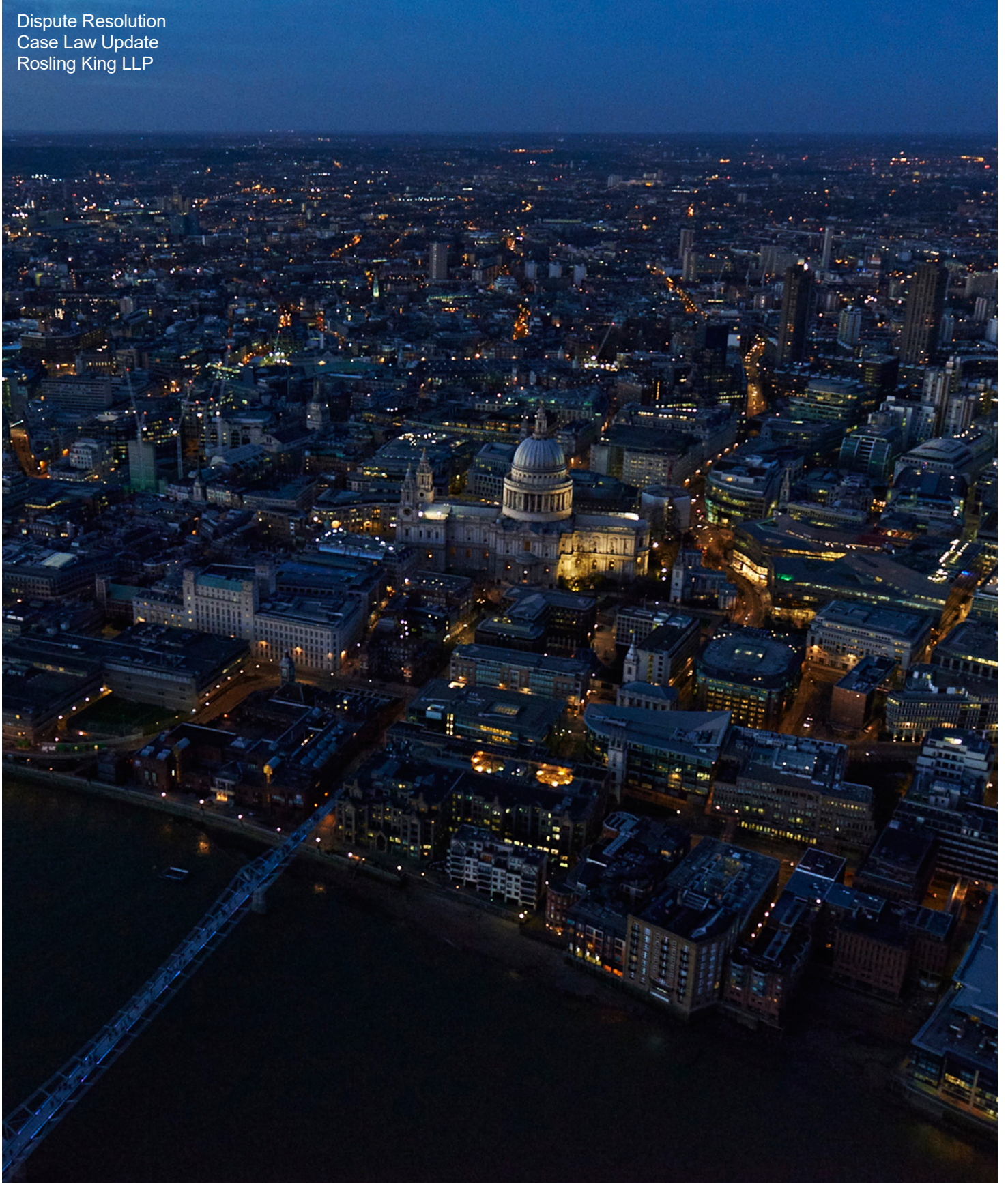


Dispute Resolution
Case Law Update
Rosling King LLP



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Background

The Petitioner was Paul Dinglis (“**PD**”) who was a 12% shareholder in the family company Dinglis Properties Limited (“**DPL**”), the third respondent. The first respondent was PD’s father, Andreas Dinglis (“**AD**”) who held a majority stake in DPL by virtue of a British Virgin Islands company, Master Holdings Group Limited (“**MHGL**”), the second respondent.

In 1989 AD formed DPL to buy and let properties in London. As the business expanded, he formed new subsidiaries, including Dinglis Management Limited (“**DML**”), which was used as a buffer company to collect rental income for DPL.

In 1991 AD gifted PD a 12% shareholding in DPL and thereafter PD was appointed a director of DPL as part of his wish for PD to learn the family business. In 2002 AD relocated to Cyprus and resigned as director of DPL leaving PD as sole director. Between 2002 and 2012 PD exercised increasing autonomy, including going against his father’s wishes on several management decisions.

In 2012, however, amid the context of an acrimonious family feud, AD removed PD as a director of DPL using his power as a majority shareholder under s168 of the Companies Act 2006 (the “**Act**”). Around the same time a £1.145m financial hole was discovered in DML. This led to a separate set of proceedings where it was found that PD had been dishonestly using DML to fund his lifestyle.

This culminated in the present petition, PD alleged (1) to have been unfairly ousted from the management of the Company and (2) that either AD was in breach of his director duties by making certain payments to his personal businesses in Cyprus or the payments were a breach of an equitable understanding as to how the business was to be run.

Issue of Quasi-Partnership

To establish a claim under s994, the aggrieved shareholder must demonstrate that the affairs have been conducted in a manner which is unfairly prejudicial to the interests of the petitioner and the shareholders generally. In assessing fairness, the starting point is to look at the articles of association. However, an act permitted by the articles may still be considered unfair if contrary to good faith.

Despite the respective shareholdings, PD said DPL was effectually a quasi-partnership as defined by Lord Wilberforce in *Ebrahmi v Westbourne Galleries* because there was a mutual understanding that the company would be run for the benefit of the family, he would be involved in its running and he would have access to the financial records. PD had the burden of showing that this understanding limited AD’s strict legal rights.

PD failed to convince the Court of this. The mere fact that DPL was a family company run with a high degree of flexibility on board meetings and dividend payments was insufficient to show a quasi-partnership. Despite PD exercising more day to day management after AD’s relocation, the Court did not see this as AD relinquishing his ultimate control of the business. PD failed to convince the Court that he was reliant on the alleged understanding under which he

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was operating, and that this served to limit his father's right to remove him.

Exclusion from Management: Misconduct by PD

PD then argued that his exclusion was nevertheless unfair because AD could not offer an adequate reason for his dismissal in 2012 other than the bitter family feud. AD admitted he could not explain PD's dismissal in 2012, however his actions were shown to be justified when PD's misappropriation of DML's funds subsequently came to light.

AD argued he could rely on facts unknown to him at the time of sacking PD because ultimately the issue is whether PD was unfairly prejudiced which required an objective analysis. PD was guilty of serious misconduct which would certainly justify the dismissal had it been known about. The Court agreed, relying on *Waldron v Waldron* [2019] in which it was stated that the Court should undertake the objective test considering all circumstances known to them as a whole.

AD's Misappropriation of Funds

PD's second allegation was that he had been unfairly prejudiced by AD's use of DPL's funds to support his suffering Cypriot companies in 2015. The Court found AD had misappropriated DPL's funds and in doing so had breached his director's duty under section 172 of the Act to promote the success of DPL. The Court found a clear causal link between the breach and the unfair prejudice because the funds could not easily be repaid because of lost business opportunities and there was every chance of this happening again given the animosity within the family.

Consequently, the Court ordered that MHGL, AD's holding company, purchase PD's shares at a discounted rate.

Commentary

The case serves to remind family run or small businesses that they are not automatically quasi-partnerships and if parties want to be involved in the management of the company, they should obtain a written agreement to protect their position.

Further, where a claim for unfair prejudice is based on an exclusion from management, the petitioner should ensure they have no skeletons in their closet in keeping with the equitable maxim that *"he who comes into equity must come with clean hands"*.

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