Neutral Citation Number: [2026] EWHC 1200 (Ch)

Case No: CR-2025-004561

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 03/06/2026

Before:

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE FRITH

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Between:

MATTHEW ROBERT HELLENS	**Petitioner**
- and -	
(1) JOEL BERKOWITZ	**Respondents**
(2) HIGH RESOLUTION DESIGN LIMITED	

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Watson Pringle KC (instructed by **Saunders Law**) for the **Petitioner.**
Marcus Croskell (instructed under the **Direct Access Scheme**) for the **First Respondent,**
The **Second Respondent** did not appear and was not represented.

Hearing dates: 10th -12th February 2026 and 3 June 2026.

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Deputy Insolvency and Companies Court Judge Frith:

Introduction and initial indication of the outcome

1. I have before me an unfair prejudice petition served by the Petitioner pursuant to s.994 of the Companies Act 2006 ("**CA 2006**") and a cross petition served by the First Respondent in response. Both petitions involve High Resolution Design Limited (the "**Company**"), and both seek relief under s.996. The petitioner is Mr Matthew Robert Hellens ("**P**"). The First Respondent ("**R1**") is Mr Joel Berkowitz.

2. R1 opposes the petition and P opposes the cross petition. Each of them seek an order that they be permitted to buy out the other's 50% shareholding in the Company. There are no other shareholders or directors.

3. Both parties assert that the company operated as a quasi-partnership. As a result, it engages the principles set out in the opinions of Lord Wilberforce and Lord Hoffmann respectively in *Ebrahimi v Westbourne Galleries Limited* [1973] A.C. 360 and *O'Neil and Phillips* [1999] UKHL 24. It involves a personal relationship of mutual trust and confidence with each party being involved in the management of the Company with a restriction for the transfer of their shares so that a neither member cannot take out his stake and go elsewhere.

4. Both parties allege unfairly prejudicial conduct against the other and each seeks to buy the shares from the other.

5. The trial was listed under the speedy trial scheme on all issues raised by the petition and cross petition as set out in paragraph 1 of the Order of Mr Tom Smith KC dated 14 October 2025.

6. Although R1 opposes the petition, unusually the unfairly prejudicial conduct relied upon by P in the petition is, to a large degree, admitted by R1 or is self-evident from the contemporaneous documents that have been disclosed.

7. P's case is that R1 procured the surreptitious diversion of company business conducted behind P's back to an entity that was controlled by R1. R1 seeks to justify his conduct by explaining that he was the subject of controlling and abusive conduct by P against R1. He asserts that this caused loss to the Company by such unreasonable conduct was also directed at suppliers and other stakeholders which has caused the Company to suffer prejudice.

8. The litigation has been bitterly fought throughout with no quarter asked or given. This is due in no small measure to the fact that not only were the parties in a business relationship, they were also good friends and as such, involved in a personal relationship at the same time. As a result of the issues raised by this case, the relationship has completely broken down amidst recriminations raised by both sides against each other.

9. Initially, it was intended that all matters would be dealt with in this judgment. However, such are the issues and sheer quantity of the material I have had to consider, I invited the parties to agree to the

issues of unfair prejudice being dealt with in this judgment leaving issues concerning the quantum of the price to be paid and matters containing the sale and purchase of the shares to be dealt with separately at a further hearing. This was also motivated by the need to provide certainty not only to the parties, but also to the other stakeholders as to who would be in control of the Company in the future. Both parties agreed to this approach.

10. In view of this approach, and the importance to provide such certainty as soon as possible, the order I will make is that the Petition succeeds and the cross petition will be dismissed. P will be ordered to buy the owned by R1 at a price to be determined. This judgment will therefore set out the reasons why I have come to this decision.

The positions adopted by the parties at the start of the trial.

11. P does not deny that he excluded R1 from the company. He justifies his decision to take this step in order to protect the company against any repetition of his unacceptable behaviour. R1 has acknowledged his behaviour to a degree, albeit P has complained that R1 has not done what he promised to do in undertakings R1 voluntarily given to P that were agreed on the discovery of his clandestine behaviour and also pursuant to the terms of the interim injunction ordered by the Court at the hearing before Mr Smith KC.

12. R1 alleges in the cross petition and his defence to the petition that his breaches of duty were the product of the personal and professional pressure placed upon him by the conduct of P. He alleged that P

engaged in controlling, bullying and abusive behaviour which affected his mental health. He claimed that P caused harm to the business of the company by repeatedly abusing its suppliers and customers. This he claimed caused the company harm leading to it losing both business and trade contacts.

13. P denies the conduct that R1 alleges. In his evidence, he admitted being forthright in his communication skills. He claimed to be frustrated by the conduct of R1 specifically in relation to his unreliability and eventually the reduction of the level of assiduity he deployed in the performance of his duties as a director of the Company.

14. P does not accept that any loss or damage was caused to the Company by his own behaviour. He submits that he was forced to exclude R1 from the company in order to limit and repair the damage he had caused which he submits R1 either admits or is manifestly evident from the contemporaneous documents that have been disclosed.

15. He contends that the proper order that the court should make is that he purchases R1's shares. P contends that R1 is impecunious and he does not have the wherewithal to purchase the shares. Consequently, it is he who should be ordered to purchase R1's shares. In support of this assertion, he relies on R1 making a suite of unsuccessful applications to the Court at a hearing before ICC Judge Mullen on 19th December 2025 which resulted in him being ordered to pay P's costs amounting to £22,522.20 by 2nd January 2026, just over a month before the trial

was due to begin. R1 made an application to stay those orders citing his inability to pay. It was listed before me to be dealt with at the start of the trial. That application was withdrawn immediately before the hearing was due to commence on 10th February 2026. The costs orders have not been paid and remain outstanding against R1. As a result, P contends that only he can complete a transaction to purchase R1's shares.

The conduct of the trial and the factual background

16. The trial took place before me over three days between 10 – 12 February 2026. Mr Watson Pringle appeared for P. Mr Marcus Croskell appeared for R1. The Company was not represented.

17. The Company was incorporated on 10 March 2015 by R1, whilst he was still a student of transport and automotive design. Prior to P joining the Company there were two co-directors and shareholders being a Mr Mott and the late Mr Darren Rickless who, 1 February 2017, invested in the business in exchange for a 50% shareholding.

18. In the early years, it had traded reasonably successfully under the control of R1 and Mr Rickless, although Mr Rickless was not involved on a day-to-day basis. This caused problems when the company experienced significant rapid growth, by virtue of the design capabilities of R1 and the trading relationships that they had both developed in the Far East. The limited availability of Mr Rickless to assist increased the pressure imposed on R1.

19. R1 met P some two years before he joined the company in February 2022. During that time, he had developed a close friendship with R1. P became aware of the pressure that R1 was under in relation to the running of the Company and he offered to assist, an offer that was accepted. He initially provided support at trade fairs and the like before becoming more formally involved.

20. P purchased the shares upon his entry to the company on 24 February 2022. The consideration paid for the shares was £80,000. The parties used the same share transfer agreement negotiated when Mr Rickless joined the Company as a template for the arrangements between P and R1 for this purpose when P joined. It is common ground that this agreement was signed and it regulated the dealings the parties had in relation to the management of the Company.

21. In addition, there was a shareholders' agreement which was purportedly signed on the same day. This is a matter of conjecture between P and R1. P flatly denies that he signed it, alleging that R1 applied his signature without his consent using the Adobe Sign process and effectively forging his signature by electronic means without his consent. Under cross examination R1 asserted that this was "no big deal" and rhetorically asked the question why he would sign it fraudulently. This agreement played no part in the proceedings but was resurrected by R1 in written submissions served by him after the event, when he sought to use it to pray in aid of a new assertion made to support a claim for dividends relying upon its terms. Since this may

have a bearing on the financial consequences of the order I intend to make, I will not deal with it conclusively in this judgment.

22. The Company has used the trading name of 'The London Toy Company' for most of its economic existence. Its principal licensor was Transport for London ("**TfL"**), its key customers included the London Transport Museum ("**LTM**") and other retailers.

23. P went on to invest further sums into the company to assist with cash flow issues which needed to be addressed. P also took the lead on arranging finance with a company called Conance Limited ("**Conance**") following an introduction arranged by R1. On 19 May 2022, the company signed a credit agreement with Conance. The arrangement was similar to a commercial factoring agreement whereby when the company received a purchase order, Conance would provide finance to help with production costs, which would be repaid with interest once the company was paid itself.

24. Initially the business improved with the benefit of P providing expertise of corporate management, credit and systems control and the introduction of improvements on corporate process. These were complemented by R1's flair for design and the client base that had been built up by R1 and others prior to P's arrival.

25. However, this did not last long. It appears that the approach adopted by P did not suit R1. Before long, R1 began to divert business to a company he controlled which traded under the style of Iconica Group

Limited ("**Iconica**"), a company he had formed in 2019 and of which P had no knowledge.

26. On 12 July 2022, just under 5 months after P joined the Company, three purchase orders worth some £106,000 were issued by LTM to the Company. Some four months later, on 14 November 2022, Iconica started to receive payments from a company called Connect Management. The last payment was received by Iconica on 23 March 2023. By that time, Iconica had received £12,678.30 from Connect Management. P was unaware of these transactions and also Iconica itself until February 2024. On the 8 June 2023, a further payment of £597.87 was received by Iconica from Connect Management Limited. Later that month on 27 June 2023, R1 set up a web site "tubetrainhire.co.uk". It transpired that this was used to generate income specifically as bar mitzvah from an asset that the Company had paid for. The asset was a replica of full size replica of a tube train driver's cabin that R1 had seen and ultimately acquired using the funds of the Company and without advising P of the purchase that he had made.

27. By late October, matters had deteriorated to the extent that R1 had evidently determined that he wished to extract himself from the arrangements he had made with P. There was undoubtedly growing acrimony between the two directors. R1 complained of the treatment he was receiving from P who was clearly a driven individual used to getting his own way.

28. There were transactions involving a company known as British Bites. On 19 December 2023, P found out that a payment should have been received for these transactions by the Company but was, instead diverted to Iconica. He challenged R1 to confirm that there were no other transactions and R1 categorically confirmed that this was the only one. P demanded that R1 should arrange for Iconica to reimburse HRDL, which he duly did. But for that intervention, the defalcation would have remained undiscovered.

29. On 28 December 2023, Amazon Prime Air sent a purchase order to the HRDL through the Amazon Portal. R1 admits that an order was placed in the name of HRDL but handled exclusively by Iconica Limited from Amazon Prime Air under purchase order Z5-12745784. This was for a quantity of soft drone toys which R1 understood would only be distributed internally to staff.

30. It is further accepted that the toys had safety information on the sewn in tags associated with HRDL. There was also a dispute between the parties as to there being safety issues to which I will refer in due course. R1 submits that any purported risk that arises from this is at best a contingent liability which decreases with the passage of time. Notwithstanding that there is evidence to show that R1 diverted this opportunity which P considers to be a breach of duty on the part of R1, Mr Croskell in his skeleton argument considers that little turns on this matter given the passage of time.

31. There was a dispute between the parties as to their precise functions prior to February 2024. This related particularly to the company's finances and who should control them. Each says that the other was responsible. Notwithstanding this disagreement, the company achieved growth in the first few years of the quasi partnership between the parties.

32. One of its important clients was LTM. At the end of 2023 and the beginning of 2024, LTM were keen to develop their relationship with the company by the placing of what was described as further large private label orders. As to who was primarily responsible for these improvements, the parties cannot agree and indeed, in the second half of 2023 the working relationship between the parties started to sour. P says this was because of R1's persistent errors. R1 says that it was on account of P's abusive and controlling behaviour towards him and others.

33. By the autumn of 2024, matters were deteriorating fast. R1 instructed solicitors to act on his behalf.

34. To try to deal with these issues the petitioner appointed a Mr Alex O' Donovan in a bid to try to improve the working practices. However, perhaps not surprisingly given the circumstances on 7 February 2024, Mr O'Donovan evidently felt that he had landed in the middle of a dispute and handed in his notice.

35. On 8 February 2024, the day after the notice had been given, an email was copied from LTM to P and R1 outlining upcoming re-order details.

The email was a standard 're-order' email sent to both P and R1. By that time, R1 had access to P's email account, and the message was deleted by R1 before P could see it. It was a narrow escape for R1.

36. P asked Mr O'Donovan to explain his reason for this unexpected departure, P was informed by Mr O'Donovan that R1 had regularly made comments to him when they were alone, regarding his strong dislike of P. R1 went on to tell Mr O'Donovan that his close personal connections with many Company stakeholders and clients meant that he could just start up a new Company and take the Company's business with him. Not surprisingly this led Mr O'Donovan to feel that he had no job security, and he began applying for other jobs.

37. In the light of this unexpected development, P arranged a meeting with R1 that took place on 20 February 2024. Its purpose was to try to agree upon a way forward. This was referred to in the proceedings as the "February meeting".

38. The parties do not agree on what took place at that meeting. What is clear is that they agreed that there would be a change in roles and responsibilities. P produced a "New Direction Plan" and gave it to R1. It provided that P would assume control of the business, focusing on its financial side going forward. R1 would take a more of a back seat and they agreed on some processes to help things run more smoothly between them moving forward. P asserts in his evidence that it was clear to him that R1's preference remained to buy P out of the

Company or to liquidate the business and each take 50% of the liquidated value.

39. At this time, P asserts that R1 mentioned specifically that he had received an offer from an unnamed third party to purchase all assets, contracts, and intellectual property rights for a figure in the region of £200/300,000. P again made it clear that he was committed to the Company and had no interest in selling or seeing the Company liquidated.

40. P asserts that it was eventually agreed that P would take over the day-to-day operations of the Company in addition to maintaining his other duties. This would leave R1 only to work part-time but still receive the same equal pay.

41. At that meeting, it is alleged by R1 that there was an agreement that became known as the "February Promise". It is articulated in the Points of Defence at paragraph 3.3.3 as follows, "[3.3.3] *Upon the First Respondent expressing his discontent at his treatment by the Petitioner in or around February 2024, the Petitioner promised him that he would be free to carry out separate private label work in the same industry as the Company provided that such work was not reasonably available to the company".*

42. He also claimed that P agreed that R1 *"could take the full profit of comparable work done by him through the Company*", such work being recorded as work of the Company, and that R1 was able to use for such

work Company resources in respect of "*shipping, logistics and similar matters*".

43. In his skeleton argument, Mr Pringle submits that this description does not really make sense. It is not clear how it was engaged, even on its own terms. In any event, in his fourth witness statement, P denies categorically that that the February Promise was ever made. P says that he told R1 that he had no objection to R1 pursuing other commercial activities, entirely unrelated to the Company's clients and licensors (the example given being of a construction-related project), however there was no consent to R1 exploiting the Company's existing business or leads, far less doing so using Company resources or assets, or using products bearing its name or breaching the Company's copyrights.

44. Mr Pringle set out six flaws in R1's account that such an agreement was reached. They were:

a) It was not recorded in P's email to R1 hours after the meeting purporting to record the key points, nor did R1 raise it in response when he received that email. There is no response in the bundle, nor as far as P is aware in the disclosure either.

b) It was not raised by R1 in response to P confronting him about his diversion of business. Instead, his sworn evidence deposed to the fact that R1 acted apologetically for having done something wrong, which is inconsistent with the existence of the Promise.

c) The Promise is also inconsistent with the fact that R1 went about the diversions surreptitiously, rather than simply telling P that, (*ex hypothesi*) in accordance with the Promise, he would be taking on private label business on his own using Company resources.

d) It was also not raised at all in the very protracted exchange of initial correspondence between the parties and their solicitors, indeed not until R1 produced his Defence in the litigation some 9-10 months later.

e) R1 does not support it, certainly not as pleaded, in his own trial witness statement. This is notwithstanding the fact that P deals specifically with it in his own evidence.

f) It is commercially fanciful. There is no reason why P would agree not only to R1 exploiting business that came to him as the Company's director, but also to the Company's resources and name and products being used for work for which it would receive no profit, simply in exchange for R1 refraining from leaving.

45. P therefore categorically refutes the suggestion that this was agreed. Indeed, he asserts in his evidence that during the meeting, R1 informed P that he had recently phoned the buyer at the London Transport Museum (LTM) shortly after receipt of Mr O'Donovan's notice. R1 had told them that R1 would be leaving the Company and it would therefore no longer be able to guarantee the reliable supply of re-orders

of their products. Not surprisingly P was shocked to hear this, although had no reason to doubt that it was true. P asked R1 to do whatever was necessary to re-assure the client that the Company could be relied upon, and R1 assured P that he would do exactly that.

46. Rather than resolving the issues, matters came to a head. It transpired that on 19 February 2004, being the day before the February meeting, LTM had in fact emailed R1, attaching a Purchase Order to the Company dated 19 February 2024 for goods to the value of £128,800. At the time of the meeting which took place on 20 February 2024, P did not know that this order existed, as R1 did not disclose it to him. Instead R1 sought to divert it. He also deliberately sought to mislead P by claiming shortly after the meeting that R1's efforts to reassure the client had failed.

47. To compound this subterfuge, he told P that the client had now placed their orders with two unrelated third parties. R1 claimed that a competitor named BigJigs would now supply the museum with the same wooden trains that the Company had previously produced, and that an unidentified Company had taken over their supply of the diecast products. R1 refers to this as an "attempted diversion" on the basis that the transaction was ultimately reversed. That is a somewhat naïve distinction. He compounded his actions by informing LTM that they should communicate with him via the ToyCo email address in the future. That R1 categorises this as a an "attempted" diversion is

disingenuous. The diversion was complete and was only reversed when P ultimately discovered the truth.

48. On 27 February 2024, Conance incorporated Toyco Limited ("**Toyco**") in the name of Philip Elliot Simons, an associate of Conance. It was to become the vehicle through which further defalcations were to be perpetrated. That same day, Mr Simons emailed R1 with details of the new company. Some 2 weeks later, on 11 March 2024, R1 started to correspond with LTM using his new Toyco email account. Just over a week later, LTM cancelled the order with the Company and issued a new one to Toyco. R1 used Company designs and products, featuring clear Company labelling to fulfil ToyCo and Iconica orders.

49. On 19 March 2024, two events of significance occurred. First, LTM cancelled the purchase order to the Company and issued a new one to Toyco. Second, R1 contacted suppliers, including Motormax Toys to place re-orders of diecast and wooden goods.

50. Two days later, on 21 March 2024, payment was made by Iconica Ltd to the Company to reimburse it for the diversion of the funds that it had received from the British Bites transaction.

51. On 27 March 2024, R1 informed First Rail/LUMO that an invoice for an order they wish to make with the Company would come from R1's Toyco email address. It was yet another instance of the diversion of business away from the Company to Toyco to its detriment and without P's knowledge or control.

52. On dates between 5 April 2024 and 12 April 2024, payments received by Iconica from Hull trains/East Coast trains totalling £31,149.60. These too represented the further diversions instigated by R1 to the detriment of the HRDL.

53. On 6 June 2024, a further purchase order was sent from LTM to Toyco Limited which R1 used as the vehicle for this transaction with finance from Conance. R1 accepts that he paid the sum of £17,325.34 from HRDL's bank account to Conance to release the order to LTM and did so without P's knowledge and approval. Mr Croskell concedes that this was self-evidently wrong and he does not seek to justify the acts of R1 who clearly panicked, realising he had been found out (e.g. his message of 18.06.24 to Phil Simons of Conance: *"Help. He's found out about the payment").*

54. However, Mr Croskell submits that it does not automatically follow that such conduct amounts to unfair prejudice. He submits that in the context and period in which the events took place the conduct of P in or around that time was of itself in breach of P's duties as a director and fiduciary to HRDL and/or R1 personally. This time R1 did not have the time to intervene as he had succeeded in doing before. The email also disclosed that the toys ordered from Motormax Toys were ready for shipment. He seeks to explain that R1's actions were motivated by LTM's displeasure with P as a character. There was a message from the LTM buyer sent previously, which Mr Croskell seeks to pray in aid of a positions that in the context in which this took

place, the conduct of P in or around that time was, of itself in breach of P's duties as a director and fiduciary to HRDL and R1 personally. In response to this position Mr Pringle submitted that this did not provide an excuse for R1's conduct making it clear that the self-help option should not have been deployed. If there was a sustainable complaint concerning the conduct of P, it should have been litigated (which eventually ultimately did take place on the service of the Cross Petition).

55. In his cross-examination by Mr Croskell, P asserts that this was the first occasion he was aware of these matters. Evidently, the representative of the supplier, Motormax Toys had been trying to contact R1 for weeks about when the goods could ship and he did not respond, so they copied P into the thread in an attempt to contact him.

56. Prior to the receipt of that email, P knew nothing of the significant clandestine transactions that had taken place since the February meeting. He asserts that he had in fact, been labouring under the mistaken impression that matters, including his relationship with the First Respondent, had improved significantly. R1 would regularly comment on how impressed he was with his running of the Company, and their social interactions increased. R1 told P that he was spending the additional time afforded by the reduction of his duties following the February meeting to develop an opportunity for the construction industry involving the renting of construction vehicles via an app. By that time, R1 was at this time still involved in the Company and was

assisting P where needed but was acting in more of a part-time capacity.

57. Upon making this discovery, P immediately confronted R1 who admitted what he had done. P then attended R1's home. On arrival, R1 gave him access to his computer. He discovered that various other customers of the Company had contacted R1 and that he had attempted to divert them to ToyCo and away from the Company. He discovered meetings between R1 and Conance re ToyCo fulfilling new orders, with Conance providing the funding. The following day, on 13 June 2024, P sent an email to R1 summarising complaints and reserving the right to take legal action before instructing his solicitors.

58. On the same day, P drafted an email to LTM explaining to them what had happened. He sent it to R1 who, perhaps not surprisingly disagreed with this course of action. This was followed by P telling other suppliers what R1 had done on 17 June 2024. The following day, 18 June 2024, P asked LTM to change the order back to the company. R1 seemingly undeterred by the events of the previous days, makes a payment to Conance of £17,325.34 without advising P of his intention to do so. It is said that the purpose of the payment was to release goods to the Company. It was in fact a payment in respect of the finance for the supply of the ToyCo LTM order. This caused problems for P and the Company vis-à-vis LTM and Conance.

59. When P did find out, and from August 2024 to early October 2024, P was working with his solicitors to serve a Letter of Claim. It was

served on 2 October 2024. The letter detailed P's issues with his conduct. It contained a request for the disclosure of specific documents as well as undertakings. It also sought his resignation as a director.

60. R1 had by then instructed his own solicitors. On 14 October 2024, R1 provided undertakings. They were set out in a document which read as follows:

> "I, **Joel Samuel Berkowitz**, …., a director and shareholder of High Resolution Design Limited trading as The London Toy Company (Company"), without admission or acknowledgement of any breach HEREBY UNDERTAKE to my fellow director and shareholder, Matt Hellens, as follows:
>
> 1. To preserve all documents in my possession howsoever stored, relating to Iconica Group Limited and Toyco Ltd.
>
> 2. To use my reasonable efforts to procure undertakings from Toyco Ltd and Iconica Group Limited, to preserve all documents relating to the matters in dispute.
>
> 3. Until further agreement, and/or until my removal as a director, whether by resignation or otherwise, to comply going forward with the following:
>
> 3.1 My duties to the Company as a director pursuant to the Companies Act 2006, in particular:

3.1.1 (s.172) to act in the way most likely to promote the success of the company for the benefit of its members as a whole:

3.1.2 (s.174) to act with reasonable care, skill and diligence;

3.1.3 (s.175) to avoid a situation in which the director has, or can have, a direct or indirect interest that conflicts with, or possibly may conflict with the interest of the company: and

3.1.4 (s.176) not to accept benefits from third parties conferred by reason of being a director or doing or not doing anything as a director, which can reasonably be regarded as likely to give rise to a conflict of interest.

3.2 My duties of fidelity to the Company as an employee under UK common law principles including (but not limited to):

3.2.1 behave honestly;

3.2.2 act in the best interests of my employer;

3.2.3 not to work in competition with my employer;

3.2.4 not to make a secret profit; and

3.2.5 duty to disclose information.

3.3 Any duty of good faith or other fiduciary duties owed to Mr. Hellens as a quasi-partner.

3.4 Not to conduct any business in competition with the Company, whether through Toyco Ltd, Iconica Group Limited or otherwise."

61. There was then a list of Additional Agreements which were the subject of a document that was signed by R1 on 20 October 2024 which read as follows:

"I, Joel Samuel Berkowitz, …, a director and shareholder of High Resolution Design Limited trading as The London Toy Company (Company"), without admission or acknowledgement of any breach or liability HEREBY AGREE with my fellow director and shareholder, Matt Hellens, as follows:

By no later than 21 October 2024

1. To disclose, alternatively, use reasonable endeavours to disclose, all business conducted by Toyco or Iconica in relation to products which the Company has in the past supplied or which it would in the normal course of its business have supplied since I have been a director of the Company;

2. To provide, alternatively, use reasonable endeavours to procure, the provision of:

    2.1 all bank statements and accounting records of Iconica from 28th February 2022 to date.

2.2 any invoices issued by Iconica in relation to goods as manufactured by the Company or which the Company would in the normal course of its business have manufactured.

2.3 any invoices issued by Toyco since incorporation to date in relation to goods as manufactured by the Company or which the Company would in the normal course of its business have manufactured.

2.4 the bank statements of Toyco since the date of incorporation to date.

2.5 all emails passing between me and Mr Simons relating to Toyco's business in relation to goods supplied by the Company or which the Company would in the normal course of its business, have manufactured.

2.6 all communications, relevant to the matters in dispute as set out in the letter from Saunders law dated 2nd October 2024, between me and Conance and also me and LTM from February 2022 to date either from or to my Toyco email address, my Company email address or otherwise.

2.7 All communications, relevant to the matters in dispute as set out in the letter from Saunders law dated 2nd October 2024, from my Toyco email address with

suppliers including suppliers of the Company, in respect of goods manufactured by the Company or which the Company would in the normal course of its business, have manufactured.

2.8 my personal bank statements having redacted those entries not relevant to this dispute from February 2022 to date.

62. However, R1 then specifically edited the document P had requested R1 sign so that its effect would be diluted. This was with regard both to matters that he was agreeing to disclose and the input required from him in securing such disclosures specifically from Toyco Ltd. Not surprisingly, this aroused P's suspicions that there may be other relevant matters that the R1 intended to continue to conceal.

63. By giving these undertakings, R1 acknowledged that the relationship between the parties had broken down. It was clear that one of them had to leave and buy the other's shares and that would be R1, albeit that he changed his position on the service of the cross petition. It was also a condition that R1 would have to give a period of non-compete restrictions after he left.

64. By signing these two documents, which appear to have been drafted by P's solicitors and amended by R1's solicitors for him to sign, R1 clearly agreed that in the future, he would comply with his fiduciary duties to the Company. This was a personal undertaking to P. He also undertook to comply with the duties of honesty and the utmost good

faith consistent with the concept of a quasi-partnership which he owed to P. He was also reminded of his statutory obligations he owed as a director, with the specific references to the relevant provisions of the CA 2006.

65. As matters progressed P became more concerned with the disclosure R1 had provided on 22 October 2024. Following his initial review P discovered that there were at least three other clients of the Company where R1 had previously diverted business as well as payments due to the Company which he had diverted to Iconica Group Ltd. These were Amazon Prime Air, LUMO, and Connect Management. This clearly contradicted the R1's previous statement that there were no further issues, which caused P not surprisingly to lose all faith in R1's assurances. The LUMO transaction featured in P's trial witness statement signed on 5 December 2025. It does not feature in the Points of Claim albeit that the issue is not contested nor the sums involved. R1 agreed to make good to the Company the sum of £31,146.60.

66. At this time, P also became aware of secret conversations that R1 had held with contacts of his since as early as September 2023. These concerned plans to remove P from the Company and, later, plans to divert business opportunities and compete with the Company. At the time, P asserts that he was completely unaware that this was happening behind his back. He discovered that R1 had also setup Toyco Ltd with the assistance of Conance, using their associate Phil Simons as his

nominee. As things unravelled, he became aware that it was R1 who had been truly in control of the business.

67. P also discovered for the first time that R1 plotted to approach one of the Company's key licensors, JCB, on behalf of ToyCo. He had also held additional secret discussions with the buyer at the Company's largest client by value of sales, LTM, regarding development of a new range of 'matchbox' diecast toys for ToyCo in direct competition with the Company. Spencer Saffer, an associate of Conance boasted at one point that ToyCo will soon be bigger than the Company. P professed his shock at both how long this had been going on for and the extent of the planning. There is also some evidence that a level of collusion took place between R1 and Conance representatives. The specific incident he cites is a conversation R1 had with Graeme Sands, the CEO of Conance on 8 February 2024 in which R1 acknowledged receiving the re-orders from LTM but stated that he had luckily been able to delete them from P's own personal Company inbox before he saw them. The message stated: (sic) "*FYI, I've had this from london transport museum in just now. Was able to delete from Matt's inbox before he saw … 150k*".

68. It was then that P realised for the first time that when the R1 had initially set up his personal Company email address when P joined the Company, R1 had also logged into his email address on his own computer and set up himself as having full control over P's email address. This was in spite of P's position as a co-director and equal

shareholder. This meant that, unknown to P for over 2 years, R1 had been able to delete anything that he did not want P to see from P's own inbox. R1 was also able to send emails that would appear to come from P's email address freely and without P knowing anything about it.

69. P had also been provided WhatsApp messages from Mr James Nash a director of Picpacgo Limited, the Company's warehouse provider. These revealed to P that there was at least one other occasion where R1 deleted emails from P's inbox to conceal matters from P, contrary to what R1 had told him. In these messages, R1 explained to Mr. Nash that he had deleted an email from P's inbox before he could see it. R1 then asked Mr. Nash to lie on his behalf if P were to approach him asking questions in the future.

70. These matters obviously led to a complete breakdown of trust and confidence. On 1 December 2024, the Company ceased paying the salary that had been agreed in the share transfer agreement signed when P joined the Company. P justified this decision by asserting with some force that there was a level of unauthorised income drawn down by R1 and applied for purposes not connected with the business of the company. Amongst other things, these related to these related to company assets being used to entertain R1's friends and Family. There is also a large number of transactions that P discovered were incurred for R1. They are subject to an account being taken with a view to R1 reimbursing the Company. The position is not assisted by the fact that P complains that R1 has not performed his disclosure obligations in

accordance with the Order of Insolvency and Companies Court Judge Agnello KC. These matters will be dealt with after the handing down of this judgement when issues of the quantum P must pay R1 for his shares and matters of set off or reimbursement will be determined.

71. P has been in effective control of the Company since the resignation of R1. He disinstructed the company's previous accountants and auditors in early 2025. This he did on the basis that not only were they the auditors of the Company, but they were also the auditors of Iconica and therefore there was a clear and obvious conflict in their retaining both appointments. He incorporated The London Toy Company Limited on 29 January 2025 in order to protect the Company and preserve it from adverse activity that R1 may have been able to perpetrate pending trial.

72. Since then, there were inconclusive and unsuccessful negotiations between P and R1. R1 continued to make allegations that he has been harassed and specifically "blocked" P stating he would manage the company's interest on his own. P has also continued to deal with the outcome of an aggressive tax avoidance scheme that R1 caused the company to participate in without P's knowledge. This related to the company claiming tax relief for expenses incurred in Research and Development. Evidently HMRC have not accepted that the company qualifies for the relief claimed and will have to pay the tax due.

73. Nonetheless, negotiations followed when they exchanged valuations of the company to see if a buyout could be achieved by agreement. This proved to be unsuccessful and as a result, P presented the petition

together with an application for injunctive relief. Those proceedings were duly defended, and the cross petition was issued.

74. The next significant event was a hearing on the 14th of October 2025. This took place before Mr Tom Smith KC sitting as a deputy High Court judge. Amongst other things, he ordered that there should be an expedited trial given R1's conduct and given that he intended to resign and compete with the company. Mr Smith KC granted P's application for an interim injunction which prevented R1 from competing until the earlier of trial or three months after R1 resigned as a director of the company. R1 resigned as a director on the 21st of October 2025. It followed that the injunction expired on the 21st of January 2026 which would leave R1 free to compete from that date.

75. The expedited trial, which ultimately took place before me, was ordered with expedited directions. A further hearing took place before ICC Judge Agnello KC who in order dated 4 November 2025 ordered disclosure within finalised issues. P submits that R1 did not comply with his obligations of disclosure and that R1 may have destroyed relevant documents that he ought to have disclosed.

The Evidence

76. Witness statements were produced on behalf of P from himself. Other witnesses signed witness statements but did not attend the trial and did not submit to cross examination. They included Mr Alex O'Donovan the former employee of the Company, who gave evidence as to the nature of the relationship between the parties in the short term he was

working at the company and further as to what R1 told him about his intentions to set up a rival business. He did not give oral testimony.

77. Mr James Nash, the managing director of the Company's Warehouse Provider PicPacGo Limited also signed a witness statement in support of P. This arose because it was alleged by R1 that in January 2025, he made a pejorative comment to R1 on his feelings when dealing with P. He gave evidence that he did not recall the conversation at all.

78. He attended the trial and was cross-examined by Mr Croskell on his evidence. He conceded that he had liaised with P in the production of this evidence, but only to the extent of the format that was to be used in its preparation and production. He indicated that he and he had prepared the narrative himself and without any other outside assistance. His company had a long relationship with the Company, dating back to 2017. It focused on an exchange he had with P over an overdue bill in breach of its credit terms. He was concerned because he was aware of the dispute and the conflicting instructions he was received from both of the parties. He was clearly caught in the crossfire of two warring factions. It was put to him that there may have been an element of reconstruction in his account and he was asked why he had not filed a supplementary witness statement, a suggestion that he readily accepted. He strenuously denied being under any economic pressure to prefer one party over the other, pointing out that at the time he had other potential customers who could fill the void. He confirmed the evidence that he provided in his witness statement in re-

examination by Mr Pringle. In his closing submissions, he made the valid point that Mr Nash whilst having no axe to grind was candid in his view of both men. He made the point that the business was running much better with P in charge. He believed that at the time of the disparaging remark (which he did not recall), he may have been influenced by disparaging comments made by R1. All in all, I found Mr Nash to be a truthful witness, and he gave his evidence with a view of assisting the Court.

79. I heard from Mr Liam Mackenzie, who had filed a witness statement and gave oral evidence in support of R1's case. He is the partner of R1 with whom he cohabits and shares finances. He gave evidence in support of R1 in relation to a telephone conversation he overheard after P had discovered what R1 had been up to, indicating that he would "ruin" R1 or words to that effect. He also voiced concerns that P would come to his house and cause both of them harm. His evidence is obviously affected by his personal relationship with R1. He was clearly an honest witness doing his best to assist the Court and his partner. However, this was in circumstances where he had no first-hand evidence to offer and with all due respect to him was of limited assistance to the determination of the issues.

80. I now turn to P and R1. The level of antipathy between them is clearly at a high level. It has clearly had an effect on the conduct of this litigation.

81. P struck me as an individual with a business background and a flare for process and organisation. He has clearly been affected by the breakdown of the relationship as evidenced by a show of emotion when describing how close he was to R1 when cross-examined on the point by Mr Croskell. He gave his evidence in a measured, precise, and transparent way. He responded in an appropriate manner to matters raised in a searching and vigorous cross-examination by Mr Croskell.

82. However, I was taken to several exchanges revealed in the bundle of documents that had taken place between himself and suppliers and messages he had sent to R1. These were unedifying to say the least. They exhibited an explosive temper which, when he lost it, prompted him to use foul, abusive, and misogynistic language. I was taken to encounters where his comments had reduced other parties to tears and antagonised suppliers. The documents also showed that he wasted no time on administering threats of violence if he did not get his way.

83. In his evidence before me, he sought to explain this behaviour by explaining that he wore his "heart on his sleeve" and adopted a policy straight talking and that his comments were justified in the context of the circumstances in which they were made. That explanation was self-serving and wholly unconvincing. That said, when giving his evidence he did so in a calmer manner. He attempted to answer the questions he was asked and to give his evidence in a measured way and with the intention of assisting the Court. Overall, notwithstanding his

highly unattractive behavioural flaws revealed in the documents, I found him a truthful witness.

84. R1 adopted a defensive approach. He was unnecessarily combative and on occasions somewhat petulant. He wasted no time in articulating his views on P's conduct. Even accounting for the heightened emotion and pressure of cross examination, he tended to obfuscate. From time to time, he allowed his emotions to get the better of him often looking to answer a question he was not asked and forgetting the fact that the Court is merely wanting to hear the truth without unnecessary embellishment. I take note of the circumstances of this case and the manner in which R1 has conducted himself. I treat his evidence with a great degree of caution.

The legal principles

85. I am indebted to both counsel for their clear and concise written and oral submissions on the law as it affects the issues in this case.

86. It is a breach of duty for a director or fiduciary to divert existing business of the Company to themselves, or to a Company owned or controlled by themselves. It is also a breach to exploit a 'maturing business opportunity' that is being pursued by the Company. If a director or other fiduciary breaches those duties, he must account for all the profits thereby made, regardless of whether (i); the Company would have made the profit for itself or (ii); the fiduciary would have made the profit but for the breach: *Recovery Partners & and anr. v*

Rukhadze & Ors [2025] UKSC 10; [2025] 2 WLR 529 (confirming the *ratio* in *Regal (Hastings) Limited* v Gulliver [1967] 2 AC 134).

87. The provisions of the Companies Act 2006 also have significant relevance. They were conveniently set out in the undertakings voluntarily signed by R1 following the discovery of his conduct to which I have previously referred. The fact that they were included emphasised their importance moving forward, albeit that it is clear that R1 chose to ignore them.

88. Their purpose is to regulate the conduct of those who accept an appointment as a director of a company incorporated under the Companies Act 2006 ("**CA 2006**"). The use of limited liability brings with it statutory obligations that bind directors so as to provide protection for all stakeholders. They are not optional and still apply when there is a breakdown of a company that trades as a quasi-partnership as both parties have submitted applies in this case. This overlays obligations to act in good faith and in accordance with trust and confidence which apply to parties that operate as a quasi-partnership.

Conduct amounting to unfair prejudice.

89. There is also common ground on the requirements for conduct to fall within s.994. They are that the petitioner must prove conduct that is both (i); unfair, and (ii); prejudicial to them in their capacity as a shareholder. Breaches of directors' statutory or fiduciary duties can suffice to establish unfairness, examples being the diversion of

business to a company owned by the respondent but not the petitioner, misappropriation of a company's property or assets, and the misuse of corporate assets: for these, and other examples, see *Joffe, Minority Shareholders, Law, Practice & Procedure, 7th ed.,* at 5-275 to 5-280.

90. At the date of the trial, R1 had been excluded from the business by P. This can amount to unfair prejudice; however, P submits that it will not always do so. In certain cases, it can be justified by the conduct of the person excluded (in this case R1): see *Re Sprintroom Ltd* (CA). [2019] BCC 1031 at [63]. The question is whether the "*disinterested reasonable bystander would regard such removal as unfair*" *Woolwich v Milne* [2003] EWHC 414 (Ch), p.39 line 11. So, for example in *Flex Associates Ltd v Hussain*, [2009] EWHC 390 (Ch) an unfair prejudice petition failed because exclusion was justified. The petitioner was a director/shareholder who had set up a rival company with another shareholder, without the knowledge of the other directors. The petitioner had then planned, and taken various steps towards implementing that plan, to divert work away from the company to the rival company. Further there was "*a clear attempt to obtain potential business for the benefit of [the petitioner and other shareholder] rather than Flex* [53]. The Court found at [55]

> "*[The petitioner's] actions...ran fundamentally counter to the co-operative understanding on which the company had been operated ... and on which the petition is based. Whether taken separately or together, they made it in my judgment wholly inequitable that [the other two directors] should have been required to accept [the petitioner's] continued participation in the management of the company. They would in other words have justified the [other 2 directors] in excluding him from such participation. Any such*

exclusion would not have constituted unfair prejudice and would not have constituted a proper basis for an order under section 459."

91. As for prejudice, it need not necessarily be financial: *Re GO DPO EU*. [2021] EWHC 1765 (Ch). It follows that *attempted* diversions of business, even if they are unsuccessful, would suffice (as P submits with regard to the LTM contract in this case). However, the prejudice must be commercial, rather than in a merely emotional sense as R1 submits) *Re Unisoft Group Ltd (No 3)* [1994] 1 BCLC 609, at 611h.

The consequences of both parties seeking a buy out order.

92. Where both the petitioner and the respondent wish to purchase the other's shares, the court will not "*preside over a protracted and expensive contest of virtue between the shareholders… to award the company to the winner*": see *Re A Company (No 006834 of 1988), ex p Kremer*. [1989] BCLC 365, 368b.

93. In such cases the court has simply to reach a conclusion as to which has the stronger claim to the company. In this case, there is the added complication that not only were the partners in business, but also, they were involved in a personal relationship at the same time. The oral evidence provided by the parties demonstrated a complete and irretrievable breakdown of that relationship. It caused a level of rancour on both parties, both in their written and oral that unnecessarily obfuscated the number of issues before me. Both sides took what appeared to be every available point. In his submissions for R1, Mr Croskell had meticulously analysed the number of factual allegations

made by each party against the other. These amounted to no less than 91 factual allegations in the petition and cross petition; 67 were made by P and 24 were made by R1. I am fortified by the guidance provided by ex *p Kremer*, it is not necessary for me to preside over a contest of virtue in a case of this nature. The main issue is directed towards having simply to find who had the stronger claim. That too is more difficult that it would, at first appear, by virtue of the volume of the material the Court had had to consider.

94. Mr Pringle has also been similarly industrious in providing a list of agreed issues that the court has to determine. They amount to 29 in total. The light at the end of that somewhat lengthy tunnel is enhanced by that fact that R1 admits misconduct in diverting business away from the company. This, he submits was prompted by the improper conduct of P in what he describes as bullying, controlling and abusive behaviour and the consequential effect it had upon his own mental health.

95. I also have the benefit of expert evidence from each party who have done their best to narrow these issues on valuation in what must have been challenging circumstances. However, I do make the point that matters would have been made easier if the parties had elected to rely upon a single joint expert. This is not a large company. The complaints were made at the beginning that it was disproportionate to have a live transcription appear ironic, given the significant costs that

have been incurred by both parties on pursuing each point to the bitter end.

96. Where, as in this case, the petitioner and the respondent are equal shareholders, the Court will take into account a variety of factors in reaching its decision, such as (i); which party has had or retains the predominant role in the management of the business (ii); the ability of each party to make payment for the other's shares taking into account what is known about their means, and (iii); in whose hands the company is likely to prosper: see e.g. *West v Blanchet*; [2000] 1 BCLC 795, 803d-804d *Re Hedgehog Golf Co Ltd*. [2010] EWHC 390 (Ch); at [78] – [79].

97. In this case, P gave evidence to the effect that he had other successful business interests. When he joined the Company, he had supported the Company by injecting working capital to meet a rising cashflow problem and negotiated a factoring arrangement with Conance to liberate cash from invoices. He has been in effective control since the resignation of R1 on 21 October 2025. He retains the predominant control in the management of the business. In contrast, R1 gave evidence as to the straightened circumstances he and his partner were currently living in. R1 pursued an application for a stay in respect of the Order of Insolvency and Companies Court Judge Mullen on the grounds of cash flow issues that was only abandoned on the first day of the trial. He is, on his own admission insolvent, having informed the Court that he had invested all his capital and savings in dealing with

this litigation. It is true that in his evidence he mentioned that he had some unidentified backers who were monitoring the situation. The only one he positively identified was Conance. There is no evidence that it has made good its intentions in that regard. Mr Croskell suggested that I should consider making an order on R1's behalf giving him time to put together a proposal once the outcome of the hearing was known. I find that proposal to be profoundly unattractive. I do have to take into account the interests of the Company and its stakeholders. The inchoate proposals emerging from R1 are unconvincing. It follows that when one considers the current situation with the Company being operational in P's hands, which is a situation I ought not to intervene in. This is a case in which the court has heard evidence that one party had the means at its disposal to complete a transaction quickly whereas the other party manifestly could not. The Court recognised the need to protect the position of the company in the midst of such disputes that lead to the presentation of s.994 petitions. Whilst in the main these are dispute between individual shareholders, the nature of limited liability reflects the need to consider the interests of stakeholders who are not primarily involved in the litigation. This includes the company's creditors who would be affected if a sale to an impecunious litigant would, in all likelihood, be unable to provide it with the necessary working capital to succeed, as against an alternative purchaser of greater financial means. Minority shareholders not involved in the dispute would find themselves in a similar ignominious plight if the Court did not take their interests into account. It follows

that although the Company joined to this type of petition proceedings will usually not participate in the litigation and the trial, its interests must still be considered where there is a contest between the active participants each seeking to purchase the other's shares as is the case here.

The list of issues for trial.

98. I received an agreed List of Issues for Trial that the parties provided. It is not necessary for me to deal with every issue, particularly having regard to the authorities that were cited before me. It is necessary for me to consider the position adopted by each party and to determine the issues in this case according to the guidance provided in the authorities.

99. On the facts of this case in circumstances where the conduct relied upon in the petition is admitted by R1 or is amply displayed by the contemporaneous documents, the task is a little easier. Both parties have profoundly unattractive traits and neither comes before the court with clean hands.

100. I will deal with some, but not all of the issues in the list. That I have not dealt with any issue does not indicate that I have rejected its relevance. I need only establish prejudicial conduct sufficient to engage the granting of relief under s.996 CA 2006.

Did R1 make secret plots to oust the Petitioner from the Company at an undervalue?

101. In his cross examination of R1, Mr Pringle identified instances when R1 was discussing the future of the business with representatives of Conance. He relied on the timeline supported by the chronology when it appeared that he was diverting business from the company from 2022 onwards. They are set out earlier in this judgment. It involved discussions with associates of Conance Limited, one of which incorporated ToyCo. There was also evidence of their representatives performing certain functions for R1 without P's knowledge. The motive beyond these steps can only be to maintain secrecy in relation these communications. They were motivated by R1's evident desire to remove P from the company whilst causing maximum damage to the Company and the investment that P had made both financially and emotionally at minimum cost to himself. I find that from almost the very start of the arrangement, R1 was in breach of the obligations of trust and confidence that P was entitled to expect. He clearly colluded with others to divert opportunities from the Company to entities that he owned. He sought in my judgment to mislead the Court on the February Promise which was in my view an attempt to try and justify his actions in the event they were discovered.

To what extent did R1 divert, or attempt to divert, business opportunities of the Company to other companies controlled by him?

102. There are a number of matters that are set out in some detail in the Petition. Some are admitted by R1 or are incontrovertible based on the contemporaneous documents that have been disclosed. The role of

Iconica in these attempts has been described earlier. The evidence shows that P was completely unaware of its existence. He only became aware of its existence some two years later during the meeting convened in February 2024 to try and gain some consensus moving forward.

103. The most egregious examples were contracts involving Connect Management, Amazon Prime Air, and LUMO, a railway company operating on the East Coast Main Line. However, even those examples do not match R1's conduct in the diversion of the benefit of the LTM contract. This coincided with the February meeting, which was a bona fide attempt initiated by P to try to resolve the differences that had by then built up between the parties. The evidence shows that R1 deliberately concealed this from P. His suggestion that this is only an "attempted" diversion has no merit. R1 admits that the value of the business he diverted was significant. He also acted in a dishonourable manner by deleting an email sent to R1 and P from LTM from P's inbox, which confirmed that LTM had placed an order worth some £150,000.

104. Undeterred from this "near miss," from early 2024, R1 acted in conjunction with Conance employees by the incorporation and promotion of a new company that was to trade under the style of ToyCo. These are revealed in Chat transcripts which provides incontrovertible evidence of this misconduct on his part.

105. Even when the parties attempted to try and resolve their disputes during a meeting held in February 2024, R1 failed to advise P of purchase orders worth some £128,000 received the day before from LTM. P was able to retrieve the position after he found out about this attempted defalcation by persuading LTM to transfer the order back to the Company such that loss to the company was avoided. R1 seeks to categorise this as an attempted diversion. There is a dispute about whether this was suggested by LTM or whether it was privy to the transaction. P says with some conviction that this was an actual diversion when the Company's order was cancelled and a new one was issued to ToyCo which was subsequently reversed. Whatever the characterisation, it was an attempt to divert business away from the Company that was completely at odds with his statutory duties under the Companies Act 2006 and a breach of the trust and confidence P was entitled to expect arising from the quasi partnership that existed between the parties. It plainly engages the judgment of Jonathan Parker J in *Re Guidezone* [2000]2 BCLC 321 at [175] when in applying the well-known dicta in O'Neil v Phillips, he states: *"O'Neill v Phillips … establishes that 'unfairness' for the purposes of [CA 2006, s. 994] is not to be judged by reference to subjective notions of fairness, but rather by testing whether, applying established equitable principles, the majority has acted, or is proposing to act, in a manner which equity would regard as contrary to good faith."*

106. It follows that I consider as a matter of fact that on his own admission R1 did indeed divert, or attempt to divert, business opportunities of the

Company to other companies controlled by him to a very significant extent and in breach of the duty of good faith which equity requires.

To what extent has R1 had disloyal contact with customers of the Company, short of full diversions or attempted diversions of business?

107. To a degree the issues dealt with under Issue 2 above amply demonstrate disloyal conduct on the part of R1 to both the Company and to P. LTM disclosed to P that R1 had informed them that ToyCo was an associate company and that purchase orders should be addressed to it for accounting purposes. The stance taken by LTM was that they had no reason to doubt what they had been told. Whether they knew or not is unnecessary to decide for these purposes. It is another example where the test set out in *O'Neill v Phillips* applies. R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

108. R1 clearly attempted to divert LTM business from the Company by indicating wrongly that they should use the ToyCo for "accounting reasons". He further acted disloyally by indicating (wrongly) that they should use the ToyCo email address for all future private label orders. He further acted disloyally by informing LTM that going forward, LTM's representatives should only order stock products from the Company. R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

109. The disloyalty is compounded by the fact that he accepted further orders with LTM on 6.6.24 which P knew nothing about. A few days later on 12th June 2024, one of the Company's suppliers, MotorMax Toys, copied P into an email thread explaining that the diecast goods Toyco had ordered to fulfil LTM's purchase orders with it had been ready for shipping for some time, but R1 had neglected to notify the supplier of the shipping address and other details to deliver the goods for almost two weeks. By this means P was able to discover that R1 had secretly contacted MotorMax Toys months earlier on 19th March 2024 from his ToyCo email address to place a re-order of diecast goods. R1 also asked that communication be directed to his Toyco email address only and that the order be kept confidential. R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

110. R1 continued to use Company designs and products, made by its suppliers displaying clear Company labelling to fulfil ToyCo and Iconica Orders. To compound this disloyalty, he accessed P's accounts to cover his tracks and deleted the offending email he had sent in error to P's accounts. By this means P was able to gauge the extent to which he had been actively misled by R1's disloyalty. He raised this with R1.

111. Eventually he admitted that he had done the things set out above, and purported to come clean, showing P his laptop.

112. P subsequently discovered that R1 had received approaches for orders from other customers which, instead of sharing them with P, R1 had

diverted to correspond with R1 via his Toyco email address. That included LNER, who believed themselves still to be dealing with the Company.

113. Shortly after that confrontation, whilst P was trying to arrange for the purchase order from LTM to be changed back into the name of the Company, R1 caused the Company, without P's knowledge, to pay £17,325.34 to Conance in respect of the finance provided for the supply of the ToyCo LTM order. That put P and the Company in a difficult position, vis-à-vis Conance and LTM.

114. P then discovered from R1's disclosure that potential orders for the Company from Connect Management and LUMO (see above) and also one from Amazon, had also been diverted to Iconica. R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

115. Again, R1 initially denied having diverted the Amazon order, and continued to mislead P about the facts surrounding it in solicitors' correspondence, including as to whether there was a purchase order in existence (there was one). He was asked how many contacts he had at Amazon (he had several but claimed only to have one, being a former school friend). He was asked whether it was a deal relating to the Company as opposed to Iconica (it was a Company deal). R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

116. This activity was being carried on through phone calls and non-Company email addresses. P became aware of it only by R1's Company email address, to which he now had access, being copied in by an Amazon employee. R1's actions were in my view undertaken in breach of the duty of good faith which equity requires.

117. R1 set up a website, using Company funds, offering a large-scale tube train carriage model owned by the Company for hire on behalf of Iconica. He arranged for that model to be used for a bar mitzvah and received £1,000 for such use which was paid into his personal account.

118. He has taken Company property for use as personal gifts. He received money in unauthorised payments and diversion of business, although the precise sum that he admits as regards unauthorised payments is unclear. (P's case as to the relevant figure is set out below.)

119. It is also admitted by R1 that the admitted misconduct amounts to a breach of (i); his duties to the Company, including the duty of good faith (ii); the duty of confidence which he owed to the Company; and (iii); the duties owed by him to P as a co-shareholder, and was a breach by ToyCo of the Company's copyright. It is also admitted that it has contributed to the breakdown in the relationship of trust and confidence between P and R1.

120. It is also admitted by R1 that there needs to be an account to ascertain the amounts payable by R1 to the Company in light of his breaches of duty. The sums that, as P understands it, from his pleading and correspondence, R1 accepts he is obliged to pay back to the Company

are set out in Annex 1 to the skeleton argument filed by Mr Pringle on behalf of P.

121. I find that these admitted or incontrovertible matters clearly amount to unfair prejudice within the scope of s.994, in line with the case-law set out above, entitling P to relief under s.996.

122. These matters cause me to make findings of fact that in addition to the instances where there was actual loss caused by the disloyal conduct, there was clearly sufficient evidence that the disloyalty was widespread even where it may have fallen short of causing actual loss to the Company.

To what extent have any monies derived from any full or partial diversion of business been restored to the Company?

123. These are matters that will be dealt with at the forthcoming hearing following the handing down of this judgment.

Did Iconica receive funds as an 'agent' on behalf of the Company, or in its own right?

124. This issue arises on an assertion in R1's defence that Iconica acted as the Company's agent. The provenance of this submission lies in the attempts made by P to chase an overdue invoice due from a company called British Bites. In response to the request for payment, it was asserted that the invoice that P was investigating had been paid to Iconica on 19th December 2023.

125. Evidence was produced to the effect that it had been paid to Iconica. When P challenged R1 about this issue, R1 could not remember it and stated that it must have been an innocent mistake.

126. P investigated further. He discovered that there was a voided invoice to an entity known as Beyond Trust Etherio Inc which was dated 19 April 2023. The Company's warehouse had a note that the goods listed on the invoice had been dispatched to the buyer. P made further enquiries of the warehouse who sent to P the email R1 had sent to them. This attached the dispatch notification which was generated before the invoice was later voided and a courier label booked by R1 personally.

127. Further investigations revealed that Mr James Nash, the managing director of the company's third-party fulfilment provider PPG informed P that on several occasions R1 would arrive unannounced at its warehouse and taken substantial amounts of stock which he loaded into his car.

128. On other occasions R1 would arrive with another person who Mr Nash believed to be a client who would pay R1 cash before loading substantial amounts of stock into the client's car. R1 then gave Mr Nash a sum to cover expenses relating to the goods that had been removed.

129. On a substantial number of occasions, Mr Berkowitz had come to the warehouse to collect the Company's tube train asset. This was used to attract attention at trade fairs. However, this was separate to the annual occasions that it was used for the Company's exhibition stand at the

Toy Fair. The petition cites further investigations that have revealed that R1 has registered a website domain TubeTrainHire.co.uk, which was paid for using funds from the Company's PayPal account. Moreover, P discovered that he was advertising this asset for public rental for parties and events under Iconica Group Ltd.

130. This was not admitted in the defence to the petition. It is averred that Iconica received the funds as agent on behalf of the Company.

131. With regard to the other allegations, R1's pleaded case is that Iconica had a virtual card terminal available that would enable the payment to be paid. This terminal corresponded to a Stripe bank account set up with dispersal bank details, such that any payment made through it would be remitted automatically to the Company, less transaction and foreign exchange fees (the "**Iconica Card Terminal**")

132. Beyond Trust Etherio initially tried to pay the Company, but the payment method failed. The Iconica Card Terminal was then used. The payment from Beyond Trust Etherio was subsequently and automatically transferred by Iconica to the Company. This is admitted by R1, but the matters relating to the removal of stock are not admitted.

133. P ultimately discovered that the voided invoice had been paid by credit card into Iconica's account. Mr Pringle for P submits in his skeleton argument that R1 claimed that Iconica acted as the Company's agent, either generally, or in relation to certain funds. It is unclear which but given that on either view R1 accepts that Iconica must return to the Company sums which it has received, it does not make a material

financial difference. However, he goes on to submit that the difference is relevant for unfair prejudice purposes, and the following suggests it is wrong. He bases his submissions on the following points.

134. First, P did not know about Iconica until February 2024 and was not involved in it.

135. Second, of the £31,149.60 which R1 accepts was received by Iconica from Hull Trains/LUMO, and which he accepts is due to be returned to the Company, the vast majority has been spent. So, either (more likely) there was no agency agreement, and the sums were simply diverted and subsequently dissipated, or such money was being held on trust for the Company and spent in breach of trust.

136. Third, the fact that R1 admits that payments to Iconica were "diversions".

137. Fourth, the fact that R1 went to such pains to prevent P from finding out about the Amazon order and the corresponding payment to Iconica which is admitted rather than simply referring to (*ex hypothesi*) the agency arrangement supports the view that there was no agency on the part of Iconica.

To what extent has R1 received funds from the Company to which he was not entitled, or used Company funds or credit for his personal benefit?

138. These matters will be dealt with separately following the handing down of this judgment. They are the subject of written submissions filed by

both parties after the trial. In view of the complex issues raised by the issues of quantum, these will be dealt with at the forthcoming hearing.

To what extent has R1 received or used the Company's goods or stock for his own benefit?

139. R1 used company funds to purchase a replica of a tube train. He used it at a toy fair that the Company attended. However, he also registered a website by which he clearly intended to use for the benefit of Iconica and without P's knowledge or consent. It was used at a family celebration at no cost and without benefit to the Company.

140. There are also transactions involving a company trading as Connect Management. This involved the purchase and supply of arcade and gumball machines. During cross-examination, R1 was taken to the invoices that were paid for by the Company, notwithstanding that it would derive no financial benefit from its acquisition. The first invoice was dated 29 March 2022. It was issued by the London Toy Company (Iconica Group) and sent to Connect Management for a total sum of £2070.00. This was for the supply of a vending machine and the cost of delivery.

141. Under cross-examination by Mr Pringle, R1 conceded there is no such entity as Iconica Group in a corporate group sense. R1 admitted that it was just a name he gave to it.

142. A further similar invoice was prepared and sent bearing the date of 14 November 2022 for a total sum of £6,661.50. It was issued for the

purchase of a custom gumball machine. Two further invoices were issued, one was dated 25 May 2023 for Graphics Design, supply and install along with an extension cable. The final invoice was issued on 22 February 2024 for the "supply and install (sic)" of replacement punchbag together with equipment required". The invoices asked for payment to be made to Iconica Group Limited by the Company. R1 conceded that the invoices were for a project for which Iconica received some £13,000 of which P was completely unaware. This was at the time that both parties had initially instructed solicitors. Ultimately, R1 accepted liability to account for any net profit established and agreed as earned from business that would, in the normal course of its business otherwise have been undertaken by the Company. It transpired that these transactions were undertaken by the Company for the benefit of R1's cousin at his behest. There was also a suggestion that R1 attempted to assert that there was some form of agency involved in these transactions. That was not pursued and R1 accepted that he agreed to repay £21,894 of which £6,070 represented the profit element received by Connect.

Did R1 knowingly cause the Company to claim a tax rebate to which it was not entitled?

143. This related to an approach R1 made to an organisation trading as Queens Lane Consultants ("**QLS"**). It related to a scheme that they were promoting to assist with tax rebates allegedly arising from expenses said to have been incurred by the Company in relation to

research and development. R1 had caused the company to enter into the scheme without P's knowledge or consent. He raised it in a letter dated 20 March 2025 following the enquiries P had conducted after he had effectively taken over responsibility for the Company and its affairs.

144. The claim led to a tax refund of £17,174 and a tax credit of £24,128 being issued to the Company. R1 paid a cheque for £41,777.76 into the Company's bank account on 8th July 2024, although an email dated 28 April 2024 discovered by P shows that R1 had asked QLS if he could pay the cheque into an account other than one in the name of the Company.

145. R1's position is that he made the claim on professional advice and in good faith. He accuses P of deliberately exaggerating the claim to depress the sale of the Company. The matter will be considered further at the hearing on quantum.

146. On 14 October 2024, QLS made R1 aware that HMRC had launched an investigation into these claims and had sent a pre-action protocol letter some two weeks previously on 2 October 2026. R1 did inform P at this stage but told him there was nothing for him to worry about. R1 and QLC formulated a response and demanded further information. P believes that the claim was made on inaccurate information.

147. P demanded a full response to the letter of 20th March 2025 relating to the HMRC claim and also, the provision of the several requests for information as to how R1 had reached the valuation in the report which

he had provided. The present position is that HMRC have rejected the claim for the latter of the two R & D claims. The initial claim is the subject of some conjecture. An enquiry was opened by HMRC in relation to this matter on 11 October 2024. The outcome will have consequences for the Company and may involve a claim for repayment. It will be a matter that will be further investigated at the quantum hearing.

148. Under cross-examination P revealed that HMRC were being patient and there have been a number of extended deadlines for the response. The matter therefore remains live, and the issue will be considered further at the forthcoming hearing to deal with issues of quantum.

Did R1 expose the Company to material regulatory risk or liability regarding product safety testing? If so, does, or could, that risk or liability have a material impact on the Company and its valuation?

149. This issue relates to an Amazon Prime Air order involving soft toys which was disclosed in the in October 2024, pursuant to the undertakings R1 gave to P and the agreements he had signed. P made it clear to R1 that this was a Company opportunity which R1 had diverted. He noted that on both invoices disclosed and which had been issued to Amazon Prime Air, there was reference to an associated Purchase Order named 'Z5 12745784', but that the purchase order was not disclosed. P therefore specifically requested this Purchase Order. He also asked for detailed images of the products produced "including

any tags, labels and/or carton printing" and for confirmation of whether the products had indeed already been delivered to the client.

150. R1 responded on 7 November 2024 when he stated the order was fulfilled by Iconica Group Ltd as a 'favour' to a friend from his High School. He explained that he had deleted all emails relating to the order and that he had no contacts at Amazon Prime Air that he could refer P to.

151. He attached photos of the Drone Soft Toys which showed only one sewn label saying, 'Amazon Prime Air.' What was on the back of the label is not visible from the photos provided. In relation to the concerns P raised about a recall of the products, R1 stated that these were for Prime Air internal promo staff giveaways. They were subsequently all handed out as gifts to staff just before R1's contact's departure from Prime Air.

152. R1 told P that this was a promotional internal giveaway, not for public consumption. They therefore bore no swing tags or care instruction labels. R1 went on to tell P that this was a white label order. It was a one-off order for the launch of Drone deliveries in Seattle. He submitted that it had no connection to The London Toy Company in any capacity with the exception of emails in my Company inbox already disclosed."

153. In discussions after the event and from discussions and disclosure direct from Amazon Prime Air, P submits that this is untrue. On 29

November 2024, R1 stated, "*There is no file, it is the logo printed twice front and reverse*"; P believes this also to be untrue.

154. On 6th December 2024, P sent a link which indicated that all soft toys manufactured and imported into the USA must feature a permanently affixed care instruction label. This is regardless of whether the products are sold directly to customers or to a company that would seek to gift them as promotional products.

155. R1 responded on 18 December 2024. He referred to the Amazon Prime Air matter as a "non-issue" and said that there can neither be any benefit to, nor comeback on, the Company which did not supply the goods.

156. On 20 December 2024, P's solicitors explained that P had "*significant reason to suspect that the goods that [R1] produced and shipped to Amazon in Seattle do not meet the required US Safety standards for soft toys. The fact that the goods were not intended for onward sale has no relevance and this was specifically covered within the same online article that was shared in that letter."* It went on to state: "*The PPAI ("**Promotional Products Association International**") understands that in real life, a stuffed item which might begin as an expo giveaway will most likely end up in the hands of a child. Thus, they put product safety first and foremost and aim to raise awareness about the safety standards for ALL products, even those not necessarily intended for children.*"

157. By 14 March 2025, P had obtained access to R1's email account. In a letter dated 14 March 2025, he had discovered what he had described as "*unequivocal evidence that [R.1] has been telling lies about the origins of the order that he diverted to Iconica Group Ltd, as well as his communications with Amazon Prime Air regarding the order*." He went on to assert, "*this included lying as regards his having claimed that the only person he ever spoke to at Amazon Prime Air was an old high school friend ....., who has since left the company and who he could no longer contact, since the emails showed communications with several others at Amazon Prime Air." The letter went on to say, "[P] has also now spoken directly with Intergears, who have confirmed that [R1] did not advise them that the goods were destined for the US market until after production had been completed. The supplier also confirms [P's] belief that the goods therefore needed to have a tag with additional information attached in order for them to be compliant, which they did not*."

158. R1 does appear to have exposed the Company to material regulatory risk or liability regarding product safety testing. These are soft toys that could cause injury to children. By acting in the manner he did, R1 exposed the Company to a material regulatory risk and potential liability regarding product safety testing. Consequently, depending on the level of the risk, this may have a material impact on the Company and its valuation.

Did R1 hold out his partner, and his friends, to customers as being colleagues or employees of the Company, and allow them to meet with prospective customers as such on behalf of the Company?

159. There is evidence that R1 did at least attempt to hold out his partner, Mr MacKenzie as a "new colleague" who was "visiting clients" in New York in April 2024. In fact, Mr Mackenzie is employed as cabin staff for an airline. At the time, R1 was in negotiation with the 9/11 Museum in New York. He had a 23-hour layover. He had expressed a desire to visit the 9/11 Museum. R1 arranged for him to meet with a prospective customer ostensibly on behalf of the Company. Ultimately, the negotiations did not go very far. This was due to the nature of the product that R1 was asked to supply, which R1 found distasteful. Nonetheless he decided to (as he put it in his oral evidence) "blag a free ticket" for Mr Mackenzie whilst he was there. There was no meeting.

160. In my judgment, I consider that taken together all these matters constituted breaches of duty from R1 to the Company. The manner in which they were executed were a clear breach of duty to P. The excuses put forward to excuse R1's conduct are unpersuasive.

Did the above-mentioned acts or any of them amount to breach of undertakings given by R1 to P and did it constitute unfair prejudice?

161. The undertakings and obligations agreed in October 2024 were breached by R1 almost immediately after they were agreed. There

were issues concerning R1's disclosure. There was also evidence of further diversions of business. R1 had little observable understanding of his fiduciary duties either at common law in the context of a quasi-partnership or under the statutory provisions of CA 2006. His conduct in regard to this aspect is not excused by the behaviour of P towards him which, although I accept was deeply unpleasant, did not cause material economic loss. However, instead of pursuing litigation, as he should have done, he embarked upon an ill-advised clandestine approach to do down P at any cost. P suffered unfair prejudice as a result.

162. I am in no doubt that the conduct outlined in this judgment taken individually or as a whole represented unfair prejudice perpetrated by R1 against the legitimate expectations of P. Whilst R1 may have asserted that he suffered unfair prejudice at the hands of P, it is not of a magnitude that would merit any findings in his favour under his cross petition. I accept that he may have been subjected to appalling abuse meted out by P the economic consequences for the Company were minimal on the evidence presented before me.

Was the February 2024 Promise made?

163. For the reasons indicated earlier, I do not accept that the February Promise was made. The contemporaneous documents do not support it, R1 has not satisfied the burden of proof that he must discharge to indicate that the Promise was made. I do not accept his account which

is unsupported by the documents not the conduct adopted by the parties.

Has P acted in an abusive, hostile and/or controlling way in his dealings with R1 and third-party suppliers?

164. The documentary evidence suggests that he did. In relation to the question of abusive behaviour, there are instances where he clearly lost his temper with suppliers, giving rise the consequences upon the unfortunate counter parties that is apparent from the documents.

165. The issues of controlling behaviour are matters of conjecture. The clash of personalities evident from the documents does show a level of disorganisation on the part of R1. These were initially addressed by P joining the company. However, there is evidence that initially R1 was grateful for his assistance. There is also evidence that in the early stages, the partnership was beneficial to the company by reason of the introduction of each of their talents. There was also an incident where P called out a customer who had made an antisemitic comment directed at R1. Later on, even at times when the cracks in the relationship were beginning to grow, there is evidence that R1 was also grateful for the task lists that P devised, even to the extent that R1 asked for more, such that he plainly could see the benefits that they introduced. There are incidences of his making mistakes in the performance of his duties that could conceivably give rise to friction. There is no doubt that the abuse meted out by P was unacceptable by any right-thinking person. They were bound to cause upset on R1's part, whilst at the same time are, to

a limited degree, reflective of the evident frustration P suffered from his perception of R1's patchy performance and from P's growing perception that he was not pulling his weight. Clearly matters reached a position where the relationship was damaged beyond repair. I perceived that both of the parties had their own frailties.

166. P may have engaged in bullying behaviour but as I have indicated this does not justify R1's response by engaging in the breaches of statutory duty that he perpetrated. However, in a petition of this type of the effect of any such behaviour upon the Company is of some relevance. Whilst his conduct was to a degree reprehensible, the loss suffered by the Company was negligible. In contrast, the economic damage caused by R1 both to P and the Company from his surreptitious activities was significant.

What effect, if any does the February 2024 Promise and P's alleged conduct have on the Petition?

167. I have found as a matter of fact that there was no February Promise on the facts.

168. There are allegations that P has caused a dispute with an organisation known as MarketRocket. This is a marketing firm that seeks to enhance the profile of businesses on Amazon Prime. A dispute had arisen giving rise to a threat of litigation. It is a case relied upon by R1 as causing economic loss to the company by exposing it to litigation. It is currently unclear as to the current status of the claim. It also involves allegations made against P in relation to his conduct.

There is no doubt that he was very aggressive towards their staff to the extent that they requested all contacts were recorded. A sum of £17,613.48 has been outstanding since January 2024. The nature of the dispute is not apparent save that P indicated that they were not doing their job properly. It seems like a commercial dispute which arises frequently in businesses of this size and nature. It does not seem to be a potential liability that emerged from P's conduct. This may be considered further at the hearing on quantum as to its current status.

169. The economic damage caused by P was on any view limited. P alleged under cross-examination that the responsibility lay with R1 and that he only became involved when he clocked out. I do not accept that he has adopted a scorched earth policy as has been asserted by R1 in these proceedings. Indeed, the exact opposite may be the case in that but for his efforts, it is highly likely that the conduct of R1 would have had the effect of meting out economic damage from which the Company may not have recovered. R1 did of course mention liquidating the company and exiting the company in his discussions with Mr O'Donovan after he had resigned.

170. P accepts that he has excluded R1 to some extent, but says that it is justified, and would be considered by a reasonable bystander to be such, because, given R1's surreptitious diversions and attempted diversions of business, he cannot be trusted either to run the Company or to refrain from causing damage caused by further surreptitious behaviour on R1's part..

171. R1 resigned as a director on 21 October 2025, triggering a three month non-compete provision set out in the order of Tom Smith KC. That of course does not affect the right to be notified of meetings and to participate in the management of the Company. P did attempt to inform him of relevant events. However, R1 issued an application before Insolvency and Companies Court Judge Mullen, which was dismissed with a significant costs order being made against him. There followed further allegations of harassment made by R1 against P. They are not particularised, but they relate amongst other things to the time when P was seeking information in accordance with the undertakings R1 had voluntarily signed. He has since "Blocked" P, which would appear to signify the end of their means of communication.

Was any such exclusion justified by R1's conduct?

172. The evidence shows that R1 has on his own admission breached the obligations associated with a quasi-partnership. He has on any view breached his duties of the utmost good faith to R1. He has also completely ignored his obligations as a director both to the Company and to P. His conduct is reprehensible. That he has made efforts to pay back the sums he has taken once he was found out does not give him credit neither does it excuse his conduct. It is a classic example of trust once lost can never be recovered. R1 complains that he was excluded from the management towards the end of 2024 which is, of course, prima facie unlawful. However, when his activities were exposed in 2024, he signed undertakings specifically outlining the

obligations he should obey. P does not accept that he has provided full disclosure in accordance with the agreements that he signed. I have no doubt that had his conduct not been checked he would have continued to cause irreparable damage to the company.

173. He resigned as a director on 21 October 2025, triggering a three month non-compete provision set out in the order of Tom Smith KC. That of course does not affect the right to be notified of meetings and developments concerning the company and its activities. The exclusion of a shareholder from a company is *prima facie* unlawful. However, this is not an unwavering rule. There are exceptions. It would be perverse for P to have to give full disclosure of the investigations he has had to make to establish the extent of R1's breaches of trust and subterfuge. R1 has revealed himself to be completely untrustworthy.

Has P conducted the business of the Company without conducting quorate board meetings, seeking a resolution from shareholders or order of the Court?

174. It is the case that P conducted the business of the Company without conducting quorate board meetings, seeking a resolution from shareholders or order of the Court. R1 submits it started in 2024, culminating in R1's resignation as a director on 21 October 2025. R1 further submits it became final in February 2025. Since then, he has had no access to the accounting records. On 21 February 2025, R1 sent an email to P claiming that he had been harassed by P, (something

which P denies). The email also stated that R1 had decided to "block" the Petitioner, which I take to mean that he intended to prevent any further digital contact being made with P. It also provided further evidence of a complete and terminal breakdown of the relationship. R1 made no secret as to the level of rancour that he still feels against P.

175. P responded by denying the allegation of harassment and stating that since R1 was blocking any contact with him, he would therefore "*take care of the companies interests on his own*". R1 does not appear to have demurred from that arrangement.

Has P unilaterally removed and replaced the Company's accountants?

176. Once P gained control of the management, he replaced the Company's auditors and accountants. He did so because he believed there was a conflict of interest since they were also the auditors of Iconica. It is true that resolutions should be passed for this to take place and that resolutions approving accounts do require proper board approval consistent with the provisions of CA 2005. As it happens both parties have filed accounts that are in breach of these requirements. These matters do involve potential statutory breaches. However, as Mr Pringle submitted in his closing submissions, they are not before me to determine as part of this petition.

Was the Shareholders Agreement properly executed?

177. At this juncture I will record my misgivings over the issue of the Shareholders Agreement. This was purportedly signed by both parties using Adobe Sign. R1 maintains that it was properly executed by digital means. P flatly denies that this was the case.

178. At the end of the trial, I was told that I need not consider it in any detail as nothing turned on the point as to its execution. However, in written closing submissions, it was resurrected by R1 in the context of a new point relating to shareholder dividends. This had not previously been raised or pleaded.

179. I was asked by R1 to accept his view of events, effectively without question. During the trial, it was indicated that only expert evidence could determine the issue. In the absence of such evidence, which I raised with both parties after I had received the closing submissions, I was still asked to opine as to its status in this trial.

180. The evidence clearly showed a tendency for subterfuge on the part of R1. There was evidence that he had evidently practised forging P's signature, a remarkable disclosure which he brazenly informed P about. However, I conclude that without such expert evidence, the Court cannot come to any conclusion on its terms and effect, save to the extent that it is R1 who purports to rely on it and therefore the burden of proof as to its valid execution is his to satisfy.

181. This position was only adopted after the end of the trial. In his written closing submissions, Mr Pringle complained that it was too late for this issue to be introduced at that late stage. I agree. This was a matter

where the court ordered a speedy trial requiring the parties to be ready much earlier than usual. Compromises have to be made. If it was that important it is self-evident that it should have been raised earlier. It is too late for this matter to be raised now. I shall therefore ignore the Shareholders Agreement.

Conclusion and disposal

182. For the reasons stated in this judgment, P succeeds in demonstrating unfair prejudice under s.994 CA 2006 of the petition and is entitled to relief under s.996 and the court will order him to purchase R1's shares at a price to be determined. The cross petition will be dismissed. Matters as to the remaining issues concerning valuation and other consequential matters will be dealt with on a date to be fixed. I invite the parties to agree an order that reflects the conclusions I have reached. I also ask them for their time estimate for the hearing to determine the final financial arrangements between the parties. This time estimate should be agreed if possible.

183. I also wish to record my thanks to both counsel and those instructing them for their helpful and illuminating submissions in this case so far. I also commend them for the assiduity they have demonstrated in producing all the documentation in an efficient manner in a short space of time.