Judgment *in Loveridge v Loveridge* [2020] EWCA Civ 1104

On 24th August 2020, the Court of Appeal handed down its reasons for having on 30th July 2020 allowed both appeals in *Loveridge v. Loveridge* against interim orders in (1) a partnership dispute and (2) an unfair prejudice petition brought by a son against his parents. Lance Ashworth QC and Dan McCourt Fritz instructed by Thursfields appeared for the appellants.

The Judge at first instance had in April given interim control of 3 partnerships (2 of which he had dissolved) to the son and then followed this in May by giving given interim control of 5 companies to the son. This was notwithstanding that the son is a minority partner in 2 of the partnerships and arguably not a partner in the third one (but if a partner then a minority partner) and is a minority shareholder in 3 of the companies, not a director of one of the other companies (albeit the registered shareholder of 50% of the shares) and was one of 2 directors and an equal shareholder in the 5th company.

The Court of Appeal held that the Judge was wrong to have made either order and set them both aside. The significance of the business structures was emphasised, the Court stressing the need to consider separately the

the partnerships at will and the companies, and to distinguish further between the individual partnerships and the individual companies insofar as there are relevant differences between them, which the Judge had failed to do.

In the lead judgment, Floyd LJ said (as to the company proceedings) that it is not the law that progressive and energetic managers, however well they perform their duties to the benefit of the company, acquire entrenched rights not to be removed from their positions if the constitution of the company permits their removal. Such a principle would act as a significant but unjustified restriction on countless companies with dynamic executives from operating their companies in accordance with their constitutions. He agreed with the appellants' submissions that the fact that an individual has played an important, and even a leading part in the development of a company's business, does not entitle him as of right to special treatment under the company's constitution. Accordingly, he

held it had not been open to the Judge to find an arguable case of equitable restraint on the companies' powers.

Even if the Court of Appeal had held that there was an arguable case of unfairly prejudicial conduct, it stated that it would not have been just or convenient to grant an injunction giving interim control to the son in circumstances where there was no plea within the petition which would have left the son in sole control of the companies at the end of the proceedings.

As to the partnership appeal, the Court of Appeal accepted that when fashioning an interim remedy the court needs to take account of where the majority share in the partnership lies. The Judge had failed to do so. He had been wrong to grant interim control to someone claiming to be a minority partner in one of the partnerships where it might turn out that he was not a partner at all. As to the other partnerships, which it

was common ground had been dissolved and therefore needed to be wound up, the Judge had failed to have regard to the separate nature of the 2 partnerships. The Court of Appeal, having done so, took the view that the appropriate order was to grant interim control of the larger partnership (which runs 6 caravan sites) to the majority resident partners and to grant interim control of the smaller partnership to the son.

The decision of the Court of Appeal reinforces the need to establish proper grounds for an unfair prejudice petition, making it clear that mere assertion of having been the driving force in the business of a company does not of itself give rise to equitable restraints on the exercise of the powers of a company and further stresses the need for a court to consider very carefully the rights of the majority shareholders before making any form of interim relief, depriving them of their contractually agreed entitlements. It is essential for a court to consider the likely outcome at the end of any proceedings and not to give interim relief which is contrary to the outcome contended for. Likewise, the Court of Appeal judgment recognises the need in partnerships to take proper account of the respective shares of the partners when fashioning any form of interim relief.

Lance Ashworth QC
Dan McCourt Fritz