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Bloomsbury Professional's Company Law Developments – 3/26 - June

Welcome to Bloomsbury Professional's Company Law Developments (3/26 June), 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, I summarise a number of important company law decisions in Ireland and the UK. The first case noted is that of our Supreme Court in ***Sweeney & The Limerick Private Limited v VHI*** [2026] IESC 32 where the Supreme Court provided definitive guidance on the circumstances in which a delay in bringing a motion for security for costs will be a special circumstance which justify the refusal of the application, even though the plaintiff company is insolvent and even though the defendant has a prima facie defence to the claim. The second decision noted is that of the UK's Court of Appeal in ***Song and Zhao v Smith and ors*** [2026] EWCA Civ 719 where the court reversed the High Court in finding that the rule against profit by fiduciaries was a strict rule, applying the recent UK Supreme Court decision in *Recovery Partners GP Ltd v Rukhadze* [2025] UKSC 10. The important decision of the Federal Court of Australia in **Australian Securities and Investments Commission v Bekier** [2026] FCA 196 in which the duties of executive and non-executive directors were explored as was the ability of non-executives to rely on the executives to discharge ordinary managerial matters. Two decisions of the High Court, both given by Sanfey J are also noted: ***Re Dalata Horel Group plc*** [2025] IEHC 768 (which concerns the sanctioning of a scheme and the application of the established criteria) and ***Re Permanent TSB Group Holdings PLC*** [2026] IEHC 317 (where it was determined that ordinarily an Irish court would not confirm appropriate class composition at the convening stage since it was obliged to do this at the sanctioning stage and that in this respect Irish law differed in practice from that in the UK). Two other really interesting Irish High Court decisions to consider company law topics are also considered: the decision of Dunne J in ***Consortio Ltd v Lynch & Lynch*** [2026] IEHC 336 in which a claim that the directors of an owners' management company were liable for that company's default and that the members of an OMC could sure the directors for breach of duty were both rejected; and finally the decision of Oisín Quinn J in ***Re Donna Ledwige Goldings Limited; Doyle v Ledwidge & Ledwidge Holdings Ltd*** [2026] IEHC 329 in which it has been made clear that proceedings for rectification of a company's register of members under s 173 of the Companies Act 2014 will not be appropriate where the title is disputed and plenary proceedings are in being to determine the applicant's rights.

Dr Thomas B Courtney

Corporate Civil Litigation

[Courtney, *The Law of Companies* (4th ed) **Ch 6**]

Security for costs – Delay as a special circumstances – Appropriate approach to be taken where there has been a significant period of delay on the part of a defendant in applying for security to be provided – s 52 of the Companies Act 2014 – ***Sweeney & The Limerick Private Limited v VHI*** [2026] IESC 32. In this decision given by Donnelly J for the Supreme Court, it was noted at the outset that delay is a special circumstance on the basis of which a court may refuse an application for security for costs even where it has been established that the plaintiff company will be unable to pay any costs award against it and that the defendant has a *prima facie* defence. This judgment went on to addresses the approach a court ought to take where there has been a significant period of delay on the part of a defendant in making the application for security and the extent to which a plaintiff must demonstrate that it has been prejudiced by the delay in resisting such an application. In the application before the court in 2015 the respondent sought the provision of security for its costs against the appellant company and failing the provision of voluntary security, said that it would issue a motion for security for costs. Notwithstanding that no security was provided, the motion was ultimately issued almost 8 years later. In the High Court Barrett J ordered the appellant company to provide security in the sum of €1.7905m; delay had been claimed as a special circumstances to justify the refusal to order security be provided but it was rejected. The High Court held that the mere establishment of some element of delay, rather than an element of delay coupled with significant prejudice, is unlikely in and of itself, to yield a decision to refuse an order for security for costs. It was also noted that the decision of Barrett J was upheld by the Court of Appeal in a judgment delivered by O'Moore J who approached the question of delay under three limbs: (a) the identification of the period of delay, (b) the correct approach to the question of prejudice, and (c) the lack of explanation by the respondent for its delay in seeking security. While it was accepted that the period of delay was an exceptional period of time, in the absence of finding any prejudice the appeal was dismissed and security ordered.

Donnelly J considered the rational for delay as a special circumstance and (at 51) determined that the rationale identified by Clarke J in *Moorview Developments Ltd v Cunningham* [2010] IEHC 30 is the correct basis on which delay as a special circumstance is to be understood. A plaintiff ought to be entitled to factor in the issue of security for costs when making any decision to progress the matter. Delay in bringing the application (and proceeding with that application up to the point of the making of the order) takes from the plaintiff the entitlement to full information when taking a decision. To that extent it is the loss of opportunity to have a full consideration of the position which is at issue.

Donnelly J said on the significance of delay that the Supreme Court decision in *Kirwan v Connors* [2025] IESC 21 is authority for the principle that in discretionary applications, the law now gives greater weight to the factor of the passage of time. The length of the delay will therefore weigh heavily on any considerations of the appropriate exercise of discretion.

As to when time should run for the purposes of determining the period of delay, Donnelly J concluded (at 68) that the guiding principle is that knowledge on the part of the defendant is the important consideration. It will be reasonable for a defendant to wait to bring the motion until such time as it was in a position to take a view on whether it had a *prima facie* defence and be able to articulate that defence. That time may often, or even usually, be after receipt of the statement of claim and the answers provided to reasonable requests for particulars, but that is fact dependent. Other situations may well indicate that the defendant was in a position to take a stance at an earlier stage. Donnelly J concluded that it was in 2015 that the respondent considered it had enough information to call on the appellants to provide security.

On the question of evidence of prejudice, Donnelly J noted that the Court of Appeal had found that the appellants had failed to establish that they had suffered prejudice. In setting out the law on prejudice, the court said that the onus lies on the plaintiff to establish the special circumstance and that while in the normal course the plaintiff is required to be able to establish the special circumstance by pointing to facts and circumstances but that it was inherently unwise to impose such a categorical requirement for every situation of special circumstance. Donnelly J noted that the appellants claimed that they were prejudiced by the delay because during the relevant period they defended a motion before three courts in relation to their use of an expert witness and ultimately had orders for costs made against them and that in her view it is acceptable to seek to establish prejudice by pointing to those orders for costs.

In relation to the question of actual prejudice itself, Donnelly J said that the rationale for the delay exception, together with the pragmatic realities, is that the prejudice must be viewed from the perspective of the loss of opportunity to make a fully informed decision before engaging in the expenditure (or the risk of detriment through a costs order). The court concluded that what constitutes actual prejudice and how it may be proven will vary depending on the facts in any given case. The extent of the prejudice required will, as stated above, also vary in accordance with the length of the delay in assessing the overall balance.

Donnelly J also held that in an appropriate case, prejudice can be *inferred* and that where there has been a very significant delay, such inferred prejudice will readily tip the balance in favour of finding that delay as a special circumstance has been established. Indeed, where the delay is as significant as 8 years it is appropriate for a court to view the balance as having been shifted in favour of refusing the application for security in the absence of a pressing exigency of justice.

Finally, the court held (at 105) that where the delay is so significant that the court views the balance of justice as having shifted in favour of refusing the application in the absence of a pressing exigency of justice, *there is no requirement to demonstrate prejudice either actual and proven or, presumed and inferred*. That is because the significance of the delay in the context of this discretionary remedy has become so great a factor that it need not be combined with any other factor to weigh the balance in favour of refusing the application for security. Donnelly J then summarised (at 109) the principles regarding delay as a special circumstance:

> ‘(a) Security for costs applications involve a court attempting to do justice at a time when it will not be possible to form any strong view as to the merits or otherwise of the claim. That analysis is also relevant to considerations of special circumstances.
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> (b) The rationale of delay as a special circumstance is based upon the entitlement of a party to be able to include in its decision whether to progress the proceedings the fact that it will have to put up security from as early a time as is reasonably practicable.
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> (c) The test is not whether the plaintiff would have progressed the action but rather whether the plaintiff ought to have been entitled to make that decision in light of full information.
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> (d) Apart from the private interests of the parties, assessment of delay also incorporates the public interest in ensuring that in the administration of justice the most efficient and effective use is made of limited court resources. The courts are not indifferent to the consequences of legal delays and litigation inefficiency. Having cases linger unnecessarily in court lists takes up time in the hearing of what might have been unnecessary applications if security for costs applications were made earlier. Such late applications delay the ultimate resolution of the proceedings on the merits. These are all factors for consideration as to where the balance of justice may lie.
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> (e) The length of the delay is relevant in the consideration of the overall balance of justice.
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> (f) In general, prejudice (in the sense of detriment, loss, damage etc.) ought usually to be proven by the plaintiff but the nature of the evidence required will depend on the facts of the case. The court is entitled to look at all the evidence, such as the history of the proceedings, in making its assessment. The greater the delay, the less the weight of prejudice may be required in order to tip the balance.
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> (g) Where the delay is significant and is in whole or in part unexplained the court may view the balance of justice as having shifted in favour of refusing the application in the absence of a pressing exigency of justice. In such a situation, prejudice is to be inferred from an especially lengthy delay and the delay of itself shifts the balance.
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> (h) There is an obligation to apply for the discretionary order for security for costs as soon as reasonably possible, a period usually measured in terms of weeks or possibly months. Where the delay is measured in the region of six months to one year and any significant part of that delay is unexplained, that may be sufficient to tip the balance against ordering security even in the absence of specific prejudice; the court will have to weigh all matters in the balance. A delay of over a year is so significant in the context of a discretionary remedy that where a significant part is unexplained the balance of justice shifts to refusing the order in the absence of a pressing exigency of justice.’

The Supreme Court concluded by allowing the appeal and finding that the length of the delay and the absence of any exigency of justice (indeed any explanation) is sufficient to allow this appeal and thereby set aside the order requiring that security for costs be provided.

Directors’ Fiduciary Duties

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

Joint venture agreement – Conducted by a holding company and two subsidiaries – One joint venture director-shareholder unilaterally withdrawing his participation and ceasing to fund the venture – Whether the other joint venture director-shareholder will be in breach of his fiduciary duties to the companies if he pursues opportunities of the same type as those undertaken by the joint business venture without accounting to the companies for profits made – The profits rule in the case of fiduciaries – Section 173 and 174 of the Companies Act 2006 (UK) – Song and Zhao v Smith and ors [2026] EWCA Civ 719. This decision concerned an appeal from a High Court decision where the judge concluded that Mr Smith, a company director and shareholder in the joint venture, had not breached his duties under ss 172 and 175 of the Companies Act 2006 (UK) by diverting business from the two wholly-owned subsidiary companies owned by the top company in which he and his spouse held 50% of the shares, the other 50% being held by the other director and his spouse. When the other director ceased funding the joint venture, Mr Smith proceeded to take up the business opportunities which those companies could not take up, due to their financial difficulties. There were other grounds of appeal too, including that the High Court was wrong to conclude that the diversion of business opportunities was not unfairly prejudicial to the petitioners. On what was referred to as the *profit rule* point, the Court of Appeal (per Zacaroli LJ) noted that the no-profit, no-conflict rule extended back over 300 years to *Keech v Sandford* (1726) Sel Cas Ch 61 and that the relevant case law had recently been explored by a seven-panel UK Supreme Court in *Recovery Partners GP Ltd v Rukhadze* [2025] UKSC 10. In that decision, the Supreme Court upheld the decisions of the High Court and Court of Appeal which found that the appellants had in breach of their duties diverted a business opportunity away from the respondents and exploited it themselves. Specifically, the Supreme Court declined to alter the test in the UK for requiring an account of profits by the introduction of a requirement that the fiduciary could not have made the same profit in a way that avoided a breach of duty and the court refused to depart from the House of Lord decisions in *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 and *Boardman v Phipps* [1967] 2 AC 46.

Applying that decision to the case in hand, Zacaroli LJ noted that the purpose of the profit rule was to '*protect or deter those who have undertaken an obligation of single-minded loyalty to someone else from being tempted by human frailty to fall short of that obligation*' ([2025] UKSC 10 at para 16). Zacaroli LJ also noted that the Supreme Court had determined that the rule requiring a fiduciary to account for profits is a rule governing the conduct of fiduciaries *which exists in its own right* and does not depend for its existence upon a breach of duty. Directors are not precluded from making profit from other ventures but they cannot use information or pursue opportunities that came to them from their fiduciary position in their company. Zacaroli LJ noted in particular that it is clear from the Supreme Court judgment that it is *no defence* for a director to rely on any of the four following arguments: (1) the company would not have made the profit even if the director had not breached his fiduciary duty; (2) the company could not have taken up the opportunity from which the profit arose; (3) the director would have made the profit even if they had not committed any breach of duty; or (4) the company, had its consent been sought, would have permitted the director to take up the opportunity from which the profit arise.

In the case before the Court of Appeal, Zacaroli LJ concluded that the trial judge was wrong to rely on the fact that the group companies could not themselves take up the business opportunities in respect of the business opportunity taken by Mr Smith as an answer to the claim by Mr Smith should account to the group for profits made by him.

Directors' fiduciary duties – Duties of directors to exercise care, skill and diligence – Whether executive directors and non-executive directors are to be treated the same – ***Section 180*** *of the Corporations Act 2001 (Australia) – Australian Securities and Investments Commission v Bekier* [2026] FCA 196. the Federal Court of Australia considered the claim for breach of duty brought by the ASIC against the executive and non-executive directors of a company called Star Entertainment Group Limited, an ASX listed company that managed gaming properties in Australia. The alleged breaches related to whether the board had exercised appropriate care and diligence under **s 180** of the Corporations Act 2001 in handling serious legal and reputational risks posed by the company's dealings with certain clients who were allegedly engaged in money laundering activities. The court decided that the executive directors had breached their duties but that the non-executive directors had not beached their duties. The court found that non-executive directors can rely on management and other officers in relation to matters concerning operational knowledge and that they are not expected to be involved in a company's operations. Inter alia the court said (at para 1892): '*non-executive directors were not there for decoration; they were required to take reasonable steps to place themselves in a position to guide and monitor the management of the company. Although, like the Chairman, they were not required to be involved in operational matters and can rely on management to a greater extent than an executive director (because they are not expected to have the same knowledge of operational activities), the focus is on what a reasonable director or officer, acting in the corporation's specific circumstances would have done*.' The decision confirms, however, that non-executive directors can assume that management will adequately manage risk and would bring to the board any substantial or material issues.

Schemes of Arrangement

[Courtney, *The Law of Companies* (4th ed), **Ch 22**]

Scheme of arrangement – Application to sanction a proposed scheme of arrangement – Court's jurisdiction to sanction a scheme of arrangement – Section 453(2)(c) of the Companies Act 2014 – ***Re Dalata Horel Group plc*** [2025] IEHC 768 (Sanfey J). This decision concerned an application pursuant to s 453(2)(c) of the Companies Act 2014 to sanction a scheme of arrangement between the company and the shareholders of the scheme shares, the effect of which was to operate to effect a takeover of the company by Pandox Ireland Tuck Ltd (Bidco) of the entire issued and to be issued share capital of the company by what is generally referred to as a cancellation scheme, which involves a reduction of company capital by the cancellation of the scheme shares and the immediate issue of an equivalent number of shares to Bidco. Sanfey J noted that this meant that there would effectively be an application also for the reduction of share capital pursuant to ss 84 to 86 of the 2014 Act. Sanfey J held that it was appropriate that the scheme be confirmed but only after noting the court's jurisdiction to do so in s 453 of the Act and the various conditions set out in the criteria examined by Kelly K in *Re Colonia Insurance (Ireland) Limited* [2005] 1 IR 497 and Barniville J in *Re Allergan plc* [2020] IEHC 214. Specifically, Sanfey J noted there was extensive evidence presented on the sufficient steps taken to identify and notify all interested parties; secondly, he was satisfied that that all statutory requirements had been met; thirdly he was satisfied that the classes of shareholders were properly constituted. This was, as it often can be, one of the matters upon which the court requires to dwell and Sanfey J noted that in *Re Allergan plc* Barniville J had identified the leading statement on the question of classes of meetings as being that of Bowen LJ in *Sovereign Life Assurance Company v Dodd* [1892] 2 QB 57 where he said of a class that "*It must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest*." As to the fourth criterion, Sanfey J noted that there was no suggestion of coercion and finally he said that he was satisfied that the scheme was such that an intelligent and honest person being a member of the class concerned acting in respect of his own interests might reasonable approve of the scheme.

Scheme of arrangement – Composition of classes – Order seeking the convening of a scheme meeting of shareholders – Application for directions – Whether the court should consider class composition and the convening stage or the confirmation stage – Section 450(3), (5) of the Companies Act 2014 – ***Re Permanent TSB Group Holdings PLC*** [2026] IEHC 317 (Sanfey J). This judgment was delivered in the context of an application for an order to join the commercial list and an order under s 450(3) of the Companies Act 2014 directing and convening a scheme meeting of shareholders and for directions in relation to the notification and holding of the meeting. The purpose of the scheme was to effect the acquisition of PTSB by an Austrian company owned by the BAWAG Group. PTSB was valued at €1,618,638,643 and would result in each scheme shareholder getting €2.97 in cash for each share. Sanfey J noted that another notice of motion had been issued by a shareholder, Piotr Shoczylas, seeking a declaration under s 450(5) that the scheme meeting should proceed on the basis that the Minister for Finance, on the one hand, and the other members of the

Company, on the other, would constitute separate classes of members. The PTSB's position was that all members comprise a single class for the purposes of the scheme.

Sanfey J reviewed the authorities as to the principles applicable to the court sanctioning a scheme, beginning with *Re Colonia Insurance (Ireland) Ltd* [2005] 1 IR 497 and *Re Allergan plc* [2020] IEHC 214 before going on to focus on the requirement identified in the authorities that "*[t]he class of members (in the case of a scheme of arrangement between the company and its members) has been properly constituted*". Sanfey J noted that Barniville J in *Re Allergan plc* stated that the leading statement on the question of the class composition of meetings is that made by Bowen LJ. in the English Court of Appeal in *Sovereign Life Assurance Company v Dodd* [1892] 1 QB 405 where it was said: '*It seems plain that we must give such meaning to the term 'class' as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest*.' Sanfey J also noted that Barniville J had quoted with approval from the decision in *Re Equitable Life Assurance Society* [2002] EWHC 14 where it was noted that it was necessary to balance the power of the majority and of the minority and that '*whereas unnecessary subdivision of a class may thwart a proper scheme altogether because of a veto thereby afforded to a small minority, on the other hand if it is said that there has been a unfairness or oppression on the part of the majority in a larger undivided class, the control mechanism is the court's scrutiny at the sanction stage: See Re Hawk insurance Co Ltd... and Nordic Bank plc v International Harvester Australia Ltd*.'

Sanfey J said he knew of no Irish case in which class composition was raised as an issue at the convening stage, acknowledging that Skocylas had relied heavily on the judgment of Quinn J in *Re EFW21 Renewable Energy Limited* [2023] IEHC 548, a case where creditors opposed the making of a convening order. He also referred to *Re DTEK Energy BV* [2022] 1 BCLC 247 which he relied on as authority for the proposition that the function of the court at the convening application requires it to consider '*matters of class composition*'. Sanfey J distinguished, however, the position in the UK where there was a *Practice Statement - Companies: Schemes of Arrangement and Restructuring Plans under Part 26 and 26A of the Companies Act 2006*, 18 September 2025 which envisaged a very full hearing at the convening stage with a full debate in relation to all procedural matters which affect the conduct of the scheme meeting, if such is required by any person affected by the scheme. He noted there was no such practice direction in Ireland that that the application by a company to convene a scheme meeting is more often than not an *ex parte* application grounded on a substantial affidavit.

Sanfey J noted that s 450(3) empowers the court, on an appropriate application, to summon meetings and at its discretion where it considers it just and convenient to give directions as to what are the appropriate scheme meetings that must be held. Sanfey J detailed the following three important inferences to be drawn from s 450(3): '*1. The Court "may, in its discretion, where it considers just and convenient to do so' ... give directions as to the scheme meetings to be held. 2. The Court, therefore, has an unfettered discretion whether or not to direct what scheme meetings should take place. 3. Any directions are 'without prejudice to the Court's jurisdiction under Section 453(2)(c),' i.e. whether the Court makes directions or not, it must still exercise its jurisdiction under Section 453(2)(c) to sanction, or not as the case may be, the compromise or arrangement'* (at para 28). Sanfey J concluded that the English authorities must be approached with caution as the practice in Ireland is to examine class meeting composition at the sanction stage. It was also noted that PTSB had raised six practical difficulties with dealing with class composition at the convening hearing.

In conclusion Sanfey J held that the question of class composition would not be determined until the confirmation hearing. He said that at the heart of any fair procedures argument lies the question of prejudice and acknowledged that there was something to be said for determining the issue of class composition before the scheme meetings but against that the court must consider class composition anyhow at the confirmation stage. Irish case law does not have a recognised procedure to determine the question at convening stage although s 450(3) does empower the court to summon meetings in such manner as it directs. Sanfey J held he did not consider that he should depart from the usual practice of class composition in Ireland being considered at the sanction rather than convening stage, and did not consider the applicant to be prejudiced by such a procedure.

Separate legal personality

[Courtney, *The Law of Companies* (4th ed) Chs **4**, **5**, **6**]

Proper plaintiff – Proceedings instituted by plaintiff against the defendant directors of an owners management company – Separate legal personality – Lifting the veil of incorporation – Liability of directors for the wrongs of an owners management company – Plaintiff appealing the decision of the Circuit Court to strike out the proceedings – Multi-Unit Developments Act 2011 – ***Consortio Ltd v Lynch & Lynch*** [2026] IEHC 336 (Dunne J). This judgment was given in an appeal against the decision of the Circuit Court to strike out the plaintiff's proceedings against the defendants for disclosing no reasonable cause of action. The background was that the plaintiff was the owner of 22 apartments at a development of 72 student apartments in Sligo, the development consisting a multi-unit development within the meaning of the Multi-Unit Developments Act 2011 (MUD Act). The owners' management company for the development was a company called St Angela's Management Company Limited, a CLG (the OMC) and the plaintiff was a member in the OMC. The defendant father and son were the directors of the OMC who also owned directly, or indirectly through a company owned by them, 42 apartments in the development. The plaintiff issued proceedings against the defendants personally as directors of the OMC, claiming the unlawful levying of sums of money on it and other apartment owners by the OMC as part of the common areas service charge scheme for the development. It was also pleaded that the defendants had a controlling interest in the OMC and that through this control they commenced litigation to secure alleged rights to use college facilities on lands adjacent to the development. The plaintiff claimed the OMC was not a proper party to those proceedings and could derive no value from them and that it was only added as a plaintiff to reduce the liability for costs of the co-plaintiff, a company controlled by the defendants. The plaintiff also objected to the increased service charge resulting from the costs of the proceedings and that the charges were not lawful service charges as envisaged by s 18(1) of the MUD Act. It was claimed also that the defendants were in breach of their fiduciary duties as directors of the OMC and in breach of their duty to exercise reasonable skill and care towards the OMC. The relief sought by the plaintiff was under s 24(3) of the MUD Act to determine that the legal costs of the action are not recoverable by the OMC as service charges etc.

The defendant's position was that the foregoing claims were an abuse of process and that in so far as the claims being made on behalf of the OMC, are concerned they say that the proceedings were in truth an attempt at a derivative action, which cannot be brought in the Circuit Court and which requires, the leave of the High Court, before they can be commenced. Therefore, the defendants claimed that such claims were bound to fail and disclosed no reasonable cause of action. In so far as the claims being made against the OMC were concerned, they said that these were claims that could only be brought against the OMC itself and not its directors personally.

After reviewing the jurisdiction of the High Court to strike out proceedings, Dunne J summarised the defendants' arguments for strike out. These included that the defendants were being sued in their capacity as directors and that since duties are owed only to the company, not its shareholders, the claim cannot succeed. It was also said that if the members believe that the company has been wronged their remedy is to bring a derivative action but that this cannot be brought in the Circuit Court and can only be brought in the High Court with its leave under the RSC. They also relied on the rule in *Foss v Harbottle* (1843) 2 Hare 461 saying that the duties owed by directors, are owed to the company, not the shareholders, so that even if there was a breach of the defendants' duties as directors of the OMC, that is a claim for the OMC to bring, not the plaintiff, as a shareholder in the OMC. They also relied on ss 227 and 228 of the Companies Act 2014 which make clear that directors' duties are owed to the company and to the company alone. In short, they claimed that the plaintiff was impermissibly seeking to enforce rights on behalf of the OMC and this amounts to a derivative action which it was not entitled to bring. The defendants also pointed out that the reliefs sought were all directed at the OMC, which was not a defendant in the proceedings. They submitted that the plaintiff's reliance on sections 24 and 25 of the MUD Act as allowing it to prosecute these claims was misplaced as the MUD Act does not impose any duties on company directors that are owed to shareholders, nor does it give to shareholders of owners' management companies the right to sue on the company's behalf for breaches of duties owed to the company. They say that the structure created by the MUD Act, is to ensure membership rights for unit owners in the owners' management company and as such it endorses the Companies Act 2014 structure, in terms of where the rights and obligations lie.

Dunne J also summarised the plaintiff's contentions as to why the action should not be struck out. It said that the claim was not derivative but about the fact that it is being charged for services not lawfully recoverable under the long leases they hold or under the MUD Act; it claimed that while a wrong was being done to the OMC this was subsidiary to its claim concerning the service charge. The plaintiff also claimed that the defendants, as directors of the OMC, owed it a duty not to carry out wrongs that will impact it as a shareholder. It relied on s 18 of the MUD Act to claim that by the imposition of the service charge the defendants had acted in breach of the powers conferred on them by s 18 and have acted in breach of their fiduciary duties as company directors. The plaintiff claimed that there was nothing in s 18 that prevented or excluded an application being brought against the directors of an OMC. It said that ss 24 and 25 of the MUD Act gave the it the right, as a party to the relevant leases and as a shareholder in the OMC, to apply to the Circuit Court for orders to enforce rights conferred and obligations imposed by the MUD Act or any rule of law. The plaintiff also submitted that the provisions of s 24 of the MUD Act are designed so that actions such as this, can be instigated by apartment owners. The plaintiff said also that even if the court finds the claims should be brought by the OMC, it could still succeed by seeking the trial judge to lift the corporate veil and hold the directors personally liable.

Dunne J began the analysis of the matter by noting (at 28) that the fundamental difficulty faced by the plaintiff in terms of the claims made about alleged wrongdoing by the OMC was that it did not name it as a defendant and deliberately did not do so since if it was successful the plaintiff would have been liable for 22/72nds of the costs. Dunne J then addressed the plaintiff's claim that ss 18, 24 and 25 of the MUD Act permitted it to bring the claims directly as against the directors. In considering s 18, Dunne J concluded that there was no doubt but that the MUD Act put a statutory obligation on the OMC to establish and maintain a scheme for annual service charge which must be transparent and equitably apportioned between unit owners. Dunne J then noted s 24 which provides for applications in respect of disputes to be brought to the Circuit Court (by s 26) and that the plaintiff as a member of the OMC had locus standi under s 25 to bring an application to the Circuit Court.

Dunne J noted, however, that whether the plaintiff had a claim was down to whether it could possibly obtain relief under s 24 of the MUD Act and concluded that it was clear that a person applying under s 24 of the Act can only succeed in getting an order from the Circuit Court either (a) '*to enforce a right conferred, or an obligation imposed, by this Act or any rule of law*' or (b) where the Act itself provides for the making of a specific application under the Act such as in ss 10(3), 12(5), 15(3) and 19(8). Dunne J said that in order to be able to succeed in its proceedings against the defendants and obtain relief under s 24, in relation to its objection to the imposition by the OMC of what it says was an unlawful service charge, the plaintiff must be able to rely upon s 24(1)(a) and point to '*a right conferred*' on it or '*an obligation imposed*' on the defendants as directors of the OMC either by the Act or '*any rule of law*'.

Specifically, it was noted by Dunne J that s 18 imposed no obligations on directors and that the plaintiff could not provide the most basic outline of the basis for the claim that the directors had obligations. Relying on the venerable *Salomon v A Salomon & Co Ltd* [1897] AC 22, Dunne J determined there was no legal basis upon which the plaintiff could succeed in its claims that any wrongs of the OMC could be visited upon its directors. Dunne J also rejected that the plaintiff could rely on the decisions in *Moorview Development Ltd & Ors v First Active Plc & Ors* [2018] IESC 33 or *Powers v Greymountain Management Ltd (in Liquidation)* [2022] IEHC 599 in order to lift the veil and fix the directors directly with liability. While other matters were addressed in relation to the jurisdiction to 'save' the proceedings, Dunne J rejected that there was any basis to do so when the plaintiff had deliberately and intentionally excluded the OMC from the proceedings.

The final matter concerned the question of whether the plaintiff could succeed in relation to claims against the defendants for breach of their directors' duties. Dunne J noted that s 227(1) of the Companies Act 2014 makes clear that the duties owed by the directors as to the company and to the company alone and that the wrongs or injuries done to a company are generally only actionable by the company and not its shareholders, is well established and can be traced back to the seminal decision in Foss and Harbottle (1843) 2 Hare 461. After considering the case law on derivative actions, Dunne J noted that 'Order 15 Rule 39 (2) provides that a derivative action may not be commenced without the leave of the High Court. The Plaintiff has not sought the leave of the High Court to bring a derivative action but instead has chosen to sue the directors of the OMC personally in the Circuit Court for a claim that falls squarely within the definition of as derivative action. This, it cannot do'. Furthermore, Dunne J concluded: 'The MUD Act does not impose upon the Defendants as directors of the OMC, duties that are owed directly to the shareholders of the OMC, as opposed to the OMC itself. The Act does not in any way alter the architecture of the Companies Act 2014 or indeed the common law, in terms of where the rights and obligations of shareholders and directors lie in a corporate structure. This is evident from the express provisions of the MUD Act itself.' Therefore, it was concluded by Dunne J that 'I am satisfied that the Plaintiff cannot succeed at the trial of the action with its claims against the Defendants that allege wrongdoing against the OMC, by the breach by them of their directors' duties. Those claims are bound to fail and have no reasonable prospect of succeeding'.

Shares and Membership

[Courtney, *The Law of Companies* (4th ed), **Ch 8**]

Membership – Register of members – Application for rectification of register of members – Application to strike out rectification application – Whether application for rectification appropriate – Applicant asserting a disputed equitable claim to shares which required adjudication in plenary proceedings – s 173 of the Companies Act 2014 – ***Re Donna Ledwige Goldings Limited; Doyle v Ledwidge & Ledwidge Holdings Ltd*** [2026] IEHC 329 (Oisín Quinn J). This judgment concerned an application by the respondents to dismiss or strike out the applicant's claim for relief under s 173 of the Act on the basis that it was inappropriate and unnecessary in the circumstances in which it was brought. On the same day as he issued the originating notice of motion under s 173, the applicant also commenced plenary proceedings seeking a declaration that the first respondent holds 50 per cent of the issued share capital on trust for him and an order directing the first respondent to take all necessary steps to transfer that 50 per cent shareholding to him. The background was that the applicant and first respondent were married and the applicant alleged that he assisted in founding the business jointly with her but this was in dispute. Family law proceedings were also in issue.

The applicant asserted that the proceedings under s 173 were not inappropriate but agreed to their being adjourned generally to await the outcome of the applicant's plenary claim to be entitled to 50 per cent of the shares. The applicant's apprehension was that if successful, an order under s 173 would be appropriate, however, such could only be sought by originating notice of motion and so the applicant could not have sought an order under s 173 in his plenary proceedings. The respondent submitted that a s 173 application was inappropriate and claimed that case law made clear that s 173 applications were intended to proceed by summary application on affidavit and were not suitable for cases where there were substantial factual disputes, citing *Re Orlington* [2023] IECA 256.

Quinn J proceeded his analysis by considering the relevant legal principles by reference to the law and mechanics set out on share transfer in *The Law of Companies* (4th ed; 2016) Bloomsbury Professional at Chapter 9, *Share Transfers*. Quinn J noted that the parties had referred to the decision of the UK Court of Appeal in *Re Hoicrest Ltd* [2000] 1 WLR 414 where it was said that the absence of a proper share transfer did not preclude the court making an order for rectification but he went on to note that it had cautioned against resolving title disputes within what are essentially summary proceedings. Quinn J also noted the decision of the Privy Council in *Nilon Ltd v Royal Westminster Investments SA* [2015] 3 All ER 372 where it was concluded that the summary nature of the jurisdiction makes it unsuitable where there are substantial factual disputes, and secondly, that the statutory jurisdiction is primarily concerned with legal title. It was also noted that Lord Collins in *Nilon* had said that *Re Hoicrest* was wrongly decided and that '*rectification proceedings may only be brought where the applicant has a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependent on the conversion of an equitable right to a legal title by an order for specific performance of a contract. It follows that Re Hoicrest was wrong as a matter of principle, however sensible it might have been as a matter of case management.*' (at para 45). Quinn J also noted the decision of Baker J in *Re Park Magic Mobile Solutions Ltd* [2017] IEHC 287 and that while that case did not cite *Nilon* Baker J's approach was consistent with it in that she emphasised that the statutory procedure is intended to operate as a summary mechanism and that where the issues cannot be resolved on a summary basis, the court may decline to grant relief. Quinn J noted that at paragraph 65 of *Re Park Magic Mobile Solutions*, Baker J concluded that the complexity of the evidence and the existence of a dispute as to beneficial ownership rendered the application unsuitable for determination under s 173. Baker J held that the dispute required resolution in plenary proceedings and she refused the application.

Applying the law, Quinn J held (at 50) that while the court has a broad discretion under s 173, it is not designed to resolve substantial disputes, particularly those concerning beneficial ownership unless they can be determined on a straightforward analysis of documents. He went on to hold (at 51) that '*the Irish authorities, particularly Re Park Magic Mobile Solutions and Re Orlington, are consistent with the reasoning of the Privy Council in Nilon, namely that rectification proceedings (section 173) should only be brought where the applicant has an immediate right to registration based on legal title, rather than a mere prospective equitable claim which will likely require a plenary hearing to resolve. In particular, Re Park Magic Mobile Solutions supports the proposition that section 173 is unsuitable where, as here, the dispute involves contested issues of beneficial ownership requiring plenary determina*tion'. Quinn J held (at 57) that he was satisfied that the undisputed context meant that the case before him fell clearly outside any potential range of claim that could be appropriately made for relief under s 173. He accepted that an order under s 173 could not be added to the plenary proceedings but said there was no justification for bringing the application either prematurely or unnecessarily as there was no evidential basis for any apprehension that, if the applicant succeeded and got an order directing the first respondent to transfer 50 per cent of the share to him, the company would then resist entering him in the register of members. In those circumstances the originating notice of motion for rectification of the register of members under s 173 of the Act was struck out.