

Resolving shareholder disputes – A creative solution



When successful unfair prejudice petitions are considered by the courts, they most commonly result in an order requiring the purchase of the shares held by the petitioner by other members of the company or by the company itself. In a recent case the High Court considered a dispute in which a share buy-out was not viewed as an appropriate remedy, offering a useful reminder for potential petitioners of the court's wide discretion when exercising its powers.

Safeguarding the rights of shareholders

If you're a shareholder and other shareholders are preventing you from being involved in the business or are acting in a manner which is prejudicial to your interests as a shareholder, then, unless you hold special rights under the company's articles or set out in a separate agreement, your options are limited. You can sell your shares (if you can) or accept the fact you have no say in the affairs of the company despite being one of its owners. If these options are not attractive then you may be able to ask a court to wind the company up or petition for relief on the grounds of unfairly prejudicial conduct.

Unfair Prejudice Petitions

The law tries to find a balance between the competing interests of shareholders especially so when it's a minority shareholder needing protection and the majority shareholder has contributed the most capital and therefore expects the most control. The most common order made by the courts is that the company or the majority shareholders buy out the petitioner's shares at a fair price (normally without a minority discount unless the petitioner himself has also acted improperly). The underlying reasoning is that where it's clear the relationship of the parties has broken down irretrievably and continued disagreement is damaging to the interests of other



stakeholders, the exit of the minority shareholder in fair circumstances is usually the ‘easiest’ and most effective outcome.

For a shareholder to successfully litigate an unfair prejudice action he must be able to demonstrate that the affairs of the company have been conducted in a manner which is unfairly prejudicial to his interests or shareholders generally. The conduct complained of must be “prejudicial” (in the sense of causing prejudice or harm to the relevant interest; but not necessarily financial harm) and also “unfair”. Conduct may be unfair without being prejudicial or it may be prejudicial without being unfair. For the conduct to be unfairly prejudicial it must satisfy both tests.

The case of Baker & Metson Ltd

The background to the case was an acrimonious dispute over the governance of a family company called Baker & Metson Ltd (B&M). B&M owns land in Essex which is used for farming and the operation of a commercial shoot. The claim was issued by Sam Metson (“Sam”) who alleged that his brother, David Metson (“David”), had together with the company’s solicitor, Mr Montlake, pursued a course of action designed to seize control of B&M.

The outcome

The judge found that many of the actions which Sam complained about were unfair to him and other shareholders but they were not prejudicial.

However, the judge did agree that, taken as a whole, Sam’s claim for unfair prejudice was well-founded despite disputes over some of the factual evidence.

The judge generally preferred the evidence of Sam over that of his brother, David, and considered Mr Montlake to be a difficult and deliberately obtuse witness. In his conclusion, the judge found that some actions taken by David and Mr Montlake were intended to undermine the rights of the other shareholders. They had failed to respect the wishes of shareholders in order to secure the appointment of a board that remained within the control of David and his trusted group of associates. Moreover, Mr Montlake had been appointed to the board against the wishes of the majority of shareholders.

The rights of shareholders to appoint and remove directors are amongst the most fundamental rights that shareholders enjoy and, in this case, the judge concluded that the shareholders had been clearly prejudiced as those rights had been undermined.

The judge had to then decide what form of relief was appropriate in the circumstances. He ruled out an order requiring shareholders to sell their shares because B&M was a family business in which all family members were expected to participate. Also, neither Sam nor David had shown any desire to relinquish their shareholdings and the judge could not see any realistic basis to divide up the assets between different shareholder groups. In view of this, the judge focused on the composition of the board and, specifically, the appointment of Mr Montlake as a director. The judge directed that Mr Montlake be removed as a director and approved the proposal made by Sam that the board should comprise four directors, namely Sam, David, David’s wife and a local surveyor who was prepared to be appointed and was viewed as independent.

Our view

This is an interesting case as the outcome was unusual but reflected the circumstances of the case. It shows that the courts are prepared to arrive at a bespoke and creative outcome in circumstances where the shareholders



are unable to do this for themselves.

Sam had largely played a passive part in the day-to-day running of B&M and would likely continue to do so. The judge probably took this into account because the outcome is unlikely to shift the balance of power in Sam's favour. The judge's intervention largely preserved the status quo in terms of B&M's activities but, importantly, Mr Montlake, who had shown himself through the evidence to be conflicted and unreasonable, was removed. It is hard to imagine that following such costly and public litigation the family has been brought closer together, but at least the present composition of the board has a good chance of providing the necessary checks and balances so that the rights of B&M's shareholders are better protected moving forward.

How can we help

Cripps has specialist expertise in resolving disputes between shareholders. If you would like to learn more about how we can help resolve such disputes then please contact Justin McConville or any member of the [dispute resolution team](#).



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