EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2024/0029

BETWEEN:

INGRID SKERRET

Claimant

And

(1) LORRAIN WHEELER
(2) EARL LYTTLETON VALMONT
(3) MONICA ALTHEA VALMONT
(4) JENNIFER NELSON

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini — High Court Judge

Appearances:

Mr. Leevie Herelle for the Claimant
Mr. Giovanni James for the First, Second and Third Defendants
Ms. Isa Cyril for the Fourth Defendant

2025: February 24, 25;
April 7,8;
May 19;
November 28.

JUDGMENT

[1] **ST ROSE-ALBERTINI, J. [Ag]:** This action concerns a family dispute over the corporate structure of Windward Island Gases Ltd ("WIG" or "the company"). WIG was duly incorporated and operated by Mr. Arnott Francis Valmont (Mr Valmont) during his lifetime.

[2] By way of fixed date claim, Mrs Ingrid Skerret ("Mrs Skerret" or "the claimant") filed an action against the defendants, who are her siblings, seeking several relief, including declarations that the documents appointing them as directors and shareholders of WIG are invalid, and that they be restrained from altering the company's banking mandate and holding themselves out as directors of WIG. She also seeks relief for unfair prejudice under section 241 of the Companies Act[1] ("the Act")

The Claimant's Case

[3] Mrs Skerret, is currently the deputy managing director and a shareholder of WIG. She alleges that the defendants unlawfully caused their father, Mr Valmont, to appoint them as directors and shareholders of the company, with effect from 14th October 2023. Central to her claim is the contention that the appointments were made without a valid board resolution and without notice to her as the only other director and shareholder of the company, and were done without lawful authority. She alleges that such conduct constitutes a calculated attempt by the defendants to dilute her shareholding, to wrest control of the company. She asserts that the defendants' actions, and the documents they caused to be filed at the Registry of Companies and Intellectual Property ("the Registry") amount to a fraud intended to prejudice her interests by unlawfully altering the proportionality of share ownership in WIG. She alleges that such conduct is oppressive and unfairly prejudicial to her as a director and shareholder of the company, pursuant to section 241 of the Act.

[4] Mrs Skerret alleges that these matters came to her attention upon receiving notice of a meeting signed by the second defendant Earl Lyttleton Valmont and her father Mr Valmont as directors of WIG, purporting to convene a special meeting on 16th April 2024 to discuss the installation of directors, signatories to the company's bank accounts and the status of the oxygen plant proposal. Upon investigations she became aware of various documents[2] filed at the Registry on 7th November 2023. At that date, she was one of only two directors and shareholders of WIG, the other being Mr Valmont. She further alleges that the defendants unduly influenced Mr Valmont, to cause him to sign the documents allotting them

[1] Cap 13.01 of The Revised Edition of the Laws of Saint Lucia

[2] Notice of Change of Directors, Return of Allotment and Form 9A-Consent to Act as Director

shares and appointing them as directors, without proper understanding or lawful authority, in circumstances which contravened the Articles of Association of the company. She says, at that time he was 103 years old, and suffering from cognitive decline.

[5] She seeks the following redress: (i) cancellation of the registration of the Notice of Change of Directors, Return of Allotment, and Form 9A-Consent to Act as Director filed on 7th November 2023 at the Registry; (ii) an order prohibiting the defendants from filing any further documents at the Registry on behalf of WIG; (iii) an order prohibiting the defendants from changing the banking mandate of WIG; (iv) an order prohibiting the defendants from holding themselves out as directors and shareholders of WIG; (v) costs; and (vi) any further and/or other relief.

The Defendants Case

[6] The defendants aver that they are members of the Valmont family, who have consistently been involved in the affairs of WIG, including participating in meetings and contributing to the company's decision-making process. In October 2023 their father, as the sole lifetime director of WIG, appointed them as directors and allotted shares to them, to safeguard the future and continuity of WIG. At that time he believed that Mrs Skerret had resigned or retired as director, based on her previous statements that she felt overwhelmed by the responsibilities of managing the family companies, alongside her own businesses, and had indicated to family members that she required their support in managing those operations, including WIG. The defendants deny that their appointments and share allotments are unlawful or ultra vires the Articles of Association, and claim that a lawful directors meeting was called by Mr Valmont as the sole director and shareholder of the company, and their only role was to consent to becoming directors of the company. The defendants also contend that they are not proper parties to these proceedings since they had no authority in WIG to engage in any of the actions being complained of by the claimant, and that the proper party ought to be their father, who signed the relevant documents, and on whose behalf the filings were undertaken at the Registry.

[7] The following issues arise for determination:

1. Were the decisions and/or actions of Mr Valmont regarding the allotment of shares and

the appointment of the defendants as directors of WIG orchestrated by the defendants exerting undue influence on him.

2. Whether the conduct of allotting shares and appointing the defendants as directors was oppressive, unfairly prejudicial, or unfairly disregarded the interests of Mrs Skerret as a shareholder.
3. Whether the (i) notice of change of directors, (ii) return of share allotments (iii) shareholders' resolution; and (iv) consents of the defendants to act as directors filed at the Registry on 7th November 2023 are invalid and ought to be cancelled.
4. Should the defendants be restrained from (i) holding themselves out as directors and shareholders of WIG and (ii) changing the banking mandate of WIG.

Preliminary Point

What is the effect of discontinuing the claim against Mr Valmont after his death?

[8] Procedural fairness and the administration of justice requires that all materially affected parties should be before the court to fully resolve disputes. Having taken the view that Mr. Valmont was central to the dispute, as principal actor in relation to the impugned documents and filings which are at the heart of this case, by order dated 4th July 2024, it was directed he be added as a defendant. The claimant complied and amended the claim to include him as the 5th defendant.[3] I note that apart from adding him as the fifth defendant, the substance of the amended claim remained unchanged from the original claim. Before the matter could progress to trial, Mr Valmont sadly passed away on 4th September 2024.[4] On 5th November 2024 the claimant filed a notice of discontinuance in relation to Mr Valmont only.

[9] At trial, in oral opening submissions, Counsel for the defendants took issue with the withdrawal of the claim against Mr Valmont, as opposed to the appointment of a representative party for his estate, to continue with the amended claim. Counsel contends that the discontinuance is fatal, since Mr. Valmont's conduct is at the center of the claimant's allegations, and the acts complained of included changes in directorship and shareholdings of WIG which were carried out by him. Counsel submits that any challenge to the matters complained of necessitates representation of his estate, and the claim may only be sustained

[3] See Amended Fixed Date Claim Form filed on 18th July 2024

[4] See paragraph 4 of the Affidavit of Jennifer Nelson filed on 20th November 2024

if it is found that the defendants unduly influenced him to give instructions for the filings in question. Counsel contends that the evidence of the attorney who took instructions from Mr Valmont for preparation of the documents, would negate a finding of undue influence.

[10] Whilst it is true that Mr. Valmont's actions in giving instructions and signing the impugned documents form part of the factual matrix of the case, the viability of the claim without him as a party must be assessed against the nature of the relief sought and the role of the remaining defendants. It should be noted that no personal remedy is being sought against Mr Valmont. Instead, the claim challenges the legitimacy of corporate decisions and acts taken by him in relation to the shareholding and directorship of the company and seeks an order that these documents be quashed on account of illegality. Although Mr Valmont's absence may limit full investigation into his motive, this is not fatal to a just determination of matters concerning corporate law, which are at play here. To the extent that it is alleged that the remaining defendants benefited from, or participated in acts said to be oppressive or unfairly prejudicial to the claimant, whether through direct involvement, or using undue influence to sway Mr. Valmont, the claim remains viable against them.

[11] Consequently, discontinuing the claim against Mr Valmont does not, on its own, render the claim untenable. The Court is not precluded from evaluating the propriety of corporate acts merely because the person who took a decision or physically executed documents is not a party to the proceedings or is deceased, as in this case. The Court may still determine whether such acts were in conformity with the Articles of Association of WIG and the Act, or whether the remaining defendants acted or participated in a scheme which affected WIG's governance structure, and whether these actions were to the claimant's detriment.

[12] Thus, while Mr. Valmont's participation would have facilitated a more complete examination of these matters, his absence, or that of a representative party, does not preclude the Court from adjudicating on the remaining issues, particularly where the relief sought is for restraining the remaining defendants and not against Mr. Valmont in his personal capacity. The claim, therefore, retains its substantive footing notwithstanding the discontinuance.

The Evidence

Ingrid Skerret

[13] Mrs. Skerret is the deputy managing director of WIG and one of its shareholders. She is also Mr Valmont's daughter, and the sister of all the defendants. She relied on affidavit evidence and gave oral testimony at trial. She stated that she has been involved in the operations of WIG for many years, having been appointed as the company secretary since 1999.[5] In support of this she exhibited historical company records and correspondence.[6] She stated that she was formally appointed a director of WIG on 12th June 2020[7] by her father who was at that time WIG's sole shareholder and director. This was done by way of a director's resolution[8] in which she was allotted 260 shares in the company in consideration of outstanding remuneration for her work as deputy managing director of WIG. She says by virtue of this allotment she became the majority shareholder of WIG, and the company's filings were updated accordingly.[9] She states that no other directors or shareholders were appointed or involved in the company during that period.

[14] Mrs Skerret stated that she first became aware of the defendants involvement in WIG's affairs on 15th March 2024, when she received an email from the second defendant, purporting to give notice of a special meeting scheduled for 16th April 2024. That notice[10] was signed by the second defendant and Mr. Valmont, and listed the agenda items as (1) the installation of directors, (2) discussion of the signatories on the company's bank accounts, and (3) discussions on status of oxygen plant proposal. She also received a notice for the same meeting from the first defendant. She informed both of these defendants that

[5] See Exhibit IS-10 (Ordinary Resolution of the Directors of WIG dated 8th January 1999)
[6] See Exhibit IS-9 (Annual Return of WIG for the period 1991-1998); Exhibit IS-11 (Ordinary Resolution of the Directors and Shareholders of WIG dated 24th November 2010); and Exhibit IS-12 (Contract of Employment for Lucas Lubin dated 29th July 2010 signed by Ingrid Skerret)
[7] See Exhibit IS-14 (Notice of Change of Directors filed on 5th August 2020)
[8] Dated 9th October 2022 (see Exhibit MAV-1 for Resolution)
[9] See Exhibit IS-1 (Annual Return for WIG for year ended 31st December 2022)
[10] See Exhibit IS-2 (Special Meeting Notice for April 16, 2024)

she would not be attending the meeting[11], whereupon the first defendant informed her that the meeting would take place as scheduled.[12]

[15] Mrs. Skerret says upon further investigations she discovered that all four defendants had been allotted shares in the company and were appointed as directors of WIG[13] without her knowledge, consent, or participation in any board of directors or shareholders meeting. She denies the legitimacy of these appointments and share allotments, noting that within the structure of the company, Mr. Valmont had no authority on his own, to allot shares or to appoint directors, without her involvement. She maintained that at the time of the appointments, she and Mr. Valmont were the only lawful directors and shareholders of the company, no notice of a board or shareholders meeting had been issued to her, nor had there been any lawfully convened board or shareholder meetings to appoint the defendants as directors and shareholders of WIG. She further stated that the Return of Share Allotments filed by the defendants shows an unlawful and prejudicial change in shareholding which reflects 300 shares held by herself and each of the defendants, with Mr Valmont holding 550 shares. She maintains that this reallocation was orchestrated by the defendants to dilute her controlling interest in WIG, in order to gain control of WIG's assets, and to change its banking mandate. She described the defendants' conduct as fraudulent, oppressive, and contrary to the interests of the company and its lawful shareholders. She also denied the defendants' assertions that they were always de facto directors, and that their involvement in WIG's affairs entitled them to formal appointments.

[16] A critical component of Mrs Skerret evidence is her allegation that the defendants exercised undue influence over their father who was 103 years old at the time, and of declining mental and physical health. She stated that Mr. Valmont has a history of cerebrovascular disease, including strokes and cognitive impairment, as detailed in a medical report from Psychiatrist

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[11] See Exhibit IS-3 (Screenshot of WhatsApp chat between Lorraine Wheeler and Ingrid Skerret – 14th and 15th March 2024)
[12] See Exhibit IS-4 (Screenshot of WhatsApp chat between Lorraine Wheeler and Ingrid Skerret – 15th March 2024)
[13] See Exhibit IS-8 – Shareholders Resolution in lieu of Meeting dated14th October 2023; Exhibit IS-5 - Notice of Change of Directors dated 14th October 2023; Exhibit IS-6 for Return of Share Allotments dated 14th October 2023; and Exhibit IS-7 - Form 9A - Consents to Act as Directors signed by each of the defendants

Dr. Julius Gilliard.[14] On that basis she challenges the validity of the documents signed by Mr Valmont. She stated that he lacked the requisite capacity to independently execute the documents or to authorize such significant corporate changes. She further states that the defendants exploited Mr Valmont's vulnerable condition to facilitate their unlawful appointments in WIG.

[17] In cross-examination, she remained adamant that the defendants had no involvement in WIG, pointing out that whilst they had attended meetings some of which were at her invitation, they had not been involved in the decision-making process of the company. When questioned about her father's management style, including his tendency to hold family meetings to discuss business matters, she denied that these meetings were formal company meetings. Concerning a meeting held on 2nd September 2022, where discussions allegedly took place about her stepping down and the future of the company, she denied that the meeting was about her retirement and says that the minutes documenting these matters were falsified.

[18] When probed on the circumstances of the allotment of 260 shares which made her the majority shareholder in WIG, she reiterated that the shares were issued to her as compensation for past work and agreed that Mr Valmont did not receive independent legal advice before making this decision. The decision was taken at a board meeting held at the Harbor Club Hotel on 2nd October 2022. A business consultant, by the name of Adrian Augier, was present at the meeting and was brought in to assist her with the business operations. Mr Lucas Lubin ("Mr Lubin"), general manager of WIG was brought in at various intervals, and there were other people present. She says, her father acquired all the shares belonging to her deceased mother, which increased his shareholdings in WIG to 250 shares. At the meeting, he also took the decision to allot 260 shares to her, to give her greater authority to run WIG, as he was no longer actively involved in the company and was mostly at home.

[14] See Exhibit IS-13 – Report of Dr Julius Gillard on Mental Capacity of Arnott Valmont dated 27th February 2024

[19] It was suggested that she too, had taken advantage of her father's declining health to secure majority control of WIG, which she firmly denied. When questioned about reporting to her father on WIG's affairs, she stated that she kept him informed as a matter of personal choice, and agreed that this was also an obligation on her part. She could not recall whether she had continued submitting documents to her father in 2023 and 2024. Concerning allegations that her father would become agitated when company documents were brought to him after the share allotment was made to her, she denied that this was ever the case.

[20] She claims to have no recollection of whether her father had lost trust in her after she obtained majority shareholding in WIG. She was questioned about the financial status of WIG, including whether the company had made significant profits during the COVID-19 pandemic, to which she responded that she could not recall the figures. She denied that this claim was motivated by her dissatisfaction with the defendants receiving shares equal to herself in WIG.

Monica Althea Valmont

[21] Monica Althea Valmont ("Ms Valmont" or "the third defendant") is also Mr Valmont's daughter. She stated that her evidence was from her personal knowledge and common experiences shared with the co-defendants, including attendance at family and board meetings and shared communications. She disputed claims that the defendants had no role in WIG. She asserted that the company was originally managed by their father and his late son Bradley, and that the entire family played a role in its operations. She averred that between 2006 and June 2020 she and the second defendant were actively involved in strategic decision-making for WIG with little to no input or participation from the claimant, who only showed an active interest in the company's operations in the latter part of 2020 during the COVID-19 crisis. Ms Valmont stated that the claimant recognized the defendants as having a role in the company by consistently inviting them to company meetings where they participated fully in discussions and decisions.[15] She noted that WIG's operations are

[15] See Exhibit MAV-3 (Email dated 21st September 2022 entitled WIG board meeting)

currently run by the general manager, with cursory supervision from the claimant, and technical and advisory assistance from the defendants.

[22] Ms Valmont denied that the defendants sought to perpetrate a fraud or unfairly prejudice the claimant, stating that the claimant had unilaterally managed and controlled WIG and the other family companies for an extended period, without transparency or accountability to the other adult children of Mr. Valmont. There was growing concern among the family regarding the claimant's exclusive control of WIG, coupled with her repeated overtures at resignation and retirement. It was believed that she had resigned or retired as director of WIG and to ensure the continuity and survival of the company, Mr. Valmont allotted shares to his other adult children and appointed them as directors. She asserted that the resolution giving effect to the appointments and share allotments was valid and maintained that the changes to WIG's shareholdings and directorship reflected in the Registry filings were lawfully authorized by their father acting as the sole director and shareholder of WIG, on the basis that the claimant had resigned or retired from the company.

[23] In relation to the claimant's allegations concerning their father's mental capacity, Ms Valmont asserted that although Mr Valmont was elderly, he remained capable of understanding and making decisions relating to the company's governance at the relevant time, and that he voluntarily acted in accordance with his authority and in the interest of the family business. She denied that he had suffered a series of strokes in 2023, stating that he was hospitalized for 3 days in September 2023 due to dehydration. She relied on a medical report from Dr Len Compton dated 3rd May 2023 for a history of Mr. Valmont's illnesses.[16] She alleged that it was in fact the claimant who unduly influenced and took advantage of Mr. Valmont in 2022 causing him to issue 260 shares to her in order to have controlling interest in WIG[17] shortly after he had suffered from a stroke. She suggested that the claimant's resistance to the appointment of the defendants as directors was rooted in a desire to retain sole control of WIG. Ms. Valmont asserted that the present claim was without merit and that the changes

[16] See Exhibit MAV-5
[17] See Exhibit MAV-1 (Director's Resolution dated 9th October 2022 filed on 24th January 2023)

to WIG's structure should be upheld as legitimate, duly authorized, and reflective of the broader family's collective interests in the company.

[24] In cross-examination, Ms. Valmont confirmed that she is a qualified but non-practicing attorney-at-law, and is currently engaged in managing a heritage business. She testified that she reviewed WIG's file at the Registry, motivated by her father's request to inspect recent changes. She denied acting in the capacity of an attorney-at-law and stated that much of the information about the company had been shared with her directly by her father from his own (personal) file. She admitted that she had not reviewed the entire company file and had not seen certain earlier documents filed in 1999 listing the claimant as a director of WIG. She initially rejected these filings as false but later conceded their existence, although maintaining that more recent filings prepared by external accountants listed the claimant as company secretary in 1999 and not director. She remained adamant that the claimant's formal appointment as director did not occur prior to 2020. She accepted that her involvement in the company was unofficial and that she had not held a formal position in WIG prior to October 2023. She described this unofficial role as that of an internal auditor, and as a signatory on the company's bank account. She accepted that these roles were never formalized through appointment or in company documents.

Jennifer Nelson

[25] Jennifer Nelson ("Mrs Nelson" or "the fourth defendant") is also Mr Valmont's daughter. She stated that her father had been the managing director and chairman of WIG from inception and that in 2020 Mrs. Skerret became a director of the company. She further stated that she had attended numerous family meetings over the years where business matters concerning WIG and other family enterprises were discussed, and referenced a meeting held on 2nd September 2022 where the future of WIG and potential compensation for Mrs. Skerret were discussed. Mrs. Nelson testified that the Mrs Skerret had informed the meeting that she was exhausted with having to manage all the family assets and companies on her own and needed help from other family members, and had also expressed a desire to retire. The family intended to meet again but as far as she was aware there were no further discussions on these matters.

[26] She says that on 9th October 2022 the claimant purportedly held a meeting with Mr. Valmont, after which she was allotted 260 shares in WIG, making her the majority shareholder of the company. She recalled a conversation with her father in which he expressed frustration and dissatisfaction about realizing he was no longer the majority shareholder of his company. She stated that it appeared to her that he had not initially realized what he had signed when allotting shares to the claimant and indicated his intention to "make it right." However, he never explicitly told her how he planned to do so. She says that during one of her visits to Saint Lucia in or around October 2023, her father instructed her to attend the office of Mr. Giovanni James, attorney-at-law, to sign documents related to the company. This was the first time she had been asked to become involved in WIG in a formal capacity. She complied with her father's wishes and signed the documents, which she later learned pertained to her appointment as a director and allotment of shares to her in the company. Mrs. Nelson maintained that her actions were undertaken in good faith and solely on the basis of her father's instructions. She denied any involvement in, or knowledge of undue influence being exerted upon Mr Valmont, and rejected the claimant's allegations that the changes in the company's shareholdings and directorship were improperly or unlawfully attained.

[27] In cross-examination, she stated that the nature of family meetings were for briefing family members and to help her father make decisions. She stated that while attending family meetings, business matters were discussed, but she was never officially involved in WIG's management nor had her father ever declared an intention to make any of the other siblings shareholders or directors before 2023. She maintained that WIG had been run by her father and brother Bradley for years, and that the claimant had later taken on responsibilities within the company. She agreed that she had not previously been a shareholder or director of WIG, that she had never been offered shares, nor sought directorship prior to her father's request in 2023. She accepted that her involvement in the company had been informal and primarily familial, and that she had no prior corporate responsibilities within WIG. She admitted that she did not receive or review any documents concerning her formal appointment before signing them at Mr. James's office, and had no personal knowledge of how the share allotments or directors appointments were processed. Further, she did not attend or receive notice of any duly convened board or shareholder meeting authorizing such actions.

[28] Mrs. Nelson agreed that the claimant had been involved in the company since the 1990s and that no evidence had been presented to show that any of the defendants held formal roles in the company before November 2023. When she was shown filed documents evidencing Mrs Skerret's longstanding role within the company, including a 1999 annual return listing her as director and company secretary, Mrs. Nelson did not dispute the contents of these documents though she claimed she had never seen them. She agreed that her understanding of the company's history and internal governance was limited, and that she had relied entirely on her father's representations. Although she was named as being present at the meeting held on 2nd September 2022, she stated that her involvement in such meetings was informal and that she attended out of family interest rather than corporate responsibility. Concerning the minutes of that meeting she stated that she could not verify its accuracy, as she did not usually read such documents in detail.

[29] When probed about her relationship with the claimant, Mrs. Nelson was visibly emotional and described the breakdown in relations with her sister as deeply regrettable. She acknowledged that they once enjoyed a very close personal and professional relationship as sisters, and had she been more fully apprised of the claimant's objections or the legal ramifications of her own actions, she might have approached matters differently. Nonetheless, she maintained that she acted honestly, on the basis of her father's instructions, and had no intention to exclude or prejudice the claimant's involvement in the company.

[30] In response to questions posed by Counsel for the claimant she stated that she believed that equal treatment was the fairest approach to this matter, but that she had sometimes believed that her father was not always entirely fair. She recounted that after working for the family company AF Valmont & Co for 35 years, she was only given an old truck upon her retirement, which she did not think was a fair reward for her services. She found it difficult to believe, that the claimant had worked for multiple family business without pay, stating that she had the authority to pay herself and should have done so, if she felt she was owed money. Concerning whether she believed that the claimant had been unfairly prejudiced by the recent share allotments, she stated that she should have taken this issue with their father, rather than instituting a court claim against herself and the other defendants.

Stephen Brette

[31] Stephen Brette ("Mr. Brette"), is an attorney-at-law. He provided affidavit evidence detailing his role in the execution of the documents allotting shares to the defendants and appointing them as directors. He says he notarized certain documents which were signed by Mr. Valmont. He stated that he was invited by Mr. Valmont's attorney-at-law Mr Giovanni James, in his professional capacity, to witness Mr. Valmont's execution of corporate documents relating to WIG. On 14th October 2023 he went to Mr. Valmont's residence where he met Mr. James and was introduced to Mr. Valmont's daughter, Ms Valmont (the third defendant). He and Mr. James met with Mr. Valmont in the absence of anyone else. He engaged Mr Valmont in conversation to assess his capacity and to ensure that he understood the documents he was about to sign. He says he asked Mr. Valmont whether he had given instructions to his attorney to prepare and file documents on his behalf, to which Mr. Valmont responded affirmatively. He also asked whether Mr. Valmont had been influenced by anyone prior to their meeting, and Mr. Valmont indicated that he had not been. He also asked him what the documents were about to which Mr. Valmont responded saying, "*my company*".

[32] Mr. Brette stated that he specifically questioned Mr. Valmont on whether it was his wish that his children be appointed as directors of WIG, to which he answered "*yes*." He also inquired whether he understood that the effect of signing the Return of Allotment was to make his children owners of his company to which Mr. Valmont again responded affirmatively. Mr. Brette remarked that Mr Valmont was able to converse coherently and intelligibly, and that he demonstrated awareness of the purpose of the meeting and the implications of his actions in signing the documents. He stated that their exchange included informal banter, which he interpreted as further confirmation of Mr. Valmont's mental clarity at the time.

[33] Mr. Brette further stated that Mr. Valmont read the documents without the use of eye glasses, after which Mr. James again went through the documents with him. Mr. James verified whether Mr. Valmont wished to change his previous instructions to him, to which Mr. Valmont indicated that he did not wish to change his instructions. He witnessed Mr. Valmont sign all the documents, and he (Mr Brette) and Mr James signed as witnesses.

[34] In cross-examination, Mr. Brette stated that while Ms Valmont facilitated the meeting and was present at the residence, there was no indication that she knew the precise contents of the documents being signed. He maintained his opinion that Mr. Valmont was of full mental capacity at the time and appeared to understand the nature and effect of the documents he executed, and that he voluntarily signed the documents.

Issue 1: Were the decisions and/or action of Mr Valmont regarding the share allotments and the appointment of the defendants as directors orchestrated by undue influence from the defendants.

[35] At paragraph 29 of her affidavit filed on 9th April 2024, Mrs. Skerret alleged that the defendants exercised undue influence over Mr Valmont in order to cause him to sign the disputed documents (namely, the Notice of Change of Directors, Return of Share Allotments and Shareholders Resolution). Counsel for the claimant and 4th defendant did not provide any submissions on this point.

[36] This issue was addressed solely by Counsel for first, second, and third defendants. Counsel argued that the claimant did not present any evidence beyond her own belief, to support her claim that Mr. Valmont lacked the capacity to make decisions and was acting under undue influence from the defendants, when he allotted them shares, and appointed them as directors of WIG. Counsel submitted that this bald assertion, without more, does not satisfy the legal threshold for establishing undue influence. He submitted that the evidence of Mr. Brette confirms that Mr. Valmont acted voluntarily and with the benefit of independent legal advice, having given clear instructions and fully understood the implications of his actions.

[37] Further, these acts were done by Mr Valmont, as founder and controlling mind of WIG, and were lawful, and supported by the Articles of Association of WIG. On this basis, he maintained that no undue influence was exerted upon Mr Valmont, and that the claimant's contrary assertions were unsupported by any evidence, whether medical or otherwise. Further, there was inconsistency in the claimant's position in alleging undue influence mere months after she had arranged for Mr. Valmont who was then 102 years old, without the benefit of legal advice, to allot to her majority shares in WIG on the basis of unverified and

undocumented unpaid drawings. This transaction, he argued, was far more suspect and indicative of overreaching. He further pointed out that even at the time of the impugned filings, the claimant continued to interact with Mr. Valmont on corporate matters, including having him sign cheques, which was an indication that she still regarded him as being competent.

[38] Counsel relied on the case of ***Ingrid Skerret et al v Ernest Valmont***[18], in which Belle J provided a comprehensive summary of the law relating to undue influence, stating that it was acts of persuasion that overcomes another's free will, distinguishing it from duress, and noting that the elements necessary to establish undue influence were that: (i) the victim must be susceptible to influence due to some vulnerability; (ii) the influencer must have had an opportunity to exert influence, typically via a confidential relationship; (iii) there must be evidence of intent to exert undue influence; and (iv) the transaction must be suspicious or unnatural. Counsel submitted that none of these elements have been proven, and although a parent-child relationship existed, there was no credible evidence that any of the defendants acted improperly or sought to manipulate Mr Valmont.

[39] Counsel underscored the need for something more than suspicion or conjecture, noting that courts will not infer undue influence without compelling evidence. Counsel highlighted a warning by Belle J against using the doctrine of undue influence as a "sword by the vindictive and avaricious who seek to invalidate a perfectly legal transaction for personal gain." Counsel contends that in the present case the claimant seeks to invoke undue influence not to protect the interests of the vulnerable, but to reverse a corrective act by her father, intended to restore balance and fairness within WIG.

Analysis

[40] The law regarding proof of undue influence is well settled in this jurisdiction, and the cases[19] set a high bar for the person alleging actual undue influence to prove his case. Whilst the claimant pointed to Mr. Valmont's cognitive health, her only evidence is a medical report

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[18] SLUHCV2012/0816 (unreported, delivered on 13th November 2014) at paragraphs 43 to 45 of the judgment
[19] See: Murray v Deubury and another (1996) 52 WIR 147 at 151; Egger v Egger - Saint Lucia High Court Civil Appeal No. 17 of 2002 (Delivered 26th April 2002, unreported); Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44

from Dr Julius Gilliard, the psychiatrist who is said to have assessed Mr. Valmont in January 2024, some three months after the transaction. Dr Gillard's report states that he found Mr. Valmont to be incoherent with loosened thought association and significant cognitive impairment. However, this report is of limited probative value, as Dr Gilliard did not assess Mr. Valmont at the material time and was not called to testify. As such, the Court is left without expert guidance on whether Mr. Valmont's condition in January 2024 was reflective of or had any bearing on his mental capacity in October 2023, when he signed the impugned documents. The report merely says that there were signs of cognitive decline but did not conclusively establish that Mr. Valmont was incompetent to give directions for the preparation of the documents and to sign the documents in October 2023.

[41] The defendants, on the other hand relied on a medical report from Dr Len Compton[20], a neurologist who assessed Mr. Valmont in April 2023, before the impugned transactions took place. This report outlines a medical history of strokes, chronic illness, and a diagnosis of moderate neurovascular cognitive disorder (vascular dementia). He noted difficulties with memory, speech, and non-routine tasks. Nonetheless, there was no conclusion that Mr. Valmont lacked decision-making capacity, or any indication that he was incapable of understanding or consenting to the transactions undertaken in October 2023.

[42] More importantly however, there is no direct evidence of coercion, manipulation, or any exertion of pressure by the defendants or the claimant. While Mr. Valmont's health may have made him vulnerable, vulnerability alone does not amount to undue influence. The authorities are clear that mere suspicion, conjecture, or the existence of a confidential relationship is insufficient. There must be cogent evidence of overreaching, or cheating, which is manifestly absent in this case.

[43] In the circumstances, the claimant has not established on a balance of probabilities that Mr Valmont's conduct was procured by actual undue influence of the defendants. Further, without the benefit of expert testimony to establish cognitive decline, the Court is unable to arrive at any conclusions regarding Mr. Valmont's true mental capacity in October 2023.

[20] Exhibit MAV-5

Issue 2: Whether the conduct of allotting shares and appointing the defendants as directors was oppressive, unfairly prejudicial or unfairly disregarded the interests of the claimant as a shareholder.

The Claimant's Submissions

[44] Mrs Skerret's case is that (i) the changes to the shareholding structure (without proper notice to her) resulting in the dilution of her shareholding, (ii) the unilateral change of directors, and (iii) her exclusion from the decision-making process, were oppressive and unfairly prejudicial to her legitimate expectations as a director and shareholder of WIG. In her view, these actions were carried out for the purpose of excluding her from the management and control of the company. Counsel for the claimant, argued that these acts were not carried out in accordance with WIG's Articles of Association and materially diminished the claimant's interest and participation in the company.

The Defendants Submissions

[45] Counsel for the first, second and third defendants submitted that the claimant's allegations of unfair prejudice were unsubstantiated and misconceived, and further that the claimant failed to establish the requisite prejudice or unfairness necessary to ground a claim under this provision. Relying on the case of ***Amstel Investment Holdings Ltd et al v AMS Holdings Ltd et al***[21], Counsel submitted that both the legal and equitable context of the conduct must be considered, and fairness is applied based on rational principles and background circumstances. Counsel argued that the claimant did not identify any specific act of prejudice suffered, nor did she demonstrate how the actions complained of caused any detriment to her position as a shareholder or director.

[46] Concerning oppression, Counsel relied on the case of ***Scottish Co-operative Wholesale Society Ltd v Meyer***[22] which defined oppression as "*burdensome, harsh and wrongful*," and argued that the actions of Mr Valmont did not rise to this threshold. He also relied on the

[21] BVIHCMAP2024/0002 (unreported, delivered on 27th March 2025)
[22] [1959] AC 324

case of ***Wayde v New South Wales Rugby League Ltd***[23], in support of the defendants' position that Mr Valmont's decisions were consistent with what any reasonable board would have done, given the familial and operational history of the company. Regarding unfair prejudice, Counsel cited the decision of ***O'Neill v Phillips***[24], to say that the claimant could not show either a breach of agreed terms or conduct contrary to equitable good faith. Moreover, he maintained that there was no prejudice, financial or otherwise, as the claimant retained and in fact increased her shareholding, thereby enhancing her entitlement to dividends and influence in company affairs.

[47] Counsel also submitted that any claim of unfair disregard of the claimant's interests should be assessed within the broader commercial and familial context of the company, which had been operated as a family business with informal participation by all siblings. He argued that the claimant herself had engaged in gross misconduct, including acquiring majority shares in WIG, in questionable circumstances. In this regard, he relied on ***Interactive Technology Company Ltd v Jonathan Ferster & Ors***[25] and ***Re A Noble & Sons (Clothing) Ltd***[26], in support of the position that such conduct may negate the fairness of her complaint or affect the relief sought.

[48] Relying on the authorities of ***Morgan v 45 Flers Avenue Pty Ltd***[27] and ***Chemtrade Ltd v Fuch Oil Middle East Ltd***[28] Counsel urged the Court to take a holistic approach by examining the conduct of both parties and to decline relief as the claimant has not come to the court with clean hands. Counsel further submitted that the claimant has not proven oppression, unfair prejudice, or unfair disregard, and even if any such findings were made, this should not result in relief, on account of the claimant's own inequitable conduct.

[49] Counsel submitted that for an unfair prejudice claim to be successful, the conduct complained of must be both unfair and prejudicial to the interest of members.[29] In deciding

[23] 180 CLR 459
[24] [1999] 1 WLR 1092
[25] [2016] EWHC 2896
[26] [1983] BCLC 273
[27] (1985) HCA 68
[28] BVIHCVAP2013/0004 (delivered on 18th September 2013, unreported)
[29] Grace v Biagioli [2006] 2 BCLC 70

whether Mrs. Skerret was unfairly prejudiced by Mr. Valmont's actions, consideration should be given not only to the pleadings but all the facts in relation to the history of the company and the relationship between the shareholders and the directors. Counsel cited the case of ***Ming Siu Hung v JF Ming Inc***[30] in which it was said that the court's discretion means that *"nothing [was] off-limits subject only to the twin tests of relevance and weight, in relation to the choices to be made in the exercise of the discretion. Secondly, the court necessarily looks not only to the past but to what is likely to happen in the future."* In that case the court found that the failure to provide the minority with the company's financial statements as required by the company's articles constituted unfair prejudice.

[50] Counsel for the fourth defendant stated that the evidence supports a finding that the allotment of majority shares to Mrs. Skerret in October 2022 was not done willingly by Mr. Valmont, since he always intended to remain in control of the company. She referred to the evidence of Ms. Nelson who stated that after becoming aware that Mrs. Skerret had obtained majority shareholding of his company, her father indicated that he would take the necessary steps to have this corrected. Counsel submitted that in considering these past events/circumstances, regard should be given to the manner in which Mrs. Skerret obtained majority shareholding in October 2022, which is what led Mr. Valmont to allot shares to the defendants and appoint them as directors, and restore himself as the majority shareholder.

[51] Counsel further submitted that the resolution awarding 260 shares to the claimant stated that the shares were issued for work performed, however, there was no computation or value provided to Mr. Valmont to assist him in making an informed decision on the value of the shareholding, in proportion to the value of the work performed by Mrs. Skerret over the years. This, she submitted constituted a breach of the claimant's fiduciary duty as a director of WIG and such breach diminished the legitimacy of her complaint. Counsel relied on section 97 of the Act which states that every director and officer of a company in exercising his or her powers and discharging his or her duties shall – (a) act honestly and in good faith with a view to the best interests of the company; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Counsel

[30] [2021] UKPC 1

submitted that given the circumstances, Mr. Valmont acted in the best interest of the company. His actions were not driven by malice, but rather were an attempt to correct the deceit perpetrated by the claimant upon his company.

[52] Counsel for the fourth defendant further submitted that the claimant's inability to demonstrate that her father was fully informed before allotting 260 shares to her closely mirrors the issues in the case of ***Mualim v Dzelme***[31], where the Australian Court of Appeal emphasized that informed consent requires clear, affirmative evidence that the principal was aware of all material facts and the consequences of their decision. In that case, a son's unilateral allotment of shares was declared invalid, due to the absence of evidence proving that his parents were fully or properly informed, or had consented.

[53] Counsel argued that similar to ***Mualim***, the claimant failed to provide any documentation or credible testimony indicating that Mr. Valmont, a 102-year-old man, understood that the share allotment would result in the transfer of majority control to the claimant. Her admission under cross-examination that she did not recall informing him of the implications, and that no supporting documentation was presented, undermines any assertion of informed consent. Furthermore, her suggestion that Mr. Augier was present as a consultant was undercut by her acknowledgment that he was not advising on the share issue and was attending for the first time.

[54] Counsel further submitted that whilst an action may be unfair to a shareholder, it may not be sufficient to warrant an unfair prejudice claim if it is shown that there is a proper and justifiable business purpose for such action. A shareholder will only be entitled to complain of unfairness if there has been some breach of the terms on which they have agreed the affairs of the company should be conducted. She relied on the case of ***Re Cardiff City Football Club (Holdings) Ltd***[32] in which the court adopted a narrow approach to what constitutes unfair conduct, holding that the conduct must be both unfair and prejudicial. It is not enough to say that an action is unfair but that it has caused, or will cause, some tangible detriment to the petitioner. While accepting that the claimant received no prior notice of the allotment

[31] [2021] NSWCA 199
[32] [2022] EWHC 2023

of shares and the appointment of the defendants as directors, she nonetheless concluded that the claimant had not made out a claim for unfair prejudice as she had not provided evidence of any prejudice which she suffered as a result of these actions. Counsel relied on the case of ***Re Coroin Ltd (No. 2)***[33] to make the point that prejudice usually involves some form of financial harm or risk to a petitioner's investment. She argued that the claimant made no investment in the company from which any loss could arise, and that the allotment of shares to the claimant, the defendants and Mr Valmont, as well as the appointment of the defendants as directors did not result in any loss to an investment made by the claimant. Counsel also submitted that the claimant had benefitted from the transaction, as her shareholding in the company had increased from 260 to 300 shares valued at $1,000 each.

[55] Counsel relied on the case of ***Kathryn Ma Wai Fong v Wong Kie Yik and Ors***[34] where the Privy Council found that in the particular circumstances of that case, breach of a provision of the Act did not reach the threshold for unfairly prejudicial conduct, and stated that *"A disregard of the requirements of the [Companies Act] could in certain circumstances be capable of being unfairly prejudicial conduct…"* however *"… the fact that [the majority shareholders] failed to put in place a formal resolution of the members at a general shareholder meeting of [the company] does not amount to unfairly prejudicial conduct in these circumstances, regardless of whether it was a breach of section 175."*

Analysis

[56] The claimant invoked section 241 of the Act, which gives the Court a broad discretion to provide redress to shareholders, and other company stakeholders, for corporate conduct that has been exercised in an oppressive or unfairly prejudicial manner, or in a manner that unfairly disregards the interests of a complainant. The claimant alleges that she was excluded from a shareholders decision and was prejudiced by share dilution and loss of control in the company.

[57] Section 241 states:

[33] [2013] 2 BCLC 583
[34] [2022] UKPC 14 at paragraph 126 of the judgment

(1) A complainant may apply to the court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates –

(a) any act or omission of the company or any of its affiliates effects a result;

(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or

(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

[58] In order to succeed, a shareholder must demonstrate that the conduct complained of was unfairly prejudicial to him or her. The test is an objective one, and it is not necessary to show that those in control of the company intended their actions to be unfair or had acted in bad faith. It is whether a reasonable bystander who observed the consequences of the conduct complained of would regard it as having unfairly prejudiced the shareholder's interests.

[59] The legal principles which guide the courts in making such determination are well established and have been re-stated in several decisions of our Court of Appeal. They are derived from the seminal case of ***O'Neill v Phillips***[35] where it was said that a petitioner must demonstrate both unfairness and prejudice in order to succeed. These principles were more recently distilled in ***Amstel Investment Holdings Ltd et al v AMS Holdings Ltd et al***[36] in which the following was said:

> *"A petitioner must demonstrate both unfairness and prejudice in order to succeed in an unfair prejudice petition under section 184I of the BCA. The court's mandate in adjudicating an unfair prejudice claim is to do what is just and equitable to achieve fairness, which must be applied judicially, and what constitutes fairness must be determined upon rational principles. Ultimately, the concept of fairness must be informed and shaped by context and background. There are two features constituting the background which must be kept in mind when considering unfair prejudice. The first is that the manner in which the company's affairs are conducted is regulated by its articles of association and sometimes by collateral agreements between shareholders (the legal background). A member of a company will therefore not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should*

[35] 1999] 1 WLR 1092

[36] Supra note 20 at paragraph 1 of the headnote

> *be conducted. The second feature is that there may be cases in which equitable considerations will prevent those having conduct of the affairs of the company from insisting on their strict legal rights."*

[60] The pertinent facts of this case are that Mr Valmont as a director and shareholder purported to give instructions to his attorney-at-law to prepare documents which would alter the shareholdings and directorship of WIG, without convening a board or shareholders meeting or consulting the claimant who was the only other director and shareholder in the company. At that time, Mr Valmont held 250 shares while the claimant held 260 shares in the company. The evidence revealed that at a duly convened board meeting in October 2022 the decision was taken to allot the claimant 260 shares in the company in return for her service to the company over the years. These matters were recorded in a resolution of the board dated 9th October 2022. At that time Mr Valmont was the sole shareholder of the company with 250 shares, and the claimant had served as company secretary from 1999, and then as a director and deputy managing director from 2020. This decision altered the shareholding in the company with the claimant becoming the majority shareholder and the defendant minority shareholder.

[61] Thereafter in 2024 the claimant discovered that several corporate documents were filed at the Registry on behalf of WIG which purported to again alter the shareholdings of the company, by further share allotments which resulted in the claimant and the defendants each having 300 shares and Mr Valmont having 500 shares. The defendants were all appointed as directors, and the resolution purporting to capture these decisions was styled as a shareholders' resolution which Mrs Skerret knew nothing about. All the documents purporting to make these changes were signed by Mr Valmont on 14th October 2023 and were registered at the Registry on 7th November 2023.

[62] Mrs Sherret's evidence is that she was lawfully the majority shareholder of the company and was never consulted on these matters. The defendants aver that at the time the resolution was passed and the documents were signed by Mr Valmont he was of the belief that the claimant had resigned or retired as a director of WIG.

[63] The documentary evidence confirms that in October 2023 when the acts complained of were undertaken, Mrs Skerret was indeed a director and shareholder along with Mr Valmont. I will return to an examination of the lawfulness of these actions later in the judgment, but assuming for the moment that they were lawfully undertaken, the effect would have been a drastic dilution of the value of Mrs Skerret shares in the company, from 50.98% to 14.63%. Although Counsel for the fourth defendant says that the claimant's shareholdings increased from 250 to 300 which would have resulted in an increased value of her shareholdings, this assumption is manifestly inaccurate, when one considers the corresponding increase in Mr Valmont's shares and the additional allocation of shares to the four defendants. The reason given for these changes was that Mr Valmont wanted to secure the future of the company and allow all his adult children to have an equal say in the business.

[64] The defendants further say that the allotment was made in consideration of their contributions to the operations of the company in various capacities. I note that none of this was recorded in the purported shareholders resolution signed by Mr Valmont. All that was said was that shares were allotted in the respective proportions, namely, 300 additional shares to Mr Valmont, 40 additional shares to the claimant, and 300 shares to each of the defendants. Such drastic dilution of Mrs Skerret's shareholdings would have relegated her standing from majority to minority shareholder along with the defendants, and would have the effect of being oppressive, unfair and prejudicial to her as a shareholder, and would also amount to unfair disregard of her interests in the company.

[65] Counsel for the fourth defendant placed great reliance on ***Re Cardiff*** as support for the contention that while Mr. Valmont's conduct may have been unfair to the claimant, the claimant has failed to show any prejudice which she suffered. This argument is flawed, as the effect which such drastic dilution in the claimant's shares would carry, in relation to voting rights, share proportion, share value and dividend payments, are inescapable. The present case can be easily distinguished from ***Re Cardiff****,* in which the aggrieved shareholder was unable to point to any breach of the articles of association or a shareholders' agreement, or show that there was some overriding arrangement or understanding between the company's shareholders that restrained the conduct complained of. The best that could have been shown was that a director had behaved unfairly in the general sense of the word, and that

was insufficient. In the present case, it could not be said that WIG's Articles of Association and the Act were complied with, if indeed Mr. Valmont acted unilaterally to allot shares to the defendants, and appoint them as directors, without consultation with the claimant, and without regard to her interests, as one of two directors and shareholders at that time. This is obviously conduct which is unfair and prejudicial to the claimant as a director and shareholder of WIG.

[66] It was also Counsel for the fourth defendant's contention that it is not every breach of a company's articles of association or the Act which will be considered unfairly prejudicial to a party. She relied on the case of ***Kathryn Ma Wai Fong*** in support. I note that the underlying reason for the Privy Council concluding that a breach of the respective Companies Act did not amount to unfairly prejudicial conduct was because that court had already determined that there were no equitable considerations arising that precluded the majority shareholders in the company from doing as they did. This can hardly be said to be comparable to the facts of the present case, where at the time the impugned documents were signed Mr Valmont, by his own earlier actions, was no longer a majority shareholder in the company. If it is as the defendants say, that Mr Valmont was duped into giving away majority shareholding in his company to the claimant, then the appropriate course would have been to file a claim to have the matter resolved through the court. These are not matters which could have been resolved by the actions of a minority shareholder, to bring about a course reversal in these circumstances.

[67] Moreover, the allotment of the shares to the defendants cannot be said to have been made for any proper *and justifiable business purpose, as was found to be case in* ***Kathryn Ma Wai Fong*** *and* ***Re Cardiff***. There was no economic benefit to be derived by the company from these alterations. The defendants accepted that they provided no consideration for the shares allotted to them[37] nor did they provided any proof that like the claimant, their shares were allotted in lieu of drawings for work undertaken in the business. On the contrary, the defendants acknowledged that the shares were allotted by their father to ensure that all his

[37] See paragraph 30 of the Affidavit of Ms Valmont and paragraphs 28 and 29 of the Affidavit of Jennifer Nelson

children had an equal shareholding in WIG. It is trite that this could not have been accomplished without adhering to the Articles of Association of WIG and the Companies Act. The only purpose which may be inferred from the allotment of the new shares, was to dilute the claimant's majority shareholding in WIG, and the defendants' position that the claimant suffered no prejudice by the share allotment is untenable.

[68] Counsel for the fourth defendant's reliance on the ***Mualim*** case did not assist the defendants' case. In that case the court found that lack of informed consent could render an allotment of shares invalid. The case is particularly instructive, as the key principle which emerged was that informed consent requires clear, affirmative proof that the affected party understood the nature and consequences of the transaction, particularly where the action would dilute their shareholding or alter control of the company.

[69] In the present case Mr. Valmont, as one of the company's directors and shareholders, allotted shares to himself, the claimant, and the defendants, in circumstances where, unlike in ***Mualim,*** the claimant here was not a passive or absentee shareholder. She was a co-director and at the time, the majority shareholder in WIG. Critically, she was not informed of the share allotment which would have dramatically altered the corporate structure of WIG, nor was her consent sought or obtained. As in ***Mualim***, the result of the allotment was the dilution of the claimant's shareholding and a shift in control of the company. The case supports the conclusion that such an allotment, done without informed consent, is unlawful. It was made plain that where a fiduciary duty exists, as it does between co-directors and shareholders, actions that affect the rights of others, especially those involving control of the company, require full transparency and informed agreement. The fact that the claimant was not informed or her consent obtained before allotting shares which had the effect of diluting her majority shareholdings would have made the allotments in this case unfairly prejudicial.

[70] Through their submissions, Counsel for the defendants sought to challenge the earlier allotment of shares to the claimant, noting that Mr. Valmont's actions were a corrective measure for that allotment, and that the claimant's position was weakened by her own conduct. It was submitted that failure to convene annual general meetings in accordance with Article 28, which requires directors to resign annually unless reappointed, and the

accepted shares in lieu of drawings without a valuation, militated against the claimant asserting her legal right to redress. While the ***Ming*** case recognises that a court has a wide discretion to take into account all facts, background and history of the company for context, and although no valuation of the company was undertaken when shares were allotted to the claimant in October 2022, it is unrefuted that the resolution in this regard was duly passed by the two directors at the time, who were Mrs Skerret and Mr Valmont. The evidence did not rise to impropriety or the exertion of undue influence by Mrs. Skerret over Mr. Valmont, when that decision was made.

[71] The assertions that the claimant caused Mr. Valmont to issue her shares in WIG shortly after suffering from a stroke[38] also did not hold up against the claimant's uncontroverted evidence that the defendants were not involved in the company at the time, were not present at the meeting, and that the decision was made following discussions held between herself and Mr. Valmont. There is no comparison to what has transpired in relation to the allotment of shares and appointment of the defendants as directors in October 2023. It is said that Mr Valmont had acted on the premise that he was sole director and shareholder when a decision was made in relation to the defendants, however there is no evidence to support a finding that Mrs Skerret had resigned or retired as director from WIG in October 2023. The articles of WIG are clear on how these matters should unfold and confirm that Mr Valmont could not have acted on his own to give effect to these transactions.

[72] Ms Valmont's evidence in cross-examination revealed inconsistencies in her understanding and presentation of WIG's official records and governance history. Although she sought to diminish the claimant's longstanding involvement and official positions as company secretary and deputy managing director, the documentary evidence, undermined this narrative and raised concerns about the reliability and completeness of her evidence, particularly as it concerned the governance structure of WIG over the years. It is clear from the annual returns[39] filed and registered at the Registry on 7th February 2024, that as at 31st

[38] See paragraph 20 of the affidavit of Monica Althea Valmont
[39] See Exhibit IS-1

December 2022 Mrs Skerret was integrally involved in WIG from August 1999 as company secretary, as a director from June 2020, and as a shareholder from October 2022.

[73] I therefore conclude that the unilateral allotment of shares and the appointment of the defendants as directors, presumably by Mr Valmont in a capacity as sole director and shareholder of WIG, without notice to the claimant, resulting in a sweeping dilution of her shareholdings in WIG, and a change in control of the company was unfair and absolutely prejudicial to the claimant as co-director and more so as a shareholder of WIG.

Issue 3: Whether the (i) notice of change of directors, (ii) return of share allotments (iii) shareholder resolution; and (iv) consents of the defendants to act as directors filed at the Registry on 7th November 2023 are invalid and ought to be cancelled.

The Claimant's Submissions

[74] Counsel for the claimant submitted that the allotment of shares to the defendants, the defendants' appointment as directors, and their acceptance of same were unlawful, and contrary to the company's procedural rules for the appointment of directors, as contained in articles 31 and 19 of WIG's Articles of Association. These articles state that directors may only be appointed by a written resolution signed by all directors and shareholders, or via a duly convened general meeting, and are reinforced by sections 130(1)(a)–(b) and 74(1) of the Companies Act, which require either unanimous written consent or proper notice and participation in shareholders meetings.

[75] Counsel submitted that in her capacity as director and shareholder of WIG the claimant (i) did not sign the disputed resolution, (ii) was not given notice of a general meeting, and (iii) was not presented with any evidence of notice of a general meeting and (iv) the disputed resolution does not bear any evidence that it was "submitted to and signed as approved by all of the directors and members of the company".

[76] Counsel noted that the purported share allotment was made pursuant to a shareholders' resolution signed by Mr. Valmont in his capacity as incorporator and shareholder without

any semblance of the Board's endorsement. Counsel referred to Article 4 of WIG's Articles of Association which provides that "the shares shall be under the control of the Board who may, subject to the provisions of these articles, allot …" the same upon such terms and conditions as they may think fit". Counsel noted that as a pre-requisite to allotting shares to non-members, Article 6 of the Articles of Association provide for an offer to be made first to existing shareholders in proportion to their existing shareholding and that it is only if such offer is declined that shares may be allotted to non-members. It is the claimant's case that the board[40] did not allot these shares in accordance with the Articles of Association, as the claimant is an undisputed director of the company, and a minority shareholder on his own could not have lawfully made the allotments, as suggested by the defendants.

[77] Counsel also took issue with the validity of the issuance of the shares, in the context of section 30(1) of the Companies Act, which requires that shares be fully paid for in money or equivalent value. Counsel submitted that the defendants have accepted that they did not pay for the shares with money[41]. The third defendant's position was that they had all worked in an advisory capacity to their father and that she functioned as an unofficial auditor for the company. Counsel submitted that this should be treated as a bold, bare and unsubstantiated statement, as no evidence was provided to substantiate. Further, the fourth defendant's position was based on a sense of equity as all Mr. Valmont's children were equal and equally deserving, and she readily admitted that her only involvement in the company was attending family meetings and that up until her father's request to sign the Consent to Act as Director, she had no involvement in WIG. The fourth defendant was not an employee, neither were any of the other defendants. Thus, Counsel posits that the purported issuance of the shares to the defendants was clearly ultra vires, and of no effect.

[78] Counsel stated that although the defendants led evidence through Mr Brette that Mr. Valmont signed the documents in the presence of Counsel and did so knowingly and voluntarily, Mr. Valmont alone could not have lawfully appointed the defendants as directors and shareholders of the company given the company's structure and directorship at that

[40] Defined in Article 2(a) of WIG's Articles of Association as all or a majority of the directors of the company acting collectively either at a meeting duly convened and held or otherwise as provided by these Articles.
[41] See paragraph 30 of the affidavit of Monica Althea Valmont and paragraphs 28 and 29 of the affidavit of Jennifer Nelson

time. The company consisted of a board of directors which included the claimant and Mr Valmont, who were also the only two shareholders. Although the defendants say that the claimant had resigned from her position as director of WIG, Counsel for the claimant noted that at paragraph 5 of the affidavit of Ms Valmont[42] she admitted that the claimant was a director since June 2020 and a shareholder since October 2022. Counsel further argued that the defendants and Mr Valmont could not have held the view that the claimant was not a director in October 2023, since the purported notice of change of directors filed at the Registry on 7th November 2023 listed the claimant as one of the directors of the company.[43] It could have at least been stated at section 4 of the notice that the claimant ceased to hold office as a director of the company at a given date, but that was not the case. Thus, the defendants' assertion that the claimant was not a director of WIG, and that Mr Valmont was the sole director when he took the decision to allot shares and appoint new directors is without credibility.

[79] Consequently, Counsel for the claimant relied on section 244 of the Act in aid of rectification of the register and cancellation of the impugned filings.

Defendants Submissions

[80] Counsel for the first, second and third defendants submitted that the documents executed on 14th October 2023 and filed at the Registry on 7th November 2023 were lawfully executed by Mr Valmont in full compliance with the articles of association and in accordance with his authority as managing director and sole remaining director of the company at the time. Counsel contends that these filings were not unlawful or procedurally defective and were carried out with the assistance of independent legal counsel, who confirmed that Mr Valmont understood the nature and effect of his actions. He rejected the claimant's assertion that the defendants appointed themselves or that undue influence tainted the process, and maintained that the claimant had previously indicated her resignation from the group of companies, creating a reasonable belief that she had ceased to act as director. In the

[42] Filed on 30th April 2024
[43] See Exhibit IS5

absence of any other sitting directors, Mr Valmont acted within his powers under Articles 4, 19, 31, and 51 of the Articles of Association to give effect to the disputed changes.

[81] Counsel stated that the filings reflected Mr Valmont's intention to ensure the continuity of the family business by formalizing the longstanding involvement of his other children, who had contributed to the company's growth and oversight. He submitted that this decision was made in good faith and in the best interest of the company, particularly as the Claimant had acquired controlling interest in circumstances described as deceptive and lacking in transparency.

[82] Counsel further argued that the claimant's application to quash the filings is not supported by any substantive legal basis, and rests solely on speculative assertions of undue influence as there is no evidence of impropriety in the execution of the documents. Counsel also stated that any such challenge should properly have been directed at Mr Valmont or his estate, as he was the true actor behind the filings. In support of this position, Counsel relied on ***O'Neill v Phillips*** and ***Amstel Investment Holdings Ltd v AMS Holdings Ltd***[44] to emphasize the importance of fairness and context in evaluating shareholder disputes. He submitted that reversing the filings would be commercially unjust and would serve only to preserve the claimant's ill-gotten majority control of WIG, which was obtained without independent legal advice or a proper valuation. Counsel maintained that the documents were valid as they were executed with due authority, and in accordance with the company's articles, and in furtherance of the founder's expressed intent to rectify past improprieties and preserve the family enterprise.

[83] Counsel for the fourth defendant submitted that the claimant outlined factors that she considered were breaches of the Company's Articles of Association, namely that:

(i) She was not given notice of the filings;
(ii) The filings did not arise from a lawfully convened meeting, and no notice of such a meeting was given to her;
(iii) The filings do not bear the company's stamp; and
(iv) No consideration was given paid by the defendants.

[44] BVIHCMAP2024/0002 (delivered on 27th March 2025, unreported)

[84] Counsel submitted that the absence of formal notice does not, by itself, invalidate the resolution and the consequent filings, and the court retains a broad discretion to assess the surrounding circumstances to determine whether the actions taken were fair and in accordance with equitable principles. As established in ***O'Neill v Phillips and Ors***[45], fairness must be applied judicially and guided by rational principles. In ***Re J.E. Cade & Son Ltd***[46], Warner J aptly noted that the court has a wide discretion, "*it does not sit under a palm tree*." Counsel for the fourth defendant submitted that the circumstances to be considered was the claimant's unjust acquisition of majority shares of the company, thereby disadvantaging her father. To correct this perceived injustice and ensure equality among his children, Mr. Valmont then still the managing director and holding the casting vote took steps to appoint new directors and allot shares. These actions were undertaken in the presence of two attorneys and in full awareness of the familial and corporate context.

[85] Counsel noted that the company itself had historically failed to comply with basic corporate requirements, such as holding annual general meetings and filing annual returns. If strict compliance with the Articles of Association is to be enforced now, regard must be given to the company's broader pattern of conduct, both past and future. Considering the above, Counsel submitted that the claimant's objections should be assessed in this context, and rejected in relation to rigid interpretation of procedural requirements where equity, intention, and fairness supports the actions taken by Mr. Valmont.

Analysis

[86] A court has wide discretion in relation to granting appropriate relief, once unfair prejudice has been established.[47] The claimant seeks cancellation of various filings made at the Registry on 7th November 2023. These comprise the notice of change of directors (Exhibit IS-5), the return of share allotments form (Exhibit IS-6), the shareholder resolution (Exhibit IS-8) and the consents of the defendants to act as directors (Exhibit IS-7).

[45] [1999] UKHL 24
[46] [1992] BCLC 213 at 227
[47] Grace v Biagioli [2006] 2 BCLC 70 at paragraph 73

[87] It is trite that the manner in which a company's affairs are conducted, is regulated by its articles of association and any shareholder agreements, and managed through its board of directors, based primarily upon rules that are set out in the Companies Act[48]. The Articles of Association and the Act supports the claimant's position that she was required to sign the shareholders resolution in order to have lawful force.

[88] Article 31 provides that directors of the company may be appointed by written resolution under Article 19 hereof. Article 19 provides that a written resolution of the company determined without any general meeting shall be as valid and effectual as an ordinary resolution of the company duly passed at a general meeting of the company duly convened and held, if the resolution is <u>submitted to and signed as approved by all of the directors and members of the company</u>.

[89] These Articles are reinforced by section 130(1)(a) and (b) of the Act which provides :

"Except where a written statement is submitted by a director under section 74

(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting satisfies all the requirements of this Act relating to meetings of shareholders."

[90] Section 74(1) of the Act provides also that "A director of a company is entitled to receive notice of, and to attend and be heard at every meeting of shareholders". At paragraph 23 of Ms Valmont's affidavit[49] the defendants accepted that the claimant was not given notice of a shareholders meeting and any consequent filing. However, the defendants claim that such conduct was justified, as it was done at the instance of the sole director and shareholder of WIG, and that there was no need for notice to be given to or consent obtained from the claimant, as she had resigned as director of WIG. To validate the disputed shareholder

[48] See section 58 – Subject to any unanimous shareholder agreement, the directors of a company shall (a) exercise the powers of the company directly or indirectly through the employees and agents of the company and (b) direct the management of the business affairs of the company.

[49]

resolution and Mr. Valmont's unilateral actions, the defendants claim that his actions conformed with Articles 19, 31 and 51 of WIG's Articles of Association, as its sole director. It was said that although the claimant did not present a written resignation, the fact of her resignation should be inferred from her repeated overtures at family meetings that she was tired of running the companies alone, and needed help, and that she was resigning as director of WIG. The defendants state that these matters were captured in the minutes of a family meeting held on 2nd September 2022[50]. Conversely, the claimant asserted that she had been involved in the company as secretary from 1999, as a director from June 2020 and a shareholder of the company from October 2022 and that she had not resigned as director of WIG and is still the deputy managing director of WIG.

[91] Article 44(a) of WIG's Articles of Association provides that "the office of director shall be vacated if the director by notice in writing to the company resigns his office. The position in the Act is the same. Sections 72(1) and (2) provides that:

(1) "A director of a company ceases to hold office when he or she –
(a) … resigns;
(b) …
(c) …
(2) The resignation of a director of a company becomes effective at the time his or her written resignation is sent to the company or at the time specified in the resignation, whichever is later."

[92] There is no evidence of a written resignation as required by WIG's Articles of Association and the Act. Without a written resignation the claimant could not be taken to have resigned as a director of the company. The defendants own evidence supports this as no notice of change of directors was filed in this regard. Therefore, both directors were required to approve the allotment of new shares and the appointment of the defendants as directors. Based on the corporate structure of WIG in October 2023, Mr. Valmont on his own could not have unilaterally taken these decisions, as to do so would have been contrary to the regulations which govern the conduct of WIG's affairs. Moreover, although no valuation of the company was obtained by the claimant and provided to Mr. Valmont when he allotted

[50] See Exhibit MAV4

shares to her in October 2022, in the same vein there was no valuation of the company when new shares were issued in October 2023.

[93] Additionally, very little weight can be given to the minutes of the meeting of 2nd September 2022. It was written by the third defendant, is unsigned and there is simply a note at the bottom which reads, "Verified by Kimberley Roheman (Chair) & the digital recording". The digital recording was not tendered in evidence for independent verification. Whilst there was discussion on retirement and compensation for the claimant the minutes do not record any conclusion on these matters. In fact, in cross examination Mrs Nelson agreed that these matters were never discussed again and there was no further action. These minutes cannot be said to support the proposition that it was believed that the claimant had resigned or retired as director, as alleged by the defendants.

[94] Furthermore, section 30(1) of the Companies Act[51] imposes a mandatory condition precedent to the valid issue of shares, namely that a share must be fully paid either in money or in property or past services that constitute the fair equivalent of the money the company would have received had the share been issued for cash.

[95] On the evidence, no money was paid as consideration for the shares in question, thus, the share issue cannot be justified under section 30(1)(a). It also cannot be sustained under section 30(1)(b) since it has been accepted that the defendants did not work for WIG and did not provide any services to the company which could count as consideration for the shares. In the absence of evidence to substantiate services rendered to WIG, there can be no "*past service*" capable of constituting consideration, still less past service that is the fair equivalent of the monetary value of the shares.

[96] Accordingly, as neither monetary consideration nor qualifying past services were provided, the statutory requirements for the valid issue of shares under section 30(1) were not

[51] "A share shall not be issued until it is fully paid –
(a) in money; or
(b) in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money."

satisfied. The purported allotment therefore lacked lawful consideration and was inconsistent with the Act.

[97] Of some import, is the fact that the resolution which purported to record the decisions, was said to be a shareholders resolution. Section 130(1)(a) and (b) of the Act provides that:

" Except where a written statement is submitted by a director under section 74,

(a) A resolution in writing signed by all of the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and

(b) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders and signed by all the shareholders entitled to vote at that meeting satisfies all the requirements of this Act relating to meetings of shareholders."

[98] As has been alluded to earlier, the power to allot shares and appoint directors falls to the board of directors. This was accepted by the defendants at paragraph 29 of Ms Valmont's affidavit[52] where she stated that "*Article 5 allows the Board (means all or a majority of the directors of the company) to issue or allot shares…"*

[99] The article in question states:

"(5) Subject to the provisions of these articles THE BOARD may issue and allot shares either as one class or several classes and at such time or times and in such manner in all respects as THE BOARD shall think fit."

[100] Mr. Valmont as a director and shareholder would have had to give the requisite notice to the claimant, or have her sign the resolution, as being approved by all shareholders. This was simply not done. While he may have had laudable intentions, as the defendants say, to rearrange the shareholdings in WIG equally among his children, as a director and shareholder he was bound by WIG's Articles of Association and the applicable provisions of the Act. It is clear that when he executed the documents which were filed at the Registry on 7th November 2023 he did not possess the requisite authority to do so on his own and did not comply with the Articles which govern these matters. In particular Article 31 and 19 of

[52] Filed on 30th April 2024

the Articles of Association were not complied with and this makes the shareholder resolution, return of allotment and notice of change of directors which he signed, invalid.

[101] I therefore conclude that there being (i) no lawful meeting of WIG's board of directors or its shareholders to discuss or decide on any changes to the company's corporate structure, and (ii) no concurrence of the claimant to the shareholder resolution in lieu of meeting, the documents executed and filed by Mr Valmont are unlawful and invalid.

[102] Section 241(3) (k) of the Act empowers the Court to make orders directing the rectification of the registers or other records of a company pursuant to section 244. It states as follows:

> "In connection with an application under this section, the court may make any interim or final order it thinks fit, including - an order directing rectification of the registers or other records of a company under section 244."

[103] Section 244 provides as follows:

> *(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture holder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.*
>
> *(2) An applicant under this section shall give the Registrar notice of the application; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.*
>
> *(3) In connection with an application under this section, the court may make any order it thinks fit including—*
>
> *(a) an order requiring the registers or other records of the company to be rectified;*
>
> *(b) an order restraining the company from calling or holding a meeting of shareholders, or paying a dividend before that rectification;*
>
> *(c) an order determining the right of a party to the proceedings to have his or her name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between 2 or more shareholders or debenture holders or alleged shareholders or alleged debenture holders, or between the company and any shareholders or debenture holders, or alleged shareholders or alleged debenture holders; and*
>
> (d) *an order compensating a party who has incurred a loss.*

[104] I am satisfied that the Registrar was given notice of the claim as required by section 244(2) of the Act. This was confirmed by affidavit of service of Stacy Khodra filed on 24th February

2025 which exhibited an email from the Deputy Registrar dated 7th March 2025 acknowledging receipt of the claim.

[105] Considering the totality of the circumstances, relief should be granted to the claimant pursuant to section 244. Consequently, the documents signed by Mr Valmont on 14th October 2023 and filed at the Registry on 7th November 2023 are declared invalid and shall be cancelled from the registers of the company and from the records of WIG maintained at the Registry. The appropriate orders will be made in this regard.

Issue 4: Should the defendants be restrained from holding themselves out as directors and shareholders of WIG and changing the banking mandate of WIG?

[106] This issue can be resolved succinctly. In light of the above finding that the allotment of shares, and the appointment of the defendants as directors of WIG were unlawful, the defendants are accordingly precluded from representing themselves as directors or shareholders of WIG and from effecting any changes to WIG's banking mandate, until such time as the circumstances may lawfully change.

Costs

[107] In relation to costs there is no party before the court against whom an order for costs may be made. As I have concluded that the unlawful conduct was that of Mr Valmont and that the defendants, had not exerted any undue influence on him in undertaking these actions, the legal authorities are clear that in such circumstances the defendants should not be required to pay costs. I will order that the parties each bear their own cost of these proceedings.

Conclusion

[108] In light of the foregoing, I make the following orders:

1. The discontinuance of the claim against Mr Valmont was not fatal to the claim.
2. The allegation of undue influence by the defendants over Mr Valmont has not been established.

3. The conduct of Mr Valmont in allotting new shares and appointing the defendants as directors of the company was unlawful and unfairly prejudicial to the claimant.
4. The shareholders' resolution executed by Mr Valmont purporting to allot new shares and to appoint the defendants as directors of Windward Island Gases Limited is hereby declared invalid.
5. The documents signed by Mr Valmont on 14th October 2023 and filed at the Registry on 7th November 2023 are hereby cancelled, and the Registrar is hereby directed to cancel the said documents from the company's records at the Registry.
6. The defendants are hereby restrained from representing themselves as directors of Windward Island Gases Ltd and from accessing or altering the company's banking mandate, until such time as the circumstances may lawfully change.
7. The parties will each bear their own costs of these proceedings.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar