



THE COURT OF APPEAL

Neutral Citation No. [2021] IECA 48

**Court of Appeal Record Numbers 2020/32
2020/33**

**Costello J.
Haughton J.
Collins J.**

**IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014
AND IN THE MATTER OF SEDA (SKILLS & ENTERPRISE DEVELOPMENT ACADEMY)
LIMITED**

BETWEEN

TIAGO MASCARENHAS

APPLICANT / RESPONDENT

- AND -

**REZAUL KARIM AND
MAHBUBA SULTANA**

RESPONDENTS / APPELLANTS

JUDGMENT of Ms. Justice Costello delivered on the 2nd day of March 2022

1. These are two separate appeals against the judgment of the High Court (Jordan J.) dated 23 May 2019 ([2019] IEHC 333), and order of 4 July 2019, wherein he held that the applicant was entitled to relief under s. 212 of the Companies Act 2014, that it was not appropriate or desirable that the company, SEDA (Skills & Enterprise Development Academy) Limited, be wound up pursuant to s. 569 of the Act and gave liberty to the applicant to acquire the shares of the respondents in the company. The respondents (hereinafter referred to as “the appellants” or Mr. Karim and Ms. Sultana as appropriate), lodged separate notices of appeal, however there is significant overlap between the issues raised in both notices and submissions and both appeals were heard together.

Background

2. Despite the extensive exchange of affidavits, much of the detail of the history of the company remains unclear. The following emerges from the affidavits filed and the emails and letters exhibited by the deponents. Mr. Karim and Ms. Sultana are Bangladeshi and UK nationals. They appear to live both in London and in Bangladesh. Mr. Karim has a history of involvement in English language colleges in England and Ireland. The company

was founded in 2008 and currently runs an English language college from a premises in Capel Street, Dublin 1, and at any one time it would have approximately 600 students attending various courses. Though Mr. Karim is described as the founder of the company, it appears that he was never either a registered shareholder or a director of the company. Ms. Sultana was a founding shareholder. She was never a director prior to the events the subject of these proceedings.

3. On 11 November 2009, Mr. Mahfuzul Haque resigned as director and secretary to the company. Mr. Amjad Mohammed Hussain and Ms. Nora Medjber were appointed directors of the company and Mr. Hussain was appointed as the secretary of the company. They both reside in London; he is British and she is French.
4. In 2014, the applicant (the respondent to the appeal and to whom I shall continue to refer to as "the applicant") joined the company. He was appointed a director and he was given 15 shares in the company. He is Brazilian and has lived in Dublin since 2006, and was found by the trial judge to be the key man in running the affairs of the company. The records in the CRO show that at the commencement of the proceedings the applicant was the registered owner of 15 shares and Ms. Sultana was the registered owner of 85 shares.
5. On 22 May 2015, Mr. Ian Fleming was appointed a director of the company, apparently to represent the interests of the appellants. He is a specialist in higher education and had worked previously with Mr. Karim in relation to a college in the United Kingdom. He lives in Hampshire, England. He is an independent consultant who has worked for a number of government agencies in the UK and, in particular, he has worked as a lead inspector for the British Accreditation Council. Mr. Karim met Mr. Fleming in October 2014 and agreed that he would be appointed as a director of the company at around that time in order that there would be an academic director on the board of directors of the company.
6. The trial judge found that in the weeks prior to the commencement of a language course the company can have significant amounts of money in its bank account, as the students pay for their courses in advance. This money is required by the company to pay staff, the company's landlord and the people who host the students, as well as other running expenses of the company, so it can never be presumed that money standing to the credit of the company will in fact be available for distribution. This has proved to be a key point of contention between the applicant and the appellants.
7. From January 2015, Mr. Karim sought to withdraw monies from the company. Initially it was agreed that he could have a loan of €10,000 on 26 January 2015. He immediately followed up seeking a further "*emergency loan*" of €10,000 by email dated 11 February 2015. This request was refused. On 13 February 2015, a board meeting of the company determined that the company's debit card should be blocked due to unauthorised withdrawals from the company's account. It is not clear who attended at this board meeting. Suffice to say that the decision to cancel the bank card "*infuriated*" Mr. Karim. On 12 February 2015, a withdrawal slip stated to be a "*personal loan*" in the sum of

€3,600 was presented, apparently by Mr. Karim, to the company's bank and the money was taken out the day before the resolution of the board of directors.

8. Mr. Karim did not accept that he was not entitled to withdraw money from the company as he had sought to do. In March 2015, he sent a number of emails stating that the business was his and he was free to "*borrow money from his company*". On 4 April 2015, he sent an email to Mr. Saiful Islam, an employee of the company, and the applicant setting out a number of demands and threatened to do a number of things if his demands were not met:
 - (a) transfer the shares in the company to other parties;
 - (b) appoint three new directors to the company;
 - (c) add his own name as a signatory to the bank account;
 - (d) issue himself with a loan in the sum of €100,000;
 - (e) close the bank account so that the salaries and rent could not be paid;
 - (f) "*inform*" ACELS (an accreditation body) (the nature of the information to be furnished to ACELS was not clarified).

9. At this stage the appellants decided to challenge the validity of the appointment of Mr Fleming as a director of the company and to disrupt the company's arrangements with its bank. On 22 June 2015, Ms. Sultana wrote to the CRO alleging that the Form B10 filed in respect of Mr. Fleming appointing him as a director was *done "without any official authority" by a "fake third party"* and that legal action was to be taken as a result of this "*false*" submission. A copy of this letter addressed to the CRO was emailed to the company's bank, Bank of Ireland. In the extraordinary email to the bank, which was sent from "Reza" (the name Mr Karim signed his emails) but signed by Ms. Sultana, she alleged that there was "*a fraud going on in the bank*". Mr. Karim also sent an email to the CRO on 22 June 2015 in similar vein. The result was that the bank froze the company's bank account with predictably immediate grave problems for the company. It was not possible to pay staff or rent or host families and students' insurance was also unpaid. The applicant estimates that during the period of 29 June to 13 July 2015, when the block was finally released, the company lost revenue and overheads in the region of €400,000, and as a result posted a loss for the year of 2015. The issues with the bank were dealt with by the applicant and Mr. Saiful Islam without any help from the appellants. Mr. Islam was an employee of the company and he claimed to be entitled to certain shares in the company.

10. Mr. Amjad Hussain had been appointed to the board to represent the interests of the appellants in 2009. The applicant said that, at the direction of Mr. Karim, Mr. Hussain would not sign the company's accounts for the year 2014 to facilitate the timely filing of the annual return in 2015. Ultimately, the applicant and Mr. Islam were required to permit Mr. Karim to borrow the sum of €4,000 from the company before Mr. Hussain

would agree to sign the company's accounts. It is to be borne in mind that Mr. Karim was neither a registered shareholder, nor a director, nor an employee of the company at any time and had no entitlement to borrow any sums from the company.

11. In 2016, the appellants sought to procure their appointments as directors of the company but for reasons which were never adequately explained, they were unsuccessful in this step. On 3 August 2016, solicitors acting for the appellants called an EGM of the company scheduled for 17 August 2016. The meeting was inquorate and it was adjourned to 24 August 2016 when it was again inquorate due to the failure of the applicant to attend. It appears that Ms. Sultana purported to pass a number of resolutions, the effect of which was to appoint three new directors to the company, apparently in fulfilment of the threats set out in the email of Mr. Karim of the 4 April 2015. The three directors allegedly appointed to the company were Mr. John White, Mr. Mohammad Bhuiyan and Mr. James Coyle. Apparently, on 2 September 2016 they called a meeting of the board of directors of the company and proposed to remove Mr. Fleming as a director of the company, though again this is not clearly established in evidence. The appellants' personal solicitors, Actons, wrote to the company indicating that they were appointed solicitors for the company at the adjourned EGM of 24 August 2016.
12. As a result of these disputes, the applicant, Mr. Islam and Mr. Fleming, instituted plenary proceedings against Mr. Karim, Ms. Sultana, Mr. White, Mr. Bhuiyan and Mr. Coyle (Record No. 2016/8689P).
13. These proceedings were compromised in April 2017 in two written agreements: a Shareholders' Agreement and a Minute of a meeting of the board of the company recording further agreements relevant to the company.
14. The parties to the Shareholders' Agreement were the company and the persons set out in the First Schedule; these were Ms. Sultana, who is described as Shareholder A and as having 57 ordinary shares, the applicant (Shareholder B) who has 25 ordinary shares and Mr. Islam (Shareholder C), who has 18 ordinary shares "*(which has been (sic) transferred to [the applicant])*". The document is signed by Ms. Sultana, the applicant and Mr. Islam and the company.
15. Ms. Sultana executed a stock transfer transferring 27 shares in the company to the applicant. The stock transfer exhibited is neither dated nor stamped but it is accompanied by a minute of the directors of the company approving the registration on 3 April 2017 of the applicant as the owner of the 27 shares transferred to him by Ms. Sultana. The minute was signed by Mr. Fleming, the applicant and Mr. Hussain. The transfer of the shares was never notified to the CRO. The stock transfer was transferred to the company's accountants, OCC Accounting, who provided company secretarial services to the company, and who intended to file it when they made the company's annual return to the CRO in September. As discussed below, events intervened.
16. The applicant was already the registered owner of 15 ordinary shares and it had been agreed in compromising the 2016 proceedings that he would be awarded a further 10

shares by Ms. Sultana, hence he was described as holding 25 ordinary shares. The 18 ordinary shares credited to Mr. Islam were in Ms. Sultana's name, as they had not yet been transferred to Mr. Islam. Thus, in effect 28 (or as it turned out 27) ordinary shares, were to be transferred by Ms. Sultana to the applicant arising out of the compromise of the 2016 proceedings in April 2017.

17. In the Shareholders' Agreement, the company agreed to give each shareholder monthly financial updates on the first working day of the immediately following week, quarterly management accounts and annual accounts no later than 21 days after they are filed in the CRO. Clause 4.1 provided that each director would not sell, dispose, burden or otherwise transfer any of his shares to any other person without the prior consent in writing of the other shareholders and in compliance with the provision of the agreement. Clause 4 thereafter set out the basis upon which a shareholder who wishes to sell his or her shares must offer them to the remaining shareholders. Clause 13.1 provides that:-

"... each party shall keep confidential and not disclose or make known to anyone else or use for his own or any other person's benefit, or to the detriment of the company, any confidential information relating to any member of the company."

18. The minutes of the board meeting which gave effect to the compromise of the 2016 proceedings recorded that transactions over €2,500 would require two signatories out of three authorised signatories who were to be Mr. Karim, the applicant and Mr. Islam. The minute referred to three shareholders though, following the implementation of the Shareholders' Agreement, there would be only two. At Clause 3, it was stated that Ms. Sultana's or Mr. Karim's name was to be added on the main business account of the company "as director" and the named individual should have "full access to the bank accounts with online management banking facility." In relation to "Directors & Shareholders remuneration", the minute provided:-

- "1. All three partners (Mrs. Mahbuba Sultana or Mr. Rezaul Karim, [the applicant] and Mr. Saiful Islam) will receive salary €3,000 monthly.*
- 2. A fixed amount of €1,000 monthly will be paid to all three partners for their personal expenses. Monthly Board of director's meetings expenditure will be added on top of this amount depending on circumstances.*
- 3. Currently only one debit card issued from the bank which will be kept [by the] accountant working in the SEDA building."*

19. Under the heading "Director Appointment" the minute provides:-

- "1. Ms. Mahbuba Sultana or Rezaul Karim will be appointed as a Director and Mr. Ian Flaming (sic) will be resigning within good time. Mr. Saiful Islam will be added as director same time (sic).*
- 2. There is to be no directorship appointment until such time as quality mark has been awarded by the QQI. Once this has been awarded the (sic) Mahbuba Sultana or Mr.*

Rezaul Karim (acting on behalf of Mahbuba Sultana) will be appointed a director of SEDA College."

20. The final matter in the minutes is headed "Outstanding Loan" and stated:-

"1. Full repayment of outstanding loan of €30,000 to Rezaul Karim from SEDA College to be repaid to SEDA College business account by instalments. This instalment will be paid value of 20% when each time profit dividend distributed from the company to Mr. Rezaul Karim according to his shareholding. First payment will be taken after nine month (sic) from the date shown in this document first page."

21. Mr. Karim freely acknowledges that he owes €30,000 to the company. Rather extraordinarily, he is to repay the instalment by reference to the distribution of a dividend in respect of his shareholding when, in fact, he was never a registered shareholder in the company and therefore would never receive a dividend: the shareholding was at all times held in the name of his wife, Ms. Sultana. He signs the record of the board meeting even though he is not a director *"for and on behalf of Mahbuba Sultana shareholder"*, though she is not a director either. Mr. Islam also signs the minutes as a shareholder and the applicant signs as director and shareholder. Mr. Fleming, who was a director, did not sign the document.

22. Thus, the agreement and the intention was that the shareholders in the company would be Ms. Sultana (57 shares) and the applicant (43 shares). The Directors would be the applicant, Mr. Hussain and, once the quality mark had been awarded by Quality and Qualifications Ireland ("QQI"), Mr. Fleming would resign and either Ms. Sultana or Mr. Karim would be appointed a Director of the company in his place, and Mr. Islam would also be appointed a director. Mr. Hussain remained as the Company Secretary. Ms. Sultana or Mr. Karim would be added as a signatory to the company's bank account; there would be online banking; all shareholders would be provided with monthly financial updates and quarterly management accounts. The applicant, Mr. Islam and either Ms. Sultana or Mr. Karim were to be paid a monthly salary of €3,000, plus €1,000 monthly personal expenses.

23. Unfortunately, matters did not proceed smoothly thereafter.

24. To date, the company has not obtained a Quality Mark from QQI and so the agreement to appoint new directors and for Mr. Fleming to resign did not become operative. This gave rise to considerable dispute later.

25. The same month as the 2016 proceedings were compromised, on 27 April 2017, Mr. Karim requested that the company give him a loan of €60,000 for a period of three weeks to cover a personal difficulty. This request was not acceded to. Mr. Karim requested, through Mr. Bhuiyan, that the company distribute a dividend which the applicant declined to pay on the basis that the company was not in a position to pay a dividend. On 8 June 2017, Mr. Karim sent Mr. Islam a text message stating:-

"I am openly declaring [that] today I start war again today for my rights and for my company back."

This was because he had been prevented from withdrawing money from the company. He said that he was going to contact the newspapers, Irish Immigration Authorities and ACELS, the accreditation body in order to *"help me get back my business"*. The applicant complained that in a text dated 21 July 2017, Mr. Karim threatened to *"report to the authority to close down the business"*. He referred to the fact that in the past Mr. Karim reported Mr. Islam and the applicant to the immigration authorities and had *"made allegations"* to the CRO and the company's bank which had impacted on their personal lives as well as the business of the company. He requested in an email of the 22 July 2017 addressed to the appellants that they cease delivering *"threatening and abusive emails"*.

26. Mr. Karim emailed the applicant on 22 July 2017 saying that he was asking for *"my business money another word my own money (sic)"*. He complained that during the last five years the applicant had stopped *"my access in the business"*. He complained about spending millions of Euros *"without asking me"* and said the applicant *can't hold 100% of the business powers as this is share business (sic) even though I started SEDA without you. Again don't forget I allowed you and Saiful [Islam] to run this and you [are] betraying me..."*. He said, *"I have my rights as well. You forgot that I have [a] share o[f] (sic) this business.."*. He went on to state that he could get control and access to the business if he wanted.
27. The applicant replied later that day stating that he hoped that all the disputed issues had been resolved and he was trying to improve the business and to make it successful. Mr. Karim replied on 28 July 2017 stating that he would like to come into the office on a regular basis from the following week and work there with full access.
28. The applicant responded on 1 August 2018 to both the appellants. He said that *"as you are the "beneficial owner" of the share belongs (sic) to Mrs. Mahbuba Sultana we don't have any problem [with] your presence in the college once [it] is scheduled in advance."* However, he then insisted that there should be a general meeting with all directors and shareholders as well as Mr. Bhuiyan and Mr. Islam to deal with the differences which had arisen before any such visit took place.
29. Mr. Karim replied saying that he did not see any reason for a prior meeting to oversee *"my beneficial interest"*. He said he wanted to see the bank accounts in order to report back to Ms. Sultana. He complained that he was baffled as the income and expenditure of the college is *"significant and vast but the profits are of a mere sweet shop"*.
30. The applicant insisted on holding a meeting before permitting Mr. Karim to attend at the college and examine the records of the college. Mr. Karim replied on 2 August 2017 stating that he had enough of excuses keeping him out of the business and he said that he was coming *"to join in my company"*.

31. The applicant replied stating that he would not work with Mr. Karim: -

"... as we all know the reasons and will not accept demands from your side that are not related to the best interest of the company. I made myself very clear ... but I guarantee [what] will not happens (sic) again, people's life (sic) have been destroyed by your attitudes and actions, and a lot more, also your emails are being (sic) very clear: Money, Profit, Dividing."

32. There appears to be a gap in either the emails or the actions of the parties but matters resume on 1 September 2017. The company's accountants, OCC Accountants, had raised concerns about the tax treatment of the €3,000 salary paid per month to Ms. Sultana in accordance with the Shareholders' Agreement of 11 April 2017. The applicant ceased the payments to Ms. Sultana and sent an email on 1 September 2017 to both of the appellants requesting that they provide PRSI or equivalent registration details as there was an issue as to whether the company was required to deduct USC, PRSI or PAYE from these payments and certain information was required to resolve this question. The email provoked outrage. There was a responding email, dated 4 September 2017, addressed to the applicant and Mr. Islam from "Reza", but signed by Ms. Sultana. The email objected that the tax was "my personal responsibility" and that it did not concern the company or the company's accountant or lawyers. It then said "we" will submit the necessary documents and tax certificate where necessary. In the same paragraph, it moved back to the singular and was apparently written by Ms. Sultana. It said "do you want my share? Do you want me to give up everything for you?" The email said "I am the major shareholder and founder!":-

"... I have my rights within the company and I am entitled to ask about my business earnings, without being questioned or hindered ...

Have you forgotten that I am the founder and the owner as well? ... You have breached our final agreement."

The email then appears to continue from Mr. Karim as it says:-

"Don't forget I [and] Mahbuba set up this company and gave it to you and Saiful, on behalf of myself, to run the operations ...

... You know very well from the previous experience that once we start again then both the college will automatically suspend all the affiliations and newspaper will broadcast each and everything (sic).

Please think and consider carefully about all of the troubles, losses and consequences of next 4/5 years that will cause suffering, lots of issues and involve things that you may not know about now and you will be held accountable as you controlled both the companies. It will not be ending here or soon, it will continue for years and years. Both the colleges will be suspended due to partnership/ownership problem and we can fight [the] skeleton only."

33. The companies referred to are the company and National Employee Development Training Centre Ltd. ("NED"), a company in which the applicant was involved, though the details of his involvement were never clarified.
34. At about this time, at an unspecified date, Mr. Hussain, the then company secretary, sought to change the bank mandate for the company. On the 7 September 2017, the company's solicitors, Abacus Legal, wrote to Mr. Hussain objecting to the change and strongly advising against the action. The letter referred to the previous occasion when the operation of the company account was interrupted with the result that the company suffered serious reputational damage amongst its creditors, most significantly its landlord. In addition, the prospect of non-payment of the teachers' wages almost affected the college's accreditations, which were essential to the continuance of the business of the company. The letter pointed out that any actions purporting to interfere with the day-to-day operation of the bank account under the current arrangements were tantamount to an attempt to cause further significant damage to the company and were not in the best interests of the company.
35. The solicitors also wrote to the appellants stating that they had been made aware of "*an improper request of Mr. Amjad Hussain Director of the above named company to interfere with the bank account for the business. We have assumed such a request has come from you.*" The letter referred to the fact that such actions were "*distinctly counterproductive to the best interest of the company*" and that they were in breach of the agreement signed in April 2017.
36. The letter also stated that third parties in Ireland had been approached by the appellants with a view to the sale of their shares in the company. The letter said that "*[y]ou have executed the Shareholder's Agreement with our Clients from which you will note that no sale can complete without a first option being given to the other shareholders. Therefore, your actions are a further attempt to breach the terms of your Shareholder's Agreement.*"
37. The letter stated that there was no future in the relationship between Mr. Islam, the applicant and the appellants, and demanded the transfer of the appellants' shares in the company to the applicant and Mr. Islam. The appellants were asked to agree to a process of mediation to resolve outstanding issues with the company.
38. The letter was replied to by an email of 8 September 2017 from "Reza" but signed by Ms. Sultana. The email did not deny that Mr. Hussain had sought to change the bank mandate of the company at their request, or that they had offered Ms. Sultana's shares in the company to a third party of the company. The email alleged that the applicant had breached the Shareholder's Agreement and said that this meant that the "*share consideration is automatically terminated*" and that the author therefore owned 85% of the shares and the applicant owned 15% of the shares. The email said that it was an opportunity "*for all of us to open all of our legal/illegal activities to Irish public, Irish immigrations and educational authorities as well as to the court.*" The author stated that if the applicant was not willing to give "*the major shareholders rights back as we agreed*" before 3 p.m. then "*all the Irish journalist (sic), all the Irish public, all the authorities will*

be informed all about our personal and business life history and activities including ICOT, SEDA, NED Training Centre, where is gone (sic) millions of euros and who is responsible ...”.

39. Ms Sultana proceeded to call an EGM of the company. Mr. Hussain, the company secretary, sent out an email of 15 September 2017 notifying all directors and shareholders of the company of an EGM to be held on 27 September 2017 called by Ms. Sultana. The notice stated:-

“The meeting has been called to address issues to be discussed from the agenda.”

40. The agenda for the AGM was:-

- “1. Opening address by chairperson*
- 2. Apologies and proxy’s(sic)*
- 3. Adding new directors*
- 4. Shareholders issues*
- 5. A.O.B.”*

41. The company solicitors replied to this by an email of 18 September 2017 addressed to the appellants. They stated that they had been advised of the following:-

- “1. You went to extraordinary lengths to attempt to force Mr. Amjad Hussain to issue notice of an Extraordinary General Meeting. We understand the actions of Mr. Karim have been persistent up tot (sic) today.*
- 2. You now wish to issue a notice of an EGM as shareholder.*
- 3. You deny that you have attempted to dispose of your shareholding when this office received a query from a party approached by you.*
- 4. You have sought sensitive company information with the express wish to share it with other parties for the purposes of such a proposed sale.*
- 5. You have been requested to supply the necessary information to the company accountants to properly records (sic) the payments made to you. You have not done so.*
- 6. You now wish to further malign and damage the reputation of the company with authorities and, if our instructions are correct, media personnel, who are not concerned with internal matters of the company.*
- 7. You have in fact now contacted QQI with your unproven allegations of wrongdoing again[st] the college and in particular [the applicant].*

8. *You have sent an email to Bank of Ireland in an effort to clearly frustrate the operation of the bank account.*

It is clear your intent is the same as the previous occasion when your efforts to act to the detriment of the company resulted in the necessity for court action. Our client's instructions are again to act to protect both the interests of the other shareholder and the company itself. Your actions are clearly oppressive to the minority shareholder.

We now require confirmation by return that you will not do the following:

1. *Immediately cease and desist with all communications with all third parties not connected with the company or its corporate administration.*
2. *Immediately in particular retract your comments with the Bank of Ireland.*
3. *Immediately retract your remarks and further cease and desist with all defamatory allegations against [the applicant] with any party in future.*
4. *Liaise with the company accountant, Mr. O'Connor, to supply the necessary information regarding tax treatment of your payments so that the monthly payments may be resumed without further delay.*
5. *Confirm by return that you will adhere in future to the terms of the Shareholders Agreement executed earlier this year including the proviso for change of mandate and appointment of directors.*

If you fail to confirm as necessary to all of the above four points (sic) then our instructions are to issue proceedings against you for all remedies available to the remaining shareholder and/or company as the case may be.

Given your actions it is clear that the company and its creditors are being placed at risk. We would repeat our request for mediation with a view to the sale of your shares to the remaining shareholders.

If mediation is not agreeable, we will have no option but to pursue litigation against you."

42. The response on the same day was an unsigned email from "Reza". It stated that an email had been sent to the bank "to inform [it] that your client [was] using all the money (sic)" for himself. It confirmed that the bank had been informed that the author had called an EGM on 27 September 2017.
43. In relation to the allegation that there had been an attempt to dispose of the shareholding, and that they had sought sensitive company information with the express wish of sharing it with other parties for the purposes of such a proposed sale, the response was "N/A". Similarly, in response to point no. 5 the answer was "N/A" and that it was a matter for the author and the company's accountant. The email did not deny

that they had contacted media personnel or contacted QQI. It said "QQI, ACELS, Deborah O'brein (sic), Bank account Manager everyone I am contacting now".

44. In relation to the complaint that the email to Bank of Ireland amounted to an attempt to frustrate the operation of the bank account, the response was that "... I want to inform everyone now on (sic) this stage because your client [is] forcefully controlling my business that's why". In response to the requested confirmations, the response was "if I get my full access in the business and my rights immediately, now".
45. On 18 September 2017, on the same day as the email discussed above was sent, Ms. Sultana sent two emails addressed to the applicant, Mr. Fleming, Mr. Hussain, Mr. Bhuiyan and Mr. Islam. The first was to state that "I am informing all authorities today that I [have] call[ed] [an] urgent EGM on 27th of September (sic)" and the second was to inform them that she had "just informed Deborah O'Brien at ACELS about our ongoing partnership problems".
46. Mr. Karim then visited Mr. Hussain. The appellant exhibited screenshots of a series of WhatsApp exchanges between himself and Mr. Hussain from 14:06 to 14:21 on 19 September 2017. Mr. Hussain said that Mr. Karim was then in his, Mr. Hussain's, office. The screenshot shows that Mr. Hussain said that "he [Mr. Karim] said he does not care anymore", that he wants to write to the papers and to the bank. Mr. Hussain texted to the applicant "I need your help" and "I can't talk he is in front of me" and "I will call you when he goes". The applicant then asked "Do u want I resign u?". The reply was "Yes". The applicant responded "Ok, I'll do it. I'll call Tom [the company's accountant] and ask. Call me when u can". Mr. Hussain did not reply further in relation to resigning nor did he tell the applicant that he was not resigning.
47. On the same day, the applicant filed a Form B10 with the CRO recording Mr. Hussain's resignation as a director and company secretary with effect from 19 September 2017. He sent Mr. Hussain a letter of resignation by email for him to sign, though Mr. Hussain never in fact signed the resignation letter.
48. On 27 September 2017, the applicant did not attend the EGM called by Ms. Sultana with the result that the EGM was not quorate and it was not possible to conduct any business at the intended meeting. It was adjourned to 5 October 2017.
49. By the 28 September 2017, Mr. Hussain had a change of heart and complained that he had been wrongfully removed as a director and company secretary without his authorisation. He sent an email to one of the company's accountants, Mr. Tom O'Connor, of OCC Accountants, complaining about this "serious fraud" and asking for matters to be rectified. When the accountants sought to "rescind the B10" the applicant emailed that he submitted the B10 "under the instruction" and "upon the request of Mr. Amjad [Hussain] and [I] did as requested."
50. The accountant who normally dealt with the affairs of the company, Ms. Margaret Traynor, sent an email to all of the parties on 2 October 2017 setting out the position of

her firm in light of the increasingly fraught relations between the parties. She said that the filing of the B10 form in relation to Mr. Hussain was not the procedure which had ever been practiced by their firm and they were dissatisfied by the manner in which it occurred. They indicated that they would not process any further CRO filings in the absence of written and telephonic confirmation from the affected parties. She indicated that the financial statements for the company for the year ended 31 December 2016 would be distributed to all directors and must be signed by them and returned to the office of OCC Accountants. Draft financial statements would be sent to all shareholders. The annual return date for the company was 26 September 2017 and financial statements required to be filed with the CRO within 56 days from that day, failing which the company would lose its audit exemption status. If that occurred, the company's accounts would have to be audited. She indicated that if consensus was not reached between the various parties in the dispute before the CRO filing deadline of 20 November 2017, and if this resulted in the financial statements being late for the filing in the CRO, and as a consequence the audit exemption status is lost, then her firm would not accept any subsequent appointment as auditors.

51. She proposed that the salary which had been agreed to be paid to Ms. Sultana/Mr. Karim should be paid. Mr. Karim should be added to the payroll as an employee of the company and a payslip should be issued each month.
52. The parties agreed to meet on 5 October 2017 in the Ormond Buildings on Inns Quay in Dublin to see if they could resolve their differences. The day before the meeting, on 4 October, Mr. Hussain complained to the Office of the Director of Company Enforcement (ODCE) about the filing of the B10 in the CRO on 19 September 2017. On the complaint form he indicated that Mr. Karim would be able to provide assistance in relation to this complaint. It was never clarified how Mr Karim could assist in resolving an issue concerning communications between the applicant and Mr Hussain.
53. On 5 October 2017 Mr. Karim emailed Ms. Siobhán McKenna of Compliance Co-Sec Services Limited, the company secretarial company of OCC Accountants, in relation to the appointment of directors. He said:-

"I want to keep away my wife from the stresses which [are] badly affecting my kids and family. Please from today I will be everything (sic). No more her involvement (sic)."

54. He instructed Ms. McKenna that he and Mr. Farida Chowdhury of 53 Rainhall Way, London, E3 3HP were to be appointed directors of the company. Mr. Hussain was to be reinstated as a director and company secretary. He said that Ms. Sultana was transferring her shares into his name. In relation to the EGM which had been adjourned to 5 October he stated:-

"[W]e [would] like to finalise the following with our major voting rights:

3. *Bank mandate changed new signatories is All new Directors not [the applicant] (sic).*
 5. *Directors terminate notice circulation 28 days from today (sic).*
 6. *Notice to CRO and ODCE for last week fraud. Change [of] director by [the applicant] only and [the appointment of] himself as a secretary with his own decision (sic).*
 7. *EGM decision circulation to bank and CRO and ODCE.*
 8. *Next EGM after 7 days.*
 9. *Notify all the related authorities about new directors.*
 10. *Ap[po]int Actons solicitor firm as a company lawyer.*
 11. *All overseas directors and shareholder's last 4 years outstanding expenses and salary to [be paid] immediate[ly] within 10 days .*
 12. *Company will pay all overseas director and shareholder expenses."*
55. These instructions were not copied to the applicant or his solicitor. Ms. McKenna was prepared to act upon these instructions as she replied 40 minutes later asking for the current address of Mr. Hussain.
56. There were now two meetings scheduled for the 5 October 2017 in Dublin. The first, the EGM adjourned from 27 September, was to take place at 1 p.m. in the office of OCC Accountants and the second was arranged for 4 p.m. in Ormond Buildings where the parties to the dispute had agreed to meet to try to resolve their differences. In the event, Mr. Karim did not travel to Dublin and so did not attend the 4 p.m. meeting. He sent an email to the accountants and Mr. Hussain stating that he had missed the flight as he was parking a "bit far from the departure gate". He offered to come to Dublin on the following Monday. He attached his boarding pass to this email, presumably as evidence of his intention to travel to Dublin.
57. Ms. Sultana travelled to Dublin without Mr. Karim and she held the EGM at 1:30 p.m. on 5 October at the offices of OCC Accountants. Ms. McKenna was in attendance as "Compliance Co-Sec Services Limited". Effectively Ms. Sultana held a meeting with herself and she resolved to appoint Mr. Karim and Mr. Chowdhury as directors of the company and instructed the Secretary to file the appropriate statutory forms with the Registrar of Companies.
58. By email dated 5 October 2017 sent at 18:46, Ms. McKenna emailed Ms. Sultana enclosing a copy of the minutes of the EGM for signature and the B10 forms appointing Mr. Karim and Mr. Chowdhury to the board of the company. She said that once she received confirmation of the home address of Mr. Hussain she would draft a Form B10 to

reflect the reversal of the Form B10 that was delivered on 19 September 2017. This would leave the appellants in control of the board of the company with the applicant and Mr. Fleming in the minority. The email was copied to the applicant, Mr. Islam and Mr. Hussain and the other accountants. She concluded her email by strongly urging all parties involved to seek the services of an independent mediator to see if a settlement could be reached.

59. Ms. Sultana did not attend the meeting at 4 p.m. in Ormond Buildings. She gave no explanation why she did not do so either at the time or subsequently. It seems clear that neither appellant, in fact, intended to attend the meeting in Ormond Buildings and were solely concerned with effecting the changes described at the EGM in the offices of OCC Accountants. The excuse given by Mr. Karim for not boarding the flight lacks all credibility when seen in the context of his overall conduct in relation to the affairs of the company.

60. On 7 October 2017, Mr. Karim emailed the applicant and Mr. Islam. He indicated that he thought the college was very close to closure and he was of the view that the authorities "will cancel all the permission due to our disputes". He said "[Please] try to understand [I] am a major shareholder. You may give me bit more hassle and troubles but I will win no matters anything (sic)". He offered to meet with just the three of them in Dublin on 9 October where the agenda would be:-

"1. *The policies how we can walkout*

2. *Sale*

3. *Consequences*

4. *Solutions"*

61. No meeting took place and the meeting of 5 October was not rescheduled. On Monday 9 October 2017, Ms. Sultana emailed the accountants, Ms. McKenna, the applicant, Mr. Islam, Mr. Fleming and Mr. Hussain stating:-

"I Mahbuba Sultana would like to transfer all my company (seda limited) share to my husband Mohammed Rezaul Karim's name with immediate effect means effected from today.

Dear Tom, as [OCC] is our company official accountants I would like to request you to complete all formalities as soon as possible. Thanks for your kind cooperation. Please feel free to contact me if you need any further details."

62. On 11 October 2017, Ms. Traynor circulated the draft accounts for the company for 2016 and asked that they be reviewed. She indicated that she required confirmation that the accounts are approved and that the directors are authorised to sign the accounts and to return them to her. She indicated that the details to be reflected on the Form B1 - Annual Return, which include current directors and secretary, must be finalised on or

before the 16 October 2017. It was necessary to file the annual return B1 on that date and the accounts were to be filed up to 28 days later. If this did not occur, then the company would be late in making its statutory filings and would automatically lose its audit exemption.

63. The appellants responded on 11 October, stating:-

"I as major shareholder, cannot accept this accounts without audit (sic)."

64. Ms. Traynor emailed all those involved on 13 October 2017 and stated that the email constituted a request from a shareholder for the financial statements for the company for the year ended 31 December 2016 to be audited. This meant that the board of directors were now obliged to appoint auditors and arrange for the audit to be done. She said that OCC would not act as auditors. She advised that an urgent application would need to be made to the District Court for an extension of the filing deadline with the CRO.
65. On 13 October 2017, the applicant's solicitors again wrote to the appellants. They noted that the appellants had now purported to remove the applicant as a director and that this was in complete disregard of the board meeting of 3 April 2017. They expressed extreme concern about the appellants' *"clear intention"* to remove money which was required to pay its creditors. The minutes of the board meeting of the 3 April 2017 made clear that Mr. Karim was to repay a loan of €30,000 by instalments, not to take further money from the company. They said that they believed that the relationship between the parties had irretrievably broken down, but they believed it would be possible to resolve their differences by way of mediation. However, they said they could not *"let you"* alter the board of directors or take money out of the company before the mediation can take place. They asked the appellants to undertake that neither they, nor anyone acting on their behalf, would seek to change the make-up of the board of directors or to extract money from the company in advance of any proceedings being instituted.
66. On 13 October Mr Hussain e-mailed the parties to say that the draft accounts for the year 2016 were not acceptable and that they required to be subject to a full independent audit.
67. On 16 October 2017, Ms. Sultana sent an email to the accountants, the applicant, Mr. Islam, Mr. Bhuiyan, Mr. Hussain and Mr. Fleming purporting to cancel the share transfer to the applicant. She *"reconsider[ed]"* the transfer of the shares to the applicant and Mr. Islam on the basis of breaches of the agreement of April 2017. She confirmed that the share transfer *"has been cancelled as per breached (sic) of agreement"*. This, of course, was after she attempted to remove the applicant as a director of the company at the adjourned EGM on 5 October 2017 and failed to attend the mediation which had been arranged for the same day.
68. Also on 16 October 2017, Ms. McKenna emailed the applicant, the applicant's solicitor, the email account used by both appellants and the company's accountant. She said that she had submitted a return online to the CRO that morning advising that its particulars may need to be amended prior to final authorisation. She expected to speak with Mr. Karim

the following day and promised to outline the result of that conversation in writing tomorrow (17 October). She said that her email was in response to the letter Mr. Karim received from the applicant's solicitors.

69. The applicant's solicitors responded to Ms. McKenna's email on 16 October stating that court proceedings were now inevitable and noting that she had progressed matters in line with requests from Mr. Karim despite the ongoing dispute.
70. The applicant organised the filing of a Form B73 to amend the company's annual return date to allow matters to be dealt with in the context of court proceedings.
71. Ms. McKenna replied the following day stating that the email was a response on behalf of the appellants and was not being issued by the Office of OCC Accountants or her own office, and that she was not acting as advisor to the appellants. She did not explain how she filed the forms in the CRO on the instructions of the appellants when the parties were clearly in dispute as to the validity of the appointments/removals and thus of the contents of the forms.
72. The appellants declined to give the undertaking sought in the letter of 13 October 2017 and they said that they would not enter into mediation where the sole purpose was to agree a purchase price for Ms. Sultana's shares as they have no intention of transferring the shares to the applicant.
73. The applicant was extremely concerned that the appellants would proceed to file the disputed Form B10s with the CRO to remove him as a director and the secretary of the company and to appoint Mr. Chowdhury and Mr. Karim as directors of the company and to carry out the other threatened actions referred to in their emails. Mediation had been tried and the appellants had not attended. Accordingly, he decided to institute these proceedings.
74. The applicant swore an affidavit to ground the originating Notice of Motion in these proceedings on 26 October 2017 and the proceedings issued on 7 November 2016. The motion was returnable for 4 December 2017.

The progress of the proceedings

75. The applicant experienced significant difficulties in serving the appellants. The originating Notice of Motion, grounding affidavit and exhibits were hand delivered in the letter box of one of their residences in London and sent to the email address which had been used extensively in the exchanges between the parties. The documents were also posted to the appellants at both of their addresses in London in November 2017. The appellants evaded service and ultimately the applicant was obliged to obtain an order for substituted service on 12 February 2018 authorising service upon them by email and Swiftpost.
76. At this point, the appellants instructed solicitors, Hunter & Company, to act on their behalf. They responded to the proceedings in a detailed letter of 3 April 2018. They first objected to the fact that the appellants were "*only formally served with these proceedings in March 2018 in circumstances where the grounding affidavit of [the applicant] was*

sworn on 26 October 2017." They made no reference to the fact that their clients had evaded service and the applicant was required to obtain an order for substituted service. They objected to the joining of Mr. Karim to the proceedings on the basis that he was not entered in the register of members, nor is he a director of the company, nor is he resident in the State. The letter stated that Mr. Karim did not have control of the bank account of the company or of the finances of the company.

77. The letter confirmed that Ms. Sultana is a member of the company and was the registered holder of 85 ordinary shares. Pursuant to s. 334 of the Companies Act 2014, they formally notified the applicant that she did not wish the company to avail of audit exemption and that the financial statements for the years 2017 and 2018 should be audited.
78. They made a formal request pursuant to s. 216 of the Act to allow Ms. Sultana, as a member of the company, to inspect the statutory books of the company in the week of 3 April 2018. They said that the request was issued pursuant to s. 797 of the Act "*so there is no misunderstanding*".
79. They requested that Ms. Sultana be co-opted as an additional director of the company and enclosed a draft resolution for the directors of the company to complete. At the same time, they also formally requested the convening of a general meeting of the company for 19 April 2018 for the purposes of appointing Ms. Sultana as an additional director of the company pursuant to s. 178 of the Act.
80. In addition, they issued "*formal requests*" pursuant to the agreement of 11 April 2017 and in particular to Clause 2.6 seeking monthly financial updates from 1 April 2017 along with quarterly management accounts, including the annual accounts of the company for the year June 2017 and/or draft accounts. Ms. Sultana also sought confirmation "*that there is no significant litigation, arbitration, tribunal or administrative proceedings affecting or likely to affect the company where current, pending or threatened in any material way and in particular with regard to the current directors of the company.*" The significance of this request emerged in the context of complaints subsequently made regarding the applicant's immigration status.
81. They noted that the monthly payment of €3,000 to Ms. Sultana and the monthly payment of €1,000 in respect of agreed expenses had not been paid since September 2017 and were significantly in arrears. They called upon the applicant immediately to reinstate the payments.
82. Pending the further information sought in the letter and a more detailed consultation with their clients, they requested that the applicant's motion be adjourned to 7 May 2018. They called upon the applicant to comply with the Practice Direction of the High Court to exchange expert accountants share valuation reports in advance of any hearing and suggested that the parties might then engage in a process of mediation as an alternative for the purposes of resolving their differences.

83. On 5 April 2018, each of the appellants swore affidavits in response to the grounding affidavit of the applicant. Mr. Karim asserted that he should not be joined in the proceedings on the basis that he was neither a shareholder nor a director, and he was not involved in the day-to-day management of the company, and did not control the bank account or finances of the company. Ms. Sultana said that she was the registered holder of 85% of the issued share capital of the company and at all material times had been the majority shareholder of the company and that she was a founding subscriber member. She resides in London and is not involved in the day-to-day management of the company and does not have control of the bank account or finances of the company. She referred to the letter of 3 April 2018 and to the agreement of 11 April 2017. While disputing the applicant's claim "*very strongly*" she was willing to enter into mediation. She said she was not satisfied that the applicant had sufficient regard for her interest as a member and, in particular, the agreement of 11 April 2017 "*that I be appointed as an additional director of the company*".
84. On 5 April 2018, the applicant's solicitors replied to the letter of 3 April 2018 from Messrs. Hunter & Company. They said that Mr. Karim had acted as *de facto* beneficial owner of the shareholding and that his "pernicious behaviour" resulted in the need for action and that, accordingly, he was a proper party to the proceedings. They declined Ms. Sultana's request to be appointed a director of the company on the grounds that the purported appointment of directors by Mr. Karim, in particular, had been at the root of the applicant's need to litigate to protect his legitimate interests. The appointment of Ms. Sultana as a director would contradict the action instituted by the applicant. They pointed out that in 2017 all relevant parties went to considerable lengths prior to the issue of proceedings to facilitate mediation with the appellants to the extent that a venue was booked for the meeting and Mr. Karim failed to show. They indicated that they would consider the request for an adjournment and would respond in separate correspondence to the content of the letter of 3 April 2018.
85. On 8 April 2018, Hunter & Co. replied in a lengthy letter. They insisted that Ms. Sultana be immediately appointed to the Board of the company on the grounds that she was the majority shareholder and it was expressly agreed in April 2017. They confirmed that the appellants have not amended nor do they intend to amend the existing records of the company in the CRO. They insisted that Ms. Sultana have full access to the bank accounts with online banking management facility as had been agreed in the Shareholders' Agreement on 11 April 2017. They also pointed out that the agreement as regards the banking mandate had not been implemented and they required that Ms. Sultana be an authorised signatory. They confirm that the appellants had no intention whatsoever of contacting the bank or interfering in the bank mandate "at his juncture", pointing out that neither of them were directors of the company.
86. On 6 April 2018, Hunter & Co. entered an appearance on behalf of both appellants. At the hearing on 9 April 2018, the parties agreed to enter into mediation and to exchange independent expert accountants' reports. Ms. Sultana was given leave to bring a motion on 17 April 2018 to facilitate her appointment as a director.

Ms. Sultana's First Motion

87. On 17 April 2018, in accordance with the leave of the court, Ms. Sultana issued a motion returnable to 23 April 2018 for an order pursuant to s. 212(3) of the Companies Act 2014 appointing Ms. Sultana as an additional director of the company and, if necessary, for an order pursuant to s. 179(1) requiring an EGM of the company to be held on 26 April 2018, or such other date to deal with the appointment of Ms. Sultana as an additional director of the company.
88. In her affidavit grounding the motion, Ms. Sultana confirmed that the current directors of the company are the applicant and Mr. Fleming. She said that the fact that there are only two directors constitutes a breach of the Shareholders' Agreement of 11 April 2017, and complained that the applicant had failed to furnish her with monthly financial updates in accordance with Clause 2.6 of the Agreement. She objected to the fact that the applicant unilaterally changed the financial year end of the company to 30 June 2017, and said that as a result she has not seen "*proper accounts of the company other than the accounts for the year ended 31 December 2015*". She did not address the failure to agree the accounts for the year ended 2016 in October 2017. She equally objected to the unilateral change of the annual return date of the company to 16 March 2018 "*whereby the applicant ... can avoid publishing financial statements*" in the CRO. She complained that the applicant "*appears to be using every mechanism possible in the Companies Acts 2014 to avoid publishing the most recent financial statements of the company*". She stated that the applicant had not convened annual general meetings and he had failed to furnish her with "*the requisite financial statements.*" She had not been furnished with minutes of the meetings of directors and other meetings of senior staff as agreed in the Shareholders' Agreement of April 2017. She reiterated that she has objected to the company continuing to seek audit exemption and she referred to the demands set out in the letter of 3 April 2018 from her solicitors.

Ms. Sultana's Second Motion

89. The following day, Ms. Sultana issued a second Notice of Motion seeking an order pursuant to s. 212(3) of the Act that the directors of the company comply with the provisions of s. 333 of the Act in respect of the financial years ended 2016, 2017 and 2018 and orders requiring the applicant to provide her with access to the minutes of the board of directors and minutes of the general meetings of the company and the statutory registers. It is not apparent why these reliefs could not have been sought in the motion issued the previous day. In her affidavit grounding the second motion, she referred to the correspondence of 3 and 4 April previously exhibited which I have set out above.
90. In the list to fix dates in the High Court later in April 2018, Stewart J. fixed 3 October 2018 to hear the applicant's motion under s. 212 of the Act and the two motions which had then been issued by Ms. Sultana. On 9 May 2018, Mr. Hussain swore an *affidavit "on my own behalf as the company secretary and a company director of the company"* in support of the application of Ms. Sultana seeking reliefs pursuant to the Companies Act and to be appointed an additional director of the company. He referred to the registration by the applicant of the Form B10 in the Register of Companies in September 2017 as

improper and illegal as he had not tendered his resignation as a director and company secretary. Mr. Hussain asserted that the appointment of Mr. Fleming as a director in 2015 was invalid because only the applicant had signed the Form B10 in May 2015 and he, as the second director of the company, never approved the appointment.

91. It will be recalled that the accountants had declined to audit the accounts for 2016 and, accordingly, it was necessary to appoint another party to audit the accounts. Mr. Hussain also complained that he had not been consulted as a long standing company director with regard to the change of the company's accountants. Mr. Hussain also objected to the appointment of the applicant as company secretary on the grounds that he did not satisfy the requirements of s. 129 of the Act with regard to the company secretary qualification test. He reported the matters of which he complained to both the Office of Director of Corporate Enforcement and to An Garda Síochána pursuant to s. 19 of the Criminal Justice Act 2011, on the grounds that a relevant offence within the meaning of the section had occurred which triggered mandatory reporting to An Garda Síochána with regard to s. 876 of the Companies Act 2014. In addition, Mr. Hussain said that the applicant is a Brazilian national and *"I do not believe that he is in possession of a valid work permit."*

Ms. Sultana's Third Motion

92. In addition to her two motions which were listed for hearing on 3 October 2018, Ms. Sultana issued a third motion dated 16 May 2018 seeking to remove the Forms B10 filed on 19 September 2017 removing Mr. Hussain as company secretary and company director. In her grounding affidavit sworn on 15 May 2018, Ms. Sultana said that Mr. Hussain was appointed as *"my representative to the Board"* and as company secretary on 28 October 2009.

The applicant's response.

93. On 11 May 2018, the applicant swore an affidavit in reply to the affidavits of the appellants. He stated that the affidavits *"do not really address the concerns which are set out in my grounding affidavit"*. The applicant said that up to about October 2017, the company was advised by Messrs. OCC Accountants that payments being made to Mr. Karim, and not to Ms. Sultana, on foot of the Shareholders' Agreement of 11 April 2017 had to be dealt with in a tax compliant manner. The applicant said that Mr. Karim did not deal *"satisfactorily"* with the matter of taxation on the payments and instead he engaged OCC Accountants to establish another EGM with a view to appointing directors to the company to create what the applicant described as an oppressive majority on the board. The applicant linked this with his declared intention to raise a loan of €100,000 for his own purposes from the company.
94. The applicant pointed out that the appellants were kept fully up to date with the financial affairs of the company until the company became aware of an approach by a party to whom Mr. Karim had offered to sell his shares in the company. It thus became clear that Mr. Karim was utilising the up-to-date financial information of the company and sharing it with third party competitors of the business with a view to selling his shares in the

company (or his wife's shares). The applicant says that this was not only detrimental to the company but in breach of the terms of pre-emption clause in the Shareholders' Agreement.

95. He said that prior to September 2017, there were three directors of the company, himself, Mr. Fleming and Mr. Hussain, with a representative of the appellants present at all times prior to the resignation of Mr. Hussain, and that board meetings were conducted in the appropriate fashion and duly minuted. The applicant repeated that it was the conduct of Mr. Karim in applying considerable pressure on Mr. Hussain in September 2017 to repeat the scheme of 2016 which led to Mr. Hussain's request to resign as a director and company secretary.
96. The applicant confirmed that the proceedings were initiated as a result of what he said was the repeat of the actions of 2016 by the appellants whereby they intended to appoint directors with a view to creating an artificial majority on the board and removing the applicant "*improperly*". The reason OCC Accountants did not file the end of year's return for 2016 was due to the dispute which came to a head in September and October 2017. In addition, the appellants refused to allow the filing of accounts without a full audit and, as a result, OCC Accountants were unable to file unaudited accounts. The company then was left facing the prospect of losing its audit exemption and, on advice from alternate financial advisors, it sought to amend the annual return date to allow time for the proceedings to be resolved and the returns to be duly filed without a risk of losing this exemption. He therefore denied that there was any impropriety on his part in adopting this approach. It was done in the interests of the company to protect it from loss of the audit exemption as a full audit of the company's accounts would add significant financial expense at each year end for the subsequent years that the company would have to provide audited accounts. He confirmed there had never been a difficulty with the supply of information until sensitive company information was being shared with third party competitors by one, or other, or both of the appellants.
97. On 13 May 2018, Hunter & Co. wrote to the applicant's solicitors in relation to a variety of matters. They complained to the Registrar of Companies regarding the recent filing by the applicant of the statutory annual return made up to 16 March 2018 along with the unaudited abridged financial statements for the year ended 30 June 2017, on the basis that the filings reflect share transfers with incorrect dates and details and where a formal notice pursuant to s. 334 of the Act had issued and where the accounts appear to confirm that no such notice had been issued. They repeated the request of Ms. Sultana that the company be subject to a full statutory audit in respect of the years 2016 and 2017 and they requested the appointment of statutory auditors. They objected to the "*unauthorised appointment*" of Easy Books and Mr. Muhammad Farooq as accountants on the basis that OCC Accountants had at all material times been accountants to the company since incorporation. They repeated the previous complaints and demands for information.

98. On 15 May 2018, Ms. Sultana swore an affidavit in reply to the applicant's affidavit. In response to his statement that neither of the appellants had addressed the substance of his complaint, her reply was to say that this had been dealt with in correspondence by her solicitors. She did not avail of the opportunity to respond by way of affidavit. She said that the applicant "*has completely failed to particularise any wrongdoing, acts of oppression or disregard of interests by me as a member of the company*". Her affidavit could be said to join issue with the complaints of the applicant and to repeat her complaints previously made. She confirmed that she had no intention of seeking to raise a loan of €100,000 from the company as alleged by the applicant. She did not deny that either she or Mr. Karim had shared financial information regarding the company with third party competitors with a view to selling her shares in the company, but she confirmed that "I have no intention whatsoever to do as is stated here".

Ms. Sultana's Fourth Motion

99. On 30 May 2018, Ms. Sultana issued a fourth motion pursuant to s. 212(3) of the Act deeming the Shareholders' Agreement of 11 April 2017 terminated and/or rescinded and cancelling the registration of Mr. Fleming as a director of the company. She alleged that the statutory filings purporting to appoint Mr. Fleming were illegal as was the purported removal on 19 September 2017 of Mr. Hussain as the company secretary and a director. Despite the fact that she was seeking relief against Mr Fleming she did not apply to join him as a party to the proceedings or to serve the motion on him. She said that the relationship of mutual trust and confidence between the applicant and herself no longer existed and that he was seeking to remove her from her own company. She objected to the applicant insisting that she pay for the auditing of the accounts of the company in circumstances where he refused "*to pay my salary and expenses*" contrary to the Shareholders' Agreement of 11 April 2017.

100. Ms. Sultana was now seeking statutory audits for the years 2014, 2015, as well as 2016 and 2017, on the basis that her expert accountant, Mr. Liam Grant, said that these were necessary for him in order to prepare his expert report. She acknowledged that she had a loan outstanding in the sum of €10,000 from the company and she denied that Mr. Karim had a loan of €103,000. She stated that she was "*not satisfied*" that the applicant had a valid work permit and was authorised to reside and work in the State. She said that Mr. Karim had a PPS number and she was in the process of applying for a PPS number. She said that the proceedings were an abuse of process and the applicant "*manufactured a cause of action simply to seek to remove me as a member*". She said that he had completely failed to comply with the Shareholders' Agreement of 11 April 2017 and she, not the applicant, was being oppressed. She again repeated her request that she be co-opted as an additional director of the company.

Ms. Sultana's Fifth Motion

101. Two weeks later, on 12 June 2018, she issued her fifth motion seeking an order directing exchange of pleadings, points of claim and defence and compliance with High Court Practice Direction 75, identification of experts and timetable for the exchange of reports.

Despite the fact that these reliefs were sought in this motion, the affidavit grounding it dealt extensively with the issue of the applicant's immigration status and the role of Mr. Islam in the company, though he is not a party to the proceedings. In the affidavit, she sought immediate equal boardroom representation, notwithstanding the fact that the motion seeking this relief had already been listed for hearing on 3 October 2018 and this was not a relief sought in the fifth motion. Ms. Sultana pointed to the fact that the applicant very recently instituted judicial review proceedings against the Minister for Justice, and notwithstanding the fact that she had not seen the pleadings, she drew an inference that the applicant was the subject of a 15-day Notice of Deportation Order and that his legal entitlement to reside and work in the State was at risk. She said this posed a serious threat to the company and she also said that it showed that the applicant had not properly disclosed all relevant matters to the court in these proceedings. In addition, she referred to the fact that a journalist writing for the Sunday Times newspaper contacted Ms. Sultana's solicitors seeking a statement from the solicitor with regard to the High Court proceedings. She said she is concerned that the Sunday Times are investigating the applicant and that they may shortly run a story on the college on the basis that it has been managed and controlled by a non-national from Brazil "*who is or was under investigation by the Department of Justice on account of furnishing false and misleading information in his application for residency to the Department of Justice*". She said the failure of the applicant's solicitors to respond to this issue raised in correspondence has further caused her concern. She is concerned as a result that the ACELS and/or EAQUALS (European Association of Quality Language Services) may revoke the accreditation of the company due to the alleged conduct of the applicant. Somewhat remarkably, she does not address the question of Practice Direction 75 anywhere in her grounding affidavit.

Mr. Karim's Motion

102. On 27 June 2018, Mr. Karim sought separate representation and instructed Hughes & Associates Solicitors to act on his behalf. It was never clarified why this was necessary as the appellants never claimed that there was any conflict of interest between them, though it had the inevitable effect of increasing the costs of the litigation. His solicitors filed a Notice of Change of Solicitor on that date and issued a motion seeking to dismiss the claim against him as being frivolous and vexatious, bound to fail and/or as an abuse of process. In the alternative, he sought an order directing the applicant to lodge security for costs pursuant to Order 29 of the Rules of the Superior Courts 1986. The motion was grounded on an affidavit sworn on 26 June 2018.
103. In his affidavit, Mr. Karim asserted that he ought not have been joined in the proceedings and that the applicant had no cause of action against him as he was neither a shareholder, director, shadow director, *de facto* director or manager. Nor did he have any influence over the employees, the company or the finances of the company. He said he was not involved in day-to-day management of the company and he did not have control of the bank account or the finances of the company. He complained that the applicant had breached the rule in *Foss v. Harbottle* in commencing the proceedings and

had failed to comply with O. 15, r. 39 RSC. He also complained that he had failed to comply with High Court Practice Direction 75. He complained that the applicant had been guilty of "*inexplicable and inordinate delay in seeking interlocutory relief*" and he said that the applicant had failed to make full disclosure or to act in good faith as required when seeking injunctive relief. He said that the applicant failed to produce documentary proof of his lawful residency within the State when requested to do so. He then said:-

"[T]his Honourable Court must therefore be compelled to draw an inference that these documents would confirm that he has no lawful basis for residing in the State and will in due course be deported."

104. He referred to the fact that the applicant lodged judicial review proceedings on 8 June 2018 in the Asylum List of the High Court and that:-

"[T]he inevitable inference that this Court is now asked to draw is that the applicant has no lawful basis for continuing to reside in the jurisdiction."

105. In the next sentence, he says he has not had sight of the papers but nonetheless says that there are strong grounds to believe that the applicant has no lawful basis to be living and working within the State. On this basis, if the court does not dismiss the proceedings against him, he sought security for costs.

Ms. Sultana's Sixth Motion

106. On 27 June 2018, Ms. Sultana issued an Originating Notice of Motion in a matter entitled "*The High Court, Record Number 2018/251MCA, In the Matter of SEDA (Skills & Enterprise Development Academy) Limited, Mahbuba Sultana, (Applicant) v. Tiago Mascarenhas, Saiful Islam and SEDA (Skills & Enterprise Development Academy) Limited (Respondents)*". The proceedings were brought pursuant to the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016, and she sought an order pursuant to Regulation 14(3) for a declaration that her name has without sufficient cause been omitted from the entity's beneficial ownership register, and for payment by the respondents of compensation for the loss sustained by her and for directions to decide whether the applicant and Mr. Islam should be entered or omitted from the beneficial ownership register.
107. The Originating Notice of Motion was returnable for 16 July 2018, on the same day as Mr. Karim's motion to dismiss the s. 212 proceedings against him was first listed. Ms. Sultana's motion was founded on the request sent by her solicitors on 25 May 2018 to the applicant's solicitors requesting that the applicant comply with the provisions of the European Union Anti Money Laundering Beneficial Ownership of Corporate Entities Regulations 2016. The applicant's solicitors indicated that the books of the company were held by the former accountants, OCC Accountants, and said that the company did not have access to the books on account of non-payment of their professional fee incurred in or around 2017. Ms. Sultana said that she did not hold shares in trust for the applicant. She said that he is the registered holder of 15% of the issued share capital of the

company and "*the said shares were never properly transferred to him and in any event he has failed to comply with the shareholders agreement of 11 April 2017 and in such circumstances I have commenced proceedings in this Honourable Court seeking an order for rescission and in order for damages in respect of his default...*".

108. Ms. Sultana referred to the 2016 proceedings commenced by the applicant and Mr. Islam and others, but not to the fact that she agreed to transfer shares to them and that Mr. Islam agreed that his shares be transferred to the applicant. She referred to her solicitor's letter of 25 May 2018 where she requested that she be entered as beneficial owner of 85 ordinary shares of the company. This was contrary to the Shareholders' Agreement of 11 April 2017, which was still binding on the parties. Further, it ignored the fact that the legal and beneficial ownership of the shares in the company was already a matter of dispute in the proceedings and, therefore, was a matter to be resolved by the court without the need for a further motion raising the issue. She instituted her Originating Notice of Motion seeking rectification of the register to record her beneficial interest in the shares in accordance with the regulations.

Further Exchanges of Affidavits

109. On the 2 July 2018, Ms. Sultana swore a further affidavit in relation to her fifth motion (issued on 12 June 2018) seeking directions and, in particular, an order directing compliance with High Court Practice Direction 75. The affidavit set out her complaint that the applicant's solicitors had failed to fully reply to correspondence from her solicitors and there had been a failure to agree an exchange of pleadings. She said that it was necessary that the parties comply with the practice direction and that this cannot happen unless the accounts of the company are audited, an issue which she acknowledged had yet to be resolved. She set out what she described as being additional grounds of continued oppression against her by reason of the fact that she failed to have access to the statutory register, there was a failure to create a beneficial owner register and the fact that there have been three occasions to make mandatory reports to the Offices of the Director of Corporate Enforcement pursuant to s. 393 of the Companies Act 2014 and to An Garda Síochána pursuant to s. 19 of the Criminal Justice Act 2011. She reprised the various complaints which have already been set out above and said that Mr. Islam is a *de facto* director and alleged owner of 27% of the issued share capital of the company, contrary to his agreement that the shares should be transferred to the applicant and the stock transfer form executed by her.
110. Also on 2 July 2018, she swore a further affidavit in relation to her fourth motion to rescind the Shareholders' Agreement and to cancel the CRO Forms filed in September 2017 in respect of Mr. Hussain and in 2015 in respect of Mr. Fleming. She stated that Mr. Fleming was not her nominee on the Board and that he was appointed without her consent, approval or knowledge and not in accordance with the provisions of the Companies Act 2014 or the constitution of the company.
111. All motions were listed before the Chancery List in the High Court on 5 July 2018. By consent, all motions were adjourned for hearing to 3 October 2018, with agreement

between the parties as to the terms of the adjournment. The court, by consent, gave directions in relation to the exchange of pleadings and written submissions. The order of the High Court records that there was a discussion on expert reports and the court made no order in relation to this issue and that, by consent, the hearing was to be on affidavit with cross-examination of deponents offered.

112. The applicant swore an affidavit dated 30 July 2018 in Ms. Sultana's beneficial ownership proceedings (her sixth motion) stating that the executed stock transfer form had been furnished to the company's accountants, OCC Accountants, which brought his total shareholding up to 43%. He said that due to inadvertence or inaction, the stock transfer form was neither dated nor stamped, and the accountants had intended to bring the paperwork up to date when filing the annual returns for the company in 2017. Up until September 2017, the company secretary was Mr. Hussain (a close friend and nominee of the appellants), and he failed in his duty as company secretary to cause matters concerning the company register, and therefore the Beneficial Ownership Register, to lapse. The applicant also referred to the issue as to whether Ms. Sultana or Mr. Karim was the beneficial owner of the shares held in her name, as had been canvassed in correspondence and previous affidavits.
113. OCC Accountants or Co-Sec Ireland Ltd. did not hold the original statutory registers belonging to the company. A digital register was not created at the time. The company was established in 2009 by Mr. Karim and his associate, Mr. Haque. Ms. Sultana was a founding shareholder. The applicant did not become involved in the company until 2014. On this basis, he denied that he is in any way at fault in relation to the statutory books of the company. He presumes that the original company registers and documents are in the possession of Mr. Karim. Furthermore, he stated that once the difficulties arose in September 2017, this frustrated the capacity of any company officer to take matters in hand vis-à-vis the filing of annual returns and the proper updating of company registers.
114. Mr. Islam sworn an affidavit on 30 July 2018 in defence of Ms. Sultana's proceedings against him (her sixth motion). He said that he had only ever dealt with Mr. Karim in relation to the affairs of the company *"who is and has at all times been the party exercising the full control over the shareholding in the name of [Ms. Sultana]"*. In relation to the agreement of 11 April 2017, compromising the 2016 proceedings, he said that he executed the agreement acknowledging the transfer of the shares he was claiming to the applicant and that he has no shareholding, beneficial or otherwise, in the company. He agreed to this because the relationship with Mr. Karim:-

"... was so deleterious to both my person and my health that I resolved that I would have no interest in any business in which Mr. Rezaul Karim and/or Mrs. Mahbuba Sultana were involved in until such time as those parties were no longer in any manner part of such enterprise."

115. On 30 July 2018, the applicant swore a replying affidavit to Mr. Karim's motion to dismiss the proceedings against him. He relied upon the previous affidavits he had sworn in the matter. He said that the proceedings evidenced the beneficial ownership of the

shareholding by Mr. Karim and that he and other members of the senior management at the college had only ever dealt with Mr. Karim. He referred to instances from 2013 and 2016 where he said that Mr. Karim held himself out as a director of the company.

116. In relation to the allegations concerning his immigration status, he said that he was resident in the State and he was not subject to a deportation notice. He complained that Mr. Karim had made improper and unfounded allegations against him in an effort to compromise his residency status. He says this was in keeping with threats previously made by Mr. Karim in June 2015 and was his consistent pattern of behaviour. As regards the question of the indebtedness of Mr. Karim to the company, he said that Mr. Karim signed the minutes of the board meeting of 11 April 2017 acknowledging his liability to the company in the sum of €30,000.
117. Mr. Ian Fleming swore two affidavits in the proceedings. On 5 June 2018, he set out his early links with Mr. Karim and explained how he became involved in the company. He resigned as Chair of the SEDA Board of Governance in the first part of 2017, but that he continued to attend senior management meetings on a monthly or two-monthly basis, and also attended director meetings as needed. Mr. Fleming described his feelings about Mr. Karim as having evolved since 2011/2012 when he thought Mr. Karim was plausible, if uninformed, to 2012/2013 *"when I realised he was a completely unscrupulous operator. I have since realised that he is grasping and immoral, without an ethical compass and focused only upon personal financial gain"*. The second affidavit reproduces the first affidavit and was sworn on 25 September 2018.
118. Mr. Paul Brown, the quality coordinator in SEDA College responsible for overseeing compliance with the regulatory regime in which the college operates and the accreditation it holds, swore an affidavit on 13 September 2018. He explained that he had known Mr. Karim since 2006 when he met him in relation to Medway College Ltd., a company Mr. Karim was involved in setting up and of which he was a director. He said that notwithstanding Mr. Karim's resignation as director of Medway College Ltd. he continued as a de facto owner of the company until it closed as an operating college in 2008. It went into liquidation in 2014. In the company office print out exhibited by Mr. Brown, Mr. Karim is not named as a shareholder, though he described Mr. Karim and Mr. Peter Offwood as being the main decision makers in the organisation.
119. Mr. Brown explained that in the autumn of 2009, he was approached about becoming the Principal of SEDA College and he agreed to take up the position on a part-time basis on the understanding that Mr. Karim, who appeared to be involved in the management of the organisation, would have no part in the day-to-day management. At the time he arrived, the directors were Mr. Hussain and Ms. Maria Lukacs, who are both resident in London. Mr. Brown said that the shares were held by Ms. Sultana, the wife of Mr. Karim, on behalf of Mr. Karim. At para. 9 of his affidavit, he said that on a visit to Dublin, Mr. Karim informed him that he, Mr. Karim, and not his wife, was the real owner and that he had invested £100,000 to set up the company, utilising a loan he had received from a wealthy Indian lady who lived in North London. Mr. Brown said that Mr. Karim visited the college

periodically about four or five times a year and that he met Ms. Sultana once during 2014 at the company's premises at Capel Street in Dublin 1. He said that during his time at SEDA he never once spoke to or met either Mr. Hussain or Ms. Lukacs. He detailed Mr. Karim's involvement in the college between 2014 and 2016 culminating in December 2016. Mr. Brown's evidence was:-

"... It was beyond doubt at this stage that no reconciliation between [Mr. Karim] and senior management would ever be possible.

I have dealt with Mr. Reza Karim over the last 12 years. In my view Mr. Karim is not an individual who can be trusted to run an educational establishment in an ethical manner. His main priority is personal gain and he has no commitment whatsoever to the provision of quality education."

120. Mr. Karim swore a replying affidavit on 26 September 2018 in reply to the affidavits of the applicant and Mr. Brown. He denied telling Mr. Brown that he was the real owner or that £100,000 represented an investment from an Indian lady. He said that the money was invested by Ms. Sultana over a long period of time. He said that he was in Dublin more than four or five times a year and that in addition *"we relied on Saiful Islam to work in SEDA and report to us."* He explained Mr. Brown's evidence of his belligerent, unpredictable and rare visits as evidence of his exclusion from the business of the company *"and the deep-seated dispute between the applicant and [the appellants] rather than anything else"*.
121. He said Ms. Sultana set up SEDA and he gave her his assistance. He said that she is a successful businesswoman in her own name and she holds an economics degree from a well-regarded university in Bangladesh. In addition, she holds an MBA degree from a U.K. university. He says she has worked in banking and has started a property business in the U.K. He said his *"involvement in sending some emails and participating in the negotiations in relation to the agreement signed on 11 April 2017 does not mean that I am a beneficial shareholder"*.
122. The balance of the affidavit does not relate to Mr. Karim's application to dismiss the proceedings against him on the grounds that they are frivolous and vexatious and/or bound to fail. Rather they appear more to be directed towards the defence of the substance of the applicant's claim. In paras. 22-30, he discusses the "sham marriage" entered into by the applicant and says that it *"logically follows that it is inevitable that he will be deported in the near future."* He complains:-

"The applicant has attempted to conceal the fact that he will have no legal basis for remaining in the State (once he loses his court case) as I presume his visa has been revoked on account of his sham marriage."

123. He complains that the fact that the applicant (presumably) will soon be deported back to Brazil ought to have been disclosed to the court, and that his proceedings should be dismissed on this ground alone.

124. For "*completeness*", he also refers to a sham marriage entered into by Mr. Islam.
125. Notwithstanding the fact that Mr. Karim's case is that he is neither a director nor a shareholder, nor involved in the day-to-day business of the company, in paras. 32-36 he complains about his exclusion from the company and the fact that he has been excluded from having "*any true, accurate or complete information concerning the finances of the company for several years.*" He does not explain the basis, if his case be correct, upon which he would be entitled to such information. He baldly states that he and Ms. Sultana have been threatened with violence by the applicant if they attended the company premises from 2014 onwards.
126. In paras. 37-43, he deals with what he describes as "*unlawful taking of company money by Saiful Islam and secret profits and diversion of company money by the applicant*". Again, Mr. Karim presumes rather than explains his interest in, and alleged knowledge of, the matters he discusses. What is clear is that, on his own case, he "*confronted the applicant and Saiful Islam*" about an alleged removal of company monies and "*I have been totally shut out from the company*". He says that the applicant has had the benefit of "*expensive legal representation*" in these and the previous proceedings. He speculates that the applicant could not afford to pay for these services and concludes "*I believe he must be receiving additional monies or must be using company monies. If he says he has significant other business interests, then I require a full explanation of how he came to own those assets.*" At paras. 42 and 43, he avers:-

"I say that the applicant has deliberately chosen to inflict financial pain on your deponent and my wife and our family. The applicant told Mr. Yasin Bhuiyan and others that he will see that my family die without food, even my child. Our family home in England is the subject of repossession proceedings.

I believe the SEDA accounts are a fabrication. The applicant wishes to run SEDA as a fraudulent company for his own benefit and for the benefit of his cronies."

127. Mr. Karim then asserts that it is necessary to have a full audit of the company's accounts and to appoint a forensic accountant to independently investigate the affairs of the company. He denies that he owes the company €30,000 on the basis that "*the figure in the Shareholder's Agreement is not the correct figure. It was only there as I was anxious to reach an agreement.*" He does accept that there may be a small amount due as a "*loan*" from the company. In Replies to Particulars dated 14 September 2018, the applicant calculated total drawings unaccounted for from the company account by the first and/or second named appellant to be €102,000. Mr. Karim denies that this is due and owing by him to the company.
128. Mr. Karim says that the applicant unlawfully terminated Mr. Hussain's position as a director and secretary of the company and "*installed himself*" as company secretary. He denies that the applicant is a vital person for the business of the company.

129. In paras. 53-59, he addresses the emails exhibited by the applicant. He says there was ample justification for the serious allegations made by Mr. Karim and/or Ms. Sultana. He says that the bank was contacted because the applicant and Mr. Islam have misappropriated company monies. He said the CRO was contacted because Mr. Fleming was not validly appointed as a director. Other than these comments, he says that he "*will explain the meaning of each email*" and says that he does not believe that "*the correct interpretation has been placed on the emails by the applicant*". He says that they contain some statements of fact and are not simple threats.
130. He then alleges that there was an unlawful course of conduct by the applicant against himself and Ms. Sultana. He says that the applicant never intended to honour his obligations in the agreement of 11 April 2017 and that it was secured "*by false representations and only after he had gravely weakened the financial position of [the appellants] by his prior unlawful behaviour.*" He alleges that the applicant "*or those connected to him*" hacked into the appellant's email account on or about 17 July 2017 and deleted many emails that would have assisted the case(s) against him. He gives no indication of the content of, or parties to, these emails or how they might have assisted his defence.
131. He concludes the affidavit by emphasising the need for a full plenary hearing, notwithstanding the terms of the consent order of 5 July 2018, and he asks for an order directing the applicant to lodge security for costs "*if the trial does not proceed to a conclusion on 3 October 2018*". He concludes by saying that the proceedings are a total abuse of a process and they amount to an extraordinary attempt by a minority shareholder to continue to "*asset strip*" a profitable company. He said the proceedings form part of a campaign by the applicant to ruin the majority shareholder and her family so as that he can secure the rest of the shares at a below market value.
132. In parallel with these motions and exchanges of affidavits, the parties were endeavouring to reach agreement to hold a mediation. They agreed to do so in principle and each instructed accountants to prepare valuations. Ultimately the mediation did not proceed as Ms. Sultana insisted that the books of the company be audited before the mediation occurred. The applicant said the company could not afford to pay for the audit and that if she insisted on an audit of the company's books, then she must pay for it. This she declined to do. The applicant offered to reinstate Mr. Hussain as a director but not as company secretary, but this was not acceptable to Ms. Sultana. The appellants' solicitors were offered the opportunity to inspect the books of the company in July-September 2018, but this offer was not taken up, as the appellants insisted upon the presentation of audited accounts.
133. On 18 September 2018, the applicant and Mr. Fleming approved the financial statements of the company as of 30 June 2018.
134. The matters listed for hearing on 3 October 2018 did not proceed and were adjourned to 6 March 2019. It was not explained why the motions were adjourned. In the intervening period, the applicant agreed to the appointment of Ms. Sultana as a director of the

company. A board meeting of the company was arranged for 15 November 2018 and in advance of the meeting she and her solicitor were furnished with the accounts for 31 December 2014, 31 December 2015, draft accounts 31 December 2016 and the draft accounts up to 30 June 2017. She was also furnished with the bank statements from April 2017 to October 2017 and the latest available management accounts. Replies to the queries raised by Ms. Sultana's accountants, Grant Sugrue, were also provided.

135. A mediation scheduled to take place on 17 November 2018 was cancelled by Ms. Sultana on the grounds that it had been scheduled without her knowledge or agreement and she had not been afforded sufficient notice to attend.
136. On the 27 February 2019, Ms. Sultana swore a further affidavit in support of her application for directions and her allegation that the applicant had failed to comply with High Court Practice Directions 75. She complained that she was not been afforded online access to the bank records of the company and that she had not had access to the company's premises. She required to know the position of the preparation and finalisation of the financial statements for the year ended 30 June 2018 and she required up to date information on the immigration status of the applicant and Mr. Islam. She asked to "*have sight of*" the applicant's judicial review proceedings and she requested information in relation to companies in South and Latin America and Bangladesh which she said were related to the company. She raised concerns about the wife of Mr. Islam receiving an annual salary of €13,500 and of the fact that the applicant, Mr. Islam and his brother were operating a clothing factory in Bangladesh. She said "*I have concerns that three employees of the company appear to be involved in a major trading concern in Bangladesh*". She complained that the monthly salary of €3,000 had not been paid to her since October 2017.
137. On 5 March 2019, the applicant swore a final affidavit where he disputed the allegation that Ms. Sultana had not been given relevant financial information and he addressed her complaints concerning companies in South and Latin America and in Bangladesh and his residential status in the country. He said "*I am in the process of completing my application for naturalisation*" and that Mr. Islam likewise was in the process of completing an application for naturalisation.
138. In addition, there were affidavits from two accountants who valued the company and the shareholding of Ms. Sultana. Mr. Paul Leonard, of Cooney Carey Accounting Limited, prepared a valuation of Ms. Sultana's 57.5%¹ shareholding in the company dated 21 September 2018, which he exhibited in his affidavit of 1 October 2018. His valuation was based upon the audit exempt accounts of the company for the years ended 31 December 2013, 2014, 2015 and the eighteen month period to 30 June 2017. He notes that the company operates in a regulated and competitive industry, that legislative developments are expected to bring higher standards and costs and that the margin for profit after tax is low. His valuation was based on the Future Maintainable Earnings (FME) methodology as the most commonly employed method for valuing profitable businesses. This involves

¹ The trial judge noted that this should have been 57% but held that it was not a material error.

capitalising the earnings of the business at an appropriate multiplier. This reflects risks inherent in the business and industry and future growth possibilities. His view was:-

"... that a company with a FME of the level of [the company], given the competitive nature of the industry, property lease in place, impending/existing regulatory requirements and new competitor entrants would attract a multiple of between 2.75 to 3.25.

Application of the Multiple to the FME produces a valuation of €125k to €148k.

The FME calculation excludes any other balance sheet value. The balance sheet value at 30 June 2018 is a negative value of €271k which will have to be funded."

He did not factor in any debt due by the appellants to the company.

139. He applied a minority interest deduction to the valuation of Ms. Sultana's 57.5% (sic) shareholding, a majority stake. He said:-

"The size of the shareholding reflects the amount of control that a shareholder can exercise on the running of a company. The value of a particular shareholding is normally discounted to reflect the degree of control. The discount range for a shareholding of between 50-75% is normally 10-15%. Given the shareholding is 57.5% (sic) and the role of [the applicant] in the business, our view is that the MI discount of 15% is appropriate."

On this basis, he says that a fair value of Ms. Sultana's shareholding in the company is in the region of €66,600, being the median of the range of €61,000 and €72,000.

140. Mr. Liam Grant of Grant Sugrue & Company, Chartered Certified Accountants, swore an affidavit on 10 March 2019 in relation to his valuation of the entire share capital of the company. He proceeds on the basis that Ms. Sultana is the registered owner of 85% shareholding in the company and he exhibited the report he prepared dated October 2018 based on the unaudited financial statements of the company produced by Mr. Farooq for the company. He said that he was not in a position to complete his independent share valuation based upon these statements and he sought audited accounts which were never produced. Mr. Grant said that valuing a company is a highly subjective determination which usually is arrived at by applying one or a combination of four methods: assets basis, earnings basis, discounted cash flow basis and dividend yield basis. Most specialists accept that the value of a company can be defined either in terms of the assets held or the future cash flows generated from those assets.
141. Mr. Grant says that the financial statements for the periods under review raise serious issues and inconsistencies in the figures and the reporting framework. He refers to the "extraordinary omission" of the details of the applicant's director's remuneration from the financial statements which is a breach of the Companies Act.

142. He carried out a sectoral analysis of three companies of comparable size to the company. Based upon the abridged financial statements of the three companies, he calculated their average achievable profit before tax. By comparing this figure to the figures for the company, he concluded that the financial performance of the company is below that of comparative businesses operating in the same market. He is of opinion that if the company were properly managed there would appear to be substantial scope for significant increase in profits.
143. He valued the company on a multiple of earnings basis. The average EBIDTA for the company for 2016 and 2017 is €109,687, but he believes that it has the potential to achieve profit before tax of circa €300k-€350k. He adopts a conservative figure of €200,000 per annum. He says that the appropriate multiplier is six, so he values the company either as $109,687 \times 6 = €658,122$, or $200,000 \times 6 = €1,200,000$. In his view, if the company were sold as a going concern, it would be likely to achieve in excess of €1.2 million. He does not explain why he uses a multiplier of six, and he does not value Ms. Sultana's shareholding (whether 85% or 57%). As a result, he does not address the issue of a discount.
144. All of the motions ultimately were heard over five days in the High Court commencing on 6 March 2019. The deponents, other than Mr. Brown, were each cross-examined on their affidavits. The trial judge reserved his decision and delivered a written judgment on 23 May 2019.

The decision of the High Court

145. The trial judge set out the history of the involvement of the appellants in the affairs of the company from 2014 and of the settlement of the 2016 proceedings in April 2017. He held that it was clear from the evidence that Mr. Karim *"had been intimately involved in the affairs of the company – and more so than the second named appellant. I am satisfied that it is he who is the beneficial holder of the shareholding which is registered in the name of his wife..."*.
146. He noted that after the settlement of the 2016 proceedings, the appellants *"recommended"* making threats similar to those which gave rise to the 2016 proceedings. The appellants again wrote to the bank and made *"unsubstantiated allegations"*. He held that the appellants (or one or other of them) attempted to renege on the compromise. They sought to ensure that their personal solicitors were appointed as solicitors to the company rather than an independent firm as had been agreed as part of the compromise. The appellants also attempted to sell their shareholding in the company to other parties which the trial judge found was in breach of the pre-emption rights of the applicant as set out in the Shareholders' Agreement. They also threatened, once again, to make contact with ACELS to make certain unspecified criticisms about the company which could *"potentially undermine the business of the company"*. Likewise, they threatened to make contact with various journalists or media outlets to make complaints about either the company or the applicant. The trial judge said that while the nature of the complaints remained unclear *"the making of such complaints obviously would have the potential to undermine the business and reputation of the company."* He held that the company paid

the €3,000 monthly salary to Ms. Sultana, as agreed under the Shareholders' Agreement of 11 April 2017, for a number of months until the company's accountants raised questions concerning the tax treatment of the payment. When the applicant sought certain information from the appellants in relation to their tax affairs, *"difficulties ensued and the [appellants] (especially the first named [appellant]) became quite threatening in relation to the conduct of the company's affairs."*

147. In para. 20 of his judgment he held:-

"Contrary to what they assert, it is clear to me that the [the appellants] were kept reasonably up to date with the financial affairs of the company, up to and including the board meeting of 15 November 2018. Detailed and comprehensive financial information was provided to them. The second named [appellant] confirmed at the board meeting on that date that she was satisfied with the information she had received and this is recorded in the minutes of that meeting."

148. He went on to note that the applicant was entitled to be concerned about the use to which the financial information concerning the company was being put in circumstances where it became clear that Mr. Karim was utilising the up-to-date financial information and sharing it with third party competitors of the company when attempting to sell his shareholding in the company.

149. Insofar as the applicant's shareholding was concerned, the trial judge was satisfied that *"the execution of the shareholders' agreement and the stock transfer form exhibited by the applicant are confirmation of the transfer of shares into his name and confirm his entitlement to a 43% shareholding in the company."*

150. The trial judge characterised the conduct of the appellants as a "ruthless pursuit of their agenda to extract cash at all costs from the company".

151. At para. 53 he concluded:-

"I am satisfied that the earlier proceedings resulted from the [appellants], and in particular the first named [appellant], failing to get his way in terms of withdrawing sums of money from the company which the company could not afford and which withdrawals would have placed the company in jeopardy – as well as causing difficulty for the staff and students. It is clear to me on the evidence that the [appellants], and in particular the first named [appellant], have felt throughout that the company's money (the money on deposit in the bank account) was theirs and ought to be available to them to do with as they wished. After being appointed a director in 2014 it is clear to me that the applicant did engage immediately with the company accountants with a view to putting in place proper protocols and procedures to protect creditors and ensure that the company's overheads and taxation liabilities were discharged. In 2015 when the demands of the first named [appellant] for the extraction of large cash sums from the business were not being facilitated he embarked upon a strategy which was designed entirely to achieve his

one objective – and that was to enable him have his way in terms of having at his disposal the cash held to the credit of the company with a view to extracting cash as he wished. It is clear on the evidence that the [appellants], and in particular the first named [appellant], were prepared to be quite ruthless in pursuit of this objective – even if that meant destroying the financial standing and reputation of the company and/or the reputation of the applicant and anyone else who stood in their way.”

152. The trial judge held that “[i]t is abundantly clear to me that there would be no company at all were it not for the efforts of the applicant and staff working with him”. At para. 100 he held:-

“... It is clear to me that the [appellants] have behaved in an oppressive fashion and that the applicant is entitled to relief under s. 212 of the Companies Act 2014. They have placed him under extraordinary pressure and have endeavoured to engineer a situation which would force him and other staff and management working with him to submit to their demands, and to permit the feeding of their insatiable appetite for cash regardless of the impact on the company.”

153. The detail of this finding is set out in paras. 115-124 of the judgment. He accepted the applicant’s allegation that the appellants planned to take control of the board of directors with a view to extracting money from the company. He held that the correspondence made clear that once the new directors were appointed they were to arrange for the company to pay “all overseas director and shareholder expenses” to be backdated for a period of four years. The appellants wanted to take control of the bank account of the company and to remove the applicant as a signatory. The trial judge accepted that the appellants had no entitlement to these payments and that Mr. Karim had actually acknowledged that he owed the company the sum of €30,000 and Ms. Sultana owed €10,000. At para. 122 he held:-

“The [appellants’] conduct threatened the very existence of the school and the company. If the [appellants] did extract a significant sum of money from the company, the removal of this money could seriously and fundamentally undermine the viability of the company. No real justification for their conduct has been put forward by the [appellants].”

154. He held that the applicant’s solicitor was contacted by a potential purchaser of Ms. Sultana’s shares in the company. He concluded that one or other of them had been attempting to sell the shares to other parties in clear breach of the pre-emption rights set out in the Shareholders’ Agreement. In addition, he held that Ms. Sultana sought to resile from the agreement to transfer shares to the applicant to ensure his legal shareholding matched his equitable shareholding of 43%. She purported to cancel the share transfer form she had previously executed. At para. 129, the trial judge quoted a lengthy passage from the vitriolic and threatening email sent on 4 September 2017 from the email address of Mr. Karim and signed by Ms. Sultana. The trial judge stated that he was quite satisfied that the email was composed and sent by Mr. Karim. The trial judge

also quoted from an email of 8 September 2017 which was signed by Ms. Sultana and which he was satisfied was composed and sent by Mr. Karim, which was equally threatening (see para. 38 above).

155. At para. 140 he set out certain facts as he had found them:-

"The following facts are clear;-

- a) *The first named [appellant] is the beneficial owner of the shareholding which the second named [appellant] is entitled to have in her name and which is a 53% shareholding.*
- b) *The actions and involvement of the second named [appellant] and of Mr. Amjad Hussain have been at the behest of and have been controlled by the first named [appellant] throughout.*
- c) *The first named [appellant] is a man of some business ability in terms of identifying business opportunities. He has shown this through his involvement with English language speaking schools including his actions in relation to the setting up of SEDA.*
- d) *However, the first named [appellant] is not committed to excellence and has not been committed to excellence in SEDA. Instead, his objective throughout has been to maximise profits at all costs and to extract cash from SEDA – and indeed from the other ventures in which he has been involved, at any opportunity and from a distance.*
- e) *The applicant is not without fault. It is clear that the [appellants] have been isolated by the applicant and the team of management who support the applicant insofar as the company is concerned. It does seem to me that the [appellants'] perception of being frozen out of the company, if I put it that way, is an understandable interpretation of the events that have arisen over the last number of years. However, I am also satisfied that this state of affairs is a consequence of the actions of the [appellants], and of the first named [appellant] in particular, insofar as the company is concerned. To borrow a sentence from the judgment of Laffoy J. in Kelly v. Kelly & Kelly, "It is a state of affairs which has been primarily brought about by the conduct of the first [appellant]."*
- f) *Fundamentally, the [appellants] and in particular the first named [appellant], are unable to grasp the reality that the profits available for distribution are not what they would wish.*
- g) *If the applicant and the staff supporting him did not act in the way in which they have acted in standing up to the [appellants] and to the first named [appellant] in particular I am satisfied that SEDA would have long since ceased to exist. It would have ceased to exist at the expense of the students enrolled in the college, at the*

expense of the applicant, at the expense of the staff of the college and probably also at the expense of the taxpayer.

As an aside, it is interesting to note that the minutes of the Board meeting at the time of the settlement of the earlier proceedings included the following provision on the second page at para. 8:-

"Any disputed issue relating to SEDA has to be dealt within the company. If anyone tried to report to any third party regarding this to dominate others which may hamper the business then he/she will be personally liable for the entire loss (if any) of the business".

This is interesting because the wording was clearly carefully considered. Carefully considered because the first named [appellant] was involved. His actions subsequent to the settlement of the earlier proceedings were in my view an attempt by him to dominate the applicant and the others involved in the management of the company.

- h) His actions were burdensome, harsh and wrongful. The actions of the second named [appellant] and of Mr. Amjad Hussain which are detailed in this judgment were done at the bidding of the first named [appellant] and were also burdensome, harsh and wrongful. I am satisfied that the [appellants], and the first named [appellant] in particular, have engaged in a campaign of oppression against the applicant since the summer of 2017.*
- i) The strategy of the [appellants], and in particular the first named [appellant], was clearly a strategy to create such a climate of fear within the company that would permit the first named [appellant] to coerce the applicant and the company to allow him withdraw cash routinely and regardless of whether or not the company could afford to meet such withdrawals without its liquidity/solvency being affected.*
- j) It is clear from the shareholder's agreement entered in 2017 that the second named [appellant] is entitled to 57 ordinary shares of the company. The applicant was entitled under the agreement to 25 ordinary shares and Saiful Islam was entitled to eighteen ordinary shares. However, the latter were transferred (and this is noted in the agreement) to the applicant – thus giving him beneficial ownership of 43 ordinary shares in the company."*

156. The trial judge acknowledged that the accounts and bookkeeping of the company had been criticised by Mr. Grant, the accountant who gave evidence on behalf of the appellants. However, he concluded, having heard the applicant and other witnesses, including Mr. Fleming, *"that the applicant and the staff supporting him in the management of the company are doing so honestly. Having considered the [appellants'] affidavits, and the oral evidence of and on behalf of the [appellants], I am not satisfied that the [appellants] are as concerned about regulatory and revenue compliance as they would like the court to believe."*

157. He was satisfied that the college was a reputable English language school which operated to high standards. He noted it had ACELS accreditation and that the courses were recognised on the Interim List of Eligible Programmes by the Department of Justice and Equality.
158. He said it was clear that the parties could not work together and it was not in the interest of the company that the appellants be involved in the day-to-day running of the college. Equally, it was clear that the involvement of the applicant and the staff and management supporting him in the company were "essential to its survival and progress". He therefore concluded that the applicant was entitled to relief under s. 212 of the Act and that it was not either appropriate or desirable to order the company to be wound up pursuant to s. 569 of the Act. Accordingly, he said he would make orders as he considered necessary to bring finality to the dispute. It did not seem appropriate to order the appellants to purchase the applicant's shares in the company in light of the findings he had made. Accordingly, he made an order directing the appellants to sell the shares to the applicant if he was prepared to buy them at a price to be fixed by the court.
159. Two accountants gave evidence as to the value of the company and the value to be attributed to the 57% shareholding in the name of Ms. Sultana. The trial judge assessed their evidence and he concluded that Mr. Leonard, on behalf of the applicant, undervalued the company and that Mr. Grant, on behalf of the appellants, overvalued it. He accepted the importance of the comparative analysis carried out by Mr. Grant and of the necessity to consider the strengths, weaknesses, opportunities and threats faced by the company as highlighted by Mr. Leonard. He concluded that Mr. Grant did not give appropriate consideration to these factors or to the fact that the company is operating in a volatile, competitive and niche industry. For these reasons, he rejected the multiplier of six, suggested by Mr. Grant, as being too great and he chose the median multiplier suggested by Mr. Leonard, a multiplier of three, as being realistic.
160. He then considered the alternative basis advanced by Mr. Grant for valuing the company, an average EBIDTA or minimum projected achievable profits and applied the multiplier of three to these figures. This placed the value of the company between €329,061 and €600,000. He determined that a realistic value of the entire company was the middle of these two figures i.e. €464,530. He did so because "*[i]t is a troubled company in a volatile and competitive and niche market. Without the applicant and his loyal team who are running the school with him it would be in a precarious position ... [a]ll the difficulties in the company and the risks in the industry must feature in what a willing purchaser would be prepared to pay for the company if it was being sold on the open market by a willing vendor.*"
161. He accepted the evidence of Mr. Leonard that the discount range for a shareholding of between 50%-75% is normally 10%-15%. He accepted that the value attributable to the 57% shareholding of the second named appellant should have a "*minority interest*" deduction of 15%. 57% of €464,530 is €264,782. Deducting 15% from this figure gives a total valuation of €225,065.

162. He noted that the appellants, between them, owed the company €40,000. Ms. Sultana was entitled to be paid €3,000 per month pursuant to the Shareholders' Agreement. He held that she was entitled to be paid that amount up until 11 April 2019, that being an appropriate cut-off date in light of the proceedings and their course. This came to a total of €72,000. Credit was given for payments of €21,000, bringing the amount due to €51,000. He set-off the sum of €40,000 due by the appellants to the company, giving an outstanding balance due of €11,000 which was to be paid by the company to the appellants.
163. He held that if the applicant wished to acquire the shareholding of the appellants, this was the sum he was required to pay for the shares.
164. The trial judge dealt with the motions of the appellants in the course of his judgment on the s. 212 application as he said that they were all intertwined. He described Mr. Karim's application to dismiss the proceedings against him on the grounds that they were frivolous and vexatious as audacious. It is apparent from his judgment that he not only dismissed the motion, but he found in favour of the applicant against Mr. Karim.
165. In respect of Ms. Sultana's first motion, seeking to be appointed a director of the company, the applicant agreed to this during the progress of the proceedings and she was appointed to the board in October 2018. The trial judge held that it was not necessary to issue the motion as the issues could all be dealt with adequately in the original proceedings instituted by the applicant. He held the fact that she also sought an order under s. 179(5) of the Act served to confirm the view that the appellants "*have throughout been anxious to gain total control of the company in order to achieve their ultimate objective of extracting cash from the company*". He struck out the motion and said he would hear submissions on the costs.
166. On the second motion, seeking access to the statutory books of the company and an audit for the years 2016, 2017 and 2018, he noted that the applicant agreed to have the accounts audited, provided Ms. Sultana paid for this. The trial judge felt the motion was unnecessary and the issues could have been dealt with in the existing proceedings. The relief sought pursuant to s. 797 of the Act made little sense in light of the familiarity of the appellants with the affairs of the company. He struck out the motion.
167. He struck out the third motion (seeking the reinstatement of Mr. Hussain) on the grounds that the applicant offered on 25 May 2018 to reinstate Mr. Hussain as a director (but not as the company secretary), it was not necessary to bring a separate motion and the removal of Mr. Hussain was as a result of his own decision clearly communicated to the applicant.
168. The fourth motion sought an order deeming the agreement of 11 April 2017 terminated or rescinded, and an order cancelling the registration of Mr. Fleming as a director in 2015. This too could have been dealt with in the proceedings without bringing a separate motion. Ms. Sultana submitted that on 19 June 2018 her solicitors indicated that she was willing to have the position of Mr. Fleming regularised as a *quid pro quo* for the

regularisation of the position of Mr. Hussain. In oral submissions, it was indicated that there was "no objection to Ian Fleming provided the payments of salary to her were started again." The trial judge struck out this motion too on the basis that it was unnecessary, and the issues could have been resolved within the proceedings.

169. In the fifth motion, Ms. Sultana sought directions and an order directing compliance with Practice Direction 75. This motion was dealt with by Stewart J. on 5 July 2018 and the costs were reserved.
170. The sixth motion was Ms. Sultana's application under the Beneficial Ownership Register Regulations. The trial judge described the issuing of this sixth motion as "absurd" and said that there was no justification for the motion. If any issue arose as to the beneficial ownership register it could be dealt with in the proceedings. He struck out the motion. He concluded in para. 36 as follows:-

"I should add that whatever technical justification there may be for any of the above motions I do not consider that they were justified given the entire context, save perhaps the motion concerning Practice Direction 75. All of the other issues could have been canvassed at the hearing of the original motion as part of the entire case rather than creating a cumbersome vehicle with significant cost implications to air grievances and issues which were live in terms of the dispute to be decided in the original Section 212 proceedings."

After he delivered his reserved judgment, he heard submissions from the parties on the costs of the proceedings and the various motions. He ordered that the applicant should recover his costs from the appellants on a joint and several basis, including reserved costs and he made no order as to the costs of Ms. Sultana's six motions and Mr. Karim's motion.

The appeals

171. The appellants were separately represented at the hearing in the High Court and they each filed separate Notices of Appeal. Mr. Karim raised 66 grounds of appeal. Ms. Sultana raised 68 grounds.
172. In his submissions, Mr. Karim's grounds are addressed under the following headings where he argues the trial judge erred in:
1. Granting relief under s. 212.
 2. Having regard to incidents which occurred prior to the Shareholders' Agreement.
 3. Holding that Mr. Karim is the beneficial owner of shares/his findings against Mr. Karim.
 4. Not having regard to acts of oppression against Ms. Sultana.

5. Failing to have proper regard to the unsatisfactory evidence of the applicant: that the applicant did not come to court with clean hands and he failed to accurately describe his residency status.
173. Counsel for Ms. Sultana submitted that her grounds can be consolidated into four main themes or grounds of appeal:
1. The rule in *Henderson v. Henderson*
 2. The s. 212 proceedings
 3. The six motions
 4. The share valuation.
174. The oral submissions of counsel elaborated on these themes. The principal issues addressed by Mr. Karim's counsel were whether:
- (1) Section 212 could apply to him in circumstances where he was neither a director nor a shareholder, nor did he conduct the affairs of the company.
 - (2) The shareholding of Ms. Sultana was beneficially owned by him.
 - (3) The trial judge erred in his assessment of the evidence and whether he failed to address critical factors in his judgment.
 - (4) The company ought to have been wound up rather than the majority shareholding sold to the minority shareholder.
 - (5) The applicant was guilty of oppressing the appellants and of withholding from them information concerning the affairs of the company and denying them representation on the board of Directors of the company.
 - (6) The trial judge erred in valuing the company and in applying a minority discount to the 57% shareholding of the Ms. Sultana.
 - (7) The trial judge failed to have any or any adequate regard to the immigration status of the applicant.
 - (8) That the trial judge erred in accepting the evidence of Mr. Fleming and Mr. Islam.
 - (9) The trial judge erred in not setting aside or rescinding the settlement agreement of 11 April 2017.
 - (10) The trial judge erred in not ensuring compliance with High Court Practice Direction 75.
 - (11) That the trial judge erred in his application of the principles in *Henderson v. Henderson*.

(12) The trial judge erred in awarding the costs to the applicant on a joint and several basis and in making no order as to costs in relation to the motions.

Counsel for Ms. Sultana additionally contended that:

(13) The trial judge erred in the application of the jurisdiction of s. 212 in circumstances where, *inter alia*, the applicant had failed to particularise any alleged wrongdoing against her specifically; where she was not a director, nor was conducting the affairs of the company; where she was denied access to requested information, books and records as the majority shareholder.

(14) The trial judge erred in striking out her sixth motion and not addressing the issues raised under the European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2016.

(15) The trial judge erred in failing to take account of numerous breaches of the Shareholders' Agreement.

Discussion

175. Section 212 of the Companies Act 2014 provides:-

"212. (1) Any member of a company who complains that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised—

(a) in a manner oppressive to him or her or any of the members (including himself or herself), or

(b) in disregard of his or her or their interests as members, may apply to the court for an order under this section.

(2) If, on an application under subsection (1), the court is of opinion that the company's affairs are being conducted or the directors' powers are being exercised in a manner that is mentioned in subsection (1)(a) or (b), the court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit.

(3) The orders which a court may so make include an order—

(a) directing or prohibiting any act or cancelling or varying any transaction;

(b) for regulating the conduct of the company's affairs in future;

(c) for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital; and

(d) for the payment of compensation."

176. The applicant is a registered shareholder and thus has locus standi to maintain proceedings pursuant to s. 212.

177. The proceedings may be brought on a number of bases:

- (i) that the affairs of the company are being conducted in a manner oppressive to him or her or any of the members (including himself or herself);
- (ii) that the powers of the directors of the company are being exercised in a manner oppressive to him or her or any members (including himself or herself);
- (iii) that the affairs of the company are being conducted in disregard of his or her or their interests as members; or,
- (iv) the powers of the directors of the company are being exercised in disregard of his or her or their interests as members.

178. The complaint may be in respect of the conduct of the members as corporators or in relation to the actions of the directors in their exercise of their powers as directors, or both. Where the case made is that the affairs of the company are being conducted in a manner oppressive to the applicant, this may be *qua* director and need not be *qua* member (see, *Re Murph's Restaurant Limited* [1979] IEHC 1, [1979] ILRM 141). Oppressive conduct will generally involve the company's authority being exercised contrary to the interests of members in a manner that is "*burdensome, harsh or wrongful*" (see, *Greenore Trading Limited* [1980] ILRM 94 and *Re Charles Kelly Limited* [2011] IEHC 349 and [2021] IECA 244 and *In the matter of ABC Limited (X v. Y)* [2020] IEHC 495).

179. The court adopts an objective standard when assessing whether particular conduct should be deemed to be oppressive. In *Re Irish Visiting Motors' Bureau Limited* (Unreported, High Court, Kenny J., 7th February, 1972) Kenny J. said:-

"The affairs of a company may be conducted or the powers of the directors may be exercised in a manner oppressive to any of the members although those in charge of the company are acting honestly and in good faith. If one defines oppression as harsh conduct or depriving a person of rights to which he is entitled, the person whose conduct is in question may believe that he is exercising his rights in doing what he does. One of the most terrifying aspects of human history is that many of those whom we now regard as having been oppressors had a fanatical belief in the rightness of what they were doing. The question then when deciding that the conduct of the affairs of a company or the passing of a resolution is oppressive is whether, judged by objective standards, it is."

The subjective belief of (alleged) perpetrators as to their entitlement to act in the manner complained of is not, and could not be, the basis for the court's assessment of their conduct.

180. Strikingly, s. 212 does not identify who is conducting the affairs of the company for the purposes of the section or even who is exercising the powers of the directors. It is the actual conduct or the actual exercise of the powers which is relevant, not whether the

alleged perpetrator is entitled to conduct the affairs of the company or to exercise the powers of the directors of the company. This was made clear in *Charles J. Kelly Ltd.* in the decision of the Court of Appeal where Haughton J. stated at para. 154:-

*"... the section must also apply to the **purported** exercise of powers, even if the purported exercise is in strict law **ultra vires** or otherwise ineffective; if it were otherwise the objective of the section would be frustrated by the additional fact of illegality of oppressive acts or omissions intended by the perpetrator(s) to be the (lawful) exercise of the power(s) of the director(s)." (emphasis in the original)*

Thus, a person who is not a director but purports to exercise the powers of the directors of the company, or who was not a member of the company but purports to conduct the affairs of the company as though they were, is not simply and automatically excluded from the scope of the section by reason of the fact that he or she is not a member of the company or is not a director of the company. The section is concerned with realities rather than mere technicalities.

181. This was recognised by Barrington J. in *Re Williams Group Tullamore Ltd.* [1985] I.R. 613, where the fact that the shareholders acted within their formal powers did not save the action from amounting to oppression within the meaning of s. 205 of the Companies Act 1963, the precursor to s. 212.
182. The corollary is also true. While the failure to comply with statutory obligations may not of itself amount to oppression, if it is part of a deliberate scheme to deprive a shareholder of his rights or to cause him loss, it may then constitute oppressive conduct. This is clear from the decision of O'Hanlon J. in *Re Clubman Shirts Limited* [1983] ILRM 323, at p. 327, where he said:-

"... I would not classify as oppressive conduct within the meaning of the Act, the omission to comply with the various provisions of the Act referable to the holding of general meetings and the furnishing of information and copy documents. These were examples of negligence, carelessness, irregularity in the conduct of the affairs of the company, but the evidence does not suggest that these defaults or any of them formed part of a deliberate scheme to deprive the petitioner of his rights or to cause him loss or damage."

Too strict a focus on the technicalities of the situation may not capture the realities. The court is required to consider the overall factual situation. In *Charles J. Kelly Ltd.*, Laffoy J., in the High Court, had regard to the overall view of the evidence and to *"the combination of factors relied on by the petitioner as constituting oppression"*, rather than simply focusing on the individual acts complained of. It is implicit in the observations of O'Hanlon J., quoted above, that if the complained of conduct actually formed part of a deliberate scheme to deprive the petitioner of his rights or to cause him loss or damage, then such conduct would amount to oppression and would entitle the petitioner to relief.

Did Mr. Karim oppress the applicant?

183. Mr. Karim maintains that he is neither a shareholder, nor a director, nor a manager of the company. In his affidavit, sworn on 26 June 2018, he averred that the applicant had no entitlement to join him in the proceedings as he was neither a shareholder nor a director, shadow director, *de facto* director or manager, and he does not have any influence over the employees of the company or the finances of the company. He averred that he was not involved in the day-to-day management of the company and he did not have control of the bank account or the finances of the company.
184. His counsel submitted on appeal that pre-2016 his role in the company was "*between educational consultant and a management consultant*" and that he was "*not far off being a director*". He said that after 2016 he did not have any real role in the company.
185. It follows, on his own case, that he had no entitlement to engage at all with the applicant in relation to the affairs of the company, *a fortiori*, after the settlement in 2017. Quite literally, it was no business of his. He advances no justification for his active involvement in the affairs of the company both pre and post 2016. If the position of Mr. Karim were accepted by this court, it follows that there was no basis whatsoever for his conduct in relation to the affairs of the company.
186. Furthermore, Ms. Sultana's counsel acknowledged in submissions to this court that her husband, Mr. Karim, treated the company as though it was his company. She said that she had no control over him, that he was uncontrollable. He took it upon himself to act and she let him act.
187. It is striking that he does not engage in any meaningful way with the central allegations made by the applicant against him and which were upheld by the trial judge. The trial judge found that Mr. Karim (together with Ms. Sultana) was attempting to treat the assets of the company as his own and to extract money, to which he was not entitled, from the company. He was prepared to bully persons to permit him so to do, for example, Mr. Hussain, the former company secretary. The fact that the applicant and Mr. Islam did not give in to his demands does not detract from the entirely improper nature of his actions. He resorted to baseless personal attacks on these and other individuals and sought to discredit them with both the bank and the Department of Justice, and generally to discredit the management of the company. Clearly, none of this was in the interest of the company.
188. The documentary evidence, and in particular the emails, present a very different picture to that painted by Mr. Karim. He was clearly heavily involved, to put it no further, prior to the compromise of 2017. On the submission of his own counsel, he was not far off being a director, though on his **own** case he had no standing whatsoever. In the email of 4 April 2015, he complained about the cancellation of his credit card with the company and about the fact that the company had taken a new building "*without my permission*". He insisted that "*any cheque must [be] sign[ed] by me*" and that he would be a director of the company. He required that all his expenses would be paid by the company. He insisted that there would be "*no meeting with any authority and internal without my presence*". If his demands were not met, he said he would transfer two tranches of 15%

interest in the company to two new persons, appoint three new directors, procure his addition as a signatory to the company bank account, issue a €100,000 company loan (presumably to himself) and "close bank account then you can't pay staff salary building rent etc." and "inform Accels (sic)".

189. How he purported to achieve any of these steps in the circumstances where he was neither a shareholder, a director, nor an employee is never addressed, never mind explained, by him. But this lack of standing did not deter him from carry through with his threats. On 22 June 2015, an email from "Reza" but signed by Ms. Sultana was sent to the bank stating "there is a fraud going on in the bank and the company house" which resulted in the immediate freezing of the company's bank account as recounted by the trial judge. He advances no basis for this most damaging allegation or for his entitlement to interfere in the relationship between the company and its bank.
190. The Shareholders' Agreement of 11 April 2017 records in the second schedule that Ms. Sultana is to be paid €3,000 per month. The minutes of the Board Meeting also of 11 April 2017, which were signed by Mr. Karim, for and on behalf of Ms. Sultana (although neither were directors of the company), records that:-

"All three partners (Mrs. Mahbuba Sultana or Mr. Rezaul Karim, [the applicant] and Mr. Saiful Islam) will receive salary €3,000 monthly".

Mr. Karim was not an employee of the company nor a "consultant" so, assuming that he was neither a director nor a shareholder of the company, the basis for any payment to him is entirely unclear, particularly in light of his counsel's submission that after 2016 he did not have "any real role" in the company.

191. Notwithstanding this, following the settlement in April 2017, Mr. Karim continued to involve himself in the company. He requested that the company distribute a dividend, notwithstanding the fact that he was not a shareholder. On 8 June 2017, he sent a Viber message to Mr. Islam declaring "war". In July, he complained that the applicant and Mr. Islam were trying to kick him out of the business and said "I have my rights as well. You forgot that I have share on (sic) this business. You should take my authorisations for everything which is normal ... don't you think if I wanted the control and access of the business then I could."
192. In emails of 4 and 8 September 2017, which the trial judge held were written and sent by Mr. Karim though signed by Ms. Sultana, he strenuously asserts *his* rights in strident terms in relation to the company, which he describes as his (see paras. 32 and 38 above). He directed Mr. Hussain to try to change the bank mandate in September 2017 and he emailed the bank complaining about the conduct of the applicant, alleging fraud. He disclosed confidential information to a third party to whom he offered to sell the shares held by Ms. Sultana in the company. He sought to appoint three new directors to the board and to remove the applicant and Mr. Fleming as directors. He gave instructions to Ms. McKenna, who provided company secretarial services to the company, to arrange that on the adjourned date of the EGM, 5 October 2017, that he and Mr. Chowdhury were

to be appointed directors, the applicant and Mr. Fleming were to be removed as directors, the bank mandate was to be changed and the signatories were to be the new directors and not the applicant, Mr. Karim's personal solicitors were to be the company's solicitors and "[a]ll overseas directors['] and shareholders['] last four years['] outstanding expenses and salary to [be paid] immediate[ly] within 10 days ."

193. After he failed to attend the mediation which had been arranged for 5 October 2017, he tried to meet with the applicant and Mr. Islam saying "[please] try to understand [I] am a major shareholder, you may give me [a] bit more hassle and troubles but I will win no matters anything (sic)." This offer was not taken up. Following on from the EGM of 5 October, Ms. McKenna filed the details of the appointment of the new directors in the CRO.
194. In light of all of this, and the matters more fully set out earlier in this judgment it is hardly surprising that Ms. Sultana's counsel submitted to this court that he treated the company as his own and that he "was out of control".
195. Considering the authorities and the facts I have summarised, Mr. Karim's argument that, because he was neither a shareholder nor a director, nor involved in the day-to-day management of the company, nor a signatory on the company's bank account, the section simply cannot apply to him, is untenable. At all times, Mr. Karim behaved as though he was a director or a shareholder, or both, of the company, as was acknowledged by Ms. Sultana on appeal. The lack of status did not prevent him from acting as though he was both a director and a shareholder – and indeed the majority shareholder. He cannot evade the provisions of s. 212 by operating without any entitlement or through proxies such as Mr. Hussain or even Ms. Sultana. Simply put, he cannot behave as though he were a director and shareholder and then assert that s. 212 has no application to him because he is neither.
196. In assessing whether a party has been guilty of oppression, the court must take an overall view of the evidence and assess it by objective standards, not by reference to the subjective belief of a party as to his or her entitlement to act as they have. In my judgment, there was ample evidence to support the trial judge's conclusion that Mr. Karim was purporting to conduct the affairs of the company and purporting to exercise the powers of the directors of the company in a manner oppressive of the applicant. He implemented a clear scheme designed to force the applicant to comply with his requirements, failing which he would engage in a ruthless campaign, on a variety of fronts, to pressurise the applicant directly, and indirectly, by threatening the business of the company. He did so on the basis that the company and its business were his company and his business. I highlight the following actions, while emphasising the importance of considering the overall conduct of Mr. Karim:-
- (1) Both before and after the Shareholders' Agreement of 11 April 2017, he consistently referred to the company as "my company" and the business as "his business". Ms. Sultana conceded that he treated the company as though it was his own.

- (2) He consistently gave instructions, made demands and uttered threats which were all premised upon his ownership of the majority stake in the company.
- (3) He consistently sought to withdraw money from the company by way of loans or "salary" or "expenses", despite the fact that, according to his own counsel, he had no real role in the company after 2016.
- (4) He pressurised Mr. Hussain to write to the bank to change the company's mandate so that he could then make the withdrawals which the applicant had refused to permit.
- (5) He sought to secure control of the board of the company by removing the applicant and Mr. Fleming as directors of the company and appointing three directors of his choice in their place. Later, he sought to have himself and Mr. Chowdhury appointed as directors and to have the applicant and Mr. Fleming removed as directors.
- (6) He gave instructions to Ms. McKenna regarding the adjourned EGM on the 5 October 2017 for the removal of the applicant and Mr. Fleming as directors and the appointment of himself and Mr. Chowdhury as directors in their place.
- (7) He instructed Ms. McKenna that Mr. Hussain was to be reinstated as a director and a secretary.
- (8) He instructed Ms. McKenna that Ms. Sultana was transferring her shares into his name.
- (9) He informed Ms. McKenna that he wanted the bank mandate changed by removing the applicant and substituting Mr. Chowdhury and Mr. Hussain.
- (10) He clearly intended to withdraw considerable sums immediately from the company once he secured control of the board of directors and changed the bank mandate
- (11) He passed confidential financial information in relation to the company to a third party competitor of the company while offering to sell the shares of Ms. Sultana to its competitor.
- (12) He sought to discredit the applicant and Mr. Islam with the company's bank, ACELS, the ODCE, the Minister for Justice and Equality and various media outlets and journalists.

197. In my judgment, there was overwhelming evidence to the effect that Mr. Karim was purporting to conduct the affairs of the company and to exercise the powers of the directors of the company in a manner that was oppressive of the applicant and the trial judge was entitled to so conclude.

198. Mr. Karim argued that the trial judge erred in finding that Mr. Karim had been guilty of oppression as he relied upon matters which predated the settlement of the 2016 proceedings. He submitted that the applicant was precluded by the rule in *Henderson v. Henderson* from raising, and the court from relying on, matters which could have been raised and determined in the 2016 proceedings but which were not. While the details of Mr. Karim's conduct from April 2017 reflected conduct which preceded April 2017, there was ample evidence of new oppressive conduct which occurred after the compromise of the 2016 proceedings. In view of the detail of the conduct which post-dated the compromise of the 2016 proceedings in April 2017, the case made by Mr. Karim that the applicant is precluded from bringing these proceedings on the basis of the principles in *Henderson v. Henderson*, is unstateable.
199. Other matters raised by the applicant do not come within the scope of the section, but they establish Mr. Karim's malicious and malign intent towards the applicant. While this is not a necessary ingredient in a case claiming oppression, it may be highly relevant to the particular case brought to court. Mr. Karim made serious allegations of fraud and misappropriation of company funds against the applicant and Mr. Islam without establishing a single shred of evidence to support the allegations. He made unjustifiable and unwarranted complaints to the CRO, the ODCE and the gardaí. Complaints were made to ACELS and EAQUALS, though the nature of those complaints was never specified; he contacted the media about the applicant and Mr. Islam; and, he raised complaints about their respective immigration status. He also contacted the bank and alleged that the applicant and Mr. Islam had misappropriated company funds. He alleged that his emails had been hacked by them. All of these actions clearly were designed to damage both the business of the company and to damage the applicant and any person who allied themselves with him, such as Mr. Islam.
200. The emphasis he placed upon the immigration status of the applicant, the fact that he had entered into a "sham marriage" and had no valid work permit was indicative of his approach to the proceedings; that attack is the best form of defence. In *Charles J. Kelly Limited*, Laffoy J. acknowledged that, while the petitioner's conduct in that case "to put it mildly, has been reprehensible on occasion"², the conduct did not disentitle him to relief, as she concluded that the state of affairs had been primarily brought about by the conduct of the first respondent. The decision of Haughton J. in the Court of Appeal, upholding her decision, stated that the finding that a petitioner bore some responsibility for the breakdown of the relationship and for the company's state of affairs "does not preclude the court from finding oppression, and granting a remedy under the section. If it were the case that relief could only be granted to a blameless petitioner, this would seriously undermine the utility of the section, especially in circumstances where it is most likely to be resorted to bring to an end an intractable situation/problem".
201. The allegations made against the applicant must be assessed in the light of these comments, as well as the rejection by the trial judge of the complaint that the applicant

² See para. 11.5 of the judgment

withheld information from the appellants, such as management accounts, bank accounts and the annual returns.

202. For these reasons, I would reject Mr. Karim's appeal against the finding by the trial judge that he had oppressed the applicant in the conduct of the affairs of the company. Any denial by the applicant of the entitlements (if any) of Mr. Karim were far outweighed by his conduct.

Did Ms. Sultana oppress the applicant?

203. Ms. Sultana argued that the applicant had failed to particularise his claim against her and that, in fact, he had not established a claim of oppression against her. The trial judge rejected this argument and accepted that the appellants acted together. In my judgment, there was ample evidence to support his conclusion in this regard.
204. On her case, Ms. Sultana is the shareholder in the company, yet she permitted Mr. Karim on many occasions to act and behave as though he, rather than she, was the owner of the majority of the shares in the company. It is not disputed that she had very little active involvement in the company, whether before or after April 2017, while Mr. Karim was involved in the affairs of the company. Mr. Islam said he only ever dealt with Mr. Karim in relation to the affairs of the company. Mr. Fleming was recruited by Mr. Karim and all his dealings were with him. Mr. Brown said that Mr. Karim told him that he was the real owner of the company and he only met Ms. Sultana once in 2014.
205. Ms. Sultana acquiesced in the conduct of Mr. Karim. At no point did she seek to distance herself from the actions of her husband or to disclaim responsibility for his actions. She did not state that he was not acting on her behalf, though at the hearing of the appeal, for the first time she said that he was out of control. Even then she did not disavow his actions. On the contrary, she affirmed his acts and conduct while her own actions implemented the joint plan to oust the applicant from his position of control of the company with a view to withdrawing monies from the company. She signed emails drafted by him and sent emails which chimed with and complimented those sent by him, particularly from September 2017 onwards. She participated in a concerted plan to discredit the applicant to the detriment of the business of the company. While Mr. Karim wrote to QQI making undisclosed complaints, she contacted ACELS, again making undisclosed complaints. She too threatened to contact the ODCE, immigration authorities, the bank and media outlets with a view to pressurising the applicant by discrediting him and undermining the business of the company.
206. Most importantly, she actively implemented the plan to remove the applicant and Mr. Fleming as directors of the company and to replace them with directors who would carry out the instructions of the appellants, Mr. Karim and Mr. Chowdhury, by exercising her power as the holder of 85% of the registered shares of the company to call the necessary EGM. She attended the EGM on 27 September 2017 and the adjourned meeting on 5 October 2017. On that occasion, she passed the resolutions appointing Mr. Karim and Mr. Chowdhury directors of the company. In so acting, she was conducting the affairs of the

company within the meaning of s. 212. And she was causing loss to the applicant both as a director and as a shareholder. The fact that she was acting within her formal powers does not absolve her from liability under the section (see, *Re Williams Group Tullamore Ltd.* [1985] I.R. 613).

207. Furthermore, on 11 April 2017 Ms. Sultana agreed to transfer 27 shares to the applicant as part of the compromise of the 2016 proceedings and she executed a stock transfer transferring the shares to the applicant. Yet, on 16 October 2017, she purported to cancel the transfer on the grounds that the applicant had breached the terms of the Shareholders' Agreement. This action sought to deprive the applicant of shares in respect of which he had a *prima facie* entitlement to be registered as owner. This was conduct by her aimed at the applicant's rights as a member of the company, and thus within the scope of s. 212.
208. In my opinion, the trial judge was not only entitled to conclude, but he was correct in concluding, that Ms. Sultana also, individually and in concert with Mr. Karim, had oppressed the applicant within the meaning of the section.
209. Ms. Sultana argued that the applicant lacked standing to maintain these proceedings as the wrongs he alleges are wrongs suffered by the company and accordingly the rule in *Foss v. Harbottle* applies. I do not accept this submission. While some of the conduct complained of undoubtedly has caused damage to the company, the gravamen of the applicant's case is that the appellants have engaged in a campaign against him as a member and as a director of the company. Ms. Sultana personally sought to remove him as a director of the company and this action must be seen in the context of the overall complaint made by the applicant. She personally sent the emails set out in paras. 9, 32, 38, 45, 61, 63 and 66 and she is to be identified with the acts of oppression by Mr. Karim against the applicant for the reasons I have set out. I am satisfied that his case is for wrongs done to him and that he is not seeking compensation for wrongs done to the company or seeking to recover reflective loss. For this reason, I would reject the assertion that the applicant lacks standing to maintain these proceedings.

Complaints by the appellants against the applicant – do they amount to a defence or a valid counterclaim?

210. The appellants say that the applicant was guilty of oppression against them. Insofar as Mr. Karim seeks to advance this as a defence to the claim against him, this is inconsistent with his own defence which is that he is neither a shareholder nor a director. As such, the applicant cannot act in a manner oppressive to him as a member or a director or in disregard of his interests as a member. Furthermore, it has long been established that in order to invoke the section, the complainant must be a member of the company and Mr. Karim is not entered on the Register of Shareholders. Accordingly, he lacks *locus standi* to advance this case. He may not advance the case of Ms. Sultana, as a person may not advance another person's case, a *jus tertii*. Therefore, his complaints regarding the applicant's conduct cannot afford a defence to the claim brought against him.

211. As regards Ms. Sultana, she says that she has been deprived of her rights as the majority shareholder in the company. She has been provided no, or no adequate, accurate financial information in relation to the company and she has been denied audited accounts. She says the applicant unilaterally changed the filing dates thereby further denying her information to which she has a statutory entitlement; the applicant unilaterally changed the company accountants; the applicant wrongfully removed Mr. Hussain as a director and the company secretary by wrongfully filing a Form B10; and, he has wrongfully refused to appoint her to be a director of the company. As company secretary, she says that he has failed properly to keep the statutory books and records of the company, that he has kept inaccurate books of account and that he has misappropriated company monies. She says that the applicant is essentially motivated by a desire to acquire the entire shareholding in the company and that the proceedings are but a means to an end in that regard. She has been frozen out of the company in which she is the majority shareholder. She claims that the applicant's proceedings are an abuse of the processes of the court.

212. In her counterclaim, Ms. Sultana claims damages for breach of the agreement of 11 April 2017, for breach of statutory and fiduciary duty and for intentional interference with her economic interests. She seeks relief pursuant to s. 212 of the Act comprising:

- i. The removal of the applicant as a director of the company.
- ii. An order deeming the Shareholders' Agreement terminated and/or rescinded.
- iii. An order for compensation for losses suffered by Ms. Sultana due to the actions of the applicant.

And an order for his disqualification pursuant to s. 842 of the Act.

213. It is not true to say that Ms. Sultana was furnished with no financial information, her complaint is that she was not provided with all of the information to which she was entitled, when she was entitled to receive it, and such information as was furnished to her was inaccurate. Ms. Sultana was provided with certain information in 2017. OCC Accountants circulated the draft accounts and annual returns to all shareholders and directors, including Ms. Sultana. She refused to accept these accounts as reflecting the true state of the company. In July 2018, the applicant, through his solicitors, afforded Ms. Sultana the opportunity to inspect the books of the company at its premises between July-September 2018 but she failed to avail of this opportunity. A year later, after she had been appointed a director of the company, she was furnished with financial information including the accounts for 31 December 2014, 31 December 2015, the draft accounts for 31 December 2016 and the draft accounts to June 2017. She was given copies of the bank statements from April 2017 to October 2017 and the latest available management accounts. Replies to the queries raised by Grant Sugrue were also provided. At the board meeting of 15 November 2018, she acknowledged that she was satisfied with the information which had been provided to her.

214. While there was evidence that Ms. Sultana was not always furnished with all of the information she was entitled to receive as shareholder, or all of the information which the applicant had agreed would be furnished in the Shareholders' Agreement of 11 April 2017, the trial judge was entitled to conclude that she was not quite as interested in corporate governance as she would have the court believe. Further, as is pointed out in *Clubman Shirts*, failures to comply with the various provisions of the Companies Act, referable to the holding of general meetings and the furnishing of information and copy documents, may be examples of negligence, carelessness and irregularity in the conduct of the affairs of the company but that does not mean that they thereby constitute acts of oppression within the meaning of the Act. More is required such that the court can conclude that the actions are oppressive, such as the fact that they form part of a deliberate scheme to deprive the member of her rights or to cause her loss or damage. The trial judge did not conclude that the actions of the applicant were part of such a scheme and he did not uphold Ms. Sultana's complaint in this regard. He was entitled to conclude that the failures by the applicant did not meet the threshold required by the section and I am not satisfied that Ms. Sultana has made out a basis upon which this court could interfere with his assessment of the evidence, having regard to the principles in *Hay v. O'Grady*.
215. Furthermore, the trial judge was entitled to have regard to the outcome of the tax audit of the company by the Revenue Commissioners in November 2014. In reviewing the company's records, OCC Accountants uncovered undisclosed PAYE liabilities. The company made a voluntary disclosure relating to underpaid PAYE in 2011 (€9,691), 2012 (€14,601) and 2013 (€16,463). The Revenue Commissioners accepted the voluntary disclosure and the payment of interest and penalties and "*indicated during the course of the audit, that the company's accounting records were of the highest standards*". On 13 July 2015, the Revenue Commissioners concluded the audit and no additional liability was identified. This is significant, independent verification that the company was maintaining proper books of account while the applicant was a director of the company.
216. The Revenue Commissioners' favourable view of the company's accounting records is echoed by the favourable review of the EAQUALS (European Association of Quality Language Services) oversight body report on the college dated 12/13 September 2013. This report from an independent body gave SEDA College "*an excellent verdict*". Furthermore, as the trial judge noted in para. 84 of his judgment, ACELS conducted an unannounced inspection of the college on 3 and 4 May 2018 and it produced "*a very positive report in relation to the college*", though there were some areas which required attention.
217. The trial judge held that there was no shred of evidence to support the allegations of improper behaviour alleged against the applicant, and indeed Mr. Islam. At para. 95 of his judgment he held:-

"Not a shred of support in terms of credible evidence is available to stand up any of the outlandish allegations made."

218. The applicant said that the appellants were misusing confidential financial information relating to the company by disclosing it to third parties, who were competitors of the company, as part of their attempt to sell their shares in the company to a third party. It is quite remarkable that neither Ms. Sultana nor Mr. Karim deny this. Indeed, it is not addressed in all the voluminous correspondence, affidavits and submissions filed and delivered on their behalves. Where a shareholder abuses his or her right to receive confidential financial information concerning the company by disclosing it to third parties – a fortiori competitors – this poses an acute difficulty as to the amount of information which ought properly to be furnished to such a shareholder, notwithstanding the prima facie right of that shareholder to receive the information. This difficulty is not acknowledged by Ms. Sultana and it is clearly one that was created solely by the acts of the appellants. Without deciding whether such a conflict of interests justifies a company in withholding sensitive information, I am satisfied on the facts in this case that the applicant was justified in withholding the information at that time. In this regard, I note that the relevant information was furnished subsequently when Ms. Sultana was represented by solicitors and the information was furnished to her expert accountants.
219. Finally, it is worth observing that OCC Accountants raised no complaints about the bookkeeping of the company. On the contrary, their actions in uncovering relatively minor underpayments of PAYE in the years 2011-2013, coupled with the observations of the Revenue Commissioners and the finding of the Revenue Commissioners that no other tax was due, strongly suggests that, at least until OCC Accountants ceased to act as accountants to the company, far from being unreliable, the books and records were scrupulously and accurately maintained.
220. The appointment of new accountants to the company was unavoidable once OCC Accountants decline to act as auditors. The imperative to appoint new accountants arose just as the dispute between the parties reached its crisis in October 2017. It is simply not realistic to suggest that while the parties were engaged in such a bitter dispute they would agree on the appointment of new accountants. In those circumstances, the unilateral appointment by the applicant of Mr. Farooq to be the accountant to the company is less egregious than Ms. Sultana portrays. Likewise, I am satisfied that the trial judge was correct in rejecting the suggestion that the alteration of the date for filing the annual returns of the company was indicative of a desire to withhold information from Ms. Sultana and to postpone the necessity of calling an AGM. The explanation of the applicant for this step is both credible and unexceptional.
221. For all of these reasons, I do not believe that the failure by the applicant to provide Ms. Sultana with complete and timely financial information regarding the affairs of the company was as grave or as egregious as she has suggested. Furthermore, the trial judge was entitled to reject her allegation that the accounts were not properly maintained, or that there had been misappropriation by the applicant and Mr. Islam of company monies.

222. In September 2017, Ms. Sultana notified OCC Accountants that she no longer wished the company to avail of the exemption from the obligation to audit the accounts pursuant to s. 334 of the Act. Section 334 provides:-

"334. (1) Any member or members of a company holding shares in the company that confer, in aggregate, not less than one-tenth of the total voting rights in the company may serve a notice in writing on the company stating that that member or those members do not wish the audit exemption to be available to the company in a financial year specified in the notice.

(2) A notice under subsection (1) may be served on the company either—

(a) during the financial year immediately preceding the financial year to which the notice relates, or

(b) during the financial year to which the notice relates (but not later than 1 month before the end of that year).

(3) The reference in subsection (1) to a voting right in a company shall be read as a reference to a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

(4) For the avoidance of doubt, the reference in subsection (1) to the one or more members not wishing the audit exemption to be available to the company in a specified financial year is, if the company is a subsidiary undertaking, a reference to their not wishing the audit exemption to be available to the subsidiary undertaking irrespective of whether its holding company and any other undertakings in the group avail themselves of the audit exemption in that year.

(5) In this section "audit exemption" does not include the dormant company audit exemption referred to in section 365."

223. Ms. Sultana was entitled to make this request as she held more than 10% of the shares in the company. Her request does not have retrospective effect and applies to the accounts for 2017, or, in light of the change of filing date, 30 June 2018. She was not entitled to require the company, and the company was not obliged, to produce audited accounts for the years 2016, 2015 or 2014. To the extent that the trial judge held that she was not entitled to demand that, in the future, the company must prepare audited accounts, he erred in my judgment.

224. Insofar as Ms. Sultana maintains an appeal in relation to the removal of Mr. Hussain as director and company secretary, in my judgment, the trial judge was entitled to conclude that Mr. Hussain had told the applicant that he wished to resign based on the text exchanges I have quoted. The fact that later he did not sign the letter of resignation does not alter this. It merely reflects his change of heart. The trial judge observed Mr. Hussain giving evidence and he did not accept Mr. Hussain's denial of his resignation. At para. 78 of the judgment he said:-

"Mr. Amjad Hussein swore an affidavit on 9th May, 2018, and gave oral evidence. Amongst other things he denied ever indicating a desire to resign as company director and secretary – despite a text message to that effect being produced to him. Indeed, his affidavit refers to the applicant improperly and illegally submitting an erroneous company's registration office form B10 to the register of companies showing his resignation as company director and company secretary with effect from 19th September, 2017, in circumstances where he did not tender his resignation as director and company secretary. In answering the question as to why he was saying this having indicated by text that he wished to resign, he effectively said that his text did not really mean what it said. His affidavit goes on to make assertions, many technical in nature, concerning the corporate governance of the company, his belief that the applicant as a Brazilian national is not in possession of a valid work permit with regard to his position within the company, a mandatory reporting requirement to the Office of Director of Corporate Enforcement concerning the possibility that the applicant had committed a category 2, possibly criminal indictable offence by signing a statutory form that was false in a material particular and also the possibility of further mandatory reporting requirements by other persons and the statutory auditors pursuant to s. 19 of the Criminal Justice Act 2011, in respect of alleged incidents of serious breaches of corporate governance and statutory compliance with regard to the company. In evidence, Mr. Hussein proved himself unreliable, evasive and not credible. His evidence, and in particular his affidavit evidence, is clearly no more than a "construct" which is being set up as a defence in answer to serious and well-founded allegations made on the part of the applicant and his witnesses. He is and came across as a person entirely under the influence of the [appellants] and of the first named [appellant] in particular."

225. The applicant offered to reinstate Mr. Hussain as a director of the company, but not as its secretary. This was not acceptable to Ms. Sultana but that does not make his refusal to reappoint Mr. Hussain as company secretary oppressive. On the contrary, given the role Mr. Hussain had played in the past and the manner in which he had sought to facilitate the efforts of the appellants to pressurise the applicant to permit them to withdraw money from the company, and in particular his role in calling the EGM with a view to removing the applicant as a director and appointing three new directors, who were nominees of the appellants, it was not unreasonable for the applicant to decline to reinstate Mr. Hussain as the company secretary *in the context of the dispute between the parties in the course of the proceedings which had yet to be heard*. In my view, it does not amount to oppression of Ms. Sultana.
226. Ms. Sultana complains that the statutory books and records were not properly maintained, and she says that this is a further illustration of the applicant's oppression. She was a founding shareholder in 2008 and was registered owner of 85% of the shares. She does not seem to have enquired about these company records prior to the involvement of Hunter & Co. on her behalf in these proceedings. The applicant became involved in the company in 2014. While it was never fully clarified, the evidence suggests

that Mr. Karim, or his associate Mr. Haque, had the original share register and other statutory books. Whether one or other of them still has them has not been clarified. Mr Karim gave no evidence on this point. There was no digital register of shares. OCC Accountants provided company secretarial services to the company, but they never had possession of the original share register or of the other statutory books of the company. Mr. Hussain, the company secretary from 2009 to September 2017, gave no evidence whether he kept the books and records of the company, as he was primarily obliged to do. The applicant never had possession of the statutory books and records, even though he has been the secretary since September 2017. When he enquired of OCC Accountants as to their whereabouts he learnt, apparently for the first time, that they did not have them.

227. There was no evidence that he or any other director of the company ever ensured that the books were properly secured and maintained. Undoubtedly, all concerned with the management of the company failed in this regard and the applicant must bear significant responsibility for this default. While he did not become the secretary until September 2017, he was a director for four years before this and he ought to have ensured that the statutory books were kept safely and properly maintained. However, applying the dicta of O'Hanlon J. in *Clubman Shirts*, in my judgment, this default does not amount to oppression of Ms. Sultana. Rather, it is evidence, at most, of negligence and a failure to comply with statutory obligations. It would seem that Mr. Hussain, as the company secretary for the relevant period, bears most responsibility for this default, though this does not absolve the applicant from any breaches of any duties he owed to the company.

228. The trial judge acknowledged that the applicant was not without fault. At para. 140(e) he said:-

"e) *The applicant is not without fault. It is clear that the [appellants] have been isolated by the applicant and the team of management who support the applicant insofar as the company is concerned. It does seem to me that the [appellants'] perception of being frozen out of the company, if I put it that way, is an understandable interpretation of the events that have arisen over the last number of years. However, I am also satisfied that this state of affairs is a consequence of the actions of the [appellants], and of the first named [appellant] in particular, insofar as the company is concerned. To borrow a sentence from the judgment of Laffoy J. in Kelly v. Kelly & Kelly, 'It is a state of affairs which has been primarily brought about by the conduct of the first [appellant].'*"

229. In my judgment, looking at the totality of the evidence in this case, this conclusion was one which it was open to the trial judge to reach and it is not one which should be overturned on appeal.

230. Perhaps the ground of appeal which each of the appellants pressed most forcibly related to the immigration status of the applicant, whether he was liable to be deported from the State and whether he had been less than candid in his evidence to the High Court. The appellants each relied upon the findings of fact in the High Court in judicial review

proceedings brought by the applicant (*Mascarenhas v. The Minister for Justice and Equality* [2020] IEHC 64).

231. The chronology is important. The applicant came to the State in 2006. The applicant obtained various permissions to reside in the State on a variety of grounds. The applicant instituted these proceedings on 7 November 2017. Subsequently, on 31 March 2018, the Minister decided to revoke and disregard the previous acceptance of the applicant's asserted EU Treaty rights based on his marriage to an EU national, who allegedly was exercising her Treaty rights of establishment in Ireland. This was because the Minister concluded that the marriage was one of convenience and the applicant had failed to inform the Minister that his wife had returned to her home state within two months of their marriage. His entitlement to reside in the State, based upon his marriage to an EU national, was revoked on 18 May 2018. The notification of this decision included a proposal to deport the applicant. The applicant instituted judicial review proceedings on 8 June 2018, which both appellants referred to in their affidavits sworn shortly thereafter. They each inferred, without having seen the pleadings, that the applicant was the subject of a 15-day Notice of Deportation order and that his legal entitlement to work and reside in the State was at risk. In his replying affidavit of 30 July 2018, the applicant averred that he was resident in the State and that he was not subject to a deportation notice. He did not refer to the decisions of 31 March and 18 May 2018 which had potentially, very grave implications for his continued ability to work in the State and therefore to act as the key man of the company's business. The trial judge held that the applicant at all times acted properly and applied for his residency status and he noted that the judicial review proceedings were compromised to the satisfaction of the applicant. At para. 92 of the judgment he said "*[t]he applicant says that he is in the process of completing his application for naturalisation and I accept his evidence on this.*"
232. It is clear that this might, at best, be described as an incomplete account of the situation and his status was far more insecure than his evidence conveyed to the trial judge. In written submissions to this court, the applicant confirmed that, as at the date of the hearing of the proceedings (in March 2019), the applicant had compromised the judicial review proceedings he had taken in relation to his status in Ireland. He denied that he had misled the High Court. This is correct so far as it goes, and his position worsened very shortly thereafter. At the time, the applicant was engaging further with the Minister's department in relation to the proposal to deport him. On 26 March 2019, the Minister made a further decision to deport him, he refused the applicant a right of residence and included a proposal to deport the applicant in the notification. The applicant instituted fresh judicial review proceedings in June 2019 seeking to quash the decision of 26 March 2019 and Barrett J. gave judgment in the High Court refusing the application and the applicant appealed the decision. At the time of writing this judgment, the appeal has been heard but judgment has not yet been delivered.
233. In summary, the applicant's position was far more precarious than he presented to the High Court, though strictly speaking his evidence to the court was correct so far as it went, it was hardly the whole truth.

234. After hearing the appeal and before the court could deliver its judgment, the applicant informed the court that he had applied for and subsequently was granted Portuguese citizenship. The court directed that he file a further affidavit setting out the position and allowed the parties to file submissions on the implications, if any, of this development to the appeal. The applicant's affidavit of 31 January 2022 confirms that he was granted naturalisation and citizenship of Portugal on 21 December 2021. He exhibited an email of 18 January 2022 from the Minister which confirms that, in light of this development, the Minister no longer proposes to make a deportation order. Thus, the applicant is entitled to reside and work in the State and his continued role in the company is no longer threatened by the prospect of his deportation. The company therefore continues to have one EEA resident director and to satisfy the requirements of s. 137 of the Act of 2014, a matter which was previously raised by Ms. Sultana.
235. The appellants say that the status of the applicant and the misleading evidence, as they describe it, of the applicant disentitle him to relief in these proceedings. The precise basis for this submission is not entirely clear. They say that if he is deported he cannot be the key man in the company. It therefore follows that the shares in the company were overvalued. Secondly, the judgment of Barrett J. in the 2019 judicial review proceedings raises issues as to whether his evidence is to be believed in these proceedings. They say this is compounded by the fact that he has, since the hearing of the appeal, obtained Portuguese citizenship without notifying either the High Court or this court of his application for citizenship. They assert that this lack of candour undermines his credibility and honesty. Thirdly, he did not come to court with clean hands; he sought injunctive relief and accordingly he had a duty to disclose the facts concerning his immigration status, which he failed to do. Fourthly, Ms. Sultana asserts that the failure to disclose his immigration status and Portuguese citizenship to her amounts to further acts of oppression/disregard of her interests by the applicant.
236. The trial judge had the benefit of assessing all the witnesses in court and under cross-examination, and thus he was in a position to assess the credibility of all of the witnesses, not merely the applicant. His condemnation of the conduct of the appellants was largely based upon emails and other evidence which was not disputed by them, though they disputed his interpretation of both the emails and their conduct. In particular, he had regard to the emails the appellants sent to OCC Accountants and Ms. McKenna, the fact that they contacted the bank as described, and that they made unspecified complaints about the applicant and Mr. Islam to journalists and media outlets, the ODCE, the gardaí, ACELS and EAQUALS. He concluded that they had devised a scheme to wrest control of the board, and thus of the company, from the applicant with a view to withdrawing sums from the company to which they had no entitlement and which the company could not afford to discharge. Any credibility issues relating to the applicant created by the failure to explain fully his immigration status is not relevant to the trial judge's conclusions on this evidence of the conduct of the appellants. Neither is it an answer to their oppressive conduct and thus it cannot afford a defence to his claim against them.

237. The real issue is whether it is relevant to the relief which a court may order in the circumstances. As was pointed out in *Charles J. Kelly Ltd.*, the “reprehensible” actions of the applicant for relief does not preclude the court from finding oppression and from granting a remedy under the section. It is for this court to assess the gravity of the conduct complained of and to assess whether it disentitles the applicant to relief, in circumstances where the appellants have been found to have oppressed him and to have conducted the affairs of the company in disregard of his interests. The court cannot condone the lack of candour on the part of the applicant, but, in my judgment, it is not of such an order and not so central to the issues in the proceedings as to justify the court in withholding relief to which he would otherwise be entitled. At all times, the applicant either was lawfully resident in the State or was challenging the decision(s) of the Minister to deport him, as was his right. While his position was precarious, it was not wrongful, and his position has now been regularised. The court should find another way in which to mark its disapproval: withholding relief would be disproportionate, in my judgment. Further, it would not bring the conduct complained of to an end, as required by s. 212(3). Therefore, I do not believe that the applicant has forfeited his right to relief from oppression.
238. Neither do I think he is to be criticised as having sought injunctive relief without clean hands. When he instituted the proceedings, which included claims for injunctive relief, the impugned decisions of the Minister had not been made: the first decision was five months later on 31 March 2018. Furthermore, while the pleadings seek injunctions, the applicant never actually moved an application for an injunction against the appellants. The applicant, in fact, never sought either an interim or an interlocutory injunction, therefore the requirement to do so with clean hands simply did not arise.
239. Finally, Ms. Sultana complained that she was misled by the “deceit” of applicant regarding his right to remain and work in the State and has thereby suffered some unspecified loss. However, given the fact that prior to these issues coming to a head she was actively engaged in seeking to oust him from the board, it is difficult to understand her complaint in this regard. She was already seeking to remove the applicant as a director and the company secretary, and she purported to revoke the transfer of shares to him agreed in April 2017. In the circumstances, it is difficult to accept that she believed that the applicant would continue to work as the key man in the company’s operations. She must have realised that her conduct would result in a permanent break between the applicant and the appellants. One of the very few matters on which the parties were agreed was that there had been an irretrievable breakdown in the relations between the parties and that they could not work together in the future. Each asked the court to direct that the other sell their shares in the company to them. Furthermore, the appellants denied that the applicant was a key man in the company. Ms. Sultana has not explained how the applicant’s failure to disclose the deterioration in his immigration status from November 2017, in any way, resulted in detriment to her. I am not persuaded that it did, and I do not accept that it affords a reason not to order the sale of her shares in the company to the applicant.

240. The appellants also appealed on the grounds that the trial judge erred in accepting the evidence of some witnesses (the applicant, Mr. Fleming and Mr. Islam) while rejecting the evidence of Mr. Hussain and their own evidence. The trial judge was in a position to assess the witnesses and his role is to determine the evidence he accepts or rejects and to explain his reasons for his conclusions. He has done so and the appellants have not met the test in *Hay v. O'Grady* which would justify this court in interfering with his conclusions on the evidence.
241. Finally, Ms. Sultana appeals on the basis that the trial judge failed to deal with her defence and counterclaim. In my opinion, this ground of appeal indicates that she misunderstands the role of the court: the trial judge was not required to address each of her claims in her counterclaim in his judgment. The trial judge found in favour of the applicant. It followed that he must dismiss Ms. Sultana's defence and counterclaim: he could not find in favour of both the applicant and Ms. Sultana (save in respect of the allegation that the applicant failed to ensure the company paid her the sums due under the Shareholders' Agreement). It was not necessary for him to analyse his reasons for rejecting the other claims in her counterclaim in light of the judgment given in favour of the applicant. Contrary to this ground of appeal, the trial judge did address her claim for the failure to pay her €3,000 per month since October 2017. He did so at the end of his judgment and set-off the sums due to her against the amount he decreed the applicant should pay her for her shares in the company.
242. For these reasons, I do not accept that the appellants have a defence to the applicant's claim based upon his conduct or that the trial judge failed to address Ms. Sultana's counterclaim properly, or at all.

Relief against oppression

243. The court is given a very wide discretion to remedy a situation once it has made a finding of oppression. The order is intended to bring the oppression to an end. The trial judge correctly identified the principles upon which he should approach the problem and, in my judgment, correctly exercised his discretion in refusing to wind up the company and in directing that one shareholder should buy out the other. One of the few matters upon which all parties agreed was that mutual trust had completely broken down and they could no longer work together. Further, each indicated, either in their affidavits or their pleadings, that the company should not be wound up. The trial judge was also very conscious of the employment of approximately 70 staff and the nearly 600 students, who all would be negatively impacted if he ordered the company to be wound up. In my judgment, it was well within his discretion to decline to order that the company be wound up and it was appropriate in all the circumstances that an otherwise successfully operating company should not be wound up. Insofar as there is an appeal against this decision, I have no hesitation in rejecting it.
244. Having reached this point, the trial judge then had to consider the order he would make with a view to bringing the conduct complained of to an end. He really had only two options: to order the appellants to purchase the applicant's shares or to order the

applicant, if he wished, to purchase Ms. Sultana's shares in the company. He declined to adopt the former option and, in my view, he was justified in this approach. He held that the appellants had been guilty of oppression, not the applicant. It would, in the circumstances, be very unfair to order that the oppressor purchase the shares of the victim of their conduct and to force him out of his full-time employment; something most compelling would be required to overcome this obstacle to such an order. Secondly, the applicant was a key man in the running of the college – a role which is no longer in jeopardy in light of his Portuguese citizenship – and he had the loyal support of the staff, while Ms. Sultana had very little involvement in the day-to-day running of the college. Thirdly, he was a full-time director and resident in Dublin, while she lived in London and Bangladesh and to-date had visited Dublin on very few occasions, even prior to the dispute which led to the proceedings. Fourthly, he had expertise in running a successful English language college while there was no evidence that she had any relevant experience. Fifthly, while Ms. Sultana was the majority shareholder, she was not the 85% owner, as she portrayed herself, as she was the beneficial owner of only 57% of the shares and the applicant owned 43%. There is nothing in the section which requires that the majority shareholder should purchase the shares of the minority, but not vice versa, and the discrepancy in the beneficial interests of Ms. Sultana and the applicant is not of such degree as to cause any difficulty, to my mind, in the order chosen by the trial judge. I would dismiss the appeal that the trial judge erred in ordering that the applicant, a minority shareholder, purchase the shares of the majority.

Valuation of the shares

245. The parties each adduced expert evidence as to the value of the shares in the company and the applicant gave evidence as to the value of Ms. Sultana's 57% shareholding. The trial judge considered the evidence of Mr. Leonard and Mr. Grant in considerable detail and with great care in paras. 149-190 of his judgment.
246. Ms. Sultana argued that the trial judge erred in rejecting the evidence of Mr. Grant; the court could not value the company based on the evidence available as the accounts were not audited and therefore were unreliable. She said that he erred in determining that her 57% shareholding should be subject to a discount of 15% and in valuing the company at €464,530. In written submissions filed on her behalf, she argued that if the position of the applicant and Mr. Islam had been known, the accountants and the court would have "*reached far different conclusions on the basis that the key men of the business where (sic) at extreme hazard of facing a proposal to be deported from the state...*". The conclusion of this submission is that the overall value of the company should be reduced to reflect this threat to the future fortunes of the company. Accordingly, this latter submission is somewhat surprising in view of her overall complaint that her shareholding was undervalued by the trial judge. Further, in light of the grant of Portuguese citizenship to the applicant, any argument that the valuation of the shares, insofar as it was based upon the continued role of the applicant in the company was erroneous, falls away.
247. At para. 26.51, *Keane on Company Law* (5th ed., Bloomsbury Professional, 2016) states:-

"An order for the purchase of shares will mean the purchase of the shares at a fair price. A variety of methods of valuation may be employed, and it is common for the court to hear expert evidence as to the appropriate method to be employed in the case in question. It is a matter for the court itself to determine what weight to attach to the evidence of such experts, but the figures chosen by the judge may be subject to appeal if they bear no connection to expert evidence given on either side. Thus in Donegal Investment Group Plc v. Danbywiske & Ors, the Court of Appeal set aside a price fixed by the High Court where it found that a multiplier employed by the trial judge was insufficiently explained and was not supported or even permitted by the expert evidence on either side."

248. Mr. Grant acknowledged that valuing companies is "*a highly subjective determination*" and it is clearly a matter for the trial judge to assess the evidence and to reach his own conclusion. He did so primarily by reference to Mr. Grant's, rather than Mr. Leonard's, figures and by taking account of Mr. Grant's evidence from other companies operating in the sector. He explained his reasons for so doing in paras. 181-183, but he also acknowledges Mr. Leonard's "*greater degree of insight to and appreciation of the nuances of the commercial trading environment relevant to this case*", and his factoring into the valuation the strengths, weaknesses, opportunities and threats facing the company. He concludes that the company is operating in a volatile, competitive and niche industry and for this reason he does not accept the high valuation placed on the company by Mr. Grant. His assessment of the evidence is all clearly explained and why he prefers one witness over another in relation to particular issues.
249. The logical conclusion of Ms. Sultana's argument in relation to the valuation of the company is that the court ought not to have embarked on such a process at all because of Mr. Grant's and her criticisms of the financial records of the company. This, of course, would mean that the applicant could not obtain relief under the section, notwithstanding the finding of oppression. Courts frequently must proceed as best they can with less than complete or perfectly reliable evidence. The assessment of the evidence is ultimately a matter for the trial judge and an applicant must prove his or her case on the balance of probabilities. The trial judge assessed the evidence in its totality. He was aware of Mr. Grant's criticisms and had some regard to them, but he was also sceptical of the degree to which the appellants' objections to the accuracy of the accounts was based upon genuine concerns as opposed to procedural and strategic wrangling between the parties. In my judgment, he was entitled to proceed to value the company based on the evidence before him, while making due allowances for the qualms of Mr. Grant as to their reliability or accuracy. He was also entitled to have regard to the fact that OOC Accountants had not complained about the company's books and records and that the company had been subject to a revenue audit which uncovered only very minor issues with regard to the accounts. I do not accept that he ought not to have valued the company pending an audit of several years of the company's accounts in the context of the disputes which had arisen in the past in relation to the accounts.

250. Critically, while Mr. Grant gave oral evidence explaining why he was of the opinion that the multiplier should be between 4 and 6, the trial judge did not accept the multiplier applied by Mr. Grant to the valuations he posited. On the other hand, Mr. Leonard gave a range of between 2.5 to 3.5 and the trial judge accepted the median figure as being the more appropriate. In so doing, he was applying his judgment in light of the evidence adduced, as he was required to do, and he was entitled to reach this conclusion. Ms. Sultana has produced no authority nor referred to any evidence which would undermine this conclusion; she has simply argued that the trial judge ought to have accepted the evidence of Mr. Grant without further elaboration. This is not a proper basis for an appeal.
251. Likewise, her appeal in relation to the application of a discount of 15% amounts to no more than an assertion that it ought not to have been applied. She does not address the evidence of Mr. Leonard, which I have set out in para. 139 above, to the effect that a discount of between 10-15% ought to be applied to a shareholding of 57%. Critically, Mr. Grant did not give evidence in relation to a discount at all. While this may be surprising, the court was not entitled to fill any perceived omissions in the evidence. She advances no basis upon which the trial judge ought not to have accepted Mr. Leonard's evidence, or any basis upon which this court could interfere with his acceptance of that evidence.
252. For these reasons, I would reject the appeal in relation to the valuation of Ms. Sultana's shares in the company.

Ms. Sultana's appeal in respect of motions 1 to 5

253. Ms. Sultana appealed the trial judge's striking out of each of these motions and his decision to make no order as to the costs of each of them. In her written submissions, she said that most of the motions had been dealt with by consent with regard to the substantive relief sought, as the applicant "*conceded that Mahbuba Sultana was entitled to the relief.*"
254. In my judgment, Ms. Sultana was not justified in bringing these five motions, commencing five months after the applicant had instituted his proceedings under s. 212. While there may have been a formal basis for seeking relief under the various sections of the Act in light of her formal requests for various information, inspection of registers and books of the company, and so forth, the motions must be seen in their context. They were all issued after a full-blooded shareholders' dispute had resulted in proceedings under s. 212; they were part of the dispute and the elements of the dispute could be resolved within the context of the existing proceedings, as the trial judge held. The issue is not whether she was entitled to bring the motions, but whether they were the appropriate means to achieve the end sought. Most of the substantive issues were resolved by consent and there is no reason to believe that this would not have occurred if Ms. Sultana had sought the concessions she obtained otherwise than by issuing five motions within the s. 212 proceedings.

255. The first motion was brought by leave of the court and was resolved by agreement between the parties prior to the hearing of the proceedings.
256. The second motion was issued the following day and a separate motion was unnecessary as the relief could have been sought in the first motion. In relation to the merits of the relief sought, the applicant offered Ms. Sultana the opportunity to inspect the company's books in the possession of the company, but she declined to avail of the offer. In relation to an audit of the accounts, s. 334 is not retrospective in its application. In this case, Ms. Sultana notified OCC Accountants in October 2017 that she did not want to avail of the exemption from audit provided in s. 334. Her solicitors formally made the same request in April 2018. Applying s. 334(2), this means that the company was no longer entitled to claim the exemption from audit for the years' end 2017 and 2018, as the request applies to the accounting year in respect of which the application is first made, but not to the accounting year end 31 December 2016. There was no basis for balancing whether the company could afford to pay for the audit and there was no basis for requiring Ms. Sultana to pay for it. The auditing of its accounts became a legal obligation once a qualifying shareholder indicated that they no longer wished the company to avail of the statutory exemption.
257. However, the company changed its reporting year to June 2018 and thus the obligation was to produce audited accounts for the 18-month period to 30 June 2018, which was after Ms. Sultana issued the second motion. Furthermore, in April 2018, Stewart J. adjourned the motion to 3 October 2018 to be heard at the same time as the applicant's claim under s. 212. There is nothing to suggest that Ms. Sultana sought to have the issue of the auditing of the accounts for either year end 31 December 2017 or for 30 June 2018 determined prior to the trial of the proceedings. That being so, the issue became a part of the proceedings, rather than a freestanding issue in its own right.
258. Secondly, the accountants of the company indicated in October 2017 that they would not accept any appointment to conduct a company audit. This meant that complying with the statutory obligation had become entwined with the dispute between the shareholders and it was not possible to appoint agreed auditors. The appellants objected to the accountants the applicant employed on the grounds that they were not independent but did not suggest accountants whom they would regard as acceptable. Meanwhile, the applicant wrongly maintained that if Ms. Sultana wanted audited accounts she would be required to pay for the audit. In summary, in my opinion, the trial judge did not err in striking out the motion in the circumstances. He had concluded that Ms. Sultana had oppressed the applicant and was going to make an order directing her to sell her shares in the company to the applicant. In the circumstances, granting the relief sought would have been pointless and unnecessary; the issue raised could be, and was, dealt with in the existing proceedings.
259. In relation to her claim to inspect the statutory books for the company, while they ought to have been in the possession or under the control of the company, they were not. It was the mistaken belief of those concerned that they were in the possession of OCC

Accountants. It is most likely that they remain in the control of either Mr. Hussain or Mr. Karim, though this has not been clarified. It is notable, that once it became clear that they were the most likely custodians of the records, Ms. Sultana did not seek them from either her husband or her ally, Mr. Hussain. Neither of them swore an affidavit clarifying the position. As the applicant only became the company secretary in September 2017, and he never had possession of the statutory registers, the applicant was never in a position to comply with her request on behalf of the company.

260. Ms. Sultana's third and fourth motions related to the reinstatement of Mr. Hussain and the removal of Mr. Fleming as directors of the company and the reinstatement of Mr. Hussain as the company secretary. This too could be, and was, dealt with in the context of the applicant's proceedings. The applicant agreed to the reinstatement of Mr. Hussain as a director and Ms. Sultana agreed to Mr. Fleming remaining as a director pending the hearing of the s. 212 application, with the applicant remaining as the company secretary.
261. In the fourth motion, Ms. Sultana sought an order rescinding the Shareholders' Agreement of April 2017. The trial judge refused this relief and upheld it, specifically the transfer of 25 shares to the applicant and the payment of €3,000 per month to Ms. Sultana. The applicant's proceedings necessarily required the court to resolve the dispute concerning the applicant's shareholding in the company. Therefore, this separate motion also was unnecessary.
262. As regards the substance of the appeal, Ms. Sultana says that the applicant induced her to enter into the agreement by misrepresenting his immigration status to her. She says he breached the agreement in numerous ways and she was entitled to treat it as rescinded and to revoke the transfer of the shares to the applicant. The trial judge was not satisfied that she had made out either case. He was not satisfied that there was a material misrepresentation which induced her to settle the 2016 proceedings. Neither was he satisfied that the failure of the applicant to comply with the terms of the agreement amounted to repudiatory breach(es) of the agreement. He therefore held that the agreement was valid and made orders consequent upon that finding in light of his overall resolution of the disputes between the parties. Ms. Sultana has not advanced any basis for this court to find that he erred in his conclusions or to overturn his decision to uphold the validity of the Shareholders' Agreement of April 2017.
263. In my judgment, he was correct to strike out these two motions also.
264. The fifth motion had been dealt with by consent by Stewart J. on 5 July 2018 and thus was not before the court, save the issue of the reserved costs. The appeal against that motion is misconceived as there is no appeal against the order of Stewart J. and that order was made on consent.

Ms. Sultana's sixth motion: Beneficial Ownership Register

265. The sixth motion of Ms. Sultana was not brought in the proceedings but was undoubtedly part of the overall campaign. The obligation on a company to maintain a register of the

beneficial owners of its shares arises under the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (S.I. No. 560/2016). These regulations came into operation on 15 November 2016.³ They state that a company “shall take all reasonable steps to obtain and hold adequate, accurate and current information in respect of its beneficial owners” and it “shall enter the information ... in its beneficial ownership register.” Such information includes inter alia their name, address, the date on which each person was entered into the register and the date on which a beneficial owner ceased to be such an owner. Where all possible means have been exhausted to determine the beneficial owners or there is doubt regarding same, one or more persons who hold the position of senior managing officials must be entered in the register as the company’s beneficial owners. It is an offence for a company to fail to comply with the above obligations.

266. Undoubtedly the company failed to comply with the obligation to maintain a beneficial ownership register. However, the court must have regard to the fact that at all material times, and in particular when the motion was issued, there was a dispute as to the beneficial ownership of the issued shares in the company. It would not have been possible to rectify this default without a resolution of that dispute. Ms. Sultana had executed a stock transfer in favour of the applicant which had not been registered. *Prima facie*, he was the beneficial owner of 43 shares. She subsequently sought to revoke the transfer and applied to have the Shareholders’ Agreement rescinded. If she succeeded in her application, she would be entitled to 85 shares in the company but, if not, she was only entitled to 57 shares. In the event, she lost this argument and the trial judge concluded that the applicant was entitled to 43 shares in the company. In my judgment, it was necessary to resolve these central issues before the company could properly enter the relevant parties in the beneficial ownership register. In the circumstances, the motion was both premature and unnecessary and the trial judge was entitled to so conclude.
267. However, in my view the trial judge was not entitled to conclude that Mr. Karim was the beneficial owner of the shares registered in the name of Ms. Sultana. First and foremost, neither Mr. Karim nor Ms. Sultana asserted that he was the beneficial owner of the shares. It was raised by the applicant as a basis for suing Mr. Karim, however it was not necessary to conclude that he was the beneficial owner of the shares in order to hold him liable under s. 212 as I have explained.
268. Second, there was ample evidence that Mr. Karim behaved as though he was the owner of the shares, but equally there was ample evidence that he sought to act as a director of the company on occasion when he was never a director. He was, in fact, neither. The fact that he so acted was relevant to whether he oppressed the applicant, but it did not follow that he was in fact the beneficial owner of the shares. The evidence was that the shares had issued in the name of Ms. Sultana and she had acted as the holder of the

³ The 2016 Regulations have since been revoked and replaced by EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. 110/2019) however, the 2019 Regulations largely restate the 2016 Regulations with some amendments.

shares. *Prima facie* therefore she should be regarded as the beneficial owner of the shares unless there was evidence to the contrary. In my judgment, there was no such evidence and this court is entitled, applying the principles in *Hay v. O'Grady*, to reverse this finding.

269. There was ample, cogent evidence that Mr. Karim habitually acted through proxies who either carried out his instructions or whom he bullied to ensure that they acted as he directed. The exchange of texts between the applicant and Mr. Hussain in September 2018 is simply a graphic illustration of his conduct towards Mr. Hussain, Mr. Islam, the applicant and indeed to a lesser extent, Mr. Browne and Mr. Fleming. The trial judge accepted that the appellants acted as one (he quoted, with approval, a witness who said they "eat from the same pot"). Counsel for Ms. Sultana said that Mr. Karim was out of control and that she could not, by implication, prevent him from acting as he saw fit. This evidence supports the conclusion that his conduct does not imply that he was the beneficial owner of the shares or that Ms. Sultana held them in trust for him; rather it shows that the fact that he was the moving spirit behind actions, and sent emails in her name, does not lead to the conclusion that he was in fact the beneficial owner of the shares in her name, it rather is part of his pattern of bullying behaviour. For these reasons, I would allow the appeal against the finding that Mr. Karim is the beneficial owner of the shares registered in the name of Ms. Sultana and order that the payment by the applicant for those shares should be to her, and not to Mr. Karim.

Costs

270. The appellants appealed the orders of the High Court on the costs of the applicant's motion and the six motions of Ms. Sultana and the motion of Mr. Karim. The trial judge ordered that the appellants were to be jointly and severally liable for the applicant's costs to include any reserved costs and he made no order as to the costs of the seven motions filed by the appellants.
271. Mr. Karim's notice of appeal raised 66 grounds of appeal, but he did not appeal the dismissal of his motion to strike out the proceedings against him on the basis that they were frivolous and vexatious and bound to fail. While Ms. Sultana appealed the striking out of her six motions in her written submissions, quoted above, she conceded that they by and large were dealt with by agreement of the parties.
272. The trial judge held in favour of the applicant in relation to his application for relief under s. 212. It was clearly open to him to award the applicant the costs of the proceedings to include any reserved costs. It was equally open to him, in the exercise of his discretion, to award costs against both appellants on a joint and several basis. The evidence was that either Ms. Sultana permitted Mr. Karim to act on her behalf or they acted together in oppressing the applicant.
273. Further, while initially they were both represented by the same solicitors, Mr. Karim sought separate representation. Despite this, his defence of the proceedings was largely repetitive of Ms. Sultana's defence and he spent considerable effort arguing her case,

which was not open to him. He compounded this unnecessary increase in the costs when he appealed, thereby forcing the applicant to incur the costs of two appeals. Undoubtedly, the costs of these already prohibitively expensive proceedings could have been reduced had the appellants continued with joint representation and Ms. Sultana refrained from issuing unnecessary, time-consuming motions. The identity of the interests of the appellants is graphically illustrated by the two notices of appeal. Ms. Sultana's largely reproduces Mr. Karim's (or vice versa), save that she also appeals the striking out of her six motions. In my judgment, it was within the trial judge's discretion to award the applicant the costs of the proceedings against both appellants on a joint and several basis. Neither appellant has advanced a basis for the court to interfere with the order of the High Court on the costs of these tortuous proceedings. For this reason, I would reject the appeal in relation to the costs of the applicant's proceedings.

Conclusion

274. The appellants each conducted or purported to conduct the affairs of the company in a manner oppressive of the applicant, notwithstanding the fact that Mr. Karim was neither a director nor a shareholder. Notwithstanding the fact that the applicant was not without fault in the breakdown in relations between the parties, the trial judge held that this was largely as a result of the conduct of the appellants. He held that the applicant was entitled to relief under s. 212 of the Act. In my judgment, he was correct to so conclude.
275. It was common case between the parties that they could not work together in the future and that the company ought not to be wound up. In order to bring the impugned conduct to an end it was necessary that either the applicant acquire the shares of Ms. Sultana in the company or Ms. Sultana acquire the shares of the applicant. As the applicant had succeeded in his case, he was the key man in the company's affairs, he had experience in running a language school while Ms. Sultana did not, he had the support and loyalty of the senior staff and he was living and working in Dublin while she lived and worked in London and Bangladesh, it was appropriate to order that the applicant could purchase Ms. Sultana's shares, if he wished, rather than vice versa. The fact that she was the majority shareholder did not preclude the court from so ordering.
276. The trial judge had evidence to support his valuation of the company and of Ms. Sultana's shares in the company. He carefully assessed the evidence from the experts on each side and explained his reasons for accepting or rejecting the relevant evidence and for his conclusions. There is no basis for this court to interfere with his assessment or his conclusions.
277. Likewise, the trial judge exercised his discretion in relation to the costs of the motions before him in accordance with established principles and in light of his findings. No reason has been advanced which would warrant this court interfering with his exercise of his discretion in his award of costs.
278. The trial judge was not justified in concluding that Mr. Karim was the beneficial owner of the shares held by Ms. Sultana in the company. I would allow the appeal of Ms. Sultana

on this point and direct that the applicant pay Ms. Sultana in respect of his purchase of her shares in the company. Otherwise, I would refuse both appeals and affirm the order of the High Court.

279. My preliminary view is that the applicant has been entirely successful within the meaning of the s. 169 of the Legal Services Regulation Act 2015 and he is entitled to his costs against both appellants, jointly and severally, to be adjudicated in default of agreement. However, he was less than candid with the High Court and this court as to the deterioration in his immigration status and thus the crucial matter of his right to reside and work in the State. This is a matter to which the court may have regard when ruling on costs (s. 169(1)(a) and (c)). I would normally therefore reduce the applicant's costs by 10% as reflecting an appropriate sanction for this conduct. However, the appellants have equally conducted the litigation in a manner which this court cannot condone and they twice refused the opportunity to resolve the dispute by mediation. For this reason, I would not in fact make any deduction from the costs of the applicant in conducting the two appeals. If either appellant wishes to argue that the court ought to make a different order as to costs, they should contact the Office of the Court of Appeal within 14 days of delivery of this judgment and request the matter be listed for a short hearing. In the event that the court does not alter to indicative order, the parties should note that they may be ordered to pay the costs of the additional hearing.

280. Haughton and Collins JJ. have read this judgment and indicated their agreement with it.