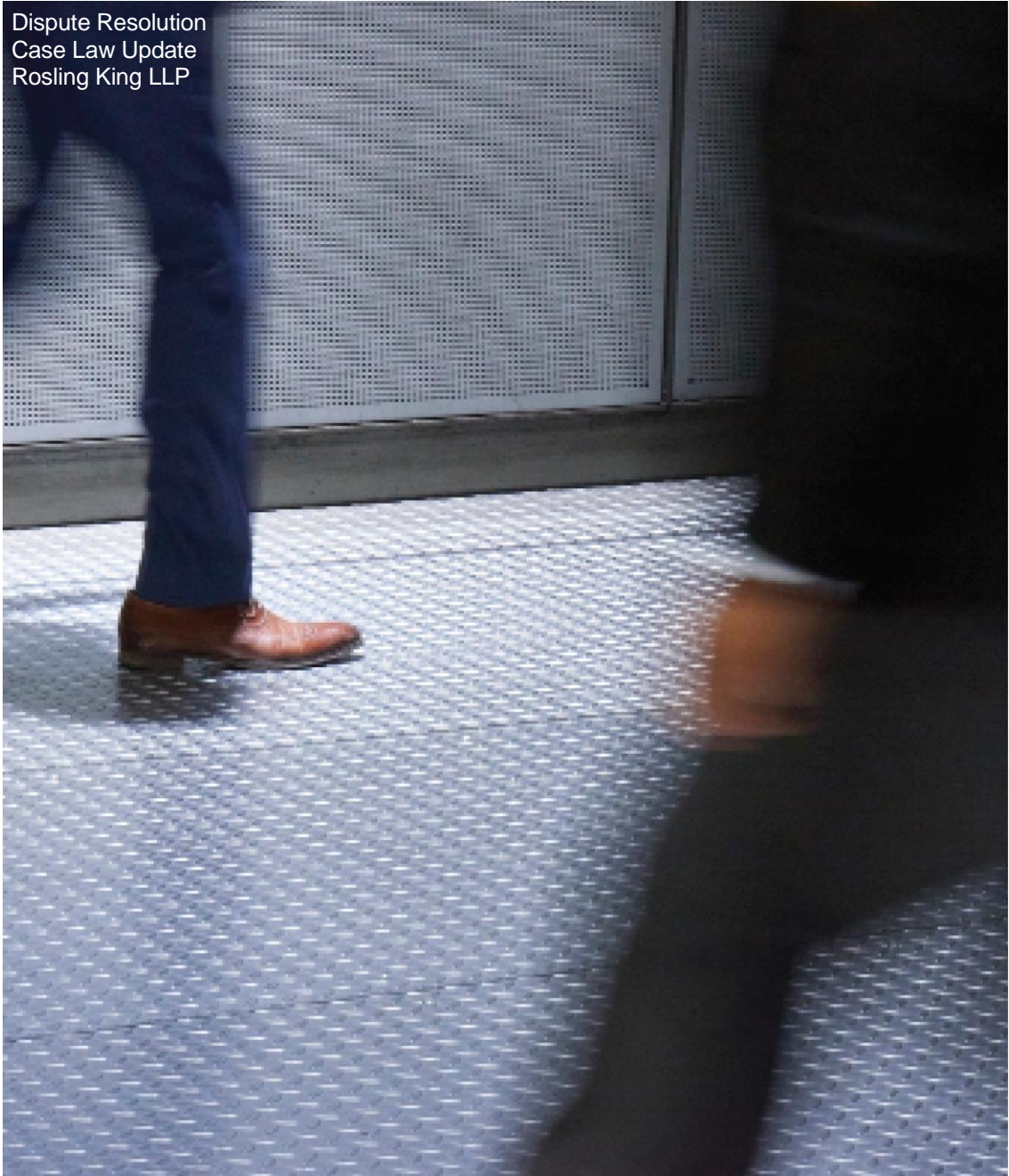


Dispute Resolution
Case Law Update
Rosling King LLP



Background facts

The Petitioner, Watchstone Group PLC (formerly Quindell PLC) (“the **Petitioner**”), had a 19% shareholding in a company called OS3. They sought relief under section 994 of the Companies Act 2006 (“**CA 2006**”) on the basis that the company’s affairs had been conducted in a manner that was unfairly prejudicial to the interests of some, or part, of the members, including itself, and alternatively to its interests.

An exclusive distribution agreement was signed between the Petitioner and the Company on 30 September 2011. Between then and late 2014, the Company was significantly dependent on the Petitioner, who made a number of loans to the Company. In 2014, new directors were appointed and the new management wanted the Company to operate separately from the Petitioner. A dispute arose and a settlement agreement was entered into on 22 December 2014 which allowed the Petitioner to elect to obtain a further 14% of the shareholding in the Company. This election was made on 31 January 2015.

On 2 June 2015, the directors of the Company asked the shareholders to pass a special resolution (“the **Special Resolution**”) to allow it to allot new shares, with the result that the Petitioner’s shareholding was diluted. All the shareholders, apart from the Petitioner, were sent the proposed Special Resolution by email (there was a dispute as to whether the Petitioner was ever provided with the notice of the proposed Special Resolution). The Special Resolution was passed with more than 76% of the shareholders’ votes and is dated 8 June 2015.

There followed a private placement, as a result of which, the Petitioner’s interest in the Company was diluted from 33% to 5.3%. The Petitioner alleged unfair prejudice.

Issues and decision

Elizabeth Jones QC sitting as a deputy judge of the High Court dismissed the Petitioner’s application.

The three key issues that were raised were:

1. Whether the directors promulgated the Special Resolution in breach of section 171 and 172 of the CA 2006 or otherwise in breach of their fiduciary duty to the Company and that in causing the notice not to be provided to the Petitioner they deprived the Petitioner of the opportunity to object.

It was held that the directors should have given notice to the Petitioners at the same time as the other shareholders and in not doing so they had breached their duties.

2. Whether the transactions including the share issue, were entered into by the directors without a genuine belief that they were in the best interests of the Company for the benefit of the shareholders as a whole. It was held that the transactions had diluted directors’ shareholdings in just the same way as the Petitioners and so there was no breach of duty by

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the directors.

3. Whether there had been any prejudice caused to the Petitioners. It was held that the special resolution would have passed whether or not the Petitioners had been given notice and so there was no prejudice to the Petitioner.

Commentary

This case provides an interesting overview of directors' duties and the position of minority shareholders who may feel their interests have not been protected by the company board. It shows that, in order for such a petition to succeed, the petitioner has to show that loss to them flowed from the directors' actions, which they failed to do in this instance.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.