ALLNUTT v NAGS HEAD READING LTD

CHANCERY DIVISION

ICC Judge Prentis: 29 October 2019

[2019] EWHC 2810 (Ch); [2020] B.C.C. 70

H1 *Directors—Breach of directors' duties—Unfairly prejudicial conduct—Removal of director—Pub run by company as quasi-partnership—Director purchased interest in nearby pub—Extent of disclosure to fellow directors—Conflict of interest—Whether removal of director was unfairly prejudicial conduct—Companies (Tables A to F) Regulations 1985 (SI 1985/805) Sch.1 para.85—Companies Act 2006 ss.175, 994.*

H2 This was a claim by a director of a company that his removal as a director was unfairly prejudicial to him as a shareholder under s.994 of the Companies Act 2006 and seeking an order that his shareholding be bought out by the company and such other relief as the court might direct.

H3 The claimant (EA) and the second to fifth defendants were the directors, employees and shareholders of NHR Ltd (the first defendant), a company formed to purchase, refurbish and relaunch The Nag's Head, a pub in Reading. They shared the bar duties, and each of them played a significant role in some other aspect of operating the pub, which ran at a modest profit and achieved success as a real ale pub. Very few formal meetings were held, most issues being addressed in an ad hoc fashion, and the relationship within NHR was that of a quasi-partnership. Over time, EA devoted less time to the pub, spending up to two thirds of his time abroad. He became interested in The Butler, a pub a very short distance from The Nag's Head, which was available to be taken over, and raised with his fellow NHR directors the prospect of taking it on. The other directors declined and formed the impression that EA's interest in The Butler thereupon ceased. In July 2014, EA and two associates purchased The Butler and he informally let some of the other Nag's Head directors know. In August 2014 the directors held a meeting at which EA's conflict of interest was raised; however, he gave very few details of the nature of his interest in The Butler. Although the question of him resigning arose, the meeting ended without a vote on what should happen next. EA remained a director, therefore, and also continued to be involved in The Butler, which had begun to trade and was following similar strategies to attract customers and grow business as had succeeded at The Nag's Head. Additionally, he spent his spare time at The Butler, and actively promoted it. His employment at The Nag's Head ended in Autumn 2015, and although he remained a director the time he gave to it grew less, and the workload of others increased. In February 2016, without notice, the parties held another meeting, at which EA was removed as a director of NHR. His claim for unfair dismissal was rejected by the Employment Tribunal, and he now sought an order that NHR buy out his shareholding on the basis that its action in removing him as a director was unfairly prejudicial under the Companies Act 2006 s.994.

H4 Held, dismissing the claim:

H5 1. For a claim to succeed under s.994, unfairness and prejudice both had to be demonstrated. Relevant to that would be a finding that EA was involved in a competing business. That in turn brought in the duty imposed by s.175(1), requiring a director to avoid a situation in which he had or could have an interest that conflicted or might possibly conflict with the interests of the company. By s.175(4) the duty would not be infringed if the situation would not be likely to give rise to a conflict of interest, or if the matter had been authorised by the directors. Further, under s.175(5) and (6) authorisation might be given by the matter being proposed to and approved by the directors, either by voting at a meeting or by agreement without voting.

H6 2. The company had adopted a modified version of the 1985 Table A articles, including reg.85 which permitted a director to be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company was otherwise interested provided that he had disclosed to the directors the nature and extent of any material interest of his. The duty of a director to disclose the nature of his interest applied both to that regulation and to a conflict of interest under s.175. It was an obligation of full and complete disclosure, such that the shareholder members could give informed consent. If the shareholders with full knowledge of the relevant facts consented to the director exploiting opportunities for his own personal gain, then that conduct was not a breach of duty. If with full knowledge they acquiesced in the director's proposed conduct, then that might constitute consent. However, consent could not be inferred from silence unless the shareholders knew that their consent was required or that it would be unconscionable for the shareholders to remain silent at the time and object after the event. (*Sharma v Sharma* [2013] EWCA Civ 1287; [2014] B.C.C. 73 applied.)

H7 3. On the facts, EA's involvement in the running of The Butler was in manifest conflict with his duties as a director of NHR. At no stage was it approved by the other directors of NHR, not least because they were never provided with full and open information as to the nature of his involvement. Since the conflict was serious, ongoing and unexplained, EA's removal as a director from NHR was justified, and any prejudice he may have suffered thereby could not be described as unfair.

H8 Cases referred to:

Aberdeen Railway v Blaikie Bros (1854) 1 Macq. 461 (HL)
Bristol & West Building Society v Mothew (t/a Stapley & Co) [1998] Ch. 1 (CA)
Duomatic Ltd, Re [1969] 2 Ch. 365 (Ch)
EIC Services Ltd v Phipps [2003] EWHC 1507 (Ch); [2003] B.C.C. 931
Flex Associates Ltd, Re [2009] EWHC 3690 (Ch)
Frawley v Neill [2000] C.P. Rep. 20 (CA)
Movitex v Bullfield (1986) 2 B.C.C. 99403 (Ch)
O'Neill v Phillips [1999] 1 W.L.R. 1092; [1999] B.C.C. 600 (HL)
Sharma v Sharma [2013] EWCA Civ 1287; [2014] B.C.C. 73

H9 *Alison Maclennan* (of Third Sector Law, Reading) for the claimant.
Richard O'Dair (instructed by Hewetts, Reading) for the second to fifth defendants.

JUDGMENT

ICC JUDGE PRENTIS:

Introduction

1. The Nag's Head is a beacon of real ale in Reading, regularly winning Campaign for Real Ale (CAMRA) awards, and presenting a dozen hand-pumps as well as an extensive range of bottled and craft beers. It has been transformed from its existence as an Irish pub by the parties to this litigation, who bought it in early 2007 through their vehicle The Nags Head Reading Ltd (the company).

2. Despite the pub's success, on 9 February 2016 the individual defendants, being Mrs Sylvia Lodge and her daughter Laura (usually known as Lola), and Michael Oates (often known as Meeko) and his son Samuel Jody (known as Jody) voted to remove the claimant, Edward Allnutt (known as Ted), as director of the company.

3. On 27 April 2016 Mr Allnutt issued a claim in the Employment Tribunal, complaining of unfair dismissal and age discrimination. Those claims were rejected in a judgment handed down by the tribunal on 29 November 2016, which stated at [49] that his

> "case confused his status as an employee with his status as a statutory director and a shareholder. The Tribunal found that his employment terminated by agreement in November 2015. His statutory directorship ended with the majority vote to remove him at the meeting on 9 February 2016 and Michael Oates' e-mail of the same date which resulted in his removal from the Companies House register. His shareholding of 10,000 shares remained unaffected by any of the above."

4. On 16 February 2017 Mr Allnutt issued the present claim for unfair prejudice under s.994 of the Companies Act 2006 (the Act) (the claim). His grounds are set out in a single paragraph:

> "On the 9th February 2016 the Petitioner was removed as a director and employee of the company without notice. The company was a quasi-partnership and the Petitioner had a legitimate expectation to be involved in its management."

5. The relief he seeks is that his

> "shares be bought by the remaining shareholders at a price to be fixed by the court. Compensation for loss of office. Such compensation as the court thinks fit. Or that such other order may be made as the court thinks fit."

6. On 20 June 2018 Deputy ICC Judge Briggs dismissed cross-applications for summary judgment. This trial is, pursuant to the order of Chief ICC Judge Briggs of 13 August 2019, as to liability only. The parties are agreed that should I find liability, I should also make findings as to whether the shares should be bought on a discounted or non-discounted basis.

7. The parties are also now agreed that the decision of the Employment Tribunal is binding on them, as are the tribunal's factual findings. The petition's complaint about the treatment of Mr Allnutt as employee has therefore fallen away.

8. What remains in issue is whether the removal of Mr Allnutt in February 2016 was unfairly prejudicial to him bearing in mind the terms of the quasi-partnership, and his acquisition in 2014 of an interest in The Butler, another public house in Reading.

9. Mr Allnutt has been represented throughout by Ms Alison Maclennan, and the individual defendants by Mr Richard O'Dair.

Witnesses

10. I have had the benefit of hearing each of the parties give evidence, as well as two other witnesses, both called on behalf of Mr Allnutt. They were Mrs Linda Coulling, the landlady and then manageress of The Butler, and Mr Stephen Stanton, one of the partners in The Butler.

11. I find that with one exception each of the witnesses gave me genuine and honest recollection. Jody Oates and Lola Lodge gave impressive evidence, brisk and clear and direct. So too did Sylvia Lodge. Michael Oates' was considerably slower, which I attribute not to deliberate misunderstanding but to character.

12. Likewise, I found Mrs Coulling and Mr Stanton credible, giving evidence which did not extend beyond their own knowledge.

13. The exception was Mr Allnutt. He is a man with intimate knowledge of the case and what each party has said and their solicitors written during the course of these proceedings and those in the Employment Tribunal. His evidence seemed tilted at times to settling other wrongs, especially the perceived difference in treatment between himself and his erstwhile friend Michael Oates. More materially, it was occasionally directed with a view to benefit to his case rather than being recollection. That was so, for example, with an embellishment to the August 2014 meeting which I will address below. More broadly, and as again I will deal with below, his evidence failed to disclose any but the barest facts of his relationship with The Butler. Those issues aside, his evidence was generally reliable.

The law

14. By s.994 of the Act:

> "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) …".

15. By s.996(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."

Examples are then given.

16. Ms Maclennan has highlighted certain passages from *O'Neill v Phillips* [1999] 1 W.L.R. 1092; [1999] B.C.C. 600, in particular this at 1098–1099; 606–607, addressing the precursor to s.994, s.59 of the Companies Act 1985.

> "In section 459 Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief. It is clear from the legislative history … that it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable …
>
> Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used … the context and background are very important.

> In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose … The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity … as a contract of good faith. One of the traditional roles of equity … was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely on their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith".

17. Here, the parties are agreed that the relevant rules are those imposed by the Act, the company's articles, and the unwritten terms of their quasi-partnership.

18. Ms Maclennan also emphasised Lord Hoffmann's observation at 1107 that where there has been an exclusion "it will almost always be unfair for the minority shareholder to be excluded without an offer to buy his shares or make some other fair arrangement".

19. The parties accept, though, that unfairness must be demonstrated as well as prejudice; and that relevant to the question of unfairness would be a finding that Mr Allnutt was involved in a competing business: see, for example, *Re Flex Associates Ltd* [2009] EWHC 3690 (Ch).

20. That brings in s.175 of the Act:

> "(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company…
>
> (4) This duty is not infringed—
>
> (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
>
> (b) if the matter has been authorised by the directors.
>
> (5) Authorisation may be given by the directors—
>
> (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors…
>
> (6) The authorisation is effective only if—
>
> (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
>
> (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
>
> (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties".

21. By s.180(1), where s.175 has been complied with

"the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company".

22. By s.180(4):

"The general duties—

(a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and

(b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions".

23. With modifications, the company incorporated the 1985 Table A (Companies (Tables A to F) Regulations 1985 (SI 1985/805) Sch.), including reg.85:

"Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office—

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested…".

24. Mr O'Dair suggests that reg.85 is inapplicable to a s.175 conflict. Without hearing full argument, I am disinclined to accept that. The bare words of the regulation are wide enough to include such a situation: "any arrangement … in which the company is otherwise interested".

25. Cases under reg.85 and its equivalents also, in my view, inform the quality of the information to be provided under it and s.175. Ms Maclennan cited *Movitex v Bullfield* (1986) 2 B.C.C. 99403. At 122, Vinelott J said this:

"… the duty 'to declare the nature of his interest' must, I think, impose on a director the duty to disclose full information as to the nature of any transaction which it is proposed to enter into. The disclosure must be such that the other director or directors can see what his interest is and how far it goes".

26. That seems to me to reflect the general principle where a fiduciary wishes to be excused conduct which is or might otherwise be a breach of duty. The fiduciary is seeking absolution from the absolute rule, described by Lord Cranworth LC in *Aberdeen Railway v Blaikie Bros* (1854) 1 Macq. 461 at 471:

"[It] is a rule of universal application, that no one, having [fiduciary] duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which may conflict, with the interest of those whom he is bound to protect.

So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into".

27. The obligation of full and complete disclosure, or "informed consent" as Millett LJ put it in *Bristol & West Building Society v Mothew (t/a Stapley & Co)* [1998] Ch. 1; [1997] 2 W.L.R. 436; [1997] P.N.L.R. 11 at 18, is the thread which runs through the various exculpatory means which have been relied on before me: s.175; reg.85; the *Duomatic* principle, in *Re Duomatic Ltd* [1969] 2 Ch. 365, as expounded further in *EIC Services Ltd v Phipps* [2003] EWHC 1507 (Ch); [2003] B.C.C. 931 at [122]; and acquiescence.

28. In *EIC v Phipps*, Neuberger J said this at [122]:

> "The essence of the *Duomatic* principle, as I see it, is that, where the articles of a company require a course to be approved by a group of shareholders at a general meeting, that requirement can be avoided if all members of the group, being aware of the relevant facts, either give their approval to that course, or so conduct themselves as to make it inequitable for them to deny that they have given their approval. Whether the approval is given in advance or after the event, whether it is characterised as agreement, ratification, waiver, or estoppel, and whether members of the group give their consent in different ways at different times, does not matter."

29. In *Sharma v Sharma* [2013] EWCA Civ 1287; [2014] B.C.C. 73, Jackson LJ, with the approval of Floyd LJ and McCombe LJ, drew out the principles of *Duomatic* and acquiescence. Quoted at [48] is another passage from *EIC v Phipps*, at [133]:

> "If a director of a company informs shareholders of an intended action (or a past action) on the part of the directors, in circumstances in which neither the directors nor the shareholders are aware that the consent of the shareholders is required to that action, I do not think it is right, at least without more, to conclude that the shareholders have assented to that action for *Duomatic* purposes. As a matter of both ordinary language and legal concept, it does not seem to me that, in such circumstances, it could be said that the shareholders have 'assent[ed]' to that action. The shareholders have simply been told about the action or intended action, on the basis that it is something which can be, and has been or will be, left to the directors to decide on, and no question of 'assent' arises."

30. Jackson LJ continued at [49]:

> "In that passage the words 'at least without more' may be significant. It is relevant to consider whether the circumstances were such that the shareholders would be expected to voice any objections, even if they were not aware of their legal rights. When a court is considering what, if anything, can be inferred from a party's silence, the factual context is a matter of critical importance. If the surrounding circumstances are such that it would be unconscionable for a party to remain silent at the time and only raise his objections later, then I would have thought that assent can be inferred from silence."

31. Then at [52] he concluded as follows:

> "(ii) If the shareholders with full knowledge of the relevant facts consent to the director exploiting those opportunities for his own personal gain, then that conduct is not a breach of the fiduciary or statutory duty.
> (iii) If the shareholders with full knowledge of the relevant facts acquiesce in the director's proposed conduct, then that may constitute consent. However, consent cannot be inferred from silence unless:
> (a) the shareholders know that their consent is required; or
> (b) the circumstances are such that it would be unconscionable for the shareholders to remain silent at the time and object after the event.
> (iv) For the purposes of propositions (ii) and (iii) full knowledge of the relevant facts does not entail an understanding of their legal incidents. In other words the shareholders need not appreciate that the proposed action would be characterised as a breach of fiduciary or statutory duty".

32. Finally, I should record two further submissions by Ms Maclennan:

> "32.1. She drew my attention to the doctrine of laches, with particular reference to *Frawley v Neill* [2000] C.P. Rep. 20. The defendants not seeking any remedy of their own, that can be no more than an analogy; and in this case any unconscionability would be accounted for by application of the doctrine of acquiescence.
> 32.2 She relied as well on section 1157 of the Act to suggest that even if there were a breach by Mr Allnutt, it was one which in proceedings for that breach would be excused. It seems to me that section 1157 can serve as a useful check against any conclusion of unfairness, but no more than that.

The case

33. The company was incorporated by the parties on 17 January 2007 to buy the lease of, renovate, and run The Nag's Head, located at the bottom of the street in Reading where Jody Oates then lived. The lease was originally offered to Michael Oates as it was owned by Admiral Taverns, who were also his landlords at the Shoulder of Mutton in Wantage. He asked Jody and Lola, who was then Jody's girlfriend, what they thought. It was in a poor state, but they agreed that it could be transformed into a traditional pub with an emphasis on locally-brewed real ale. Mrs Lodge then showed an interest, and so did Michael Oates' great friend of 30 or 40 years, Mr Allnutt.

34. The original shareholdings reflected the capital contributions: £10,000 and the same number of shares for Mr Allnutt, Michael Oates and Mrs Lodge; £5,000 each from the youngsters. Each also became a director. The 20-year lease was acquired, the £40,000 capital spent largely on renovations, and on 19 February 2007 the pub was relaunched.

35. Only Lola Lodge could originally work full-time, as each of the others had their own full-time job. As found by the Employment Tribunal, though, it was agreed at the outset that "there would be no sleeping partners and that all would work as employees at the pub carrying out both bar duties and managerial functions between them". This was hard work, everybody rolling up their sleeves to get the pub off the ground, and what would not have been fair to anyone would have been to permit some parties to do the work but others just to rely on their monetary investment.

36. As implied within this, and not contested by anyone, the company was a quasi-partnership.

37. Beyond the incorporation documents, no formal records of how the company was to be run were created: there was no shareholders' agreement, there were no contracts of service or employment; and except once, for the 10 August 2014 meeting, no minutes were taken or made.

38. The lack of minutes probably reflects the lack of formal directors' meetings. As Mr Allnutt said, meetings were never a matter of formal agendas and long notice to consider issues. Rather than wait for issues to build up, they would be dealt with as and when they arose, between whoever was needed.

39. Beyond the bar work which each carried out, Michael Oates dealt with the accounts; Mrs Lodge with the kitchen and wages; Lola Lodge with the kitchen and anything else needed; Jody Oates with the cellar, and Mr Allnutt with the web-site and advertising, as well as ordering wines and glassware. Leaving aside the bar work, the parties retained the same roles until February 2016.

40. Above the pub were rooms. The first to be refurbished was for Mr Allnutt and his son who, not yet being adult, Mr Allnutt was unhappy about leaving of an evening until his late return home in Caversham. Mr Allnutt contributed his own money towards that, which has been repaid. Subsequently, after Michael Oates' girlfriend, with whom he ran the Shoulder of Mutton, died suddenly

in November 2009, he moved in with Mr Allnutt, whose son had gone to university. He thereby joined Jody and Lola, who had been living in the other flat since November 2008.

41. As the tribunal found, nobody paid any rent, and the provision of accommodation "was not part of remuneration for work done"; the parties "regarded it as a perk for them to live, with the agreement of all of them, rent-free on the premises if they so wished". For her part, Mrs Lodge never took advantage of this arrangement.

42. The business model of The Nag's Head was an early success, assisted by its running a bus to and from Reading Football Club home games, but also by its buying out the beer tie which, while doubling the rent, permitted beer to be stocked at much lower prices. Increasing profitability allowed the company to employ additional staff, and allowed those with other full-time jobs to instead join the company full-time.

43. From 2010 Lola Lodge and Jody Oates became equal shareholders with everyone else, in recognition of their particular efforts.

44. The first material change to the working arrangements came in January 2013. Michael Oates became 65, and unilaterally decided to stop working behind the bar. Mr Allnutt says that at the time he was "a little surprised" by this, because Mr Oates had only the year before been formally reappointed as a director. For reasons which are not stated, he had resigned in 2008. He had anyway been bankrupted on his own petition on 8 March 2010, apparently due to the debts he now faced at the Shoulder of Mutton following the death of his partner. He was discharged a year later. Mr Rogers of the Official Receiver has confirmed that they have no interest in the transfer to Jody of Mr Oates' shares in the company prior to his bankruptcy, which shares were re-transferred in about 2015; and it is not suggested by anyone that the transfer caused any disruption in the quasi-partnership. As Michael Oates told the court, the first reaction of his other partners to his giving up the bar had been one of relief as, despite being the one who came to the company with experience of the trade, he was not especially adept.

45. Over the years Mr Allnutt has become increasingly irked by Mr Oates' retirement, contrasting it with his own position when he wished to retire from the company, and considering his comparative treatment unfair. What that overlooks is what Mr Oates continued to do. He continued to carry out the accounting work for the company and provide his trade wisdom, making himself available by mobile phone when, for perhaps two or three days a week, he spent time on the narrow boat which he had once owned with Mr Allnutt. Mr Oates was still in 2016 working about 20 hours a week fulfilling these director's duties, and reckoned that someone, usually Lola, would phone him once a day with some problem or another.

46. Moreover, while all acknowledge that the original agreement came with the obligation to carry out bar work, they acknowledge as well that it made no provision for retirement or, indeed, succession. The parties would therefore have to make ad hoc arrangements. So Mr Allnutt, who suffers from a heart condition, had at some point before 2014 gifted Jody and Lola his shares in the company under his will, to ensure continuity at the pub they all loved; a gift which was still intended until at least February 2016. I have no doubt that while Mr Oates' retirement was not agreed beforehand, his fulfilling his obligations by way of continuing with the accounts work was agreed subsequently, even if tacitly by acquiescence.

47. A little time before, during the summer of 2012, Mr Allnutt had also begun to think about retirement. He had spent many holidays in Thailand, and began learning the language. In November 2012 he visited Chang Mai; he visited again in April 2013; and in July 2013 he took a lease a flat there for a year, for himself, his Thai girlfriend and her child. Tragically, she died from malaria in September 2013, and the lease was cancelled. Mr Allnutt's next visit in November 2013 was therefore

to a different part of Thailand. During 2014 he was spending about one month in three there; and by 2015 about two months in three, which is how he envisaged his retirement.

48. The events of Autumn 2013 through to the August of 2014 are described in short form by the tribunal:

> "15. In the autumn of 2013 the Butler pub, located near The Nag's Head, came up for sale. Michael Oates and [Mr Allnutt] had previously been customers of the Butler pub. [Mr Allnutt] was interested in buying the Butler pub and there were discussions between all the directors/ shareholders as to whether they wished to contribute towards its purchase. After discussions, only [Mr Allnutt] was interested in pursuing the venture and, in July 2014, [Mr Allnutt], Stephen Stanton and one other person formed a partnership and purchased the freehold of the Butler pub. After some refurbishment, the Butler pub was run by a manager on behalf of the partnership. [Mr Allnutt] was not involved in managing or running the Butler pub.
> 16. [Mr Allnutt's] involvement in the purchase of the Butler pub caused disquiet among the other four director/ shareholders and a shareholders' meeting was held on 10 August 2014. It was apparently the only shareholder meeting which was minuted, and even then the minutes were completed retrospectively on 15 August 2014 by Michael Oates. At the meeting there was discussion, disagreement and arguments. Michael Oates accused [Mr Allnutt] of a 'conflict of interest' under company law as he was a director/ shareholder of The Nag's Head but was involved in the operation of another pub nearby. The minutes record that 'The meeting finished without a vote on what should happen next'".

49. It is Mr Allnutt's position before me that:

> "49.1. [H]is involvement in the Butler was not such as could reasonably be regarded as likely to give rise to a conflict of interest with his duties to the company: section 175(4)(a);
> 49.2. if it was, then any breach was approved at the August 2014 meeting, being authorised under section 175; or disclosed and approved under regulation 85; or approved by the *Duomatic* principle;
> 49.3. if not, then after 2014 there has been acquiescence, such that the defendants cannot now rely on the breach as the ground for deeming his February 2016 removal as a director not unfair.

50. This requires analysis of what the opportunity of The Butler was; what each of the defendants was told about it, or knew about it; and how they reacted.

51. The Butler was in Autumn 2013 tenanted by Mrs Linda Coulling as a tied pub under a Fullers lease. It was in a dilapidated physical state, and had a dozen or so regulars. Its only real ale was London Pride. As Mrs Coulling said, the tie meant that beer was expensive to stock, and the deteriorated state meant it was hard to attract customers; it was therefore difficult to make money.

52. Fullers put The Butler up for sale. Mr Allnutt saw the sale boards and, despite everything, was enthused: it was a pub to which he had had an attachment since his youth, and one of considerable historical importance for Reading brewing and bottling. He mentioned it to his group of friends at The Nag's Head, and they too were interested, in particular Mr Stanton. Mr Stanton became the chief organiser, and began to seek buyers of 20 notional shares at £25,000 each.

53. Mr Stanton talked to Michael Oates. He was particularly keen to have those behind The Nag's Head involved as they were "great people" who ran an "award-winning pub". As Mr Stanton recalled, "Meeko was not really interested, but because I refused to give up too quickly and on my request he agreed to be put temporarily on the list to take 2 shares".

54. Mr Stanton also recalls that the "opportunity to operate the Butler was offered to Meeko and his son Jody … but both declined … Jody never expressed any concerns about any competition from the Butler".

55. Mr Allnutt says very little about what he told the defendants in Autumn 2013. He does say that when interest began to wane, and potential investors drop out, "I attempted to get Jody interested to drive things along but met with a negative 'Why would I want another pub?' response, with Meeko losing interest I didn't bother to lobby the girls …".

56. The more fulsome evidence comes from the defendants. In her statement before the tribunal, Lola Lodge said that in 2013 Mr Allnutt "asked if Jody Oates and I would possibly think about running it for him. We decided we were far too busy running the Nag's Head to take on anything else". Her mother does not seem to have had first-hand knowledge: "I was told by Jody Oates that Mr Allnutt had asked if we (the Pub) wanted to buy a share of it. I asked Jody if he was interested but he said he wasn't". Michael Oates' recollection was a little different, in that he said that having been contacted by Mr Stanton, "I put it to the other three partners, but my son Jody was totally against it as he thought we had our work cut out running the Nag's Head". In cross-examination he said that he viewed his offer to be a subscriber not as being personal but for "the whole partnership. I wouldn't go in otherwise", but that he was interested in investing for "about a day". He said he had told Jody that it was a good investment, but Jody had turned it down. The reason it was a good investment, worth it for the bricks alone, was that while The Butler would have to remain as a pub for planning reasons, it came with land with hope value.

57. Jody Oates' account, which has been consistent and on which he elaborated convincingly when giving evidence, is the fullest of all:

> "Mr Allnutt asked whether the directors of the Nag's Head would like to come in on their new venture. Although Michael was all for this, having admired the pub for years, I was not an advocate for many reasons. Firstly, due to Michael retiring from bar duties and Mr Allnutt spending a fair bit of time in Thailand, my workload at the Nag's Head had increased considerably and it felt like I was now doing the majority of the work. I saw no reason that this would change by acquiring another pub, and in fact the same would probably happen there, meaning my work load would increase even more. Secondly, I thought it would have a detrimental effect on the Nag's Head business. The Butler was 0.2 miles from the Nag's Head (a 3 minute walk). I had no problem with Mr Allnutt purchasing another pub, but not one so close to us. Mr Allnutt argued that another good pub in our area would make this the side of town to come to, and although I understood his point I couldn't see that we were going to double our current clientele, and therefore felt that having an 'alternative' to the Nag's Head made bad business sense. I told him so".

58. Cross-examined about this, Jody Oates gave a convincing account of a lengthy conversation with Mr Allnutt at the bar of The Nag's Head in about November 2013, which had included a proposal that their best barman could work at The Butler, which was "absolutely no way".

59. Another reason I find this account convincing is Mr Allnutt's response to it in a statement of 31 January of this year: "I did not approach Jody and I certainly took no account of anything he had said or not said to me". I have already quoted from Mr Allnutt's main trial statement, which confirms that he did approach Jody. That approach is, I observe, entirely consistent with the circumstances of excitement about the potential purchase, the desire to have The Nag's Head on board, and Mr Allnutt's close relationship with Jody; it is consistent as well with Mr Stanton's dealing only with Michael

Oates. Additionally, I note that Mr Allnutt does not seem able in this statement to identify exactly what Jody had, or had not, told him.

60. Cross-examined, Mr Allnutt acknowledged that he had talked with Jody, who had only said to him "why would I want to run another pub?". He said that he dropped the idea of the partnership investing "shortly afterwards and didn't approach Jody any more", but that he did not tell Jody he was no longer pursuing the idea of him being part of it.

61. I must reject that last contention as well, in favour of Jody's account that a "few days later Mr Allnutt came to me and announced that he had thought about what I said and would no longer be pursuing the Butler". As Mr Allnutt describes, while investment had been sought in November 2013 and the discussions had "at first" included the other members of The Nag's Head, in late 2013 the idea of buying The Butler through the sale of 20 shares collapsed. That is confirmed by Mr Stanton. Why would Mr Allnutt not tell Jody that? It is Mr Stanton's evidence that for his part he had told Michael Oates that the "deal was off as we couldn't raise enough funds" and that "after the period in late 2013 I never approached Meeko again about the Butler pub as both he and Jody had rejected the idea of becoming involved". Lola Lodge's evidence was that Mr Allnutt told her that he "wasn't going to get involved in buying the Butler", and she confirmed that evidence on oath. Michael Oates' account confirms Mr Stanton's. Mrs Lodge says "I was later told that Mr Allnutt and his friends couldn't raise enough money to buy it so the deal was off". That was what Mr Stanton and, I find, Mr Allnutt had said; and that was the situation until July 2014 when Mr Allnutt approached Lola Lodge in the pub kitchen and "told me he had bought the Butler with two others. He had a big smirk on his face". Jody Oates, too, recalls that "in July 2014 Mr Allnutt admitted to me that the sale of the Butler had now been completed and he was indeed a partner. My original reservations had not changed and I told Mr Allnutt this".

62. Mr Allnutt himself identifies no time before the August 2014 meeting when he told his fellow directors and shareholders in the company of his actually acquiring an interest in The Butler, and none was suggested by Ms Maclennan.

63. I must set down Mr Allnutt's witness statement account of the August 2014 meeting:

> "Meeko said he thought my owning the Butler was a conflict of interest … and thought I should resign my directorship or should be taken to court. I explained my stance that there were no secrets to what we were doing and both he and Jody had known all along the plans and I pointed out that there was nothing that could compromise the Nag's. Besides the pub would have been sold anyway, and remain a pub as it is a listed building, and in many ways it was better to have someone with the Nag's interest at heart than any other operator. Not only had we disclosed our interest in buying the freehold but we had offered the directors of the Nag's Head the opportunity to run it for us".

64. The disclosure referred to was that in Autumn 2013. As I have found, towards the end of the year the defendants were then told that the deal was not proceeding. Lola and Jody knew nothing until July 2014; and even then they were given no details. The minutes of the meeting, drawn up by Michael Oates, record that "[s]ometime during June or July (Ted knows the exact date), Ted told Meeko that he had bought a share in the Butler".

65. What, then, was disclosed at the meeting? Mr Allnutt does not tell us in his evidence. But we do have the minutes, which were created and circulated on 15 August and on which Mr Allnutt made some contemporaneous points.

66. The minutes begin:

"Ted had recently purchased another Pub (The Butler), 200 metres from the Nag's Head, with 2 partners, Steve Stanton and Pete Lincoln".

67. They go on to record that Michael Oates

"asked Ted if he could let us know exactly what was going on at the Butler"

which indicates that the others attending did not know. Mr Allnutt's reply was that

"he thought it pretty obvious to anyone".

68. Later we have this:

"Ted said that he had done his best not to interfere with the Nags Head's operation.
Meeko asked him if he was at the Butler to make money. Ted replied of course he was…
Sylv wanted to know what he was planning to sell in the pub.
Ted said that it would be a kind of a cafe during the day and a pub in the evening.
Lola asked if he would be selling Sunday Lunches. Ted said they would".

69. Here are the defendants asking basic questions of Mr Allnutt because they do not know. To those questions they have received brief answers in what was, as all agreed, a heated atmosphere not conducive to due consideration.

70. It is clear that the state of disclosure by the end of the August 2014 meeting is a very long way short of what would be necessary to sustain a case based upon s.175, or reg.85, or *Duomatic*, or acquiescence. It is for the fiduciary to make full and open disclosure of all relevant matters. Yet Mr Allnutt has not disclosed the name, if any, of the partnership; any partnership deed; any terms of the partnership, including equity interests and his own and others' roles in it; he has not disclosed anything about refurbishment of The Butler, or its planned business model: whether it is to be managed or let, what its food, beverage and beer offerings will be, when its opening hours will be.

71. Subject to minor exceptions which I will describe below, even now at trial those details are lacking.

72. Moreover, the result of the meeting was not approval. As the tribunal recorded, the minutes state that the "meeting finished without a vote on what should happen next". That was after, as the minutes say, "Ted walked out for a second time and for a second time, Sylv, Lola and Jody thought, Ted should remain a partner ([citing] 'better the devil you know'), while Meeko insisted that Company Law should be upheld 'it's there to protect us, in exactly these circumstances'".

73. On that paragraph Mr Allnutt made his fifth and final point in his contemporaneous response: "I think if the other partners re-iterated they thought I should remain a partner, it is effectively a vote of confidence even though there was no show of hands".

74. It is fair to say that even if there was no show of hands, there was a sounding of the views of Mrs Lodge, Lola, and Jody. In his written evidence, Jody referred to that as a vote, but he was less definitive in cross-examination. As Mrs Lodge said, "Michael Oates asked for a vote to get Mr Allnutt to resign but Lola Lodge, Jody Oates and I didn't want him to resign". For her part, that was because "I didn't want an atmosphere to exist between the directors". Her daughter's reasons were that she and Mr Allnutt "had a close relationship together and I did not want to see Mr Allnutt hurt or upset". Neither of those reasons are directly related to approval of Mr Allnutt's involvement in The Butler.

75. It is again the level-headed Jody who has given the fullest account. Everybody was agreed that the meeting was called at very short notice, with no agenda, because Michael Oates had chatted to a friend, Luke Raimbach, who had told him that directors of companies "should not do anything

considered to be a 'conflict of interest'". From about May 2014 there had been increasing rumours about Mr Allnutt's involvement in The Butler, in gossip at both The Butler and The Nag's Head, and among the breweries who supplied The Nag's Head; when quizzed, Jody Oates had always referred people to Mr Allnutt, as he said "with some amusement", because Mr Allnutt had yet to tell him anything about it. Mr Allnutt had even failed to tell his flat-mate, Michael Oates. In his fourth point to the August 2014 minutes Mr Allnutt expressed surprise that "you don't remember the 4 or 5 'chats' we had on our sofa about the continuing negotiations about the Butler"; 'chats' may well be in inverted commas because, as Michael Oates said, these were 1am, post-closing time discussions, when both had enjoyed The Nag's Head's offerings.

76. In July 2014 Mr Allnutt had broken the news to his co-partners in The Nag's Head. By August 2014 The Butler was beginning to trade after some refurbishment. The defendants were concerned. Going into the meeting, only Michael Oates knew what it was to be about. It quickly deteriorated, Mr Allnutt becoming angry and upset. As Jody said, the idea of conflict of interest was new to them all; and so too was having a formal and disputatious meeting about a serious matter: it was all "new water". The meeting lasted no more than half an hour and was "heated and confusing". In the end, Jody and Lola just wanted to "stop this nonsense and keep it how it is for now and see how it goes": they wanted to preserve the previously good and close relationships. Jody Oates also described the consensus as "let's not rock the boat at the moment, and see what happens".

77. Mr Allnutt stated in cross-examination that although he was not present at the relevant time, as he twice exited the meeting as it was going on, he did not believe that there had been a vote, but, as he said in his fifth point on the minutes, took the conclusion of "we don't want you to go" as being a vote of confidence. Whatever his immediate personal belief, I do not think that on a weighing of what was said that conclusion was justified. The defendants knew little about what was going on at The Butler; they were told little at the meeting; they were all concerned; and while only Michael Oates would have removed Mr Allnutt immediately, the majority view was that they would wait to see how things developed.

78. There was a further material factor on which the attitudes of Mrs Lodge, Lola Lodge and Jody Oates were based. Mr Allnutt told them that if there was a conflict of interest, he would take his share out of the company and spend it on The Butler. Everybody, including Mr Allnutt, seems to have thought that he could do this in short order. Its disadvantage to The Nag's Head was plain. It was not until February 2016 that the defendants became aware, again through Michael Oates' friend Luke Raimbach, that realising a shareholding was not as easy as all that.

79. This statement of intent by Mr Allnutt means that the suggestion made to Lola Lodge and Jody Oates that in August 2014 they were content to keep Mr Allnutt in the company whatever, because of their self-interest as current beneficiaries under his will, cannot be right.

80. In cross-examination, Mr Allnutt came up with an additional statement made at the meeting. He said that he had told it that if they wanted him out, he would resign "if they bought my shareholding". That has all the hallmarks of being an addition designed to improve Mr Allnutt's case. It is not in the minutes, or the points in response to the minutes, nor in his or anybody's written evidence. It also does not, in the context of the agreed statement of intent, make sense.

81. One of the things which worried the defendants was that, as Lola said, if Mr Allnutt spent more money on The Butler to make it more attractive than The Nag's Head, The Nag's Head customers would migrate to The Butler.

82. The evidence that The Nag's Head business could be directly affected by The Butler is overwhelming, and the inherent conflict in Mr Allnutt's position as director of The Nag's Head and partner in The Butler is plain.

83. From the moment Mr Allnutt mentioned the potential purchase to Jody Oates in the Autumn of 2013, Jody's reaction, besides the extra work for him if he were to become involved, was that "it would have a detrimental effect on The Nag's Head's business. I had no problem with Mr Allnutt purchasing another pub but not one so close to us". Jody estimated the distance at 0.2 miles, a three-minute walk. To Mr Allnutt's response that another pub on this side of town would be beneficial Jody said: "I couldn't see that we were going to double our current clientele". Jody's point reflected the business reality of the situation, the genuine risk that another pub would dilute trade.

84. In response to that, Ms Maclennan observed that the evidence was that for planning reasons The Butler had to remain a pub, so someone had to buy it; and that it was better, as Mr Allnutt said, for that someone to be a person with The Nag's Head's interests at heart. The first point seems to me irrelevant: without informed consent, the purchaser could not be a conflicted person. The second point simply demonstrates Mr Allnutt's conflict.

85. Although he did not then think that there was anything he could do about it, Jody Oates reiterated his concerns about dilution of business to Mr Allnutt on being informed in July 2014 of the purchase. As he said then, from Mr Allnutt's point of view it was "win win": while The Butler was no threat at that point, if it improved then Nag's Head customers would spend at least some of their time there; either way, Mr Allnutt would be profiting, but not the defendants.

86. In July 2014, with its one real ale, a regular clientele of about a dozen, and dilapidated premises, The Butler was not a threat. But Mr Allnutt and his partners were not going to leave it that way. Mr Allnutt was aware from his experience at The Nag's Head that the lifting of the beer tie, as occurred when Fuller's sold The Butler, was beneficial in allowing a range of beers to be stocked at much lower expense. Mr Allnutt and his partners were going to be investing in the premises, with a view to attracting more customers, and did so straightaway.

87. What twigged Michael Oates to the particular risks of The Butler was that after the takeover it started to sell two beers which were best-sellers at The Nag's Head, even if not always on its taps, being Barbus Barbus from Butts Brewery and Moondance from Triple fff Brewery: where Jody Oates would order most beers a firkin at a time, these he ordered four firkins at once. On takeover Mrs Coulling was retained as manageress of The Butler until May 2015. She told the court how straightaway after the renovations customers began to come through the doors, as they could see it was on the way up; she told it as well how Mr Allnutt was and continued to be her "right-hand man" when it came to beer choice. Interestingly, even in the pre-takeover days, when Michael Oates would come into The Butler to talk to his friends, Mrs Coulling would say "the spies were in", because she viewed The Nag's Head as a rival.

88. So it was apparent from that, and from Mr Allnutt's confirmation to the August 2014 meeting that The Butler was intending to do Sunday lunches, that, as Jody Oates said, The Butler was "mimicking" The Nag's Head business.

89. The conflict becomes the more stark when one considers The Nag's Head's margins. The company's filed accounts show that for the year-end 31 March 2013 it made £36,977 after tax on a turnover of £516,385. The figures for the 2014 year-end are respectively £32,904 and £530,127; and those for 2015 £18,516 and £540,957. Those are slim margins. At the August 2014 meeting Michael Oates said that on a turnover of around £13,000 per week, it had a break-even point of £12,000, so "If the Butler were to steal just £1,000 of the Nag's business a week, it would put the Nag's in serious financial trouble". Although Mr Allnutt did not take issue with that part of the minutes in his contemporaneous response, his Points of Reply "estimate" weekly takings of £14,000 "at its busiest times… from his own experience", and his 16 January 2018 statement describes weekly takings "in the region of £13,000–£14,000 per week". In cross-examination, he stated that the £1,000 margin on

a £13,000 per week turnover was "wrong". At the end of his evidence I asked him why. He told me that turnover was £13,000 to £14,000 per week, and that "gross profit" was more than 50%. That was a curiously indirect response to the question, gross profit not being the same as margin. It seems to have been with an eye to his valuer's view expressed in the 26 September 2017 report that, whatever the company's reported figures, the industry would expect gross profits of at least 64%. Neither that theorising nor Mr Allnutt's evidence provides any alternative figure for actual net profit; nor do they displace the accounts, nor Jody's compelling account in cross-examination that Michael Oates was "constantly getting at us" if there was a 1-week loss, an argument he recalled they had "nearly every week". I add that it is no part of Mr Allnutt's case that the company's net profit was so large that his involvement in The Butler "cannot reasonably be regarded as likely to give rise to a conflict of interest".

90. There was a final factor within the perceived conflict, being the person and activities of Mr Allnutt. Mr Allnutt told the court that much of the success of The Nag's Head was down to him. He said that customers came to the pub because it was "my pub"; he was the customers' favourite among The Nag's Head directors. He said that he was very good at playing "mine host", and enjoyed it. There is exaggeration in the first two of those remarks, but the essence is true. As Lola Lodge said, even before the August 2014 meeting she was worried that Mr Allnutt would spend more and more time at The Butler's, drawing The Nag's Head customers with him. Even without the chats to customers in The Nag's Head about the refurbishment and goings on at The Butler, which occurred, Mr Allnutt's very presence in The Butler would draw people there and away from The Nag's Head.

91. Ms Maclennan's analysis of the evidence was that after the August 2014 meeting, everything continued as it had before. I am unable to accept that. One of the changes became that Mr Allnutt spent his spare time in The Butler and not The Nag's Head. Spare time was the time when Mr Allnutt was not obliged to be at The Nag's Head behind the bar. This covered potentially long periods. So Mr Allnutt at the end of a shift would nip over to The Butler to see how business was going, whereas before he had stayed to drink with customers at The Nag's Head. He would no longer breakfast with Lola Lodge and discuss life or, if need be, help out with beer deliveries then, because he was at The Butler. That is not to say that every moment of his spare time was at The Butler, but the pattern had changed and his presence at The Nag's Head was markedly less.

92. Mr Allnutt was also actively promoting The Butler. The Winter 2014 edition of "Mine's a Pint", the magazine for the Reading and area branch of CAMRA, which appeared in late November or early December 2014 contained a full-page article, written by Mr Allnutt, describing himself and the "new owners of the Butler" and "tell[ing] us more about the place and their plans for the future".

93. Even if not directly involved, he was also overseeing The Butler's business. Mrs Coulling was, he said, "my manager". She picked his brains, she said, on beer choice; and it was also to Mr Allnutt she turned when she wanted an advance on her wages, even if that meant coming to find him in The Nag's Head.

94. It is also apparent, although Mr Allnutt has provided almost no detail, that he was and is involved in continued strategy for The Butler, including investment in it, and the marketing of its leasehold. It was leased from about May 2015. There was no prior disclosure to the defendants, and there is still no full disclosure before the court now: nothing about the marketing or negotiations, no lease, no terms, no parties. The defendants are aware that The Butler lease was at half the rent the company pays for The Nag's Head premises. Mr Stanton said that the tenant was obliged to put in his own money for further refurbishments, which Mr Allnutt said was £30,000; and he said as well that there was a premium of £30,000 paid in addition. Jody Oates' view of these arrangements was that they

were "not a level playing field". The refurbishments again made The Butler a better and more attractive pub.

95. As has already been foreshadowed, what also changed were Mr Allnutt's working hours as he spent more time, and by 2015 the majority of the time, in Thailand. While there he obviously could not carry out the "mine host" duties in either pub. But neither could he carry out his director's duties in the same way as when he was present. In Thailand Mr Allnutt was limited to e-mail, even if he took with him memory sticks with company data. There was no mobile telephone contact with the company or his fellow directors because it was too expensive. Thus, and in contrast with Michael Oates, he could have no part in the day-to-day casual exchanges which took the place of directors' meetings.

96. As found by the Employment Tribunal, his employment ended consensually in November 2015. He had not worked behind the bar since August 2015, when a Saturday night football crowd had got too much and he had stormed out. He was anyway with age finding the work physically ever more difficult.

97. By February 2016 the position therefore was that except for one month in three Mr Allnutt could do little anymore for the company, while he retained his competing interest in The Butler. Jody Oates gave vivid evidence about one practical effect of this, being Mr Allnutt's failure to order, as he normally would, the glasses and champagne for the pub's New Year's Eve night for 2015–16, because he was in Thailand. At the busiest time of year this added to Jody's burdens, to his irritation. It was not that Mr Allnutt could do nothing: because he had his computer stick with him, he had the format for the tickets, which he could pass on for others to print and guillotine; and into the Summer of 2016 there passed half a dozen emails from Mr Allnutt trying to deal with the builders who had destroyed the party wall between the pub and its neighbour, and had made an agreement with him to reinstate it (which was never completed); but he could effectively do very little.

98. By February 2016 it was also known among the defendants that Mr Allnutt wanted a meeting so that retirement plans could at least be discussed.

99. That same month Michael Oates had bumped into Luke Raimbach again, and they had chatted about things. It was then that Mr Raimbach told Mr Oates that Mr Allnutt could not simply withdraw his capital from the company.

100. On 9 February 2016 the parties held another directors'/shareholders' meeting, for which again there was no agenda or notice, and this time it was unminuted. It was at this meeting that, as the tribunal has found, Mr Allnutt was removed as a director of the company on the votes of Michael Oates and the Lodges, Jody Oates abstaining. By 24 February 2016 Ms Maclennan was writing a letter before action on behalf of Mr Allnutt, complaining among other things about breaches of the Act, in particular s.168 requiring special notice of a meeting to remove a director. The letter stated that although Mr Allnutt could seek the winding-up of the company, "a less aggressive position would be to require the remaining shareholders to buy out his shares … in addition to compensation for unfair dismissal and the loss of his accommodation".

101. I did raise with Ms Maclennan why, if s.168 was breached, Mr Allnutt did not simply treat his removal as a nullity, particularly when in fact Mr Allnutt was, albeit without his instant knowledge, by July 2016 reinstated as a director at Companies House, where he remained until this year. Her reply was that Mr Allnutt did not want to remain a director because he recognised that relations were irreparably ruined. She also observed, fairly, that the reinstatement was in name only, and that neither it nor the procedural failures were relied on as a defence.

102. When he arrived at the February 2016 meeting, Mr Allnutt doubtless thought that it was to discuss his retirement plans. He told it that he wanted to retain his capital interest in the company,

and remain as a director. He was also keen to continue sharing accommodation with Mr Oates, as a base for the month in three when he was in England, and that despite their barely speaking to each other any more. I add that by this time, Lola Lodge and Jody Oates had split up, amicably, and while Jody continued to live above the pub, Lola had moved elsewhere in town.

103. Michael Oates told the meeting that Mr Allnutt ought to resign. First, he was no longer doing no work, whether as employee or director, yet still had the benefit of living upstairs; secondly, he was spending the majority of time in Thailand; thirdly, he continued with his other business in direct competition.

104. On Mr Allnutt's refusal to resign it was put to a vote, which was carried with Jody Oates abstaining. Mrs Lodge told the court that while she thought she had only voted to ask Mr Allnutt to resign, she did so for each of the three reasons suggested by Michael Oates, in equal proportion. Her daughter's reasons for voting to remove were the same.

105. Jody Oates was, as before, more nuanced. Now that he knew that Mr Allnutt could not simply realise the shares, the fact that he was a beneficiary of them under his will did become an influence. He could also see that, again, the meeting was a "bit of a mess"; and, practical as ever, he wanted to know how removing Mr Allnutt would be of benefit to The Nag's Head. Another factor was, again, a wish to bring peace to the situation.

106. Mr Allnutt had left the meeting at his own wish before the vote. Afterwards, Lola and Jody saw him in the kitchen. They told him the result, and he remarked "Just go with Michael, as it was an illegal meeting anyway".

107. A few days later Mr Allnutt departed as planned for Thailand, and the correspondence began.

108. Mr Allnutt did not vacate his room above the pub until about October 2016. Although Ms Maclennan suggested in opening that he had been wrongly removed from management and from his accommodation, the latter claim is not to be found in the statements of case, and in any event would make no difference to the result.

Conclusion

109. Mr Allnutt's involvement in The Butler was in manifest conflict with his duties as director of the company. That conflict was at no stage approved by his fellow directors or shareholders, or otherwise consented to, or acquiesced in. Indeed, it could not be, because Mr Allnutt never provided his fellow quasi-partners with full and open information as to his involvement, whether prior to his acquisition of an interest, or when he notified that acquisition in July, or before or at the meeting in August 2014, or when The Butler was leased in May 2015, or before or at the February 2016 meeting. The information has not even been provided to this court.

110. The conflict being as at 9 February 2016 serious, ongoing, and unexplained, I consider that Mr Allnutt's removal as a director was justified. For the same reasons, I conclude that any prejudice which he suffered thereby cannot be described as unfair. If, as suggested, I use s.1157 as a check against this conclusion, I cannot see how it can be said that he has behaved reasonably or ought fairly to be excused for his breach of duty when he has made no real effort to remedy the same through disclosure whether contemporaneously or even now.

111. In the circumstances, while it was originally intended that, subject to compliance with the Act and the company's articles, the quasi-partners could be involved in the management of the company as directors if they so wished, it is unnecessary to reach any conclusion as to whether Mr Allnutt's removal was otherwise justified by his no longer carrying out any work for the company, and spending most of his time in Thailand.

112. The claim is dismissed.

(Claim dismissed)