularly require the Company's cooperation with client due diligence (**"CDD"**), know your client (**"KYC"**), and anti-money laundering (**"AML"**) processes. In some cases, this requires all persons with a 25%+ beneficial interest in the Company to cooperate with the completion of paperwork, including the provision of identity

documents. An example of such a request is quoted in paragraph 56 of the Royal Court's judgment **[see pages 1747-1748]**.

13 The Royal Court found that in the course of 2020 and the first half of 2021, multiple CDD/KYC requests were made by AHL to Mr Sinclair; that no response was received from Mr Sinclair to a significant number of requests; and that the business of AHL and its subsidiaries was being adversely affected by Mr Sinclair's lack of response from these requests. The courts below found that this was partly a result of ill-health, but *"not entirely attributable"* to it, and *"on occasion wilful";* that Mr Sinclair's failure to co-operate pre-dated any serious health issues, at least to some extent, and was characterised at times by posturing; and that he appeared to have been seeking to engineer a situation in which the other directors were driven to make an offer for his shares which he found acceptable (see paragraph 87(iii) of the Court of Appeal's judgment **[see pages 1848-1849]**). The Respondents took the view that Mr Sinclair's failure to cooperate was causing damage to the business and risked losing clients.

14 At a board meeting on 20 August 2021, a resolution was proposed authorising the allotment to Mr Domaille of a further 975,000 ordinary shares at a valuation on £0.26 per share. Mr Domaille recused himself from the discussion. The resolution was considered and passed by Ms Guillou (the Second Respondent, who had been appointed as a director on 1 July 2021) and Mr Bright (the Third Respondent, who had been appointed as a director on 5 August 2021).

15 Prior to the share issue, the Company had an authorised share capital of £10,000 divided into 1,000,000 ordinary shares of £0.01 each, all of which had been issued. The price per share for the newly issued shares was £0.26 per share, but the shares were issued part-paid, with £0.01 payable per share, being a total of £9,750. That consideration was settled by way of a loan in the full amount of £9,750 from the Company to the Mr Domaille, which has never been repaid.

16 The effect of the issue of 975,000 further shares was to dilute Mr Sinclair's shareholding from 49.27% to 24.94% and increase Mr Domaille's shareholding from 50.73% to 75.06%.

17 The share allotment did not raise capital and was not intended to do so. The directors' purpose was to reduce Mr Sinclair's shareholding below the 25% threshold. The Court of Appeal held that:

(a) *"... the purpose of the share allotment was not to raise capital, but specifically to reduce Mr Sinclair's shareholding below the 25% threshold because of the operational difficulties the company was facing..."* (CA, paragraph 63 **[see page 1841]**); and

(b) *"... the purpose of the allotment in this case was (as held in the judgment below) to obviate the need for Mr Sinclair's participation in the company's CDD obligations, so* *as to avoid the operational difficulties caused to the business by his failure to co-operate in that regard..."* (CA, paragraph 66 **[see page 1842]**)

18 As set out in the Board minutes of 20 August 2021 **[see pages 1368-1376]**, the directors believed that the dilution would not prejudice Mr Sinclair for the foreseeable future. They recorded the fact that they had no intention to declare dividends, and stated that if, in the future, there was any likelihood of dividends being declared or a sale of the company, *"the position could be reconsidered by the Board... based on the circumstances at the time"*. See minutes at paragraph 5.6 **[see page 1370]** and paragraph 41(ii) of the CA judgment **[see pages 1833-1834]**.

19 Having decided to issue the shares, the directors considered that the proposed terms of the share issuance were fair and reasonable to the Company **[see page 1370]**.

20 In correspondence from their advocates on 15 September 2021 **[see pages 1471-1477]**) the directors gave undertakings the broad effect of which was that no further shares would be issued without giving 28 days' prior notice.

Procedural history

21. Mr Sinclair commenced proceedings on 5 November 2021 under the unfair prejudice provisions in sections 349 and 350 of the Companies (Guernsey) Law, 2008 (the **Companies Law**) or, alternatively, as a derivative claim on behalf of the Company. He argued that the dilution a) was prejudicial to his interests as a member; b) breached the terms of a shareholders' agreement which, he argued, applied to the Company and/or quasi-partnership duties between the parties; c) breached the directors' fiduciary duties, their duty to act for proper purposes, and their duties of care; d) breached section 295 of the Companies Law; e) was unfair in all the circumstances; and f) in the alternative, gave rise to a derivative claim on behalf of the Company.

22. Between 13 and 17 May 2024 the trial was heard before Judge Fionnuola A Connolly sitting with Jurats. The Court heard factual evidence as well as expert evidence on the valuation of the Company.

23. On 29 November 2024 the Royal Court handed down judgment: Sinclair v Domaille [2024] GLR 440 **[see pages 1736-1815].** It found (so far as relevant) that there had been no unfairness and no prejudice to Mr Sinclair, and dismissed the claim. It also found that the derivative claim had not been sufficiently pleaded.

24. On 20 December 2024 Mr Sinclair appealed on ten grounds **[see pages 1-8]** (many of which do not now concern the Judicial Committee).

25. On 8 and 9 April 2025 the appeal was heard before Crow JA, Perry JA and Wolffe JA.

26. On 10 April 2025 the Court of Appeal dismissed Mr Sinclair's appeal: *Sinclair v Domaille* [2025] GCA026 **[see pages 1825-1850]**. Crow JA gave the sole judgment. He held (so far as relevant) that the dilution had (contrary to the Royal Court's decision) been *"prejudicial"* to Mr Sinclair within the meaning of section 349, but not *"unfair"*. He held that the directors of the Company had acted for proper purposes, namely to obviate the need for Mr Sinclair's participation in CDD obligations, so as to avoid the operational difficulties caused to the business by his failure to co-operate in that regard. He also held that the directors had acted reasonably in determining the terms of the share dilution, and that contrary to the Royal Court's view, the derivative claim had been properly pleaded.

27. On 10 December 2025, the Judicial Committee of the Privy Council granted permission to appeal.

28. JCPC Practice Direction 5.9 requires the parties to confirm the duration of the proceedings below. The proceedings a) in the Royal Court lasted c. 3 years; b) in the Court of Appeal lasted c. 5 months.

29. A summary of the key procedural dates appears at **Annex A**.

<u>The issues</u>

30. The issues in the appeal to the Judicial Committee of the Privy Council are:

    30.1. Did the Court of Appeal err in its interpretation and application of the 'proper purposes' rule in Guernsey law, in relation to the decision of the Company's directors to issue shares to Mr Domaille?

    30.2. Did the Court of Appeal err in its interpretation and application of directors' duties at common law and/or under section 295 of the Companies Law, in the context of decision-making regarding the terms of the share issuance?

    30.3. In light of the above, did the Court of Appeal err in its conclusion that the affairs of the Company had not been conducted in a manner that was unfairly prejudicial to the interests of Mr Sinclair as a member and/or that the Royal Court was right to dismiss the derivative claim?

THOMAS GRANT K.C.

TED LOVEDAY

ROBERT BRECKON

On behalf of the Appellant

DANIEL LIGHTMAN KC

SARAH BREHAUT

STEPHANIE THOMPSON

On behalf of the Respondents

14 May 2026