

## Shareholders in family businesses behaving badly – the court's response

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In the words of F. Scott Fitzgerald, “family quarrels are bitter things. They don’t go according to any rules. They’re not like aches or wounds, they’re more like splits in the skin that won’t heal because there’s not enough material”.

### The case of Re Westshield Ltd

Never is this more true than in disputes within family businesses when there is money at stake. An illustration of this can be found in the case of Re Westshield Ltd.

This was a classic family business. Set up by the father and mother it grew into a successful enterprise. They had four children, three boys and a girl. Shareholdings were gradually passed down to the children. All of them worked in the family business at various times. However, as is often the case, one of the children became dominant within the business and came to be seen as the natural leader / successor.

Eventually this was formalised by the dominant sibling becoming managing director with a larger shareholding. Two of the others were directors and the last sibling retained a shareholding.

Business life rarely runs smoothly and sure enough the company fell into financial difficulty. This required a re-organisation, a third party investor came in, the parents exited and the seeds of a family dispute were sown. Relations between the dominant sibling and the others became progressively worse leading eventually to the dominant sibling dismissing his sibling co-directors. There was bad behaviour on both sides, the family dynamic meaning that positions were sometimes taken on the basis of sibling rivalry rather than necessarily on commercial grounds.



No resolution of the dispute was found and a petition was issued by the three siblings against their brother, who now controlled the company alone. On the face of it they had a good case, they had been excluded from the company when they had legitimate expectations of being directly involved. Attempts to find a negotiated solution continued even after the trial, with judgment being delayed to allow the parties to mediate. However, no settlement was reached and judgment was therefore given.

## The judgment

The judgment is a classic example of the decision making process when the court has to do justice and all parties have rights and interests which need protecting but when truth and commercial realities have become a little lost in the fog of sibling war.

The upshot was the Judge found that the dominant sibling had acted unfairly to his siblings, but to a much lesser degree than had been claimed. In particular, he found that excluding the two sibling co-directors was not unfair because of their behaviour. With regard to the unfair actions which were upheld, the Judge found that the other siblings had acquiesced at the time and could no longer complain.

As a result, the Judge declined to make an order requiring the dominant sibling to acquire the shares of his siblings. Thus, unless they come to an agreement the siblings remain locked together in the family company having spent years of their lives, and lots of their money, on an ultimately fruitless legal battle. The lesson is clear, litigation of family business disputes is a high risk strategy and should always be seen as the last resort.

## How we can help

If you are in a similar situation and need some help or advice on this topic, please contact Ed Weeks on [ed.weeks@cripps.co.uk](mailto:ed.weeks@cripps.co.uk).

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