

Update No

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Bloomsbury Professional's Company Law Developments – 1/26 - February

Welcome to Bloomsbury Professional's Company Law Developments (1/26 February), a series where I summarise what I consider to be the most important recent case and statute law developments in company law in the preceding two months. In this issue, there are a number of significant Irish cases considered. First is the mammoth 263 page judgment of Quinn J in [Re Tuskar Property Holdings Ltd and ors](#) [2026] IEHC 6 where the High Court considered and made determinations in relation to fraudulent trading, reckless trading, failure to keep proper books of account, fraudulent disposition, misfeasance, disqualification and pooling order. This case is considered here under several headings, given the breadth of its findings and the fact that the updates are organised under chapters from The Law of Companies. The second significant case is the judgment of Roberts J in [Re Daf Truck Services \(Cork\) Limited; Ferriter & Ferriter v Gorzow Ltd and ors](#) [2025] IEHC 664 where the High Court had to consider whether it was appropriate to grant an injunction to prevent the removal of a director who was in the process of bringing a s 212 petition alleging oppression. Roberts J recognised the entitlement of members to remove a director as provided for in s 146 of the Companies Act 2014 and said that injuncting the removal of a director would interfere with that right and so should be granted only on an exceptional basis. It was found that the case in hand was such an exceptional case owing to the fact that there was prima facie evidence that the petitioner was in a quasi-partnership with the respondents and so had an 'external title', on that basis, to remain as a director. Notably, however, the respondents were given leave to apply for the discharge of the injunction if the petitioner did not make progress with the substantive petition and also if the petitioner sought to unreasonably obstruct the conduct of business at any future board meetings. Another Irish case of interest is the decision of Oisín Quinn J in [Re Sulu Software Consultancy Limited; O'Neill v Hudner](#) [2025] IEHC 669 where once again the Irish courts have recognised that the jurisdiction in s 569(1)(e) to order the winding up of a company on the just and equitable ground is a dynamic one and not confined to the six categories used in text books to explain the exercise of the jurisdiction in decided cases. Of the decisions from the UK which are noted in this update, one of the most interesting is [Re Bubbles Champagne Bar Limited; Olivier v McCaughran and ors](#) [2025] EWHC 3308 (Ch). The interest is not so much with the decision itself but in the decision it applies, [Re Contingent & Future Technologies Ltd](#) [2023] EWHC 2451 (Ch) which addressed an issue not as yet addressed by the courts in Ireland, namely, how to approach a case where a petitioner for relief from oppression has had his or her shares expropriated and their names removed from the register of members, with the result that he or she no longer has locus standi to petition under [s 212](#) of the Companies Act 2014.

Dr Thomas B Courtney

Civil litigation

[Courtney, *The Law of Companies* (4th ed) [Ch 5](#)]

Civil litigation – Security for costs – Special circumstances – Whether the plaintiff's insolvency was due to the defendant's wrongdoing – [s 52](#) of the Companies Act 2014 – Good Hope Investments Limited v New Ireland Assurance Company plc [2025] IEHC 667 (Nolan J). In this application for security for costs, the defendant, New Ireland, applied for an order under [s 52](#) of the Act, to require the plaintiff limited liability company, to provide security for its costs in defending the plaintiff's claim. The plaintiff's claim arose in circumstances where in 1991 the plaintiff bought a property in Dublin from the defendant for €78,000 but never registered its title to the property with the Land Registry. Remarkably, not only did the purchaser not register it but the defendant too forgot that it had sold the property, resulting in the defendant selling the property again in 2017 to a third party for €2,507,500 and in 2022 the third party sold it again for over €3m. It was only in 2022 that the plaintiff claimed to have become

aware of what had happened and after some correspondence between the plaintiff and defendant, ultimately, the plaintiff instituted proceedings, claiming that the defendant had wrongfully sold the property and retained the proceeds of sale. The defendant claimed that the plaintiff's claim was statute barred.

Nolan J noted the threshold requirements for an order for security for costs as provided for in s 52 of the Act. In particular, the requirement that the defendant show that it has a prima facie defence must be established and that where it is then security should be ordered unless there exist special circumstances. On whether or not the defendant had a prima facie defence, Nolan J held that on the face of it the defendant had shown a prima facie defence based on the statute of limitations point although he noted that it had been argued that there is no such limitation in the case of a bare or constructive trust.

Nolan J noted it was not necessary to consider whether the plaintiff would be able to meet the defendant's costs, estimated at €400,000, since the plaintiff admitted it would not have sufficient assets to provide full security.

Turning to whether there were special circumstances, Nolan J noted that the plaintiff claimed that its impecuniosity was due to the actions of the defendant: it did not trade and the property was its sole asset and the reason why it would not be able to meet costs would be because of the defendant's actions in depriving it of its sole property. Having considered the decision in *Connaghton Road* as endorsed by the Supreme Court in [Quinn Insurance Ltd v PWC](#) [2021] IESC 15, Nolan J said while the circumstances of the case were very special it was less clear that they fell into the category of special circumstances as envisaged by the legislation. However, he went on to note that the test did not require the court to determine whether the proceedings would be stifled or not. Nolan J said he was satisfied that the plaintiff had established, on a prima facie basis, that there was an actionable wrongdoing on the part of the defendant when it sold the property a second time and that there was a causal connection between that actionable wrongdoing and the consequences for the plaintiff in that its only asset has been disposed of without its consent and it has suffered a loss. Nolan J found that the balance had been tipped where it could be shown that rather than the alleged wrongdoing only forming part of the shortfall giving rise to the financial difficulties the plaintiff is in, it was arguable that it forms all of it. It followed that Nolan J refused the defendant's application that the plaintiff-company provide security for the defendant's costs.

Directors' Personal Liability

[Courtney, *The Law of Companies* (4th ed) [Ch 16](#)]

Fraudulent trading – Reckless trading – Whether first respondent was a de facto director of a shadow director – Failure to keep proper books of account – Sections 220, 609 and 610 of the Companies Act 2014 – [Re Tuskar Property Holdings Ltd and ors](#) [2026] IEHC 6 (Quinn J). In this 263 page judgment Quinn J considered a series of applications against five respondents brought by the liquidator of three companies, Tuskar Property Holdings Limited ('TPH'), Hynes Jewellers (Wexford) Limited ('HJW') and JW Fashions Limited ('JWF'). The background was that Hynes Jewellers was a family business which operated in Wexford town since 1956 but HJW was only incorporated in 1999. Its shareholders were the second respondent as to 55 per cent, and his sisters FH as to 35 per cent and CC as to 10 per cent. The second respondent and FH were directors, the second respondent being managing director and a jeweller by trade who worked in the shop and ran the company. The sisters worked in the shop. Business was up and down but on a stable footing for most of its early years. In 2014 the first respondent, their cousin, was brought into the company as a financial consultant and a company owned by him and his wife NH (TPH) became company secretary of HJW. Around this time HJW stopped paying rent, leading to the shop being repossessed and six months later, the business restarted at new premises in Main Street Wexford but in the name of the third company, JWF. After a few years the sheriff seized most of the stock from that company's premises on foot of unpaid taxes and JWF ceased trading in April 2019. The sisters were excluded from the company's affairs by the first and second respondent. The affairs of HJW, the family jewellery business, became entangled with companies introduced by the first respondent resulting in its insolvent liquidation and losses to its creditors including the revenue. Prior to his involvement in the companies, the first respondent had been disqualified from acting as a director for three years from October 2013 and a five-year restriction order. Quinn J observed it was not known whether the second respondent and his sisters were aware of this. In 2019, the Revenue Commissioners petitioned

successfully for the winding up of HJW and in 2020, Revenue also successfully petitioned to have JWF and TPH wound up too.

The liquidator said his investigation into the companies revealed that: the first respondent was a *de facto* or shadow director; numerous transactions and payments between the companies and the respondents and others were fraudulent; the first and second respondents were knowingly party to fraudulent trading; the third respondent was knowingly a party to reckless trading; the companies failed to keep proper books of account and that this was the responsibility of the first and second respondents; the first, second and third respondents had failed to cooperate with him. Quinn J concluded that the findings of the liquidator were substantiated by the evidence.

The trial of the issues itself was unusual in that the respondents were not legally represented and the first and second respondents never appeared in court in person, only attending intermittently by telephone, something permitted to facilitate the third respondent who was a medical practitioner in the UK.

In relation to the claim that the first respondent was a *de facto director* or a *shadow director* Quinn J held that the first respondent was a *de facto* director (not a shadow director) of HJW after considering in some detail the applicable law as set out in [Re Hocroft Developments; Dowdall v Cullen and ors](#) [2009] IEHC 580, [Re Lynrowan Enterprises Limited](#) [2002] IEHC 90, [Re Hydrodam \(Corby Limited\)](#) [1994] BCC 161. Quinn J noted in particular (at para 327) that there is a clear difference between a *de facto* director and a shadow director, the latter acting overtly, having assumed the status and function of a director and the latter lurking in the shadows, sheltering behind others. Quinn J gave six reasons for concluding that the first respondent was a *de facto* director (at para 332): (1) he took it upon himself to respond to the liquidator's request for information, not denying he was a director; (2) he was clearly the person driving the arrangements for the transfer of the business from HJW to JWF; (3) the second respondent deferred frequently to him; (4) he took active steps in the representation of HJW in legal proceedings when the Revenue Commissioners presented the winding-up petition; (5) he had held himself out as a director in dealings with a car finance company; (6) he had held himself out to third parties as the person with whom they should deal. See also paras 705 to 733 where Quinn J expanded on the reasons for his finding that the first respondent was a *de facto director*.

In relation to the claim for *fraudulent trading* Quinn J held that the first respondent had traded fraudulently within the meaning of s 610 of the Act. Quinn J considered the leading Irish cases on fraudulent trading: [Re Hunting Lodges Limited](#) [1985] 1 ILRM 75, [Re PSK Construction Limited; Kavanagh v Higgins](#) [2009] IEHC 538 and [Re Kelly Trucks](#) [2019] IEHC 6 which concerned the predecessor of s 610, s 297 of the Companies Act 1963. In particular Quinn J noted that a single act committed with fraudulent intent can suffice to ground a declaration of personal liability; that as noted by Carroll J in [Hunting Lodges](#) everyone is deemed to intend the natural and probable consequences of his acts. Quinn J surveyed the case law (at para 740) relating to fraudulent trading and said they included instances of: (a) assets or money being transferred to other companies when the company is under pressure for payments; (b) disbursement of company funds into bank accounts which are not referred to in the company's books (c) withdrawal of company monies by a director for their personal use; (d) attempts to divert business, property or assets to other companies under the control of the same directors or shareholders; (e) knowingly under declaring amounts due to the Revenue Commissioners. Quinn J held (at para 741) that the term 'knowingly' means that it must be proved that the person concerned had knowledge and fraudulent intent must be established and in considering that proof the court will apply the principle that every person is deemed to intend the natural and probable consequences of his acts. Quinn J held that there were numerous transactions and events which evidence intent to defraud creditors of the company or other fraudulent intent and identified (at para 742) nine specific examples. Quinn J then declared the first respondent was knowingly a party to the carrying on of the business of the companies with intent to defraud creditors and for other fraudulent purposes and that he be personally liable without limitation of the debts of the companies. The first respondent was therefore liable of fraudulent trading when acting as a *de facto* director. In relation to the *quantum* Quinn J held that while [s 610\(2\)](#) empowers the court to impose liability without limitation for all or part of the debts, this requires the court to apply the principle of proportionality by reference to the circumstances of each case. Again, the learned High Court judge considered the authorities (already cited) on the question of quantum and concluded (at par 753) that the wholesale abuse of the privilege of limited liability revealed in the evidence was of such a scale that the benefit of limited liability should be totally withdrawn from the first respondent before going on to quantify the amounts he owned in respect of each of the three companies, €894,264 (HJW), €651,609 (JWF) and €1031272 (TPH).

As regards the second respondent, Quinn J held that he too was guilty of having traded fraudulently. Quinn J noted that he was a formally appointed director and that he had facilitated certain transactions not least by allowing his joint account with his wife to be used as a conduit for the transmission of monies from HJW to TPH. Quinn J (at para 856) set out eight separate specific reasons for finding that the second defendant had knowingly traded fraudulently. As regards *quantum*, Quinn J declared the second defendant liable for the debts of HJW and JWF in an amount not exceeding €1,660,572.

As regards the claim of *reckless trading*, Quinn J held that the third respondent was guilty of reckless trading. Quinn J considered the leading decision of *Re Hefferon Kearns Limited (No 2)* [1993] 3 IR 181 and two decisions of the South African Courts, *Engelbrecht NO and ors v Zuma and others* [2015] 3 All SE 590 (GP) and *Cronje v Stone* 1985] 3 SA 597. In particular, Quinn J noted that in the latter case it was found that a director and large shareholder had recklessly refrained from exercising proper control over the company and that her inertia had facilitated the mismanagement by her co-director. Quinn J noted that there was limited evidence before the court and that the third respondent had not testified. The learned judge held that the third respondent was knowingly a party to the carrying on of the business in a reckless manner for the purpose of [s 610\(1\)\(a\)](#) and that he was personally responsible for the debts of the company up to €1,029,733.

In relation to the claim for *contravening the obligation to keep adequate accounting records* Quinn J held that the first, second and third respondents had all contravened the obligation to keep adequate accounting records and were personally liable under [s 609](#). In his consideration of the first respondent's conduct, Quinn J reviewed the case law (at para 779 et seq) on [s 609](#) beginning with *Mehigan v Duignan* [1997] 1 IR 340 and *Re Rayhill Property Company Limited; Conroy v Corneill* [2003] 3 IR 588 and [Re PSK Construction Limited](#) [2009] IEHC 538. Quinn J noted the causative limitation which requires either one of three conditions precedent to liability: contribution to the company's inability to pay all its debts, or results in substantial uncertainty as to its assets and liabilities or has substantially impeded the orderly winding-up of the company. Again, the principle of proportionality was noted (at para 788) and the decisions in *O'Keeffe v Ferris* [1993] IR 165 and *Maloc Construction Limited v Chadwick* [1986] 3 NZCLC 99. After due consideration of the relevant matters Quinn J held that the first respondent was a person in default as regards the contravention of ss [281](#) to [285](#) and that he be personally liable without limitation for all debts and liabilities in the amounts totalling €3.26m plus costs. Quinn J also found (at para 871) that the second respondent too was in default as regards the keeping of adequate accounting records and that he should be personally liable. The third respondent too was found to be in default although Quinn J confined the amount of his liability to the cost of reconstructing the books and records.

Disqualification

[Courtney, *The Law of Companies* (4th ed) [Ch 28](#)]

Disqualification of directors – De facto or shadow directors – Period of disqualification – [s 842](#) of the Companies Act 2014 – [Re Tuskar Property Holdings Ltd and ors](#) [2026] IEHC 6 (Quinn J). The facts and background to this decision have been considered already under the heading Directors' Personal Liability. On the question of disqualification, Quinn J considered the statutory provisions concerning discretionary disqualification in [s 842](#) of the Act and the fact that a two-stage enquiry is required: first, whether one or other of the gateway grounds apply and secondly, the exercise of the court's discretion: *Re Kentford Securities Limited; Director of Corporate Enforcement v McCann* [2011] IR 585. Quinn J noted that finding that the first respondent was a party to fraudulent trading would be sufficient to establish the jurisdiction under [s 842\(c\)](#) but there were five other grounds (at para 815) which were noted as they were relevant to the length of the disqualification order. Quinn J also noted that from the day of his appointment, the liquidator had encountered continuous non-cooperation, obfuscation and failure to comply with the basic obligations of directors to provide information and documents to a liquidator. Quinn J was satisfied that on the evidence the first respondent's conduct made him unfit to be concerned in the management of a company. It was noted that no discretionary factors had been drawn to Quinn J's attention to suggest an order should not be made and then held that it was appropriate to disqualify him. As to the length of the period of disqualification, Quinn J noted the decision in [Re Bovale Developments Ltd](#) [2013] IEHC 561, noting the points made in that regard by Finlay Geoghegan J (at para 824) and also noting the decisions in *Re Wasteman Plant and Civils Ltd; Kirby v Rabbitte* [2020] IEHC 703 and [Re Pembroke Dynamic Investment Services](#) [2021] IEHC 475. As to the case before him, Quinn J noted six specific circumstances which led him to conclude that the case fell into the most serious of categories and that the appropriate period was 18

year and that no mitigating circumstances were evident. He also ordered that the first respondent be liable to pay the costs and expenses in investigating his behaviour in this regard.

As regards the second respondent, Quinn J said he was primarily concerned with his role in relation to the affairs of HJW and JWF and summarised in seven points (at para 881) his conduct. Having found that he had been knowingly engaged in fraudulent trading, the gateway in [s 842\(c\)](#) had been satisfied. Although there were no submissions made as to the exercise of his discretion, Quinn noted a number of points: that there was no evidence he had been aware of the first respondent having been previously disqualified and restricted; that he had no formal training or experience in law or finances and that he clearly had come under the influence of the first respondent. He also considered whether a restriction order might suffice but concluded he ought to be disqualified. Quinn J then determined that the second respondent should be disqualified for a period of seven years.

As regards the third respondent, Quinn J conducted (at para 953 et seq) a similar exercise as he had in relation to the other two respondents and determined that he should be disqualified and that the period of disqualification was that of 12 years.

Meetings

[Courtney, *The Law of Companies* (4th ed) [Ch 14](#)]

Meetings – General meetings of members – Validity and effects of a disputed general meeting – Whether resolutions purportedly passed were effective to amend the company's articles of association as to eligibility to be a director and to remove and replace board – Construction of articles of association – Validity of a requisition for a general meeting – Directors declining to convene meeting on grounds it proposed invalid resolutions seeking to change class rights which required separate class meetings – Whether objects of the meeting could have been achieved such that the directors were obliged to convene the meeting – Whether applicants were entitled to convene a meeting where the directors failed to convene a meeting – Whether directors who were obliged to retire but did not retire at an AGM remained as directors or were deemed to have ceased to hold office – [Re Plantation Wharf Management Limited](#) [2025] EWHC 2938 (Ch). This UK High Court decision concerned an application for an injunction and declarations concerning the validity of a disputed general meeting and subsequent board meeting. One of the matters to be decided was whether the freehold owner which was a shareholder in a management company had lost its power to nominate, remove and replace up to four directors, in circumstances where the management company's articles of association provided it would do so where the last of the 'units' in the estate had been let to 'owners'. 'Units' were defined in the articles of association to mean a 'flat, or other unit of accommodation' and it was contended that this excluded storage units and garages. Having regard to the dictionary meaning of the word 'accommodation' and the context and the articles overall, it was held that this was correct and that the freehold owner lost the power to nominate, etc, once it was left with only storage units and garages.

Another matter required to be decided concerned the validity of a requisition notice. The resolution proposed to be passed at the requisitioned meeting included a special resolution which it was claimed would vary the rights of the A shareholders (the freehold owner) by removing their right to appoint directors and would vary the rights of the B shareholders by allowing persons who were not owners of units in the estate to become directors. Deputy judge, Rushton KC found that the resolution would not have varied the rights of the A shareholder since the A shareholder had already lost the right to nominate directors once it was left with only storage units and garages but that it would have varied the rights of the B shareholders. Accordingly, it was held that it was necessary to comply with the requirements for holding a class meeting in order to pass the resolution.

It was, however, also contended that the objects in the requisition notice could have been addressed at a general meeting and so the directors were obliged to convene the meeting. Reliance was placed on *Isle of Wight Railway Co v Tahourdin* (1884) LR 25 ChD 320 where Fry LJ had said (at p 344) 'if the object stated in the requisition be such that by any form of resolution or by any machinery sanctioned by the Act, it can be carried into effect, then it is the bounden duty of the directors to call the meeting'. The Deputy Judge held that insofar as the objects were to remove the Freeholder Directors and/or to change the criteria for appointing directors and amend the articles, she considered that these were objects which were capable of being effectively achieved, albeit by differently worded resolutions and so held that the directors ought to have convened the requisitioned meeting and reframed the proposed resolutions to be ones which addressed the objects in the Notice but which could properly be passed by a general meeting.

The next issue considered was whether the general meeting convened following the refusal by the directors to convene a general meeting was valid and the same for the subsequent board meeting. The deputy judge held that the resolutions passed at the general meeting were not valid because resolutions were put to the meeting which required class approval and so the subsequent board meeting appointing and removing directors was also invalid.

Finally, it was held that the principle in *Re Consolidated Nickel Mines Ltd* [1914] Ch 883 which provides that if a director is under a duty to call a general meeting at which he will have to retire but fails to do so, he should be treated as having retired on the last day on which such a meeting could have been called, also applies to where a general meeting is called but the directors do not retire because they do not realise that their requirement to retire under the articles had arisen.

Shareholders' Remedies

[Courtney, *The Law of Companies* (4th ed) [Ch 11](#)]

Shareholders' remedies – Oppression proceedings – Whether the majority shareholders in a company should be restrained pending trial from removing or implementing the removal of a current director bringing oppression proceedings – Whether company was a quasi-partnership in the context of an application to remove a director – Serious question – Adequacy of damages – Balance of justice – [s 212](#) of the Companies Act 2014 – [Re Daf Truck Services \(Cork\) Limited; Ferriter & Ferriter v Gorzow Ltd and ors](#) [2025] IEHC 664 (Roberts J). This decision concerned an application for an injunction to restrain the majority shareholders in a company from removing a director who was bringing proceedings under [s 212](#) of the Act. The applicants for the injunction were a father and son who held 30 per cent (father) and 4 per cent (son) of the shares in the successful company, Daf Truck Services (Cork) Limited. The three respondents each held 18% of the shares, the remaining 12 per cent of the company being held by a person who was not party to the proceedings. The first applicant (PF) was one of six directors of the company and the only applicant seeking injunctive relief. PF was the longest serving director who had been also the company secretary but had been removed as secretary in 2023. The second applicant for [s 212](#) relief was SF who had been managing director but who had been removed from his position as director and employee following a review which identified numerous financial irregularities. It was noted that the company did not have a formal agreement with DAF NV for the sale of Daf trucks in Ireland and that in 2012 DAF NV had granted exclusive Irish distribution rights to another company (DDI) which was owned by the majority shareholders. While the company was not permitted to sell new Daf trucks, it was allowed to service them. In addition, under a 'workaround' the company was permitted to source trucks from DDI and invoice customers such that it was effectively a sales dealer for Daf trucks. It was noted that the majority shareholders said that following a review by DAF NV it had been decided that the 'workaround' would be discontinued and the company prevented from reselling new trucks. It was noted that the applicants claimed the company had been excluded from these discussions and that DDI denied that it had participated in the decision taken by DAF NV. A dispute arose between the applicants and the majority shareholders over legal proceedings against DAF NV challenging its decision. Additional directors were appointed to the board of the company which the majority said was done to better reflect the shareholders' composition and this led to a review of the company's financial performance and ultimately the removal of the second applicant, SF. PF claimed that the redirection of the company's business to DDI would benefit DDI hugely and would most likely render the company insolvent. These were broadly the circumstances leading to the institution of proceedings under [s 212](#) by PF and SF who alleged that the majority shareholders were acting in DDI's interests, had appointed additional directors in furtherance of DDI's interests, had failed to progress proceedings against DAF NV, had excluded the applicants from running the company and that the investigation into the financial position was oppressive.

In considering the background to the application for injunctive relief, Roberts J noted that the board had unanimously resolved to appoint KPMG as auditors and that in consequence, the company was required to commence the process of restating its financial statements for a number of years. PF alleged that the sole purpose of that was to diminish the value of the applicants' shares in the company but the respondents averred that it was necessary due to the numerous and material financial irregularities and inconsistencies identified in the company's records. The restatement of the accounts was the reason given for not providing management accounts. There was a disagreement as to the level of information being provided to the applicants and PF instructed his solicitor to write to the company's solicitor seeking information and contended that it was this which prompted the majority shareholders to commence the process to remove him as a director; this was denied by the

respondents. Subsequently, a board meeting was convened regarding PF's performance of his role as director, pointing to issues with the statutory books which PF had been required to maintain, when he had been the company secretary, and an alleged failure to cooperate with parties retained by the company to regularise the company's historical financial and governance issues. When the board met and decided to convene an EGM for the purpose of removing PF as a director under s 146 of the Act, the application for an injunction to prevent his removal was brought.

It was noted that as a compromise, the majority shareholders had offered to provide PF with the same information as he was receiving as a director but that this was rejected as PF claimed he was already not receiving sufficient information as a director and the compromise would only reinforce the information deficit. It was also noted that the restated financial statements were approved at a board meeting although PF had voted against the resolution without giving reasons.

Roberts J noted the entitlement of members to remove a director as provided for in s 146 of the Act and that injunctioning the removal of a director would interfere with that right and so should be granted only on an exceptional basis. In this regard a number of cases where such an injunction had been granted and refused were noted: *McGilligan v O'Grady* [1999] 1 IR 346, [Ancorde Limited v Horgan](#) [2013] IEHC 265 and [Mulcahy v Avoca Capital Holdings Ltd](#) [2005] IEHC 302. Roberts J noted that while the cases in which injunctions had been granted had involved special circumstances (e.g. an unresolved question as to the entitlement to shares to which voting rights to remove the director attached and a shareholders' agreement. Roberts J noted that PF claimed that the company was in the nature of a quasi-partnership and that he had an 'external title', on that basis, to remain as a director but that that was strongly disputed by the majority. The court said that this was the 'key issue' to consider.

Roberts J went on to consider the question of whether the company was a quasi-partnership and in that regard quoted from the decision of Binchy J in [Hamill v Vantage Resources Limited and Simon Martin](#) [2015] IEHC 195 and after reviewing the facts ultimately concluded that while she could not decide the matter on an interlocutory application, there was more than a bare assertion of quasi-partnership and that the claims had been made from the outset of the proceedings and that therefore, the facts of the case brought it within the confines of those limited exceptional cases where a court might consider restraining the removal of a director, but only because of the plea of a quasi-partnership.

In those circumstances, Roberts J went on to consider the tests for interlocutory relief. On the 'no permanent injunction likely' ground it was concluded that even if unlikely to be granted as buy-out is the most common remedy, *'the unlikelihood of a permanent injunction at trial as being an absolute bar to obtaining interlocutory relief in all cases alleging oppression under s. 212 (with its varied possible outcomes) is not in my view mandated by the judgment in Merck'* (at 86). On the *'is there a fair question to be tried'* ground, Roberts J concluded that the assertion of a quasi-partnership was more than a bare allegation. As to the 'adequacy of damages' Roberts J concluded that although *'it is very finely balanced, I find that by reason of his claim of a quasi-partnership entitling him to participate in the management of the Company, damages would not be an adequate remedy for PF to address his removal as a director at this time'* (96). And finally, as to the 'balance of convenience/ balance of justice' Roberts J held that this favoured the making of the injunction, citing as reasons the fact that PF had been a director for over 40 years, he had not been given all available information, if a director he could continue to voice his concerns, he had not been disruptive of board meetings and of course the possibility of the company being a quasi-partnership. Of interest to practitioners is the acknowledgement by Roberts J that PF would *'would of course remain bound by his duty of confidentiality in relation to any information he receives in his capacity as a director. It may also be inappropriate for him to receive certain information where there would be a conflict of interest, bearing in mind the ongoing litigation'* (101). In those circumstances the injunction was granted Roberts J holding that the least risk of injustice favoured maintaining the status quo; however, liberty given to apply to lift the injunction should PF not proceed to advance the proceedings to trial of if he sought to unreasonably obstruct the conduct of business at any future board meetings (103).

Petitioner in unfair prejudice petition not a registered shareholder – UK law requiring a petitioner to be a member of a company – Court's discretion to order rectification of the register of members so as to render the petitioner a member – s 994 of the Companies Act 2006 (UK) – [Re Bubbles Champagne Bar Limited; Olivier v McCaughran and ors](#) [2025] EWHC 3308 (Ch). In this decision of the UK's High Court, the putative petitioner for unfair prejudice was prevented from proceeding with a petition for unfair prejudice because s 994 of the [Companies Act 2006](#) (UK), like [s 212](#) of the Companies Act

2014, requires a petitioner to be a registered member of the company. The facts in this case were that the petitioner claimed to be entitled to be registered as the holder of one-third of the issued share capital of the company. The basis of the petitioner's claim was that, before the company was incorporated, he and the first respondent were operating the business as partners on the basis of a declaration of trust and that he had provided assets to the company; the trial judge, HHJ Cadwallader, observed that nowhere was there an explicit allegation that the parties had agreed that the petitioner should be a shareholder in the company although that was the petitioner's case.

It was noted by the court that only a 'member' has standing to present such a petition and that the burden of establishing that one is a member is on the petitioner: [Re HLHP Oriental Food Limited](#) [2024] EWHC 497 (Ch). It was also noted that it was not in dispute that the petitioner has never been a member of the company nor a person to whom shares in the company had been transferred or transmitted by operation of law. Of significance, however, is the acknowledgement by the court that it 'has a discretion to determine, within a petition brought under s 994 of the Companies Act 2006, a dispute about whether an order for rectification of the shareholders register ought to be made so as to render a petitioner a shareholder: [Re Contingent & Future Technologies Ltd](#) [2023] EWHC 2451 (Ch). In the instant case the court exercised its discretion in the interests of the overriding objective but concluded that the petitioner was not entitled to be entered in the register of members because on the evidence before the court it had never been agreed that he would be the beneficial owner of one-third of the shares in the company and that his involvement in the company was, on the evidence, as an investor only. Accordingly, the petition was dismissed as the petitioner had no standing to bring the unfair prejudice petition, not being a member of the company.

While this case involved the assertion of a trust which, it was claimed, entitled the petitioner to be registered as member, many of the cases in which this legal quandary will arise is in the context of the expropriation of shares i.e. the petitioner for relief from unfair prejudice (or oppression in an Irish context) will have been a shareholder in the company but has had his, her or its shares compulsorily acquired by the company or another shareholder resulting in their removal from the register of members, and thereby lacking standing to bring a petition under [s 212](#) of the Act. This was the basis of the case referred by HHJ Cadwallader, [Re Contingent & Future Technologies Ltd](#) [2023] EWHC 2451 (Ch)

. which was considered to be a new and novel, approach to the quandary faced by petitioners: see Lightman, 'Non-members & s 994 petitions: a novel approach', (2024) *New Law Journal* 11. Where someone who is not currently a member but claims to be entitled to retrospective rectification of the register of members presents a petition, the traditional approach in the UK has been to strike out the petition or to stay it while the petitioner seeks to establish their entitlement to petition in separate proceedings. In *Re Contingent & Future Technologies Ltd* ICC Judge Greenwood made use of its case management powers to order a split trial and direct that the first trial should determine whether the register of members should be rectified so as to determine whether the petitioner had locus standi to bring the petition first, and if the petitioner was rightly a member, then going on to hear the petition for unfair prejudice. It was said there that this approach was open to the court in a case in which the petitioner's disputed right to membership is advanced in the petition itself and particularly so if the claim is to retrospective rectification of the register and the petition does not raise a claim to a winding-up order. It was said there that in such case the court should consider the possibility of fashioning an appropriate alternative case management solution to the resolution of a genuine dispute which needs to be resolved. The rational put forward, that "the court is required to give effect to the overriding objective of dealing with cases justly and at proportionate cost" would seem to be as relevant in Ireland as it is in the UK.

Winding Up

[Courtney, *The Law of Companies* (4th ed) [Ch 24](#)]

Winding up – Petition to wind up company on the just and equitable ground – Alleged breakdown in the relationship with one of the founders – Company ceasing to function – Company on cusp of insolvency – Case not falling within one of the theretofore recognised grounds – Whether additional ground exists to make a winding-up order – Exercise of discretion – [s 569\(1\)](#) of the Companies Act 2014 – [Re Sulu Software Consultancy Limited; O'Neill v Hudner](#) [2025] IEHC 669 (Oisín Quinn J). In this case the petitioner (41.33 per cent shareholder) sought to have the company wound up on the just on equitable ground under [s 569\(1\)](#) of the Act but the petition was opposed by the respondent who was also a director and 25.31 per cent shareholder in the company. The respondent's

position as to solution was that he wanted the company to purchase his shares. It was undisputed that the company was on the brink of insolvency; it had no longer any employees, was carrying on minimal activity and would run out of cash in a matter of months. The reason why it was necessary to petition the court was because the respondent could block a special resolution to wind the company up voluntarily. The affidavits before the court in the petition and the [s 212](#) proceedings showed that there was a breakdown in the relationship between the petitioner and respondent and there was no dispute the breakdown in relationship was irretrievable. There was also a dispute as to whether the respondent was a good leaver or bad leaver as those terms were described in the company's constitution. On resigning following a long period of absence, the petitioner purported to acquire the respondent's shares for a nominal value as a bad leaver; however, it was noted that given the company's finances the value of the shares was in any event nominal; it was also noted that if the petition was granted the transfer of his shares would be void as happening after the presentation of the petition.

Quinn J began by identifying the relevant statutory provisions, beginning with [s 224A](#) being the new duty to have regard to the interests of creditors, etc, on believing that the company is or is likely to be unable to pay its debts, Also relevant was [s 569\(1\)\(e\)](#) being the ground to wind up where the court is of the opinion that it is just and equitable to do so. Quinn J also identified [s 602](#) and the voidance of transfers of shares post-petition.

Turning to the relevant case law, Quinn J cited the decision of the Court of Appeal in [Re Lanskey Limited](#) [2022] IECA 34 where Collins J noted that [s 569\(1\)\(e\)](#) is cast in broad terms and that the court should not entrap the jurisdiction thus conferred by reference to authorities that merely exemplify it. Quinn J also noted and quoted excerpts from the decision in [Re Leech Papers Ltd](#) [2022] IEHC 475, [Re Kilcurrane Business Centre Limited](#) [2021] IEHC 701 and *Ebrahimi v Westbourne Galleries Ltd and ors* [1973] AC 360. Quinn J also noted the commentary of the issue in Courtney, *The Law of Companies*, (4th ed; 2016) at [24.120] where six categories of grounds were identified under which the decided cases could be conveniently grouped: (i) quasi-partnership; (ii) deadlock in corporate management; (iii) failure of substratum; (iv) illegal objects; (v) corporate instruments of fraud; and (vi) the public interest as well as the caution that there may well be other grounds too.

Turning to the matter before the court, Quinn J noted that the petitioner accepted in submissions that the case touched on three of the recognised categories (quasi-partnership; deadlocked management and failure of substratum) but that the six categories were not exhaustive. The respondent opposed the winding up on equitable principles, contending that the petitioner must come to court with clean hands referring to three 'conduct issues' namely the purchase of the respondents shares, the removal of a non-compete clause and the setting up of a new business at some point in 2025.

Quinn J held that it was appropriate to exercise the court's discretion and order the winding up of the company on the just and equitable ground, the principal reason being '*the undisputed fact that the company is on the cusp of insolvency and has literally only months to go before it runs out of funds and there is no plausible prospect of this not occurring. No solution has been identified that will enable the Company to avoid imminent insolvency. As Collins J says in Re Lansky Ltd 'there was no adequate or satisfactory alternative remedy here'* (at para 50). Quinn J also declined to accept that the conduct issues identified by the respondent justified denying the relief sought.

Winding up – Proposed petition to wind up company – Application for injunction to restrain the presentation of petition – Whether petition grounds disputed on bona fide and substantial grounds – Whether petition would be an abuse of process due to the petitioner's having contracted to be bound by an arbitration clause – Section 570 of the Companies Act 2014 – [San Leon Energy plc v Brightwaters Energy Ltd](#) [2026] IEHC 1. This decision concerned an application for an injunction to restrain the presentation of a winding-up petition. There were four questions before Kennedy J for decision. First whether the grounds for the presentation of the petition were disputed on bona fide and substantial grounds. That question depended upon whether an obligation placed on the plaintiff-company resisting the petition to be wound up under a Nigerian law agreement was conditional upon the plaintiff-company first being placed in funds pursuant to its independent corporate refinancing agreement; the second question was whether the presentation of a petition would be an abuse of process because the petitioner and the plaintiff-company had an agreement which contained an arbitration clause; the third question was whether, irrespective of the existence of any dispute, the petition should proceed regardless because there was evidence to suggest that the plaintiff was

insolvent and the fourth question was whether relief in any event should be refused on the basis of non-disclosure in the ex parte application for the injunction to restrain the presentation of the petition.

Kennedy J **held** that he was not satisfied that there was a substantial and bona fide issue in dispute because on the evidence he determined that the plaintiff had made an unconditional agreement and was bound accordingly (at para 41). Secondly, Kennedy J **held** that the existence of an arbitration clause did not make the presentation of the petition an abuse of process. In this regard Kennedy J had regard to the decision of the UK's Privy Council in [Sian Participation Corp v Halimeda International Ltd](#) [2024] UKPC 16 where the Board rejected the proposition that a winding-up petition should be stayed on the basis of a wide arbitration clause unless the debt was genuinely disputed on substantial grounds. It was noted that the parties did not dispute that the law in Ireland did not differ from that decision but that the plaintiff argued that *Sian* should be distinguished on factual grounds, claiming that in the instant case the debt was genuinely disputed on substantial grounds. Kennedy J said he found the reasoning of the Privy Council to be compelling and accepted that the law set out there was the same in Ireland. However, he rejected the plaintiff-company's claim that the debt was disputed in good faith and on substantial grounds. On the arbitration clause point, Kennedy J quoted with approval the following passage from the decision of the Privy Council: "*None of the general objectives of arbitration legislation (efficiency, party autonomy, pacta sunt servanda and non-interference by the courts) are offended by allowing a winding up to be ordered where the creditor's unpaid debt is not genuinely disputed on substantial grounds. To require the creditor to go through an arbitration where there is no genuine or substantial dispute as the prelude to seeking a liquidation just adds delay, trouble and expense for no good purpose. Party autonomy and pacta sunt servanda are not offended because seeking a liquidation is not something which the creditor has promised not to do. And by ordering a liquidation the court is not resolving anything about the debt, nor interfering with the resolution of any dispute about it*". On the third question Kennedy J **held** that even if the plaintiff had established a bona fide and substantial factual or legal dispute, he would have been disinclined to stay the petition due to the unchallenged evidence of the plaintiff's insolvency. On the fourth question, Kennedy J was not inclined to dispose of the application on the non-disclosure point which he suspected was down to hasty drafting rather than an inappropriate attempt to deflect attention from awkward facts.

In his concluding remarks, Kennedy J noted that the Supreme Court had emphasised that the courts should be slow to deprive petitioners of the right to exercise their statutory entitlement to bring a winding-up petition before them and in the instant case he was not satisfied that he should take such a step on the evidence before him. Accordingly, the application for an injunction to restrain the winding-up petition was refused.

Realisation of Assets

[Courtney, *The Law of Companies* (4th ed) [Ch 26](#)]

Improper transfer of assets – Misfeasance – Pooling order – Whether companies were related – Whether there was jurisdiction to make a pooling order – Meaning of related company – Sections [2\(10\)](#), [600](#), [608](#) and [612](#) of the Companies Act 2014 – [Re Tuskar Property Holdings Ltd and ors](#) [2026] IEHC 6 (Quinn J). The facts and background to this decision have been considered already under the heading **Directors' Personal Liability**. On the question of **improper transfer of assets and misfeasance**, Quinn J considered the claims under [s 608](#) and [612](#) together (see para 796 et seq). On the improper transfer of assets, Quinn J noted that [s 608](#) did not require a fraudulent intention and cited the decisions in [Re Chateline Thudichum v Conway](#) [2008] IEHC 349 and [Re CityWest Hire Ltd](#) [2014] IEHC 279 and [Re MPS Global Limited](#) [2014] IEHC 318. Quinn J noted that [s 608](#) permits orders to be made against any person who has received the asset or money concerned, there being no requirement the person should be a director or officer. Quinn J **held** (at para 805) that there had been a disbursement from the account of TPH of the sum of €1m and that one of the payments made out was for €300,000 to the first respondent's personal account and that this was clearly a payment which perpetrated a fraud on TPH; Quinn J also held that there was evidence of misfeasance also under [s 612](#) against the first respondent. The second respondent too was found to have made an improper transfer and was directed to return it (para 879) but no order was made under [s 612](#) as no evidence of misfeasance was found to exist. It was found that there was no evidence that there has been an improper transfer in favour of the third respondent and no order was made under either [s 608](#) or under [s 612](#).

Finally, (at para 966 et seq) Quinn J considered the liquidator's application for a **pooling order** pursuant to [s 600](#) of the Act, directing that the three companies be wound up as if they were one company. Quinn J noted the wording of [s 600](#) and that it was a prerequisite that the companies to be wound up together should be 'related companies'. It was noted that none of the shareholders in any of the three companies was a shareholder or held voting control in the others. Quinn J noted that the liquidator sought to invoke [s 2\(10\)\(e\)](#) i.e. that the business of the companies had been so carried on that the separate business of each company or a substantial part thereof 'is not readily identifiable'. On this point Quinn J **held** that [s 600](#) could not be invoked because the companies were not related companies because he did not accept that the separate businesses of the three companies were not readily identifiable.