Neutral Citation Number: [2020] EWHC 1112 (Ch)

Case No: Case number 287 of 2018
Appeal Ref: MC19C136

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
On appeal from the County Court at Manchester
Decision of Deputy District Judge Watkin dated 18 June 2019

Rolls Building
Fetter Lane, London EC4A 1NL
Date: Thursday 7 May 2020

Before :

MR JUSTICE SNOWDEN

Vice-Chancellor of the County Palatine of Lancaster

- -

IN THE MATTER OF CHRISTOPHER STEPHEN JONES

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

CHRISTOPHER STEPHEN JONES	**Debtor/ Respondent**
- and -	
THE SKY WHEELS GROUP LIMITED	**Creditor/ Appellant**

- -

Mark Harper QC (instructed by **Freeman Fisher LLP**) for the **Appellant**
Thomas Roe QC and Martin Budworth (instructed by **JMW Solicitors LLP**) for the **Respondent**

Hearing dates: 19-20 February 2020

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Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 a.m. on Thursday 7 May 2020.

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

Introduction

1. This is an appeal by Sky Wheels Group Limited ("the Company") against the judgment of Deputy District Judge Watkin ("Judge Watkin") dated 18 June 2019, setting aside a statutory demand served by the Company on 5 October 2018 on the Respondent, Christopher Stephen Jones ("Mr. Jones").

Background

2. The Company was set up by Mr. David Schofield in 1992 and is engaged in the repair of aviation parts. Mr. Jones began working for Mr. Schofield in 1995 and worked his way up the Company, being appointed as a director in 1999 and then in due course becoming managing director and a minority shareholder. Mr. Schofield remains the majority shareholder of the Company and the only other shareholder apart from Mr. Jones.

3. Mr. Jones was initially given 5% of the shares in the Company in 2009, and was promised further equity by Mr. Schofield, dependent on his performance. Mr. Jones contends that he performed well and that in accordance with this promise, his entitlement to shares increased by degrees over time, up to 35%. This was reflected in returns filed with the Companies Registry on 16 August 2010, 21 July 2011 and 15 June 2012, all of which show the Company being owned 80% by Mr. Schofield and 20% by Mr. Jones, and then a return filed on 28 June 2013, which shows 65% of the share capital being owned by Mr. Schofield and 35% by Mr. Jones.

4. From the time at which Mr. Jones was given shares in the Company, he and Mr. Schofield were remunerated for their work for the Company by a relatively small salary of £1,000 per month on which PAYE was paid, and which was fixed at a level designed to be just below the threshold for payment of National Insurance Contributions ("NIC"). In addition, the two directors each drew a monthly payment of £8,250 which was debited to their director's loan account. Prior to the dispute arising between the parties, the balance arising on the loan account was discharged at the end of each year by the declaration of a dividend to Mr. Jones and Mr. Schofield and set-off as between the amounts owing on the loan account and in respect of the dividend. Because of the unequal shareholdings, Mr. Schofield executed dividend waivers so that the two men received equal benefits from the Company.

5. According to Mr. Jones, the Company received a number of purchase offers or expressions of interest between 2014 and 2016. In particular, on 22 August 2016 a company called Aero Technics Aviation Ltd made an offer in principle to purchase the Company for around £9 million.

6. From the end of 2016 onwards, however, the relationship between Mr. Jones and Mr. Schofield deteriorated. The Company claims that this was a result of Mr. Jones' increasingly erratic and irresponsible behaviour, including his inappropriate use of Company funds. Mr. Jones denies this and maintains that he was unfairly excluded from the Company's management by Mr. Schofield.

7. Mr. Jones also complains that Mr. Schofield has wrongly denied him his agreed entitlement to shares in the Company. In an affidavit sworn by Mr. Schofield on 11 December 2017 (in the context of matrimonial proceedings relating to Mr. Jones' divorce), Mr. Schofield accepted that in April 2010 he agreed to increase Mr. Jones' shareholding to 20%. Mr. Schofield also accepted that in April 2013 he agreed a further increase up to 35%, albeit that he insisted that this latter increase was conditional on a payment from Mr. Jones which Mr. Schofield contends was never received. Mr. Schofield's evidence was that the formalities to give effect to such transfers were never completed and the register of members of the Company was never up-dated, so that in October 2016, at a time at which he had concerns about Mr. Jones' erratic behaviour, Mr. Schofield instructed the Company's accountants simply to file a confirmation statement altering the proportions of shares shown at the Companies Registry from 65%:35% to 95%:5%.

8. On 20 November 2017, Mr. Schofield instructed Mr. Jones that he was barred from attending the Company's premises. On 27 February 2018, the Company's solicitors wrote to Mr. Jones informing him that his name had been removed from the Company's bank mandate. This was said to be due to his use of the Company credit card for personal purposes and his alleged misappropriation of Company funds. The letter informed him, however, that his "director's remuneration" would remain unchanged whilst investigations were conducted.

9. No dividends have been approved or paid by the Company since Mr. Jones was excluded from the Company's premises (e.g. in respect of the financial years ending 30 September 2017 and 30 September 2018).

10. On 27 April 2018, Mr. Jones' solicitors responded to the 27 February 2018 letter. They denied all of the allegations against Mr. Jones, stating, for example, that Mr. Jones had not been in possession of a Company credit card since August 2017 and that it was customary for both him and Mr. Schofield to incur personal expenses which would then be allocated to their directors' loan accounts. The letter stated:

> "The way that the Company is being conducted presently and in particular the decision to exclude our client from the affairs of the management of the Company, to remove him from the bank mandate and to prevent him accessing financial information…is clearly unfairly prejudicial to our client's interests as a member."

11. On 4 May 2018, the Company's solicitors responded refuting the contents of the 27 April 2018 letter. In particular, they asserted that the relationship between the directors had broken down due to Mr. Jones' "erratic" behaviour at work, and disputed that Mr. Jones had not been in possession of a Company credit card since August 2017. The letter attached a number of credit card statements showing expenses allegedly incurred by Mr. Jones from August 2017 up to the date of the letter (e.g. iTunes and Amazon transactions) and a schedule detailing allegedly improper expenditure by Mr. Jones.

12. On 17 July 2018, Mr. Jones' solicitors responded with a letter before action in accordance with the Practice Direction on Pre-Action Conduct and Protocols. It stated that Mr. Jones' claim against Mr. Schofield was twofold: (i) a claim in relation to the disputed 35% shareholding; and (ii) a claim for unfairly prejudicial treatment under section 994 of the Companies Act 2006 ("Section 994" and the "2006 Act"). Mr. Jones'

solicitors also amended his previously stated position in respect of certain of the allegations. For example, they maintained that Mr. Jones had returned the Company credit card, but in October 2017 not August 2017, and conceded that the Company credit card details had inadvertently been left on Mr. Jones' iTunes and Amazon accounts. It was admitted that some of the expenditure set out in the 4 May 2018 letter was unrelated to the Company and should therefore be added to Mr. Jones' loan account, but it was contended that this was in accordance with the understanding between Mr. Jones and Mr. Schofield that personal expenses could be paid for using Company funds and allocated to their respective loan accounts.

13. On 25 July 2018, the Company responded with its own letter before action, threatening to bring a claim against Mr. Jones under CPR Part 7. The letter set out the Company's claims against Mr. Jones for breach of his director's duties and stated that if the alleged breaches were proven, the Company would be "entitled to substantial damages to recover sums lost as a result of Mr. Jones' actions", in addition to tracing the proceeds of monies unlawfully extracted from the Company. The letter also indicated that the Company had debited Mr. Jones' director's loan account with all sums which it contended had been inappropriately paid by him using the Company's funds and attached a statement of that director's loan account which was contended to be overdrawn by a sum of £418,609.28. The letter stated:

> "In the absence of a full and transparent explanation from your client, alongside repayment of sums owed to the Company, we have instructions to issue proceedings against your client."

The letter also informed Mr. Jones' solicitors that the monthly payments of "director's remuneration" to Mr. Jones would cease from the following week.

14. On 9 August 2018, Mr. Jones' solicitors responded to the claims set out in the 25 July 2018 letter, denying that Mr. Jones had breached any of his director's duties. The letter alleged that Mr. Schofield had also used his loan account for personal expenditure, and that an inconsistent approach was now being taken by the Company to repayment of Mr. Jones' loan account and Mr. Schofield's loan account. The letter also stated that Mr. Jones would rely on the Company's decision to cease his monthly payments as "further evidence of your client's unfairly prejudicial conduct" and that he would counterclaim for payment of sums owed to him in any proceedings issued by the Company.

15. Despite the indication in the letter dated 25 July 2018 that the Company would issue proceedings against Mr. Jones under CPR Part 7, on 5 October 2018 the Company instead served a statutory demand in respect of the amount claimed to be the balance on Mr. Jones' overdrawn director's loan account in the sum of £418,609.28. The Company demanded immediate repayment of the loan account in full. On 6 November 2018, Mr. Jones applied to have the statutory demand set aside.

16. Before that application was heard, the Company held a general meeting on 19 March 2019. The meeting was convened pursuant to a Court Order which was made on 28 February 2019 on the application of Mr. Schofield, and which enabled the hearing to take place without the attendance of Mr. Jones. Mr. Schofield claims that at this meeting a resolution was passed removing Mr. Jones as a director of the Company. Mr. Jones says that the meeting was adjourned before any such resolution was passed.

17. Also before the application to set aside the statutory demand was heard, on 12 April 2019 Mr. Jones issued a petition pursuant to Section 994 of the 2006 Act, claiming that the Company's affairs had been and were being conducted in a manner that was unfairly prejudicial to his interests as a member (the "Petition"). Mr. Jones sought two remedies: (i) a declaration that he is the beneficial owner of 35% of the Company's shares; and (ii) an order that Mr. Schofield purchase his shares at a price to be determined by the court.

18. Consistent with the allegations that Mr. Jones had been making since his solicitors' letter dated 27 April 2018, the Petition claimed that:

    i) the Company was regarded and operates as a quasi-partnership, enabling the application of equitable principles to the parties' legal rights;

    ii) Mr. Jones had been unfairly excluded from the management of the Company, for example being removed from the Company's bank mandate, being prevented from receiving Company information, being placed on gardening leave in February 2018, and being denied any monthly payments after July 2018; and

    iii) the Company had entered into transactions and indebtedness without any commercial justification and without consulting Mr. Jones.

19. The Petition has been proceeding in parallel with these proceedings. Most recently, an application by Mr. Schofield for reverse summary judgment on the Petition was dismissed after a hearing before HHJ Pearce on 24 January 2020.

The claim and cross-claims

20. In the evidence filed for the hearing to set aside the statutory demand, it was not disputed that Mr. Jones' loan account was, prior to 30 September 2016, in credit by £7,287.03. It was also not disputed that Mr. Jones later introduced £11,000 of capital which fell to be credited to the loan account.

21. The debts allocated by the Company to Mr. Jones' loan account fell, broadly speaking, into two categories:

    i) monthly drawings of £8,250 per month, which amounted to a total sum of £144,868.08 (£49,000 for the period 1 October 2015 to 30 September 2016 and £95,868.08 for the period 1 October 2016 to 30 September 2017); and

    ii) other miscellaneous payments and expenses which were said to be personal expenses of Mr. Jones.

22. In his evidence, Mr. Jones contended that he was entitled to the monthly drawings of £144,868.08 as remuneration for his work for the Company. He also disputed the vast majority of the transactions and expenses allocated to his loan account, contending that they were either legitimate expenditure on the Company's business, or had been wrongly allocated to him. His position was that taking such matters into account, his undisputed debt to the Company was only £4,482.04 – less than the minimum required to support a statutory demand.

23. Mr. Jones also contended that he had a cross-claim against the Company for further unpaid remuneration for nine months from the end of July 2018 to his removal as a director in the sum of at least £74,250. He also raised a cross-claim in respect of a bonus payment of £31,939.07 which he said he was promised by Mr. Schofield in or around April 2017, but which had not been paid. He therefore cross-claimed a total of £106,189.07.

24. The Company denied all of Mr. Jones' contentions, but did not press £77,863.71 of the claims included in the statutory demand, leaving the total said to be owing by Mr. Jones to the Company to be £340,745.57, not £418,609.28.

25. The hearing of the application to set aside the statutory demand took place on 14 May 2019 before Judge Watkin. In a reserved judgment delivered on 18 June 2019, Judge Watkin found for Mr. Jones on almost all grounds and ordered that the statutory demand be set aside. The Company now appeals that decision.

Relevant law

26. Section 267 of the Insolvency Act 1986 ("1986 Act") provides that:

> "(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented
>
> (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
>
> (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
>
> (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
>
> (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts."

Section 267(4) of the 1986 Act provides that the "bankruptcy level" is set at £5,000.00.

27. The Insolvency (England and Wales) Rules 2016 (the "IR") set out, at IR 10.5(5), a number of alternative bases upon which the court may set aside a statutory demand:

> "(5) The court may grant the application [to set aside the statutory demand] if—
>
> (a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt specified in the statutory demand;

> (b) the debt is disputed on grounds which appear to the court to be substantial;
>
> (c) it appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
>
> (d) the court is satisfied, on other grounds, that the demand ought to be set aside."

28. In respect of IR 10.5(5)(c) concerning security, IR 10.1(9) states:

> "If the creditor holds any security in respect of the debt, the full amount of the debt must be specified, but –
>
> (a) the demand must specify the nature of the security, and the value which the creditor puts upon it at the date of the demand; and
>
> (b) the demand must claim payment of the full amount of the debt, less the specified value of the security."

The judgment of Judge Watkin

29. Under IR 10.5(5)(a), Judge Watkin first rejected a submission that Mr. Jones' claim in the Petition could amount to a cross-claim against the Company. That submission was based upon a suggestion that the court would have power under Section 994 to order the Company to acquire Mr. Jones' shares in the alternative to ordering Mr. Schofield to do so.

30. Judge Watkin then also rejected the submission that Mr. Jones had a cross-claim to unpaid remuneration of £74,250 on the basis that Mr. Jones "was paid mainly by way of dividends" [sic] and that no dividends had been declared for the relevant period. She accepted, however, that there was a limited cross-claim both for unpaid salary of £1,000 per month from 27 February 2018 and in respect of Mr. Jones' alleged entitlement to a bonus of £31,939.97.

31. Turning to IR 10.5(5)(b), having considered the various debts said to make up Mr. Jones' loan account, Judge Watkin held that they were subject to a dispute on substantial grounds. She stated, at paragraph 37 of her judgment:

> "Thus, initially, it would appear that there are debts of £33,315 which are undisputed. However, at paragraph 18 of his witness statement, the Applicant states that there was an agreement between him and Mr Schofield that their Directors' Loan Accounts would be repaid from any dividends declared by the Company. As no dividends were paid, Mr Schofield states that these sums become repayable immediately. The Applicant disputes this and states that there was an agreement that the sums were not to be repaid until a dividend was declared. The fact that

> Mr. Schofield, in his statement (page 63), indicates that he also had incurred a substantial debt himself, due to the non-payment of dividends, appears to support the Applicant's position in this regard. It is, therefore, accepted that the sums set out within the Director's Loan Account … are disputed on substantial grounds due to the Applicant's averment that there was an agreement that the sums would not be repaid until the dividends are declared."

32. Turning to IR 10.5(5)(c), Judge Watkin found that the Company also held security in relation to the debt claimed, in the form of an equitable charge over (i) Mr. Jones' rights to receive dividends once declared, and (ii) any proceeds of sale of Mr. Jones' shares in the Company. She reached this conclusion on the basis that there was an agreement between Mr. Schofield and Mr. Jones which was binding on the Company that any monies paid by way of dividend or any proceeds of sale of the shares in the Company would first be applied in discharge of sums owing to the Company on the directors' loan accounts. Judge Watkin held that this amounted to "an agreement between a debtor and a creditor that a debt owing shall be paid out of a specific fund coming to the debtor", and on the basis of Swiss Bank Corp v Lloyd's Bank [1982] AC 584, that this gave rise to an equitable charge.

33. Judge Watkin then pointed out that the statutory demand made no reference to any security, and therefore failed to comply with IR 10.1(9). In any event, she also found that although the value of undeclared future dividends was not known, and so could not be said to equal or exceed the debt, she was satisfied that the value of Mr. Jones' shares in the Company would do so.

34. Finally, under IR 10.5(5)(d), even if her other conclusions were wrong, Judge Watkin held that it would be unjust for Mr. Jones to be made bankrupt. She stated,

> "The main concern that arises is that the circumstances outlined leave a general impression that the situation has been manipulated to enable Mr Schofield, through the Company, to obtain a bankruptcy order which would avoid him potentially facing the unfair prejudice proceedings from the Applicant.
>
> The potential manipulation to which I refer arises from the fact that dividends have not been declared for a significant period. No substantive reason has been given for this…"

35. In that regard, Judge Watkin dismissed Mr. Schofield's explanation that the non-declaration of dividends was in part because of "financial issues" and in part because the Company's accountants had advised against taking dividends in a particular manner. She pointed out that the "financial issues" were unspecified, and the fact that the Company's accountant had advised against a declaration of dividends in a particular manner was not a reason to declare no dividends at all.

36. Judge Watkin therefore held that, even if she had not already found in Mr. Jones' favour on the previous three limbs of IR 10.5(5), she would exercise her discretion under sub-paragraph (d) to set aside the statutory demand on the basis that it would be unjust for Mr. Jones to be made bankrupt "in circumstances where funds have been withheld from him as a result of the failure to declare dividends".

The arguments on appeal

37. The Company appealed every aspect of Judge Watkin's decision that was unfavourable to it. Mr. Jones cross-appealed the decisions (i) that the Petition did not give rise to a cross-claim exceeding the full value of the statutory demand, and (ii) that he did not have a valid cross-claim for unpaid remuneration.

38. During the course of the parties' submissions before me, Mr. Roe QC did not seriously pursue the argument that the possibility that the court might make an order for a buy-out against the Company under the Petition amounted to a cross-claim for the purposes of IR 10.5(5)(a). He was obviously right not to do so. The Company is plainly a nominal respondent to the Petition; no relief is expressly sought against it; and in my judgment the conceptual possibility that the court might make an order for a buy out against the Company is not a monetary cross-claim of the type envisaged in the Insolvency Rules.

39. That point aside, the grounds of appeal and cross-appeal can be distilled down to four key issues:

i) *Issue 1: can the monthly drawings be said to constitute remuneration?*

Was Judge Watkin correct to hold that that the payments totalling £144,868.08 that had been debited to Mr. Jones' loan account were not remuneration for services provided but were loans from the Company; and that for the same reasons Mr. Jones also had no cross-claim for unpaid remuneration of £8,250 per month for nine months from July 2018 to March 2019 (a total of £74,250)?

ii) *Issue 2: was there a genuine dispute as to whether the director's loan account was due and payable as at the date of the statutory demand?*

Was Judge Watkin right to hold that there was a genuine dispute on substantial grounds on the basis that the undisputed amounts debited to the loan account (including in particular the £144,868.08 drawings) were not due and payable as at the date of the statutory demand because of the evidence that there was an agreement that such loans would not be repayable unless and until dividends were declared by the Company?

iii) *Issue 3: does the Company have security for the debt claimed?*

Was Judge Watkin correct to hold that the Company had an equitable charge and that the statutory demand was defective in failing to refer to that security and place a value on it?

iv) *Issue 4: was Judge Watkin right to exercise her discretion under IR 10.5(5)(d)?*

Was Judge Watkin right to exercise her discretion to set the statutory demand aside on the grounds of her impression that Mr. Schofield had manipulated the situation by causing the Company to fail to declare dividends so that Mr. Jones would be made bankrupt and Mr. Schofield would not have to face the Section 994 Petition?

Analysis

Issue 1– can the monthly drawings be said to constitute remuneration?

40. As I have indicated, the evidence of Mr. Schofield was that after Mr. Jones became a shareholder, both their salaries were reduced to an amount which was subject to PAYE and was designed to be just below the threshold for payment of NIC. The remainder of the benefits which the shareholders received were in the form of an annual dividend in an amount advised by the Company's accountants. Because the shareholders held an unequal number of shares, each year Mr. Schofield was required to sign a waiver of part of his dividend so as to equalise the amounts that they received.

41. Mr. Schofield also explained that the agreed monthly drawings of £8,250 were regarded as payments on account of the anticipated annual dividend and not salary. In addition, the agreement was that the shareholders' respective tax liability (part PAYE and part schedule D liability on dividends) would also be paid for by the Company. Mr. Schofield asserted:

> "The sums taken in that way apart from the PAYE salary element remain a debt due to the Company until offset by dividend voted by the Company in favour of the individual Director."

42. Mr. Schofield's evidence summarised his contentions:

> "The matters that are agreed are:-
>
> i. That [Mr. Jones] and I will each take salary subject to PAYE at a level recommended by the accountants as being just below the threshold for paying National Insurance Contributions on salary.
>
> ii. That we will each take the sum of £8,500 per month on account of anticipated dividends.
>
> iii. That our individual tax would be paid by the Company and allocated to our respective [directors' loan accounts].
>
> iv. That any dividends voted to be paid to us by the Company will first be used to defray the balance on our respective [directors' loan accounts].
>
> If the Company is unable to legitimately pay the requisite dividend or if for whatever reason the dividend is not voted to be paid to the Shareholders, the sum taken on account forms a debt due from the director to the Company. There is no Shareholders Agreement or other agreement that says otherwise."

43. Mr. Schofield then dealt with the position as regards payment of dividends. He said,

> "In fact, no dividends have been voted for payment to the Directors for the years commencing 1 October 2016 and 1

> October 2017, therefore the sums shown as drawings are due as a debt from [Mr. Jones] to the Company. In part, this has been because of financial issues that have arisen but also because the Company accountants advised that taking dividends in this manner was no longer advisable…I then arranged to repay my [director's loan account] and go straight onto PAYE."

44. Mr. Schofield gave no further information about the "financial issues" to which he referred. The advice from the Company's accountants to which he referred was contained in an email dated 8 January 2018, which was addressed to Mr. Schofield and Mr. Jones and stated,

> "Using dividends to manage cash extraction is straightforward in the case where the shareholdings are equal. However to maintain equal payouts when the shares are unequal requires dividend waivers to be executed. As a one-off measure this generally causes no issues. However as a continual policy it is not recommended. This is because HMRC could challenge the effectiveness of the arrangements and say the waiver is in effect salary and seek to apply PAYE and NIC in any event with potential penalties and interest…
>
> Accordingly you may wish to consider that to keep things simple and straightforward to pay salaries as opposed to relying on dividends to extract cash out of the company."

45. No meeting of directors or shareholders has, however, been held to consider this advice or to consider payment of dividends since Mr. Jones was excluded from the business. As I have indicated, the result is that the Company has stopped paying dividends.

46. In his evidence in response, Mr. Jones sought to characterise the monthly payments of £8,250 (as well as the £1,000 basic salary) as being remuneration. Mr. Jones stated:

> "As a director and employee of the Company I am entitled to remuneration for the services provided. The drawings I have taken were the agreed remuneration for my services. This has been a long standing agreement between [Mr. Schofield] and I and [Mr. Schofield] enjoys the same benefit. The drawings I have taken have never previously before been claimed from me and I would doubt that the drawings [Mr. Schofield] has taken are being claimed by the Company from him."

47. In a later witness statement, Mr. Jones accepted in his evidence that he did not have an entitlement to a dividend. However, he stated:

> "It was never intended that if the Company didn't issue a dividend that the drawings taken in anticipation of the dividend to be issued would have to be repaid to the Company. This is clear from the longstanding arrangement of the Company paying [Mr. Schofield] and I a heavily discounted salary in

> consideration of the drawings taken and dividend payments being issued."

48. Mr. Roe QC initially submitted that the reality was that Mr. Jones and Mr. Schofield had agreed that they would be entitled to be remunerated for their work for the Company, but that for what he described as "personal tax reasons" they would periodically cause the Company to declare a dividend which (coupled with a waiver by Mr. Schofield of most of his entitlement to dividend) would put into each man's pocket most of the money the Company owed him by way of remuneration. He submitted that Judge Watkin had been wrong not to find that if the Company failed to declare a dividend, this did not relieve it of a prior obligation to pay remuneration to Mr. Jones.

49. I do not accept that submission. It is frequently the case in small private companies that persons who are both directors and shareholders are paid only a relatively modest amount of remuneration for their work through the PAYE system. They then enter into an informal agreement or arrangement between themselves to draw sums of money from the company periodically during the year. Those sums are then debited to the directors' loan accounts in the expectation that at the end of the year the company will be in a position to declare a dividend. The intention is that the resultant debt created by the declaration of dividend (of the company to the shareholders) will be set off against the indebtedness of the directors on their loan accounts. Under such an arrangement, the periodic drawings are not declared as remuneration for the purposes of PAYE and NIC. Instead the directors and shareholders benefit from the more favourable tax treatment accorded to dividend payments.

50. In light of the manner in which such arrangements are presented to HMRC, in general terms I do not consider that such periodic drawings can simply be re-characterised as remuneration as and when it might suit one of the recipients so to contend. Or at least that cannot be done without acknowledging that the manner in which they had previously been disclosed to HMRC had been incorrect, with all the consequences in terms of the payment of additional tax, interest and penalties that this might entail.

51. When I put that point to Mr. Roe QC in the course of argument and questioned whether his submission was consistent with the manner in which the regular payments made to Mr. Jones and Mr. Schofield had been presented to HMRC for purposes of PAYE and NIC, Mr. Roe QC took instructions and indicated that he would not be pursuing that argument.

52. On this basis, I conclude that the £144,868.08 debited to Mr. Jones' loan account represents an amount owing from him to the Company. For the same reason, the cross-claim of £74,250 made by Mr. Jones against the Company for "unpaid salary" from July 2018 to March 2019 (i.e. nine months at £8,250 per month) must fail.

53. As such, subject to Issue 2 below, I consider that Judge Watkin was correct to hold that Mr. Jones is substantially indebted to the Company and that the cross-claims for the unpaid bonus of £31,939.07 and for unpaid basic salary of £1,000 per month would not exceed the amount claimed in the statutory demand. Hence IR 10.5(5)(a) is inapplicable.

Issue 2: was there a dispute on substantial grounds as to whether the director's loan account was due and payable as at the date of the statutory demand?

54. Mr. Harper QC submitted that Judge Watkin was wrong to hold that the debt claimed in the statutory demand was disputed on substantial grounds. He submitted that on the evidence there was no realistically arguable case that there was any agreement binding the Company that the debt would only be payable out of dividends. He argued that the evidence from Mr. Jones upon which Judge Watkin relied was too vague and of no substance.

55. Mr. Roe QC argued that it is perfectly possible in principle for all the shareholders of a solvent company to agree informally (on behalf of both themselves and the company) that personal expenditure incurred using company funds will be repayable only upon the declaration of a dividend. In Mr. Roe QC's submission, such an agreement did exist (or arguably existed) between Mr. Jones, Mr. Schofield and the Company. As there was no written agreement between the parties to that effect, he submitted that such agreement could be implied from the discussions between the parties and/or from conduct.

56. Mr. Roe QC accepted, however, that such an agreement could not lawfully provide that the amounts drawn by the directors/shareholders should never be repaid (i.e. that if no dividends were capable of being declared, the amounts drawn would be treated as a gift to the shareholders). He acknowledged, for example, that any such agreement between the director/shareholders could not be relied upon by them as a defence to a claim for repayment in the event that the company became insolvent and an administrator or liquidator was appointed.

57. Mr. Roe QC also acknowledged that such agreement would need, expressly or impliedly, to cater for the situation that would arise if a dividend was not declared in respect of any financial year, for example because the Company did not have sufficient distributable profits to do so lawfully or because the directors considered that their fiduciary duties required them not to recommend declaration of a dividend. In the instant case, he submitted that a term should therefore be implied so as to give business efficacy to the agreement between Mr. Jones and Mr. Schofield that no debt would become due and payable until such time as the directors and shareholders had at least met to consider whether or not to resolve to declare a dividend – which he said had not yet occurred.

58. In this regard, the evidence of Mr. Jones upon which Judge Watkin relied was as follows (emphasis added):

> "A historic review of each party's DLA will show that each DLA is always been repaid by the dividends issued. There was no agreement (written or otherwise) that either party's DLA would be repayable on demand. Both [Mr. Schofield] and I always operated on the express understanding that our DLA would be repaid from dividends issued by the Company. As can be seen from the financial information available in this dispute. Both [Mr. Schofield] and I drew from our DLA and incurred expenses such as personal tax but this was always repaid by the dividends issued."

59. Mr. Schofield's evidence on this point is set out above at paragraph 42.

60. I would accept that it is arguable that any agreement or arrangement between Mr. Jones and Mr. Schofield in this regard applied as much to amounts of personal expenditure properly debited to their respective loan accounts as it did to the monthly drawings to which I have referred. However, I accept Mr. Harper QC's submission that the evidence does not support Judge Watkin's finding that it was arguable that a legally binding agreement had been concluded between the parties.

61. For such an agreement to have existed, I do not believe that it would be necessary to have a formal written contract binding the Company. Agreements can be legally binding even though not in writing (see e.g. Paul v Constance [1977] 1 W.L.R. 527); and in many small private companies, business is frequently conducted on an informal basis, and agreements between shareholders can be binding both upon themselves and the company, even if undocumented: see e.g. Re Duomatic Ltd [1969] 2 Ch 365.

62. However, for a binding legal agreement there does need to be sufficient certainty of terms and some evidence from which the court can conclude, objectively, that there was a meeting of minds on those terms. In the instant case I do not think that the evidence arguably satisfies those requirements. Mr. Schofield gave evidence that there was an agreement which included some provisions (listed at (i) to (iv) in paragraph 42 above) which are consistent with Mr. Jones' case. To that extent the parties appear to have been in accord. But there was, of course, no common ground in the evidence as to what would be the position if no dividends were declared.

63. In that regard, Mr. Jones' evidence was that the agreement was that drawings would only fall to be repaid if dividends were actually declared. For the reasons that I have outlined, however, Mr. Roe QC accepted that an agreement in those absolute terms could not be lawful and suggested some implied terms that might fill the gap. I think that his difficulty was that his own client's evidence left no real scope for such a lawyer's exercise. There was no hint of any such terms in Mr. Jones' evidence, and as such I cannot see how such terms could possibly satisfy the usual requirements for implication of terms – namely that in addition to being necessary, they must not contradict the express terms of the contract, and they must be so obvious that they go without saying. The terms Mr. Roe QC suggested are hardly consistent with Mr. Jones' evidence and were not sufficiently obvious to have occurred to him to mention when he signed his witness statement.

64. Although that is the conclusion as a matter of strict contract law, in the context of certain companies (quasi-partnerships), a shareholder may be able to assert a legitimate expectation that the affairs of the company should be conducted in a certain way, so that it would be unfairly prejudicial to him within the meaning of Section 994 if the affairs of the company are conducted in breach of those expectations: see O'Neill v Phillips [1999] 1 W.L.R. 1092. As Lord Hoffmann indicated at page 1101G, it is not necessary for any promises giving rise to such expectations to be independently enforceable as a matter of contract, as they may be binding as a matter of equity.

65. Although Mr. Harper QC strongly disputed that these principles were applicable on the facts of the instant case, he accepted, correctly in my view, that if a debtor had an argument based on substantial grounds that the making of the demand by the company for immediate repayment of his loan account was unfairly prejudicial to him under

Section 994, it could amount to a dispute over the debt within the meaning of IR 10.5(5)(b).

66. In that regard, although Mr. Jones did not have a strict contractual entitlement, I believe that it is sufficiently arguable that he had a legitimate expectation that the Company would not demand repayment of his director's loan account unless and until the directors and shareholders had considered in good faith whether or not to declare a dividend. Mr. Jones' evidence is of an arrangement between him and Mr. Schofield under which he agreed to work for the Company for a salary that was significantly lower than the appropriate market salary and on an understanding that the directors' loan accounts would be repaid from dividends that would be declared from time to time. That conduct on his part in working for less than the market rate, together with the fact that Mr. Schofield had also amassed over £178,000 of debt in respect of his own loan account as at 30 September 2017, is entirely consistent with such an arrangement.

67. In those circumstances, it would, in my judgment, arguably be inequitable for Mr. Schofield, without good cause, to resile from such an understanding, to refuse or fail to give consideration to whether to declare a dividend, and to cause the Company summarily to demand repayment of Mr. Jones' loan account.

68. I have summarised the evidence as regards non-payment of dividends in paragraphs 43-45 above. Judge Watkin held, and I agree, that this evidence does not provide a coherent explanation of why no consideration has been given by the Company to the declaration of dividends since Mr. Jones was excluded from the business. Moreover, the fact that, after the parties had fallen out, Mr. Schofield chose to repay his own director's loan account from other funds available to him does not meet the argument as regards the potential unfairness to Mr. Jones of the apparent change in attitude as regards payment of dividends.

69. Mr. Harper QC submitted, however, that it was for Mr. Jones to put forward a positive argument that the Company had sufficient distributable profits and that it had unfairly prejudiced him by failing to pay a dividend. Mr. Harper QC pointed out that Mr. Jones had not included such a complaint in his Petition to date. Although the point concerning the Petition was well made, I think Mr. Roe QC provided the answer, which is that if the argument is capable of being made on the evidence that was before Judge Watkin, the fact that Mr. Jones' lawyers have not yet thought to apply to amend his Petition to include it, should not prevent it from being raised on this appeal.

70. Accordingly, although on different grounds to those outlined by Judge Watkin, I am satisfied that the debts allocated to Mr. Jones' director's loan account are subject to a dispute on substantial grounds, namely whether or not such debts are currently due and payable.

Issue 3: does the Company have security for the debt claimed?

71. Judge Watkin held that the debt claimed under the statutory demand was secured by an equitable charge in the Company's favour over: (i) all future dividends to which Mr. Jones might become entitled, and (ii) any proceeds of sale of Mr. Jones' shares in the Company.

72. Mr. Harper QC contended that the creation of a security interest required a binding contractual agreement to that effect, and that the evidence upon which Judge Watkin relied was incapable of supporting the conclusion that there was such a contract at all, never mind one for the creation of a security interest.

73. In Swiss Bank Corp v Lloyd's Bank [1982] AC 584, the House of Lords approved a statement of the test for creation of an equitable charge in Palmer v Carey [1926] AC 703 at 706-707, which was as follows,

> "The law as to equitable assignment, as stated by Lord Truro in Rodick v Gandell (1852) 1 De GM&G 763, 777, 778, is this: 'The extent of the principle to be deduced is that an agreement between a debtor and a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, will create a valid equitable charge upon such fund, in other words, will operate as an equitable assignment of the debts or fund to which the order refers.' An agreement for valuable consideration that a fund shall be applied in a particular way may found an injunction to restrain its application in another way. But if there be nothing more, such a stipulation will not amount to an equitable assignment. It is necessary to find, further, that an obligation has been imposed in favour of the creditor to pay the debt out of the fund. This is but an instance of a familiar doctrine of equity that a contract for valuable consideration to transfer or charge a subject matter passes a beneficial interest by way of property in that subject matter if the contract is one of which a court of equity will decree specific performance."

74. It is clear from that statement that the creation of an equitable charge requires a contractual agreement, but that an agreement which merely provides for a fund to be applied in a particular way will not suffice. That is because, as Buckley LJ explained in the Court of Appeal in the same case, [1982] AC 584 at 595,

> "An equitable charge which is not an equitable mortgage is said to be created when property is expressly or constructively made liable, or specially appropriated, to the discharge of a debt or some other obligation, and confers on the chargee a right of realisation by judicial process, that is to say, by the appointment of a receiver or an order for sale…"

75. The authorities in this area were reviewed in Re TXU Europe Group plc [2004] 1 BCLC 519. In TXU, a company agreed with its senior executives that they would continue to be entitled to final salary pensions, and, in order to give the executives some comfort, the company established a fund which would match the extent to which the pensions were not funded by Inland Revenue approved arrangements. Although it was clear that the fund was intended as the source from which the pension obligations would be met, it was held that the senior executives had no right to have recourse to the fund to satisfy

their claims to pension benefits, and so did not have a charge over the fund. Blackburne J summarised the principles at [35],

> "35.. What therefore must be shown is (1) that a particular asset (or class of asset) has been appropriated to the satisfaction of a debt or other obligation of the chargor or a third party and (2) that the chargee has a specifically enforceable right to look to the asset (or class of asset) or its proceeds for the discharge of the liability. Whether a particular transaction gives rise to an equitable charge depends upon the intentions of the parties, ascertained from what they have done. Their intention may be express or inferred. An expression of intention will not be determinative of the legal effect of the transaction if, upon a proper understanding of the admissible evidence (including any material documents), the transaction in question has a different legal effect. Equally, it is irrelevant that the parties may not have realised that the legal effect of the transaction into which they have entered gives rise to an equitable charge if, upon a proper understanding of the admissible evidence, that is its legal effect."

76. In the instant case, in relation to future dividends, Mr. Roe QC placed reliance on Mr. Jones' evidence that he and Mr. Schofield "always operated on the express understanding that our [director's loan accounts] would be repaid from dividends issued by the Company", together with Mr. Schofield's own evidence set out at paragraph 42(iv) above, in which he stated that it was agreed that "any dividends voted to be paid to us by the Company will first be used to defray the balance on our respective [director's loan accounts]".

77. In relation to the proceeds of sale of shares, Mr. Roe QC referred to Mr. Jones' evidence that:

> "Because … the sale of the Company was being seriously discussed, there was a mutual understanding between [Mr. Schofield] and I that any sums that were borrowed from the Company would be repaid when the Company was sold from the sale proceeds we received. [Mr. Schofield] and I originally discussed this when we received the first offer in 2014 … He said we could have anything we liked and it would all be sorted from the sale."

78. I do not consider that this evidence even arguably supports a conclusion that there was a contract which amounted to the creation of an equitable charge.

79. So far as the proceeds of sale of Mr. Jones' shares are concerned, all Mr. Jones describes is a mutual understanding arising from a discussion at a time at which a particular sale of the Company was being considered, several years before his relationship with Mr. Schofield broke down. There is nothing to suggest that their understanding would endure beyond the particular sale under consideration as would have to be the case for a security interest; and the discussion was clearly of the most general nature.

80. The shareholders could doubtless foresee that any future proceeds of sale of their shares would provide them with the money to repay the monies owing on their director's loan accounts. However, statements such as the loans "would be repaid from the sale proceeds we received" and "it would all be sorted from the sale" are entirely consistent with a simple understanding that the shareholders would each use the proceeds which they envisaged receiving to repay the Company. Crucially, given the point made by Buckley LJ in Swiss Bank Corp and picked up by Blackburne J in Re TXU, there was no suggestion that they were thereby appropriating any such future monies to repayment of their debts, still less that they were thereby conferring a right on the Company to have recourse to those future proceeds by way of a judicial process.

81. The evidence is a little clearer as to what was agreed in relation to dividends. Mr. Schofield accepts that it was agreed that dividends declared would first be used to defray the balance on the director's loan accounts. But there were no express words of charge used, and in my judgment it is impossible to infer from the evidence that this is what Mr. Schofield and Mr. Jones must have intended to create. I reach that conclusion not least because any security would have had the highly unusual characteristic of being a charge in favour of the Company over monies which would have been paid by the Company.

82. Instead, the arrangement that the parties envisaged is more simply and obviously characterised as one in which the Company would be entitled to exercise a right of set-off between the debt which it would owe once a dividend was declared, and the debt owed to it on the director's loan account. As I have explained, that is the conventional way in which arrangements of this type are operated in small private companies. That is also what I understand Mr. Schofield was describing when he referred to the dividends being "used to defray" the balance on the directors' loan accounts.

83. In addition, the better view as a matter of law is probably that such a contractual right to set-off is not a security right, because it simply confers a right upon A (in this case the Company) to extinguish or reduce a debt which it owes to B (in this case Mr. Jones or Mr. Schofield) by asserting its own claim against B: see *Goode, Legal Problems of Credit and Security* (6th ed) at paragraph 1-20. There is thus no need to infer that something as esoteric as an equitable charge was created in order to give efficacy to the arrangement between the parties in this case.

84. As such, I disagree with Judge Watkin's conclusion on this point. In my judgment, IR 10.5(5)(c) has no application.

Issue 4: was Judge Watkin right to exercise her discretion under IR 10.5(5)(d)?

85. IR 10.5(5)(d) provides the court with a discretion to set aside a statutory demand "on other grounds" to those set out in sub-paragraphs (a)-(c). Although sub-paragraph (d) appears on its face to provide a very wide discretion, both counsel accepted that it is not unlimited or unfettered.

86. The width of the discretion under sub-paragraph (d) has been discussed in a number of cases. One of the first statements on the provision (or more accurately, its predecessor under the Insolvency Rules 1986) was by Nicholls LJ in Re a Debtor [1989] 1 W.L.R. 271, who stated:

> "When therefore the rules provide…for the court to have a residual discretion to set aside a statutory demand, the circumstances which normally will be required before a court can be satisfied that the demand "ought" to be set aside, are circumstances which would make it unjust for the statutory demand to give rise to those consequences in the particular case. The court's intervention is called for to prevent that injustice."

87. However, it cannot be the case that the court has an unlimited freedom to take its own view of what is just and unjust. There must be recourse to some relevant legal principles. That was what Peter Gibson LJ was alluding to in Budge v A.F. Budge (Contractors) Ltd [1997] BPIR 366 when he indicated that it was necessary to "show a substantial reason comparable to the sort of reason one sees in paras (a), (b) and (c)" why the demand ought to be set aside.

88. As examples, cases in which the discretion in sub-paragraph (d) has been exercised, include Re A Debtor (where the demand was so confusing that it may have caused genuine prejudice to the debtor); Maud v Libyan Investment Authority [2016] EWCA Civ 788 (where paying the demand would have been illegal); and John Remblance v Octagon Assets Ltd [2009] EWCA Civ 581 (where a creditor pursued a guarantor in circumstances where they could not proceed against the debtor).

89. Judge Watkin's basis for applying IR 10.5(5)(d) was as follows,

> "The main concern that arises is that the circumstances outlined leave a general impression that the situation has been manipulated to enable Mr Schofield, through the Company, to obtain a bankruptcy order which would avoid him potentially facing the unfair prejudice proceedings from [Mr. Jones]."

90. Mr. Harper QC criticised that reasoning as being expressed in terms of "concern" and a "general impression". It is, however, instructive to examine the facts upon which Judge Watkin came to her view.

91. In the solicitors' correspondence between the parties from February 2018 to August 2018, there was no mention of any intention that the Company should issue a statutory demand in bankruptcy. Quite the reverse: the Company's solicitors stated a clear intention to issue a claim under CPR Part 7. In particular, their letter dated 25 July 2018 stated that in the absence of repayment of the loan account debt, the Company would issue a claim for damages against Mr. Jones. That would be the natural mode of proceedings in a case in which it was readily apparent that there was a substantial dispute between the parties. It would, of course, be entirely inappropriate to use the bankruptcy process where there was a substantial dispute over the liability of the alleged debtor.

92. At some point between 25 July 2018 and 5 October 2018, however, the Company changed its mind and decided instead to go down the path of bankruptcy proceedings. Despite pushing Mr. Harper QC on the point, I received no credible explanation for that change of approach. One suggestion was that Mr. Jones had changed his own behaviour in mid-2018, in conceding that certain of the debts were owed by him to the Company, which prompted the Company to consider that a statutory demand would be a preferable

route to recover these undisputed debts. It was also suggested that the Company became alive to allegedly fraudulent behaviour by Mr. Jones, so that it was anxious to recover any undisputed debt as soon as possible.

93. I do not, however, accept these explanations. They do not correspond with the timing of the Company's strategic shift – which evidently happened at some point between 25 July 2018 and 5 October 2018. As to the first point, Mr. Jones had already conceded that he owed certain of the debts to the Company before the Company threatened to bring a Part 7 claim on 25 July 2018. And in relation to the second, according to Mr. Schofield, the Company had already curtailed Mr. Jones' use of Company funds in February 2018 and raised £800,000 of urgent finance in March 2018. That substantial new finance was allegedly needed in order to compensate a key customer as a result of discovering that Mr. Jones had falsely informed customers that aircraft parts were irreparably damaged so he could repair and recycle the stock, and had laundered the money which he had earned through the Cayman Islands. Such matters were far more serious than any additional matters that came to light after July 2018, and it is implausible that it was only at that late stage that the Company became alive to the possibility that Mr. Jones might have been dishonest.

94. What did become apparent in about July 2018, however, was that Mr. Jones was serious about bringing proceedings for unfair prejudice against Mr. Schofield and that he claimed to own 35% of the Company. That much was apparent from the correspondence from 27 April 2018 onwards, including in particular Mr. Jones' formal letter before action on 17 July 2018 and a reiteration of the intention on 9 August 2018.

95. In the absence of any other coherent explanation, I am driven to the same conclusion which Judge Watkin reached, namely that Company's decision to change tack and commence bankruptcy proceedings was driven by a desire to bankrupt Mr. Jones in order to forestall his threatened Section 994 Petition against Mr. Schofield. Consistent with the approach of Nicholls LJ in Re a Debtor, Judge Watkin concluded - and I believe she had ample basis for concluding - that this rendered it unjust for Mr. Jones to face the consequences of bankruptcy proceedings before his Petition could be heard, so that it was appropriate for her to exercise her discretion under IR 10.5(5)(d).

96. I also consider that Judge Watkin's conclusion could have been justified by analogy to the principles which apply when the Court is considering, under its inherent jurisdiction, whether a bankruptcy petition is an abuse of process. Bankruptcy proceedings are a class remedy, and even if a statutory demand is served in respect of a debt that is otherwise undisputed, if the bankruptcy process is being used to enable the petitioner to achieve an illegitimate purpose to the detriment of the class of creditors, this will constitute an abuse of the process of the court.

97. In Maud v Aabar Block S.A.R.L. and Edgeworth Capital (Luxembourg) S.A.R.L. [2015] EWHC 1626 (Ch), Rose J considered a number of the key authorities on this point, including In Re Majory a debtor [1955] 1 Ch 600, Re Leigh Estates (UK) Ltd [1994] BCC 292 and the decision of the Privy Council in Ebbvale Ltd v Hosking [2013] UKPC 1. Having considered these authorities, she concluded, at paragraph 29, that the pursuit of insolvency proceedings in respect of a debt which is otherwise undisputed will amount to an abuse of process if the petitioner genuinely wants a bankruptcy order to be made, but is also pursuing a collateral objective which will, or is designed to, operate to the disadvantage of the general body of creditors.

98. Mr. Harper QC submitted that even if (contrary to his earlier submissions) the Company had a collateral objective of seeking to bankrupt Mr. Jones to frustrate his Section 994 Petition, that would not prejudice Mr. Jones' creditors so there would be no abuse of process. He argued that on bankruptcy, Mr. Jones' shares in the Company would become the property of his trustee, who could decide objectively whether or not to pursue the Petition in the interests of creditors. This was the type of argument that found favour with the Privy Council in Ebbvale Ltd v Hosking [2013] UKPC 1, but I consider that the instant case is distinguishable from Ebbvale on the facts.

99. In Ebbvale, the petitioner (P) was an English trustee in bankruptcy of a bankrupt (B), who acquired a debt owed by a company (C) incorporated in the Bahamas and presented a winding up petition against it. C had acquired a service station with development potential which B had owned until shortly before he was made bankrupt. P claimed that C was a front for B, who had been trying to hide his assets from his creditors in his bankruptcy. P was found by the Privy Council to have brought his petition in the Bahamas in order to give him an advantage in removing or weakening C's defence to a claim to ownership of the service station that P had brought against C in England.

100. One of the reasons that the Privy Council gave, at paragraph 33(e), for not finding the petition to be an abuse of process, was that it would be in the interests of the creditors of C (of which P was one), that a "professional decision" should be taken by a liquidator about the strength of C's defence to the English claim and the further expenditure of money on it.

101. In contrast to Ebbvale, in which there had been no independent scrutiny of C's defence to the claim by P to the service station, and where there was more than a hint that it might be entirely unmeritorious for C's funds to be spent defending the claim in England, in the instant case there has been some independent scrutiny of Mr. Jones' Petition. As I have indicated, HHJ Pearce has refused to grant reverse summary judgment on it to Mr. Schofield. It is also quite clear that, if successful, the Petition would provide very significant value for Mr. Jones' creditors, since Mr. Jones would stand to be paid the fair value on a non-discounted basis of up to a 35% shareholding in a Company that was apparently thought to be worth in the region of £9 million in 2016. As Judge Watkin observed, that would likely be an amount far in excess of the amounts claimed in the statutory demand. Moreover, given that the Company is a private company, in the absence of a sale to a third party, this is the only realistic route by which the value of Mr. Jones' shareholding could effectively be realised for the benefit of his creditors.

102. As such, I consider that Judge Watkin was justified in holding that even if the debt claimed by the Company was not disputed on substantial grounds, it was nonetheless just to exercise her discretion under IR 10.5(5)(d) to set aside the statutory demand in any event.

Disposal

103. I therefore uphold Judge Watkin's decision to set aside the statutory demand, and I will dismiss the appeal.