Hilary Term
[2021] UKPC 1
Privy Council Appeal No 0092 of 2017

JUDGMENT

Ming Siu Hung and others (Appellants) *v* J F Ming Inc and another (Respondents) (British Virgin Islands)

From the Court of Appeal of the Eastern Caribbean Supreme Court (British Virgin Islands)

before

Lady Black
Lord Briggs
Lady Arden
Lord Sales
Lord Burrows

JUDGMENT GIVEN ON

14 January 2021

Heard on 26 November 2020

Appellants	*2nd Respondent*
Christopher Parker QC	Paul Chaisty QC
Ian Mann	Nigel Meeson QC
Paula Kay	Richard Evans
(Instructed by Harney Westwood & Riegels LLP (British Virgin Islands))	(Instructed by Conyers Dill & Pearman and Sinclair Gibson LLP)

Appellants:-

(1) Ronald Ming Siu Hung
(2) Bertha Shaw Shiu Kuen
(3) Ming Shiu Tong

Respondents:-

(1) J F Ming Inc
(2) Lawrence Ming Shui Sum

LORD BRIGGS:

1. By this appeal to the Board the appellants, three siblings in the Ming family, seek to reinstate the order made by Leon J in the British Virgin Islands on 16 August 2016 that their brother Ming Shui Sum, Lawrence, the Second Respondent ("Lawrence") purchase their shares in the First Respondent company JF Ming Inc ("the Company") at a price to be determined by the court. That order was made at the conclusion of unfair prejudice proceedings, following a finding (which is no longer in dispute) that Lawrence had conducted the affairs of the Company in a manner which was oppressive, discriminatory and unfairly prejudicial to the appellants as shareholders within the meaning of section 184I of the BVI Business Companies Act 2004. This was mainly by his failure to ensure that they were provided with financial information about the Company pursuant to their right to be given such information enshrined in article 120 of the Company's Articles of Association, but also because he had abused his voting powers as majority shareholder by seeking to have their right to financial information permanently removed.

2. By its order made on 28 June 2017 the Court of Appeal (Blenman, Webster and Gonsalves JJA) set aside the Judge's order for a buy-out, but upheld both his findings of unfairly prejudicial conduct, his order that the rights to information in article 120 be fully reinstated and that the financial information be provided. The Court of Appeal considered that it was appropriate to exercise the remedial discretion afresh because of what it regarded as errors of principle in the judge's reasoning. The relatively short question which is decisive of this appeal to the Board is whether the judge made the errors identified by the Court of Appeal. If he did not, then the Court of Appeal should not have taken it upon itself to re-exercise the discretion as to remedy, and the judge's order for a buy-out should stand. But it is first necessary to summarise the facts.

3. The late Ming John Fook was a successful Hong Kong businessman who had seven children, including the appellants and Lawrence. In 1991, as part of estate planning late in his life, he established the Company as the vehicle for the family ownership of his by then substantial property development business in Hong Kong. He gave each of his children 1,000 shares in the Company. Unknown to the other siblings he also gave a further 10,000 shares in the Company to Lawrence who, alone among the children, had helped him build up the business. When Lawrence revealed the existence of these shares to his siblings in response to their attempt to take over control of the Company after their father's death in December 1992 there ensued protracted litigation in Hong Kong about the validity of that gift. After losing in the lower courts, Lawrence was ultimately successful before the Hong Kong Court of Final Appeal, in May 2006. From then on, Lawrence has been the undisputed majority shareholder in the Company, and in sole control of its affairs as its only director.

4. Article 120 of the Company's Articles of Association required the directors of the Company to furnish each of the company's shareholders annually with a profit and loss account and a balance sheet for the Company, unless that entitlement was waived by a members' resolution. Lawrence provided none of that financial information to his minority shareholder siblings from his resumption of control of the Company, for any year from 2006, until the judge's order that he should do so was affirmed by the Court of Appeal in 2017.

5. The appellants did not protest about not being provided with that information until late in 2013, when the second appellant sought it, unsuccessfully, in connection with a possible sale of her shares to Lawrence. In 2014 all the appellants sought it, under threat of proceedings if not provided. The other siblings had by then sold their shares to Lawrence.

6. Lawrence's response was not to provide that information, but to use his majority shareholding to pass resolutions waiving the shareholders' entitlement under article 120, both for the past and for the future. Thereafter the appellants petitioned under section 184I, initially seeking only an order for the provision of the requisite information and the setting aside of the waiver resolutions. Lawrence's defence, supported by his own witness statement and the submissions of his counsel, included the assertion that, since the appellants had merely been given their shares and had never worked for the Company or in the underlying businesses, they had no reason to expect any monetary return on their shares, so that they suffered no unfair prejudice by being denied the financial information prescribed by article 120. Further he maintained that the appellants had waived their rights to financial information by not asking for it between 2006 and 2013. Lawrence also alleged misconduct by the appellants when briefly in control of the Company before 2006. In response, by a late amendment to their pleadings, the appellants alleged financial misconduct by Lawrence prior to 2006 and sought for the first time a buy-out of their shares, by Lawrence.

7. A split trial was directed, with liability and the form of remedy to be dealt with first, with any question of valuation of shares to follow, if necessary. The liability trial took place over seven days between October 2015 and May 2016, following which Leon J delivered a lengthy reserved judgment in August 2016. Lawrence had provided evidence in the form of a witness statement, but illness prevented him from attending for cross-examination. The judge accepted his evidence "for what it was" and did not treat it as being of less weight than it would have carried after cross examination.

8. The judge found that both the persistent refusal to provide the financial information in and after 2013 and the passing of the waiver resolutions designed to deprive the appellants of the right to receive it amounted to unfairly prejudicial conduct. He described the deliberate failure to provide the financial information as "oppressive, unfairly discriminatory and unfairly prejudicial" (para 145), as contrary to commercial

morality (para 158) and as having been done for the improper purpose of benefiting himself by depriving the appellants of information to which they were entitled (para 171). He described the waiver resolutions as having been motivated by Lawrence's "desire to take advantage of the claimants' lack of information" about the affairs of the Company (para 156) and done "in a manner designed to inflame the situation between himself and the claimants" (para 162). Following the rejection by the Court of Appeal of Lawrence's challenge to the ruling of unfairly prejudicial conduct these serious findings against him, reached by the judge after a full trial, stand unchallenged before the Board.

9. The judge approached his consideration of the appropriate remedy from a clearly expressed perspective that, on the facts found by him, he had a broad choice between one which would merely compel Lawrence to provide the prescribed financial information and one which, in addition, would deal fully with what he found would be a likely continuation of unfairly prejudicial conduct by Lawrence in the future. He concluded that the best that could be achieved, in the legitimate interests of all the parties (see eg para 215), was by ordering a buy-out of the appellants' shares. Although no substitute for reading the judgment in full, the following extract best summarises the core of his reasoning:

> "There is real reason for concern, based on all that has occurred, that the Second Defendant will not serve as sole director of the Company without recurrences of oppressive, unfairly discriminatory and unfairly prejudicial conduct towards the claimants.
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> His misguided beliefs on matters of shareholders' rights and his attitudes towards the claimants as minority members are too engrained. His patterns of conduct in defending the indefensible, his hardball tactics, his repetition in his evidence of those beliefs and attitudes make it abundantly clear to this court that a Court-ordered buyout is needed.
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> The reasons include, first, the Second Defendant's completely unjustifiable failure to provide the Financial Statements over many years, even when asked by the Second Claimant and then all the claimants, and even when he had access to them in discussions with the Second Claimant about an acquisition of her shares (as he did in the 2006-2007 acquisitions); and second, the Second Defendant's long and strongly-held misguided perspective that the claimants are not entitled to the economic benefits of their shares as they were given the shares

> and as they did not work to build the Company, as did the Second Defendant.
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> The court has no confidence that the Second Defendant, as sole director, will comply with his obligations to the claimants, or will cause the Company to comply with its obligations to them as members (albeit minority members) of the Company." (paras 205-208)

10. The Court of Appeal's own view of the merits of that choice was the opposite to that of the judge. As expressed in the leading judgment of Blenman JA a more limited order, requiring the furnishing of the prescribed financial information, both for the past and for the future, was a more proportionate response to the unfair prejudice pleaded and proved at trial. But the Court of Appeal did not say that the judge's solution fell outside the reasonable range within which the judge's statutory discretion had to be exercised, nor that the judge's self-direction as to the relevant law, based (with counsel's concurrence) upon *Grace v Biagioli* [2006] 2 BCLC 70; [2005] EWCA Civ 1222 was flawed.

11. Rather the Court of Appeal identified two aspects of the conduct of the appellants arising from the evidence which it considered that the judge had failed to take into account, in his reasoning as to the appropriate remedy, so that the Court of Appeal was entitled and indeed obliged to exercise that discretion afresh. The first was the financial misconduct of the appellants while briefly in control of the Company's affairs before they finally lost the Hong Kong litigation in 2006. The second was what the Court of Appeal described as the blameworthy failure of the appellants to complain about the denial of financial information about the Company between 2006 and 2013. Before addressing their significance directly and considering how (if at all) the judge dealt with them, it is worth summarising the relevant law, both about the exercise of the discretion as to remedies under section 184I of the Act, and about the constraints upon the appellate function, when reviewing the exercise of a discretion conferred upon a trial judge.

12. The remedy for what is usually labelled unfairly prejudicial conduct is expressed in section 184I of the Act in terms evidently derived from the similar jurisdiction conferred in the United Kingdom by the Companies Acts, but slightly differently. It provides:

> "184I(1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly

prejudicial to him in that capacity, may apply to the court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders

(a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;

(b) requiring the company or any other person to pay compensation to the member;

(c) regulating the future conduct of the company's affairs;

(d) amending the memorandum or articles of the company;

(e) appointing a receiver of the company;

(f) appointing a liquidator of the company under section 159(1) of the Insolvency Act on the grounds specified in section 162(1)(b) of that Act;

(g) directing the rectification of the records of the company;

(h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company.

(3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made."

13. This statutory jurisdiction differs from its UK predecessor in two principal respects. First, it includes conduct which is oppressive or discriminatory rather than just unfairly prejudicial. Secondly it describes the very wide discretion as to remedies as requiring that the chosen remedy must be one which the court thinks it just and equitable to grant. The first of those differences makes no difference in a case such as the present where the judge found that the conduct complained of satisfied all three of those adjectival descriptions. Nothing is added to the UK formula by the requirement that the remedy should be just. That would in any event be implied. But the requirement that the remedy should also be equitable might perhaps add an element, although the UK remedy started out in life as a more flexible remedy than winding up on the just and equitable ground. However that may be, it has at all times in this litigation been common ground between counsel that the decisions of the UK courts are at least persuasive authority on the interpretation and application of this statutory jurisdiction.

14. There was, likewise, little disagreement between counsel as to the following principles. First, at the remedy stage, the court is entitled to have regard to any aspect of the facts as found about the history of the company and the relationship between its shareholders inter se, and between them and the directors, including those occurring after the issue of the claim and those which may fairly be found by the court even though not necessarily pleaded. In short, nothing is off-limits, subject only to the twin tests of relevance and weight, in relation to the choices to be made in the exercise of the discretion. Secondly, the court necessarily looks not only to the past but to what the court finds is likely to happen in the future.

15. In *Grace v Biagioli* (supra) at para 73 Patten J put it like this, giving the leading judgment in the Court of Appeal:

> "Once unfair prejudice is established, the court is given a wide discretion as to the relief which should be granted. Although section 461(1) speaks in terms of relief being granted 'in respect of the matters complained of', the court has to look at all the relevant circumstances in deciding what kind of order it is fair to make. It is not limited merely to reversing or putting right the immediate conduct which has justified the making of the order. In *In re Bird Precision Bellows Ltd* [1985] BCLC 493; [1986] Ch 658 Oliver LJ described the appropriate remedy as one which would 'put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company'. The prospective nature of the jurisdiction is reflected in the fact that the court must assess the appropriateness of any particular remedy as at the date of the hearing and not at the date of presentation of the petition; and may even take into account conduct which has occurred between those two dates. The court is

> entitled to look at the reality and practicalities of the overall situation, past, present and future."

16. There was a difference between counsel about whether it had been established by UK authority that a buy-out order had become the usual remedy for all serious cases of unfair prejudice, or only for those arising within quasi-partnership companies, after the exclusion of a minority shareholder from management. At para 75 in *Grace v Biagioli* Patten J continued:

> "In most cases, the usual order to make will be the one requiring the respondents to buy out the petitioning shareholder at a price to be fixed by the court. This is normally the most appropriate order to deal with intra-company disputes involving small private companies. This is the relief which Mr Grace says that the judge should have granted and which he seeks on this appeal. The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the value of its business and assets in return for foregoing any future right to dividends. The company and its business will be preserved for the benefit of the respondent shareholders, free from his claims and the possibility of future difficulties between shareholders will be removed. In cases of serious prejudice and conflict between shareholders, it is unlikely that any regime or safeguards which the court can impose will be as effective to preserve the peace and to safeguard the rights of the minority. Although, as Lord Hoffmann emphasised in *O'Neill v Phillips* [[1999] 1 WLR 1092], there is no room within this jurisdiction for the equivalent of no-fault divorce, nothing less than a clean break is likely in most cases of proven fault to satisfy the objectives of the court's power to intervene."

It is evident that these sentiments chimed with Leon J on the facts of the present case. *Grace v Biagioli* was about a quasi-partnership company, but the exclusion of the petitioner from management was not found to have been unfairly prejudicial conduct, since he had set up a competing business. Rather it was the denial of dividends and their payment to the majority shareholders dressed up as management fees that was unfairly prejudicial, sufficient to justify an order for a buy-out. The Board's attention was drawn to dicta of mine in *Sikorski v Sikorski* [2012] EWHC 1613 (Ch) in which I said, at para 74:

> "I recognise of course that an order for the purchase of an unfairly prejudiced shareholder's shares, either by the other shareholders or by the company, has become almost the norm in cases where unfair

> prejudice is established in relation to the affairs of private companies."

That was a case about a company which had been a corporate quasi-partnership prior to 1993, but the unfair prejudice alleged and proved was the majority shareholder's failure thereafter to abide by the purely financial terms upon which the dissolution of the partnership relationship between the shareholders had been agreed long previously. In the event it was the respondent who preferred a buy-out if the court found that there was unfairly prejudicial conduct. The petitioner sought a form of specific performance of the terms of the 1993 dissolution agreement, and that is what he got.

17. The Board does not consider that any useful purpose would be served by seeking to resolve this difference about the types of case in which a buy-out order has become the usual remedy. Neither the BVI Act nor its UK predecessor makes a buy-out a preferred remedy in general, in quasi-partnership companies or otherwise. If it has become widely used, (as it probably has), that will be because the particular facts about a large number of cases make it the most appropriate remedy in each of them. At the highest it may be said that it would usually be an uphill struggle for an appellate court to conclude that such a remedy for serious oppression, discrimination and unfair prejudice was out with the reasonable confines of a discretionary judicial response to the facts. But that is not how the Court of Appeal approached the present case, even though it was not persuaded by, and did not share, the judge's view (para 89).

18. It is clear that, as in the exercise of any discretion on just and equitable principles, the conduct of the party seeking relief may be both relevant and, in particular cases, of real weight in the grant or choice of remedy. Laches (that is long delay plus prejudice) and estoppel may sometimes operate as an equitable bar. More often the conduct of the applicant may be one among a number of factors to be weighed in the balance. There may even be some room for the notion that a person seeking equity must come with clean hands: ie that misconduct of the applicant may sometimes justify the refusal of a remedy which would otherwise have been granted. That was unsuccessfully argued in *Grace v Biagioli* and rejected only on the facts, rather than because the petitioner's conduct was regarded as being irrelevant in principle: see para 77.

19. Conversely it may well be, in particular cases, that the fact that during a deteriorating relationship there has been misconduct on both sides is a factor militating in favour of a remedy like a buy-out which provides a clean break between the warring parties, provided that it is kept firmly in mind that the remedy is primarily there as the court's response to the unfairly prejudicial conduct pleaded and proved. What cannot be doubted is that the conduct of the applicant is in any particular case a factor of infinitely variable weight, on a scale from it being decisive at one end to being of no weight at all at the other. The question where it lies on that scale is a matter for the judge.

20. It is necessary at this point to bear in mind the well-settled constraints upon the appellate jurisdiction, when asked to re-exercise a discretion conferred upon the first instance judge. These constraints form part of a package, developed over many years, which ensure that the benefit of finality which should normally follow from the judicial determination of the parties' dispute is not rendered ineffective by undue appellate activism. The general reasons for appellate restraint are well summarised by Lewison LJ in his well-known judgment in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, para 114, as follows:

> "114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC 1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23; [2007] 1 WLR 1325; *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include
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> > i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
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> > ii) The trial is not a dress rehearsal. It is the first and last night of the show.
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> > iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
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> > iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

> v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
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> vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."

21. In *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] 1 WLR 1911, para 107, Lord Kerr of Tonaghmore adopted a three-fold classification of the various functions of the trial judge. Although he used it in relation to care proceedings it is equally applicable to unfair prejudice proceedings. He said:

> "Three different types of judicial decision in care proceedings have been authoritatively identified by Baroness Hale of Richmond in para 199 of her judgment. The first concerns factual decisions on the evidence; the second involves consideration of whether the statutory threshold has been crossed; and the third deals with decisions as to the type of order that should be made. For the reasons that she has given, with which I agree, it is important to recognise the different intellectual exercise which is in play in each of these contexts because that will dictate the proper approach of the appellate court to a challenge about the correctness of a judge's decision."

He likened the third stage to the exercise of a discretion, and continued, at para 112:

> "Where what is under review by an appellate court is a decision based on the exercise of discretion, provided the decision-maker has not failed to take into account relevant matters and has not had regard to irrelevant factors and has not reached a decision that is plainly irrational, the review by an appellate court is at its most benign. Truly, in that instance, an appellate court which disagrees with the challenged decision of the judge will be constrained to say, even though we would have reached a different conclusion, we cannot interfere."

22. The question whether a judge has failed to take something into account is not to be answered by an over-zealous dissection of the language of the judgment. In *Piglowska v Piglowski* [1999] 1 WLR 1360, at 1372, Lord Hoffmann said:

> "An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

Finally, it is not an answer to the need for the exercise of appellate restraint for the appeal court to regard itself as well placed as the judge to carry out the relevant task. In *Zuckerman on Civil Procedure: Principles of Practice*, 3rd ed (2013), at para 24.204 it is observed:

> "It has been said that a review of the lower court's decision on a question of fact is different from a review of the lower court's exercise of discretion. The difference between the two kinds of judicial exercise is undeniable, but it does not call for a difference in appellate restraint to interference with the lower court's decision. For while it is true that in the case of discretion the appeal court may be as well placed as the trial court to exercise it, the primary responsibility rests with the trial court not the appeal court. This is true not only with regard to case management decisions but also other decisions requiring the balancing of different factors as in care proceedings for instance."

23. Appellate review of the exercise of judicial discretion on just and equitable principles in relation to shareholder remedies is no less subject to restraint than in care proceedings, in the UK or in the British Virgin Islands: see *Chu v Lau* [2020] 1 WLR 4656; [2020] UKPC 24, para 70.

24. With that need for appellate restraint in mind, which affects the Board as much as the Court of Appeal, it is necessary now to look closely at the two matters which the Court of Appeal considered that the judge left out of account. The first is the appellants' own financial misconduct in relation to the Company while briefly in control of it before 2006. The allegation was that the appellants had taken money from the Company to which they were not entitled, contrary to an order of the Hong Kong court, and allotted some shares to themselves without authority. The judge dealt with this first at paras 35 to 37 of his judgment, as follows:

> "In the course of the claimants' period as directors, and particularly in the latter part, certain things were done by them which were inappropriate and were remedied by them in about 2006, shortly after they occurred.

> The Second Defendant (*Lawrence*) raised those actions in this proceeding as reflecting on the character of those involved and going to the Second Defendant's concern about the claimants' motivations in relation to the Financial Statements and as going to their entitlement to the discretionary relief claimed.
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> While those actions did not reflect well on those involved, they are of little or no relevance to the central issues in this litigation. In particular, they did not justify the Second Defendant's actions in relation to the Financial Statements, nor were they the reason for his actions regarding the Financial Statements, and those actions do not inform this court on the relief that is appropriate."

At para 135 he continued:

> "These matters do little to substantiate the Second Defendant's asserted concern about disruptive or difficult behavior as a reason not to provide the Financial Statements in 2014 or later. Further, this court does not consider these matters of any relevance in the exercise of its discretion regarding the appropriate relief/remedy."

Mr Paul Chaisty QC for the respondents submitted that the judge made no mention of this aspect of the appellants' conduct in the section of the judgment on remedies, so that he did not take them into account for that purpose. But the judge had already stated twice that he gave these matters no weight on the question of remedies.

25. The judge dealt fully with the allegation that the appellants were guilty of delay in seeking financial information about the Company between 2006 and 2013 at paras 88 to 94 of his judgment. In summary he found:

> (i) that the delay was not surprising in the light of the outcome of the years of bitter litigation in Hong Kong,
>
> (ii) That it was understandable and that the appellants should not be criticised for it, the onus being on Lawrence to provide the information without prior request,
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> (iii) Their delay was even more understandable, with hindsight, in the light of Lawrence's reaction to the request for information once made,

(iv) The requirements for Lawrence's case that there had been a waiver by the appellants' delay were not met either in law or in substance.

26. The judge made no further reference to this aspect of the appellants' conduct when considering the question of remedy, apart from noting the submission made, at para 196. But in the light of his conclusion, with reasons given, that the appellants' delay was not blameworthy on their part, it may readily be inferred that he did not regard it as a factor of any weight.

27. In the Court of Appeal Blenman JA dealt with both these aspects of the appellants' conduct at paras 87-88. In summary she said that:

(i) their delay in seeking financial information was both blameworthy and had contributed to the "state of affairs" calling for a remedy.

(ii) the judge was to be criticised for having improperly minimised the delay as the appellants' contribution to that state of affairs.

(iii) the judge should have given "more weight" to the appellants' delay than he did.

(iv) the judge failed to take the appellants' financial misconduct into account on the question of remedy.

At para 92 Blenman JA said that the effect of these failures by the judge was that he had erred in principle and exercised his discretion improperly, so that the Court of Appeal had to exercise the discretion afresh.

28. In the Board's view these criticisms of the judge's reasoning in his exercise of discretion do not withstand analysis. Taking them in turn:

(i) The judge decided that the appellants' delay in seeking financial information was not blameworthy, with fact-specific reasons which the Court of Appeal did not address. Furthermore the Board does not understand how, on the judge's findings of fact, the delay made any contribution to the unfairly prejudicial conduct of Lawrence which followed in and after 2014, when the request for information was made. At most, it just postponed an inevitable confrontation.

(ii) Accordingly there was no blameworthy contribution by the appellants' delay for the judge to minimise.

(iii) A view that a judge should have given "more weight" to a relevant matter is not within the scope of appellate review. Matters of weight when exercising a discretion are for the judge, provided that his assessment of weight is not irrational. In the present case it was not.

(iv) The judge did not fail to take into account the appellants' financial misconduct on the question of remedy. He did so expressly, at paras 35 to 37, and his conclusion, supported by reasons, was that they were of little or no weight. He repeated that conclusion at para 135. Again this assessment of weight was a matter for him. He was not saying that such matters were in principle irrelevant, just that they were of no weight on the facts of the case. The Court of Appeal did not engage with the judge's reasons for reaching that conclusion about weight.

29. In oral submissions Mr Chaisty made two further criticisms of the judge's approach to remedy, not made by the Court of Appeal. In his written case, it was stated at para 2 that there was to be no cross-appeal, and that reliance was placed purely on the grounds set out by the Court of Appeal in its own judgment for setting aside the judge's ruling on remedy. It is therefore sufficient for the Board to deal with them briefly. The first was that the judge made no reference to the fact that the absence of trust and confidence between Lawrence and his siblings (including the appellants) went right back to 1994, so that it existed before the matters complained of in the unfair prejudice claim. There is nothing in this point. The judge recognised in the second paragraph of his judgment, and elsewhere, that the long history of disputes between them went right back to the 1970s, and that the most significant of them occurred between 1994 and 2006, culminating in the bitter Hong Kong litigation.

30. The second criticism, pursued at rather more length, related to the non-payment of dividends. Mr Chaisty noted, correctly, that the appellants had refrained in their Statement of Case from relying upon non-payment of dividends as unfairly prejudicial conduct, merely reserving their position pending provision of financial information. He noted that the judge had recorded this position, accurately, at paras 47-48 of his judgment. But he submitted that the judge had then, in a series of later passages, rowed back on that acknowledgment and relied upon non-payment of dividends as part of Lawrence's misconduct.

31. It is enough for the Board to say that, after studying all those passages, and considering them in the light of the judgment read as a whole, the judge did no such thing. His references to payment of dividends never went beyond simple fact-finding,

or the plainly correct observation that provision of the financial information about the Company was of real importance to minority shareholders with no role in management, so as to enable them to inform themselves (inter alia) about the ability of the Company to pay dividends, as an aspect of its financial health about which they had a legitimate interest.

32. It follows that neither the Court of Appeal, nor Lawrence on this appeal to the Board, have demonstrated any basis for appellate intervention in the exercise of the judge's discretion to order a buy-out of the appellants' shares. Had it mattered, (and the question was fully argued) the Board would have shared the judge's view that this was a clear case for ordering a buy-out, for the reasons which he gave. Lawrence's refusal to provide financial information was in reality a symptom, albeit a very serious and harmful one, of his complete and continuing inability to recognise or acknowledge that the appellants had any legitimate stake in the Company as minority shareholders.

33. The Board will therefore humbly advise Her Majesty that this appeal should be allowed, and the judge's order restored.