



Helping remove errant director and shareholder

As owners of a company the shareholders have a common interest in ensuring its success, but disputes between shareholders can be very destructive and damaging for all stakeholders. [Justin McConville](#), a senior associate in our dispute resolution team was recently instructed by the principal shareholder of a healthcare business in relation to such a dispute.

The case

Our client had discovered that a director of the company, who was also a minority shareholder, had been actively involved in another business which was a direct competitor. The relationship between them collapsed and our client was forced to take steps to protect the business including terminating the individual's employment with the company for gross misconduct. He then instructed Justin to help him remove the individual from the business – as both a director and shareholder. The task was made difficult by the individual threatening to injunct the business so that he could remain as a director which, he claimed, was a right he was entitled to by virtue of the provisions in the parties' shareholders' agreement.

The individual also made a series of allegations that it was our client – and not him – who had first committed a breach of the shareholders' agreement, with the consequence that it was our client – and not him – who was required by the terms of the shareholders' agreement to sell his shareholding to him. In reality, the individual's claims had little merit and were simply a device he hoped would produce a large pay out from the business.

However, because the shareholders' agreement contained some unwelcome ambiguity, the individual's assertions and claims made by his legal representatives had to be treated seriously. We agreed a clear strategy with our client and followed it in the extensive negotiations which followed with the individual and his legal representatives. The individual continued to remain unrealistic in his demands for compensation but at no time did he claim that the actions of our client had been so unfairly prejudicial to him that he was entitled to seek relief from the Court under its inherent jurisdiction (sections 994 – 996 of the Companies Act 2006) – most likely because an application for relief was unlikely to be successful due to the individual's gross misconduct.

To break the impasse our client instructed us to prepare an application to the High Court for a declaration that the individual had breached the shareholders' agreement and must transfer his shares to our client. With the prospect of a (costly) hearing in the High Court, the individual finally relented and dropped his demands. The parties were then able to agree an outcome where, in consideration for a nominal payment, the individual resigned as a director of the company and transferred his shares to our client. He also agreed to be bound by covenants which restricted his activities in the market for a temporary period of time.

Our client commented: "This was a difficult and stressful time for our business, when somebody we had trusted went rogue and caused enormous disruption. Justin stepped in with a steadfast strategy which over time resulted in the demands made by the individual being lowered, until eventually we were able to achieve our aim of removing him from the business in circumstances which were acceptable to us. Justin was clear about our legal options and the costs involved and even though we were primed to issue court proceedings, we were very pleased to achieve the certainty of a mutual settlement thanks to Justin's brilliant negotiations. The result for our business was very welcome."



[Will Angas](#)

Partner