Neutral Citation Number: [2020] EWHC 2113 (Ch)

Case No: CR-2018-009804

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOVLENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF PROSPECT PLACE (WIMBLEDON) MANAGEMENT COMPANY LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Building
London, EC4A 1NL

Date: 31/07/2020

Before :

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

- -

Between :

(1) LILY PROPERTY NOMINESS LIMITED
(2) GURUPARAN CHANDRASEKARAN **Petitioners**

- and -

(1) WILLIAM GEORGE STONEBRIDGE
~~**(2) PATRICIA ANNE STONEBRIDGE**~~
~~**(3) RUTH VOGT**~~
(4) PAUL JOHAN VOGT
(5) RICHARD MICHAEL JOSEPH
(6) PROSPECT PLACE (WIMBELDON) MANAGEMENT COMPANY LIMITED
Respondents

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Tom Beasley (instructed by **BDB Pitmans**) for the **Petitioners**
Richard Samuel (instructed by **Peacock & Co**) for the **Respondents**

Hearing dates: 2nd to 6th March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Insolvency and Companies Court Judge Burton:

Introduction

1. This is an unfair prejudice petition under section 994 of the Companies Act 2006 concerning a dispute between homeowners and residents of a private estate in South London. Each holds a share in the company which manages the common parts of the estate. The Petitioners claim that the company's affairs have been managed in bad faith, resulting in their interests in the company being unfairly prejudiced.

The Company and its constitution

2. Prospect Place (Wimbledon) Management Company Limited (the "Company") owns the freehold of a road and the adjoining grass verges, which join a public highway through motorised gates. Behind the gates is a community of eight private homes. They were built in the grounds of a substantial private residence which is now No.3 Prospect Place.

3. The Company's principal objects according to its Memorandum of Association are: first to acquire the land comprising the private road, install gates, drains, pipes, cables and lighting columns (all of which I understand have now taken place); and secondly:

> "To undertake the control management repair and administration of the said land and other facilities and to collect rent service and maintenance charges and income from the owners and/or occupiers of the said dwellinghouses and in connection therewith to engage and employ such servants, agents, builders, engineers and other person as the Company may consider necessary in its absolute discretion to provide such services and to pay all rates taxes insurance premiums and other outgoings costs and expenses or otherwise in relation to the said land".

4. The Company's Articles of Association entitle the owner of each home on the estate to a single, ordinary B share in the Company. B shares may only be held by homeowners and are to be transferred upon or immediately before a change in ownership of the home. The Company's directors are required to register such a transfer on and subject to the production of both satisfactory evidence that the property has been transferred to the new owner and also a completed Deed of Covenant, in specific form, between the new owner and the Company.

5. The Articles provide for the Company to have not less than two nor more than four directors. A party must hold a B share in order to qualify to be a director. Unless otherwise resolved by the Company, no director or officer of the Company is entitled to receive any remuneration for his services.

6. The Articles incorporate the provisions of Table A in the Companies (Tables A to F) Regulations 1985 with certain of the regulations expressly excluded. Among those excluded are regulations 73 to 75 which concern the appointment and retirement of directors. Regulation 76 provides that no person other than a director retiring by rotation shall be appointed or reappointed as a director at any general meeting unless (a) he is recommended by the directors; or (b) not less than 14 nor more than 35 clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the Company of the intention to propose that person for appointment or reappointment.

7. Regulation 77 provides that not less than 7 nor more than 28 clear days before the date appointed for holding a general meeting, notice shall be given to all who are entitled to receive notice of the meeting of any person (other than a director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been duly given to the Company of the intention to propose him at the meeting for appointment or reappointment as a director.

8. Regulation 78 provides that subject to these provisions, the Company may, by ordinary resolution, appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director and may also determine the rotation in which any additional directors are to retire.

9. Article 79 provides that the directors may appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the Articles as the maximum number of directors. A director so appointed shall hold office only until the next following annual general meeting and if

not reappointed at such meeting, he must vacate office at the conclusion of the meeting.

10. During the relevant period the following were appointed (and, where shown, resigned) as directors:

Name	Date appointed	Date resigned
Peter Beckwith	07.09.1999	21.06.2016
Paul Vogt	07.09.1999	-
David Birley	01.01.2001	16.03.2016
Cynthia Hipps	07.04.2016	25.11.2016
William Stonebridge	07.04.2016	-
Richard Joseph	05.03.2018	24.09.2018

11. The First and Fourth Respondents, Mr Stonebridge and Mr Vogt are the current directors of the Company. The Fifth Respondent, Mr Joseph was a director from March to September 2018.

The Deed of Covenant

12. The Deed of Covenant ("DoC") which must be entered into by each homeowner recites as its purpose:

> "(3) This Deed is entered into in order to give effect to the agreed scheme for the management maintenance and repair of Prospect Place Wimbledon London SW20 and ancillary motorised gates and lighting and adjoining landscaped areas".

13. Clause 1 defines Prospect Place to mean "the private road thus named which is situate in the position shown on the Plan" and "'Communal Landscaped Areas' means the grassed or planted landscaped areas which are situate in the positions shown on the Plan".

14. Clause 3 of the DoC sets out a series of positive and negative covenants summarised in Mr Samuel's skeleton argument as follows:

> "a) a series of positive covenants
>
> (i) to maintain the land it owns (Prospect Place and the grass verges) and the structures on it;
>
> (ii) to enforce the provisions of the Deeds against other homeowners; and
>
> b) a series of negative covenants, of which the following are relevant:

i) not to allow to be done on any part of Prospect Place or the Communal Landscaped Areas anything which does or may be or may grow to be a nuisance or annoyance to any other occupier of [the eight houses]; and

ii) not to 'allow any car or cars… to be parked in any part of [the private road] or in such positions that they project onto or overhang [the private road] …"

The Petition

15. The petition was amended on 15 March 2019, 26 March 2019 and 11 November 2019. All references in this judgment to "the Petition" are to the Re-Amended petition.

16. The First Petitioner, "Lily" is a company incorporated in Jersey. It holds the legal title to 7 Prospect Place ("7PP" - I shall describe each home in a similar manner) which is beneficially owned by the Second Petitioner and his wife, Guruparan (or "Paran") and Vanessa Chandrasekaran. They live at 7PP with their young children. Mr Chandrasekaran was joined to the Petition for the purposes of costs only.

17. The Petition claims that:

> "as far as the Petitioners are aware, the Company has always been run on the following basis and understanding ("the Understanding"):
>
> i) That all the owners from time to time of the 8 Properties would be consulted by the Company on material matters concerning the management of the Company's Land;
>
> ii) To the extent that vacancies became available on the board of directors, that the owners from time to time of the 8 Properties would each be fairly considered by the existing directors of the Company for appointment and would be informally approached and then appointed as directors if they so desired;
>
> iii) That the members of the Company would ensure that the Company was run fairly and in good faith as regards all the other members of the Company from time to time having regard to the residential use of the eight Properties and the reasonable expectation in the owners and occupants that they would peacefully use and enjoy their properties and would themselves be treated equally and fairly."

18. The Petition states:

> "Further and in any case, the Petitioner and the Chandrasekarans were entitled to expect all members and those who were appointed as directors of the Company from time to time to maintain a standard of fair dealing and fair play with regard to the running of the Company which would have included acting in accordance with the matters comprising the Understanding set out above".

19. The Petition recites that as directors of the Company, pursuant to the Companies Act 2006 ("CA06") each director owed the following statutory duties to the Company:

    i) to exercise his powers for a proper purpose and in accordance with the Company's constitution (section 171);

    ii) to promote the success of the Company pursuant to section 172;

    iii) to exercise independent judgment pursuant to section 173;

    iv) to exercise reasonable skill, care and diligence pursuant to section 174;

    v) to avoid placing himself in a position of conflicting personal interests pursuant to section 175; and

    vi) to declare an interest in any proposed transaction or arrangement exercise independent judgement pursuant to section 176.

20. The Petitioners allege that despite the directors' statutory duties and the Understanding, the Respondents have discriminated against Mr and Mrs Chandrasekaran and their children in the way in which they have managed the Company and in their general actions in and around the Company's land. The Petition states that not only has the Company treated the Chandrasekaran family differently to other occupants of the eight properties but that steps have been taken that have caused the family to endure continuing stress, anxiety and embarrassment which have had a negative effect on the family's use and enjoyment of 7PP. It states that:

> "It is to be inferred from the matters set out in this Re-Amended Petition that the [Respondents] have adopted a policy in the manner that they have managed the Company aimed at not only diminishing the Chandrasekaran family's quality-of-life but of causing them to sell 7PP or otherwise leave the property".

Incidents giving rise to the Petition

21. Paragraph 15 of the Petition describes a disagreement between the Petitioners and the Company, shortly after the First Petitioner purchased 7PP in 2016:

> "Mr and Mrs Chandrasekaran initially leased 7PP in 2010 before the property was acquired by the Petitioner in 2016. Following this acquisition, the Company wrongfully refused to acknowledge the Petitioner's entitlement to be issued with a 'B' share and wrongly demanded that it pay management fees relating to the period preceding its acquisition of the property. Further, the Company aggressively and abusively pursued this argument including in an email sent on 3 February 2016. A letter was sent by the Company apparently rowing back from this position later in February 2016. This recognised the Petitioner's entitlement to the 'B' share and that the management fee claimed was not due. It also apologised and retracted the "offensive" email of 3 February 2016, offered £500 towards legal costs and gave the following undertaking: "in our future conduct we will treat you fairly and equitably, just the same as we would any other shareholder of Prospect Place".

22. The Petition continues that despite the letter of apology, discriminatory and damaging conduct on the part of those running the Company, and directed at the Chandrasekaran family, continued. Specific acts complained of are set out in paragraph 16 of the Petition ("Paragraph 16 Matters"):

i) **The gardener**

The directors failed, in May 2018, when Mr Chandrasekaran asked them to do so, to take suitable steps to terminate the contract of a gardener. Mr Chandrasekaran had complained that the gardener had racially slurred him in February 2016. The gardener's continued presence on the Company's land caused the Chandrasekaran family discomfort, "compounded by the Chandrasekarans' knowledge that those in control of the Company prefer to support an individual accused of racism than the persons the Company was designed to serve".

ii) **Mr Stonebridge's behaviour**

The Petition cites various incidents when the First Respondent, Mr Stonebridge, allegedly acted in an intimidating and physically threatening manner towards Mr Chandrasekaran which, it is said, comprised attempts to harass the Chandrasekaran family including:

a. Mr Stonebridge visiting 7PP without notice on 2 January 2017 when he rang the bell and banged so violently on the glass surrounding the front door of 7PP that it frightened the Chandrasekarans' then seven-year old daughter;

b. several incidents from September 2017 when Mr Stonebridge is said to have stared aggressively at Mr Chandrasekaran, sometimes in the presence of Mr Chandrasekaran's children, on one occasion using foul language whilst shouting at Mr Chandrasekaran in front of the drive to 7PP and on another occasion putting his face right up to Mr Chandrasekaran's in a threatening and intimidating manner as if he were going to strike him; and

c. Mr Stonebridge taking to "pointedly engaging" Mr and Mrs Chandrasekaran's young children in conversation when they were playing in the front garden of 7PP. "This is something that he has not previously done. It is not welcome conduct and is a form of intimidation".

The Petition states that a number of the incidents had been raised in correspondence but not accepted or appropriately handled by the Company. "The Company's failure to address the issues compounds the actual problem itself and makes it a continuing source of discomfort for the family".

iii) **Double standards**

Examples in the Petition of incidents which the Petitioners claim demonstrate that the Company discriminated against the Chandrasekaran family by adopting double standards include:

a. **Parking:** the Company strictly enforcing no-parking areas on the Company's land against the Chandrasekarans and their guests whilst regularly tolerating occupants of the other properties and their guests or contractors parking on the Company's land. Of particular relevance here, as will be seen, is an event when, according to the Petition, Mr Stonebridge told Mr Chandrasekaran's elderly mother that she was not allowed to park on Prospect Place, even though she was intending to park on 7PP's private drive. This resulted in her parking outside the gates, on the main road and having to walk up to 7PP laden with bags of food and books which she had brought for the Chandrasekaran family's children. The Petition states: "As with other matters, rather than react appropriately when this matter was complained of in correspondence, those running the Company adopted a combative, offensive and incorrect attitude, suggesting that any adverse treatment of her (none being admitted) can possibly amount to unfair prejudice of the required kind".

b. **Appointment of JCF**: Failing to consult Mr and Mrs Chandrasekaran on important decisions concerning its business. The Petition alleges that the Company appointed JCF Property Management Ltd as managing agents after consulting other Prospect Place homeowners but without putting the appointment out to tender and without consulting Lily or Mr or Mrs Chandrasekaran;

c. **Barking dog:** Ignoring legitimate complaints raised by the Chandrasekaran family for example in late 2016 with regard to the late-night barking of a dog left in the garden of one of the properties neighbouring 7PP which caused a nuisance and annoyance to Mr Chandrasekaran's son who was recuperating at home from a critical illness and recent hospitalisation; and

d. **Garden waste:** In November 2017, the Company falsely informing the council's refuse collector not to take away 7PP's garden waste because it had not been paid for.

iv) **Instructing contractors not to cooperate with Mr and Mrs Chandrasekaran**

DS Systems Ltd was overseeing a proposed upgrade to an intercom and gate system and carrying out related works to 7PP. The petition alleges that DS Systems Ltd were told not to cooperate with Mr and Mrs Chandrasekaran. It states that the interference blocked the proposed upgrade of the system causing expense and delay to the works the Chandrasekarans were undertaking at 7PP and that those controlling the Company misreported and exaggerated the likely cost of the upgrade "apparently motivated by a desire to undermine Mr Chandrasekaran rather than because the same was in the interests of the residents and, in fact, indicated a preparedness to damage the interests of members to this wrongful end".

v) **Blocking an upgrade to the gates**

The Petition claims that the Company also blocked a proposed upgrade to the gate system for which Mr Chandrasekaran had indicated he was prepared to

pay: "this was clearly against the interests of the members and residents. The gates remain faulty and has caused great inconvenience to all residents and amounts to a potential health and safety issue".

vi) **Instructing the Company's solicitors to adopt a hostile and defensive attitude**

The Petition states that many of the matters summarised at (i) to (v) above have been repeatedly raised in correspondence but rather than adopting an appropriately conciliatory and constructive tone, those in control have replied via the Company's solicitors and "instructed them to adopt a hostile and defensive attitude completely out of keeping with the fair manner in which they should be managing the Company". This, it is said, indicates bad faith towards the Petitioners.

vii) **Double standards in corporate governance matters** The Petition claims that in marked contrast with their dealings with other residents, those in control of the Company adopted a formal, overly strict and at times incorrect attitude to Mr and Mrs Chandrasekaran regarding corporate governance matters. In particular:

a. Directorship vacancies: the Respondents wrongly failed to consider or invite Lily or Mr or Mrs Chandrasekaran to become directors of the Company, despite vacancies arising. They also wrongly denied in correspondence that Mr Chandrasekaran qualifies for appointment (despite Mr and Mrs Chandrasekaran being beneficial owners of 7PP). By contrast, in the past, other property owners have been informally approached and within the last 12 months, the Fifth Respondent, Mr Joseph was appointed before he even moved into his property and a Mr Beaumer was approached with a view to appointment, even though he had only lived on the estate for just over a year.

b. Denying a claim under section 994: The Respondents wrongly denied in correspondence that the allegations levelled against the Company and the Respondents were capable of justifying a claim under section 994 CA06. Mr and Mrs Chandrasekaran beneficially own 7PP, live there with Lily's consent and their treatment is therefore to be treated as the treatment of the Petitioner.

viii) **2018 AGM** The Petition claims that the Respondents breached their duty to inform members at the AGM held on 27 November 2018 of the Petitioners' threatened litigation and that "This indicates that the directors of the Company are not proposing to address the Petitioners' concerns at all let alone fairly".

23. The Petition summarises that the Paragraph 16 Matters were not agreed to by Lily or Mr and Mrs Chandrasekaran and were not promoted by genuine business considerations. It claims that they were instead designed to deter Mr and Mrs Chandrasekaran from remaining at 7PP and to ensure that they would have no control over the Company or its land as well as to cause damage to their use and enjoyment of 7PP. The Petitioner and Mr and Mrs Chandrasekaran have lost confidence in the Respondents from the way the Company's affairs have been managed in bad faith.

Consequently, it is said that Lily's interests in the Company and those of Mr and Mrs Chandrasekaran have been unfairly prejudiced.

24. The Petition further claims that the Paragraph 16 Matters amount to breaches by the First, Fourth and Fifth Respondents of their duties as directors, giving rise to potential claims by the Company against them.

Relief sought

25. The relief sought by the Petition includes:

i) An order that the Company should invite Mr Chandrasekaran to act as a director and duly appoint him as such;

ii) An order requiring the Company to consult the Petitioner and Mr and Mrs Chandrasekaran on any spending decisions that are likely to result in the Company paying more than £300;

iii) An order that the Company, through its directors, should give reasonable and fair consideration to one of Mr and Mrs Chandrasekaran being appointed as a director whenever the Company is considering the appointment of a new director, assuming that neither of them has already been appointed;

iv) An order that the Company should be run in good faith and fairly in the interests of all the occupants from time to time of the 8 properties at Prospect Place and act in accordance with the rights granted to those owners over the company's land including rights of access to and egress from their properties; or

v) Such other order as may be made as the Court thinks fit.

26. During his closing submissions and taking into account various open offers to which I shall refer later, Mr Beasley emphasised the Court's wide discretion to make such order as it thinks fit.

The Respondents' defence

27. The Respondents deny the conduct which the Petitioner relies upon. They also deny that such conduct amounts to unfair prejudice or that any relief should be granted. The Petitioner's Re-Amended Reply and Defence to Counterclaim and witness statements disclosed additional incidents and complaints of the Petitioner. One such incident which occupied some time during cross-examination concerned Mr Vogt mowing the front lawn in the summer of 2012. According to the Respondents, he did so only after Mr Birley (a former director) telephoned and obtained Mrs Chandrasekaran's consent. Mr and Mrs Chandrasekaran deny that such consent was sought or given.

28. Adding this incident to the Paragraph 16 Matters, the Respondents say that of the acts relied upon by the Petitioner, the following five do not concern affairs of the Company and do not fall within section 994(1) at all; at best, they provide background information. Those five are:

i) the mowing of the front lawn in 2012 (which took place before the First Petitioner bought 7PP);

ii) the alleged racial slur of the gardener in February 2016 (at the time the gardener was not employed by the Company but by Mr Birley who then lived at 3PP)

iii) the Company's failure to do anything about the barking dog;

iv) the refusal of the local authority's refuse collector to collect 7PP's garden waste in November 2017; and

v) the allegations against Mr Stonebridge of harassment. The Respondents claim that they do not concern his directorship or an act or omission of the Company.

29. The Respondents provide an alternative version of events and/or explanations for the remaining acts. They accept that if the Petitioner persuades the Court that those acts comprise a campaign, through the agency of the Company, to drive the Chandrasekaran family away from their home, that would indeed amount to a breach of their statutory duties as directors and unfair prejudice within the meaning of section 994. However, the Respondents contend that if the Court finds no such campaign, then the acts complained of, "comprise no more than a few errors in running the Company's affairs, nothing to take them above the *de minimis* principle and without any indication that such acts would be repeated, nothing to justify the Court's intervention".

30. The Respondents claim that at the heart of the dispute is Mr Chandrasekaran's "disproportionate and impetuous reactions and intemperate and offensive emails, all of which resulted in him sacrificing the goodwill of his neighbours".

The Company's counterclaim

31. The Company brings a counterclaim for unpaid service charges of £2,250. The claim has been resisted by the Petitioner on the basis that it requires the Company to prove that the sums were properly due. The Petitioner also asserts a right of set-off which includes claims for losses caused by a failure to claim service charges from previous occupants of 7PP, damages for nuisance in breach of the Deed of Covenant, damages for the Company's failure to maintain the gate entry system, and damages for interference with their rights of way.

Open offers

32. Negotiations continued between the parties right up to the commencement of the trial before me. The First and Fourth Respondents (Mr Stonebridge and Mr Vogt) are keen to resign as directors of the Company but have not been able to persuade any of the other residents to assume the position. They are not opposed to Lily proposing Mr Chandrasekaran as a director, but they state that as a result of the allegations he has made against them (including allegations of racism) they are not prepared to sit on a board with him. He must therefore find a "running mate".

33. When both an earlier mediation as well as the pre-trial settlement discussions failed to result in settlement, the parties recognised that the only solution would be to ask the Court to provide a judgment on the merits which might hopefully draw a line under all that has gone on in the past.

Legal framework

34. Section 994(1) of the Companies Act 2006 ("CA06") provides:

"A member of a company may apply to the court by petition for an order under this Part on the ground:

a. that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of the members generally or of some part of its members (including at least himself), or

b. that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

35. It did not appear to be in dispute, as set out in Mr Beasley's skeleton argument that it is common to approach claims for unfair prejudice on the basis that the petitioner must establish four elements:

i) the conduct complained of must consist of the conduct of the company's affairs or an "act or omission of the company (including an act or omission on its behalf)", and

ii) the petitioner's interests (or those of the company's shareholders generally) as a member must have been,

iii) prejudiced,

iv) unfairly.

36. Mr Beasley addressed each element in turn, *inter alia* to highlight the breadth of the Court's jurisdiction. He relied extensively on commentary from Hollington on Shareholders' Rights (8th Edition) and Buckley on the Companies Acts (15th Edition). The commentary at paragraph 7-48 of Hollington states:

> "It is not necessary for the petitioner to be able to show a course of conduct nor one that is continuing at the date of the petition: an isolated past act or omission is sufficient to give the court jurisdiction to intervene, although the court will of course take into account in the exercise of its discretion the extent to which the prejudice relied upon by the petition is continuing and has been suffered, or is likely to be suffered by the petitioner. The court will in this context have regard to the substance and practical realities of the business arrangements: *Oak Investment Partners XII v Broughtwood [2009] 1 BCLC 453".*

Conduct of the affairs of, or act or omission by, the company

37. The CA06 provides no guidance on what is meant by "the affairs of the company". In *Re Coroin Ltd (No 2); McKillen v Misland (Cyprus) Investments Ltd and others*

[2013] 2 BCLC 583, David Richards J held that the court will not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look at the business realities. He also highlighted the distinction between the affairs of the company and the private affairs of its members:

> "The section is not directed to the activities of shareholders amongst themselves, unless those activities translate into acts or omissions of the company or the conduct of its affairs. Relations between shareholders inter se are adequately governed by the law of contract and tort, including where appropriate the ability to enforce personal rights conferred by a company's articles of association".

38. In *Re Neath Rugby Ltd (No2), Hawkes v Cuddy and others (No2)* [2009] EWCA Civ 291 Stanley Burnton LJ cited the observations of Powell J in *Re Dernacourt Investments Pty Ltd* (1990) 2ACSR 553 at 556:

> "The words "affairs of the company" are extremely wide and should be construed liberally: (a) in determining the ambit of the "affairs" of a parent company for the purposes of s320, the court looks at the business realities of a situation and does not confine them to a narrower legalistic view; (b) "affairs" of a company encompass all matters which may come before its board for consideration; (c) conduct of the "affairs" of a parent company includes refraining from procuring a subsidiary to do something or condoning by inaction an act of a subsidiary, particularly when the directors of the subsidiary and the parent are the same …
>
> I would accept these propositions, but with some qualification. Proposition (b) may extend to matters which are capable of coming before the board for its consideration, and may not be limited to those that actually come before the board: I do not accept that matters that are not considered by the board are not capable of being part of its affairs".

The petitioners' interests as a shareholder

39. Mr Beasley's skeleton extracted sections of text from Hollington which in turn refers to several cases, starting with *O'Neill v Phillips* [1999] 1 WLR 1092 where Lord Hoffmann said that the requirement for a petitioner to show that his interests as a shareholder is prejudiced "… should not be too narrowly or technically construed". *O'Neill v Phillips* concerned an indication that [P,] the controlling shareholder of the company was prepared to increase Mr O's shareholding and voting rights from 25% to 50% when certain targets had been reached. However, he latterly became concerned about Mr O's management of the company and decided to resume personal command. The House of Lords held that as P had not agreed unconditionally to give Mr O more shares, he could not be said to have acted unfairly in withdrawing from negotiations. At paragraph 9 of his judgement, Lord Hoffmann said:

> "It is somewhat unreal to deal with the capacity in which prejudice was suffered in these respects where there was no entitlement in law or equity in the first place. But assuming there had been a contractual obligation, I would not exclude the possibility that prejudice suffered from the breach of that obligation could be suffered in the capacity of shareholder. … As cases like *R & H. Electrical Ltd v Haden Bill Electrical Ltd* [1995] 2 BCLC 280 show, the

> requirement that prejudice must be suffered as a member should not be too narrowly technically construed."

40. Mr Beasley also relied on the decision of Hoffmann J (as he was) in *Re A Company (No 00477 of 1986)* [1986] 2 BCC 99,171 in which he said:

> "the interests of a member are not necessarily limited to his strict legal rights under the constitution of the company".

The case concerned an application to strike out the petition. The petitioners were husband and wife. They alleged that the respondents had represented that if the petitioners sold their shares in the company to them, they would make a substantial investment in the business and, inter-alia, employ the husband as managing director of the company as well as permitting him to join the board of the respondent company. The petitioners alleged that the representations were false. The respondent company had no funds to invest in the company and the petitioners argued that they had lost the benefit of the husband's salary under his service contract and the prospect of dividends from the shares in the respondent company (which they said were worth little or nothing). The principal ground for the application to strike out was that most of the matters of complaint constituted wrongs done to the petitioners in their capacity as defrauded vendors of the shares in the company or to the husband as a wrongfully dismissed employee of the company. Quoting Lord Wilberforce in *Re Westbourne Galleries Ltd & Ors* [1973] AC 360, Hoffmann J said:

> "… a limited company is more than a mere legal entity, the personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals with rights, expectations and obligations inter se which are not necessarily submerged in the company structure."

He continued:

> "I bear in mind that Lord Wilberforce added that in most companies and in most contexts, whether the company was large or small, the member's rights under the articles of association and the Companies Act could be treated as an exhaustive statement of his interests as a member. He mentioned various features typically present in cases in which further equitable considerations might arise: a personal relationship between shareholders involving mutual confidence, an agreement that some or all should participate in the management and restrictions upon the transfer of shares which would prevent a member from realising his investment."

Hoffmann J found there to be "much force" in the respondents' submissions that it was not a case in which one should look beyond the petitioners' interests as members of the company as defined by the articles of association. He nevertheless decided not to strike out the petition:

> "Section 459 operates within so potentially wide a frame of reference and gives the court so broad a discretion that I do not think that I can say that no evidence which the petitioners might bring in support of the petition could satisfy a court at the hearing that Mr S's employment as a director of A Limited was not in all the circumstances part of his legitimate expectancy as a member of O plc".

41. It was not in dispute during the trial that a member's interests may include the interests of the beneficial owners of the shares, such as Mr and Mrs Chandrasekaran who beneficially own the shares of Lily.

Prejudice

42. Similarly it did not appear to be in dispute, as held by David Richards J in *Re Coroin* [2012] EWHC 521 (Ch) that the alleged prejudice need not be financial in character: "A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section".

43. Mr Beasley submitted that the prejudice in this case should be measured in terms of the rights given to homeowners and residents at Prospect Place as shareholders and pursuant to the DoC, as well as their general right peacefully to enjoy their homes and use of the Company's land.

Unfairness

44. Mr Beasley emphasised the many varied forms that "unfairness" may take. In *Re Tobian Properties Limited* [2012] 2 BCLC 567 Lady Justice Arden explained that fairness is contextual and it is "also flexible and open-textured. It is capable of application to a large number of different situations."

45. Mr Beasley referred to paragraph 7-14 of Hollington "quoting Slade J in *Re Bovey Hotel Ventures Ltd:*

> "The test of unfairness must, I think, be an objective, not a subjective one. In other words it is not necessary for the petitioner to show that the persons who have had de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith; the test, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests".

46. The context in which the alleged unfair prejudice is said to arise is also important. In *O'Neill v Phillips* Lord Hoffmann noted that:

> "Although fairness is a notion which can be applied to all kinds of activities its content will depend upon the context in which it is being used. Conduct which is perfectly fair between competing businessmen may not be fair between members of a family. In some sports it may require, at best, observance of the rules, in others ("it's not cricket") it may be unfair in some circumstances to take advantage of them. All is said to be fair in love and war. So the context and background are very important".

The role of equity and its intervention in this case

47. The rights and duties of a company and its shareholders are governed principally by its constitution, supplemented possibly by a shareholders' agreement or, as in this case, the DoC. In *O Neill v Phillips* Lord Hoffmann, when considering the relevance of context said:

"In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.

The first of these two features leads to the conclusion that a member of a company will 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 be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith.

This approach to the concept of unfairness in section 459 runs parallel to that which your Lordships' House, in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, adopted in giving content to the concept of "just and equitable" as a ground for winding up. After referring to cases on the equitable jurisdiction to require partners to exercise their powers in good faith, Lord Wilberforce said, at p. 379:

> "The words ['just and equitable'] are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act [1948] and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents [the company] suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

I would apply the same reasoning to the concept of unfairness in section 459. The Law Commission, in its Report on Shareholder Remedies (1997) (Law Com. No. 246), p. 43, para. 4.11, expresses some concern that defining the content of the unfairness concept in the way I have suggested might unduly limit its scope and that "conduct which would appear to be deserving of a remedy may be left

> unremedied …" In my view, a balance has to be struck between the breadth of the discretion given to the court and the principle of legal certainty".

48. In *Apex Global Management Limited v F1 Call Limited* [2015] EWHC 3269 (Ch) Hildyard J summarised the principles set out by Lord Hoffmann:

> "44. As that passage makes clear, and as also is apparent from cases such as *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14, the concept of unfairness is open-textured; but it is to be applied judicially and must comprise some breach of either the terms on which it was agreed the affairs of the company should be conducted or of equitable constraints which apply to the exercise of legal powers by reason of the nature of the relationship between the parties. As to the latter, the context in which such equitable considerations most regularly arise is that of what is usually referred to (since the seminal speech of Lord Wilberforce in *Ebrahami v Westbourne Galleries Ltd* [1973] AC 360) as a "quasi-partnership". That useful, but perhaps over-used, phrase is intended to recognise and convey the fact that the relationship between shareholders may be subject to equitable considerations of a personal character which "make it unjust or inequitable to insist on legal rights, or to exercise them in a particular way".

49. The burden is on the Petitioners to persuade the court that the context in which the Company operated is such that equitable considerations should apply in addition to the shareholders' rights under the memorandum, articles and DoC.

50. The intervention of equity is said to arise in this case in the form of the Understanding. In his skeleton argument, Mr Beasley states, in relation to the Understanding, that it is not:

> "relied upon along quasi-partnership lines but plays into the general assessment of unfairness. Part substantially overlaps with the rights that existed anyway. The parts concerning the rights to be consulted on material matters and to be fairly considered and brought onto the board if wanted, were policies communicated by those on the board and followed by the Company. Though, and this is the whole point, they were not applied equally to Lily".

51. The Plaintiffs thus recognise that each aspect of the Understanding replicates existing duties which bound the Company and its directors, other than the right to be consulted on material matters and the right to be informally approached when a vacancy on the board arises.

52. If I had seen evidence of the Company promising to observe the matters set out in the Understanding and then trying to resile from such promises, there is likely to have been a basis for arguing that equitable principles should apply.

53. However, Lily does not contend that it relied upon such an Understanding when it purchased 7PP and in doing so, acquired a share in the Company. In fact some of the alleged conduct of the directors complained of, including a disappointing or allegedly hostile welcome when the Chandrasekaran family first moved into 7PP as tenants and offence that Mr Vogt mowed the lawn of 7PP, both occurred long before Lily purchased the property. Rather, the Petition simply states that "as far as the Petitioners are aware, the Company has always been run on the following basis and

understanding" and that the Petitioners were "entitled to expect all members and those who were appointed as directors of the Company from time to time to maintain a standard of fair dealing and fair play with regard to the running of the Company which would have included acting in accordance with the matters comprising the Understanding".

54. The Company's role is very limited. Its directors are unpaid. Membership arises only as a result of ownership of a home on Prospect Place. Its existence facilitates the maintenance and administration of the common drive, verges and gate entry system by a nominated few, thus avoiding the need for all homeowners to become involved in all decisions and payments as they arise. Members are fairly entitled to expect the Company to be run in accordance with its constitution and for the directors to observe their statutory and common law duties.

55. There is no relationship of mutual confidence or agreement that all of the shareholders will participate in the conduct of the business; the Company exists precisely to avoid them having to do so. Whilst the features identified by Lord Wilberforce in *Ebrahami v Westbourne Galleries* are not exhaustive, it is instructive to note that they do not appear to form any part of the context in which the Company operates.

56. I can see no basis upon which, as pleaded, equity should impose the duties comprising the Understanding on the Company's members. Those who buy a house at Prospect Place become members. Provided they observe their obligations under the DoC, they should be entitled to assume that they bear no greater responsibility for the Company's affairs. The intervention of equity to provide otherwise would result in unnecessary uncertainty.

57. I similarly see no basis upon which equity should impose on the directors an additional obligation to consult before appointing agents or informally to approach a homeowner and recommend his appointment. In relation to the former, some decisions may need to be taken quickly and for the benefit of all homeowners on the estate. This possibility appears to lie at the heart of the reason for the Company to exist. The directors may *choose* on occasion, informally to consult but that does not justify the imposition of an undocumented obligation upon them to do so.

58. Obliging the directors to approach or recommend a homeowner for appointment, in circumstances where they might consider that they cannot in good faith do so, would conflict with their statutory and common law duties.

59. I do not therefore accept that equity intrudes in this case, in the form of the Understanding.

Witnesses

60. The Petitioner advanced the evidence of

i) Paran and Vanessa Chandrasekaran,

ii) Maheswary Chandrasekaran, who is Mr Chandrasekaran's mother;

iii) Jerome Mohamed a technical expert who works with Mr Chandrasekaran and became involved in the discussions regarding Mr Chandrasekaran's dissatisfaction with the gate entry system and a possible upgrade to that system;

iv) David Archer the client relationship partner at Pitmans, solicitors for the Petitioners; and

v) Rachel Constantine, Mr Chandrasekaran's personal assistant.

61. All five witnesses were cross examined during the first two days of trial, after which the next two days were taken up with cross-examination of the Respondents:

i) Paul Vogt, the Fourth Respondent,

ii) William Stonebridge, the First Respondent; and

iii) Richard Joseph, the Fifth Respondent, who purchased 3PP from its former owner, Peter Beckwith.

Mr Chandrasekaran

62. Mr Chandrasekaran took care to listen to the questions being asked of him. He appeared to be concerned that the Respondents' counsel would try to make him say or agree to statements that were not correct and on occasion, held back from providing detailed answers until the purpose of a particular line of questioning became clearer to him. I did not form the impression that he was trying to hide anything. I believe he answered the questions posed of him as honestly as he could, relying on his recollection, perception and interpretation of events. However, as will be seen, in my judgment it is Mr Chandrasekaran's perception of the way he and his family have been treated, coupled with his inability to anticipate or appreciate the effect of his own actions on others, that lies at the heart of this very sad affair.

Mrs Chandrasekaran

63. Mrs Vanessa Chandrasekaran gave considered, careful and in the main, honest evidence. She sought to recall as accurately as possible events that took place several years ago. She explained that she wished to enjoy a happy and harmonious relationship with her neighbours. She stated in her witness statement, that she was upset and disappointed by the unwelcoming and cold response she and her family received from their new neighbours when they moved onto the estate – by "their lack of generosity of spirit toward a young family in such an intimate close".

64. Mrs Chandrasekaran was not directly involved in most of the correspondence passing between her husband and the Company's directors. In her witness statement she said that she was usually aware when people joined or resigned from the board because her husband would mention it to her, but she did not pay much attention, as it was not something she was particularly concerned about.

65. She was copied into a particularly controversial email sent by her husband to Mr Joseph. During cross-examination she said that she did not read it at the time. When asked whether she wished that she had done so, she replied that her husband always

advised her to think before sending an email. She conceded that the email was not "in accordance with our values" but insisted that it needed to be read in context and that her husband felt deeply about two of the issues raised in the email concerning the gardener and parking. She struck me as an intelligent woman and I did not find it credible that she did not consider the email attacked Mr Joseph's character.

66. Mrs Chandrasekaran firmly asserted in her witness statement that she and her husband had never accused the Respondents of racism and that the respondents "have tried to paint the picture that we are accusing them of racism – there is nothing in the petition to support this absurd conclusion". When shown their solicitors' letter which clearly stated: "Our client believes that this treatment is motivated by racism towards him" she said she was not aware of that particular letter.

67. Mrs Chandrasekaran's perception of encounters and correspondence in which she was not directly involved, was dependent upon her husband's interpretation of the events. She appears mostly to have heard only his side of the story and appears to have accepted it without question. An example appears in her witness statement in which she relays an event when her husband told her that he had decided to approach Mr Stonebridge to "clear the air" but that Mr Stonebridge shouted at him using foul language. She said that her husband said he was not going to be spoken to in that way "for no reason whatsoever". Despite not being present during the alleged exchange and not knowing the content of many of the emails that passed between her husband and Mr Stonebridge she appears unquestioningly to have accepted that her husband was entirely blameless for Mr Stonebridge's reaction and concluded: "I was shaken by this incident".

Mrs Maheswary Chandrasekaran

68. Mrs Maheswary Chandrasekaran is in her eighties. She spoke very quietly when giving evidence.

69. I am satisfied that she sought to answer counsel's questions honestly. However, I consider that like her daughter-in-law, Vanessa, her understanding and consequent perception of the treatment of her son's family was largely gleaned from, and in my judgment, heavily influenced by Mr Chandrasekaran's own perception. Her dealings with the respondents and other people on the estate, was limited. Nevertheless when describing in her first witness statement how, in the late spring or summer of 2017 she was asked by a gentleman in the estate not to enter the estate but to park outside on the main road, she explained why she complied:

> "I was afraid to cross the people involved in this matter as I was already aware at their distaste toward my family. I was worried not to exacerbate it".

Later, in the same witness statement she said:

> "I really feel for their situation very badly. They have been bullied for so long and have kowtowed to all that has been put upon them. Now I fear for the children. I worry about the environment in which they are experiencing all this and the effect it might have on them".

Mr Archer

70. Mr Archer obdurately refused when giving evidence to recognise that letters which he sent on behalf of Mr Chandrasekaran antagonised an already delicate situation between neighbours. I formed the view that this was because he genuinely failed to see how inflammatory and offensive were his and his client's correspondence. To conclude otherwise would compel me to find that he was deliberately seeking to mislead the Court when he professed not to appreciate that letters sent by him to the Respondents accusing them of condoning racism, discrimination under the Equality Act 2010 and "an obvious, deliberate attempt to harass" Mr Chandrasekaran were provocative and offensive.

71. Mr Archer initially appeared to seek to distance himself from the allegations of racism by saying that it formed no part of his clients' claim but when it was suggested that no such allegations should ever have been made, he replied that he did not accept that; they were important points and should have been raised.

72. Despite Mr Archer's insistence to the contrary, it is clear to me that the tone of the letters sent by Pitmans on Mr Chandrasekaran's behalf fanned the flames of discord. When counsel referred to the absence of any evidence to justify Mr Archer writing to the Respondents' solicitors saying that their refusal to recognise Lily's shareholding was "entirely unreasoned and obviously a deliberate attempt to harass our client", Mr Archer made no comment. He did, however, concede that a passage in the same letter suggesting that the Respondents' solicitors had given advice which "no reasonably competent lawyer would dare to contemplate" sent under cover of an email stating that Mr Chandrasekaran had informed Pitmans that "he proposes to report Mr Wismayer [the Respondents' solicitor] to the SRA for unprofessional conduct" could have been more measured.

Ms Constantine

73. Ms Constantine's evidence suggests that she is a loyal employee who enjoys working for Mr Chandrasekaran and thinks very highly of him and his family. Her written evidence described her perception of events. I find her description of the heated atmosphere during the 2019 AGM credible.

74. However, as with Mrs Vanessa Chandrasekaran and Mrs Maheswary Chandresekaran, Ms Constantine first came to learn about the troubles on the estate via Mr Chandrasekaran's description of them. I find that on the balance of probabilities this influenced her written evidence: she may well not have been aware of the allegations of racism and the hostile and inflammatory emails sent by Mr Chandrasekaran before stating in her witness statement:

> "From my experience and also from working so closely with them I do not see [the Chandrasekarans] as intemperate in the slightest which I know is something Mr Chandrasekaran has been accused of in the litigation correspondence".
>
> … "The C's are a delightful family and I cannot quite understand why having raised legitimate concerns to the board they are being treated in such an unfairly prejudicial manner".

I consider that she engaged openly and honestly with questions put to her.

Mr Mohamed

75. Mr Mohamed gave evidence only in relation to his involvement with DS Systems. I shall reserve my comments regarding his performance as a witness to that section of my judgment.

Mr Vogt

76. I found Mr Vogt to be an honest and straightforward witness who gave balanced evidence. When counsel suggested that Mr Birley's email demanding arrears of service charges was inappropriate he conceded he "would not have put it that way" and that he could see why it might have been upsetting. He described it as an email from a solicitor rather than a neighbour, which, he felt, could have been phrased in a friendlier way. However, he also said that he considered Mr Chandrasekaran's response to be disproportionate. He pointed out that Mr Birley wrote a letter of apology shortly afterwards but that proved not to be acceptable to Mr Chandrasekaran. He stated that he felt Mr Chandrasekaran took offence at things that did not happen.

77. Mr Vogt agreed that the Company's directors could have chosen not to have employed the gardener or could have terminated his contract far earlier than they did. However, he explained that he did not accept that there was evidence that the gardener was racist. Mr Chandrasekaran had described the conversation he had with the gardener but in Mr Vogt's opinion, did not describe why it was racist. He referred to a letter of apology which the directors at the time had been led to believe would diffuse matters. He was not aware of any further interaction between the gardener and Mr Chandrasekaran after that letter was sent.

78. Mr Vogt willingly admitted that the Company had erred in failing to complete the DoC with Lily. He said it was an oversight around the time matters were handed over to Peacock & Co ("Peacocks"). He readily conceded, as counsel suggested, that "it could be interpreted as 'slapdash treatment'" of the Petitioners but qualified the concession by saying: "It was an error and has been admitted as an error".

79. Mr Vogt was clear that Mr Joseph was invited to join the board following Mr Chandrasekaran's recommendation: "It seemed like a very good idea. Mr Chandrasekaran had said he didn't want to join".

80. Mr Vogt gave a very credible account of what he recalled happened in relation to the difficulties with DS Systems and the gate entry system and that he considered that the directors "bent over backwards to accommodate" Mr Chandrasekaran. He volunteered that some issues "fell through the cracks" particularly when DS Systems started to report to JCF Management Company instead of the directors.

81. Mr Vogt also gave a very credible account of the reasons why his home was chosen as the venue of the Company's AGM in 2019. There was no suggestion in his account that it was for any reason other than to encourage shareholders to attend and to save the Company the cost of hiring a third-party venue.

82. Mr Vogt gave clear and credible evidence regarding the appointment of directors. He said that the current directors usually raise the issue at the Company's AGM and that someone usually "reluctantly comes forward". He confirmed that he had not sought to find a "running mate" who could sit on the board with Mr Chandrasekaran but said he had never sought to deter other neighbours from doing so.

83. His statement that he had never discussed the litigation with neighbours other than Mr Stonebridge and Mr Joseph was consistent with Mr Joseph's evidence and with his decision not to mention the litigation at the AGM.

84. He was very clear that if Mr Chandrasekaran were to be proposed by another member, he would not oppose his appointment but that he would not sit on a board at the same time as Mr Chandrasekaran and he was equally clear about his reasons for adopting that position. My notes record that he said: "In all the boards, I have never worked with someone who accused me of profiting friends, falsifying minutes or of racism".

Mr Stonebridge

85. I shall address Mr Stonebridge's evidence when considering the specific allegations made against him in the Petition.

Mr Joseph

86. Mr Joseph was an impressive witness. He sought to clarify any question which he considered raised more than one issue at a time and to be careful and thorough in his replies. He said that Mr Vogt had been very discrete and merely informed him that there had been issues with 7PP but that no details were given. He first learned the details when he agreed to speak to Mr Chandrasekaran on the telephone. He said that Mr Chandrasekaran talked him through the issues in great detail, though he could not recall whether, included in that list, was the Company's decision to engage Peacocks. He said: "My impression at the time was that I didn't want to get involved in historic issues which, I felt, were between neighbours". This appears to me to be credible. Counsel asked if, upon learning of Mr Chandrasekaran's grievances, Mr Joseph expressed any sympathy for him. Mr Joseph replied that he barely said anything and that Mr Chandrasekaran spoke for 98% of the call. Mr Joseph's evidence, that he concluded the call saying it would be a good thing, as neighbours, to try to get together with Mr Vogt to try to sort it out, is supported by the documentary evidence.

87. Mr Chandrasekaran has alleged that Mr Joseph agreed during the call to nominate him as a director. This is not supported by the documentary evidence and Mr Joseph denies that they discussed the matter during the call. I find it more likely than not, that no such proposal was made or discussed during the call.

88. I found Mr Joseph's explanation why the meeting which he proposed between himself, Mr Vogt and Mr Chandrasekaran did not take place to be credible. He had intended it to be a conciliatory meeting to try to sort things out. However, the provision by Mr Chandrasekaran, ahead of the meeting, of his solicitors' letter, in Mr Joseph's words, "took things to another level" and "contained a threat which had to be taken seriously". When asked whether he agreed that Peacocks' letter of 3 May 2018 in reply was inflammatory and whether he regretted that it was sent out, Mr Joseph replied that he found the question difficult because he had not been involved in the

instruction. He found Gardner Leader's letter to be unhelpful but said that he felt both solicitors' letters were taking matters in the wrong direction and then agreed, that both were inflammatory. He strongly refuted that Gardner Leader's letter could be described as extending an olive branch on behalf of Mr Chandrasekaran.

89. Mr Joseph's evidence that he was prepared to join the board to help to share some of the burden of dealing with contractors but that he had no desire and sought actively not to get involved in any of the historical matters which Mr Chandrasekaran had complained about, was not undermined. His consistent position during the brief period of his directorship was that he wished to remain neutral but if possible, to bring the parties together as neighbours to "sort it out".

Analysis of incidents said to give rise to the Petition

The Company wrongfully refusing Lily's entitlement to be issued with a B share, wrongly being demanded to pay management fees relating to the period prior to its acquisition of 7PP and the Company aggressively and abusively pursuing this argument including an email sent on 3 February 2016

90. Mr and Mrs Chandrasekaran moved into 7PP as tenants in April 2010 and on 27 April 2010 delivered a short letter of introduction to each of their new neighbours saying that they "very much looked forward to making your acquaintance, in early course".

91. Only two of the neighbours replied: Peter Beckwith who at that time, owned 3PP and the former owners of 6PP. In his first witness statement, Mr Chandrasekaran says:

> "No other board member or shareholder replied.
>
> During the period 2010-2016, we had very little interaction with other members of the estate (other than PB). I would often tip my hat or wave at others as they passed, but unless it was PB or his wife, my friendliness was not reciprocated. We are however busy people and I didn't make anything of it at the time."

92. In his witness statement, in relation to Mr Stonebridge, Mr Chandrasekaran stated:

> "I would best describe our relationship during this earlier period as being 'at arm's length neighbours'. WS would respond to my greetings as we passed one another in the common areas, saying something along the lines of 'alright'. As he did reciprocate the wave of a hand or a 'good morning' greeting, and in the context of everyone being quite hostile, I thought it would be helpful to maintain this relationship".

93. Mr Chandrasekaran does not explain or provide examples of what he meant by "in the context of everyone being quite hostile". He proceeded to explain that he had extended invitations for Mr Stonebridge to the Oval and international matches at Twickenham but that none of his invitations was accepted. He also said that he would often invite Mr Stonebridge and his wife over for drinks but that by the end of 2015 it was clear that social invitations were neither going to be accepted nor reciprocated. Mr Chandrasekaran said that: "we were a very busy family, raising young children and did not have the time to be too concerned with the issue".

94. During cross-examination Mr Chandrasekaran said that he was not hurt by the response of his neighbours. When asked whether he thought that they were "looking down their noses" at him he did not address the question directly but replied that if his "good morning" greetings were to be ignored a number of times, he might stop saying "good morning". However, when pressed and asked again whether he recognised that his neighbours were "looking down their noses" at him he replied: "There was certainly distaste". He was asked whether he considered such distaste to arise as a result of socio-economic or racial prejudices. He replied that he did not know the reason but that he certainly felt that there was a distinction between the manner in which he and his family were greeted and treated by their neighbours and the treatment of others at Prospect Place.

95. I did not find Mr Chandrasekarans' statement that he was not hurt by the response to be credible. He professes that he did not care about the good opinion and friendship of his neighbours, but he spoke of his and his wife's excitement to be moving into a new neighbourhood and what a happy time it should have been. He appeared also to be proud to be able to claim the friendship of Mr Beckwith. He sought to get on better with Mr Stonebridge by inviting him to events and he waved to his neighbours as he came in and out of the estate.

96. His witness statement continues:

> "Whilst we were ignored throughout the duration of our tenancy, … matters got worse following the purchase of the Property in January 2016.
>
> Not only have we been treated differently to the other residents, but we have to endure daily stress, anxiety and upset which has had and still has a negative impact on our family and home life. We often feel embarrassed or even harassed and anxious. The motive for acting in this way towards us remains unknown, despite our attempts to reconcile this dispute, but whatever the motive, there is a clear aim to cause us distress".

97. Lily purchased 7PP on 15 January 2016. On 16 January 2016, Mr Birley, in his capacity then as a director of the Company, wrote to Mr Chandrasekaran's solicitor, Mr Archer of Pitmans setting out certain formalities which would need to be completed in order for Lily to become a shareholder in the Company. Each email or other written exchange between the parties is set out sic erat scriptum. Mr Birley's email concluded:

> "I will ask Mr Chandrasekaran [by copy of this email] to let me have his cheque for £750.00 in favour of Prospect Place (Wimbledon) Management Company Limited. This sum is for the service charge for the year from 1 August 2015 to 31 July 2016 which Mr Gallas [7PP's former owner] does not appear to have paid".

98. Mr Archer replied half an hour later:

> "as between Mr Gallas and Mr Chandrasekaran the former is liable for the service charge fee up until 15th January. I believe that new shareholders are only liable for the service charge apportioned from when they acquire ownership. Would you be kind enough to confirm?".

99. An hour or so later, Mr Birley replied:

> "the Management Company is not concerned as to the apportionment of the service charge made by Mr Gallas and his buyer.
>
> Mr Gallas remains liable under his covenant until released [Clause 2.1]. Lily will be liable for the service charge when it executes the Deed of Covenant".

100. On 2 February 2016 Mr Birley sent an email to each resident enclosing a copy of the Company's bank statement which he said demonstrated that five of the eight service charge contributions had been received and asking if those who had made payments on specific dates could identify themselves. His email concluded: "Will those who have not paid please do so without further delay".

101. Mr Chandrasekaran replied a few hours later:

> "I would of course be more than happy to pay our portion of the fees from 15 January 2016 (date of completion). I had been waiting to have confirmation of the formalities of the stock transfer being finalised – hence the silence.
>
> If you would be kind enough to tell me how much is owed, then I will promptly make a cheque (my preferred method of payment) out to the relevant party".

102. Mr Birley replied at 5.47pm on 3 February 2016:

> "Mr Gallas was asked in October 2015 to pay his share of the current year's service charge by 31 January 2016.
>
> … [*illegible*] noted that before your company bought 7 Prospect Place no enquiries were made either by yourself or your Solicitors of Prospect Place (Wimbledon) Management Company Limited, and it is further noted that you have lived in 7 Prospect Place for some time past.
>
> If your suggestion that you should only pay the outstanding service charge from 15 January 2016 is adopted, this Company will be left to seek the balance from Mr Gallas at a cost which will fall on the shareholders.
>
> If the service charge for 7 Prospect Place is not paid in full the Directors will have to report this fact to the other shareholders before the next AGM and Mr Gallas's, your company's and your names will be mentioned.
>
> I feel sure that you do not want your neighbours to have a bad impression of you.
>
> If however you decline to pay the service charge in full would you or your Solicitors draft a form of words to explain your decision which the Directors will consider".

103. Mr Chandrasekaran replied at 10.26pm the same night. His email ran to over two pages and whilst not extracting all of it in this judgment, as with other exchanges between the parties, I consider it appropriate to refer to it quite extensively.

"Dear David,

Thank you for your email and for the parts which furnish me with the information I have for so long wanted.

The remainder of the email, is in any view, ill-judged, hurtful to say the least and of course menacing and attempts to intimidate. I understand you are a solicitor. I am responding to it in the absence of legal advice. I am writing more in sorrow than in anger but please note that I am no shrinking violet and your ill-judged, un-neighbourly email, with all the conations it contains is now on the record. As you will see I am copying your fellow directors as you have referenced them.

…3. My 'suggestion' is not without foundation - in fact I go further as it is not a suggestion rather an assertion. I know of no legal responsibility on my part to pay for the fees in question whilst we were tenants – quite the contrary as I have even, in the past, obtained the management fee for you (through my own strenuous efforts) from Mr Gallas via his agents – a 'herculean' task if you recall.

4. You seek to suggest that if I do not pay the sum – which is not even due from me, or I presume a pro rata sum of £750.00, you and your fellow directors will seek to impugn if not to defame my character via the AGM to other shareholders. On this I have the following observations:

a. I have never owed your company any funds whatsoever

b. I have volunteered to pay any funds from the time of ownership via my own company (15 January 2016)

c. Seeking to promote a view which is contrary to the above is clearly defamation, coercion and intimidation

d. The email below, of which presumably there was part of a quorum of the board of directors which sanctioned it, seeks to intimidate and harass without any foundation for which I will seek appropriate remedy in the event I need to. I will not, for the avoidance of doubt, believe that it was sent in the absence of the knowledge of at least one other director. Peter [Mr Beckwith], who I know is abroad and is a close family friend, would never in my view, have sanctioned such a ghastly and beastly note to have ever been conceived leave alone sent.

e. I confirm I am happy for any or all shareholders in Prospect Place to see the full correspondence of this audit trail - the initiation of which was by the director(s) of the management company – provided it is in full. From a legal perspective I am also happy to have it published in a wider capacity.

5. You state that I or my solicitor should write a form of words that the directors would consider. Apart from the effrontery and defence of the other parts of your email, I think it is reasonable for me to ask, somewhat rhetorically, why it is that I should have my solicitor write to the company on a matter in which there is no legal basis for your claim. I may justify fees in writing to you and

your directors for sending me such an invidious note which threatens the peaceable existence of me and my family but that is about the limit of it.

Other: I reported the following to David Archer, senior partner, Pitmans LLP in a casual conversation I had with him last week - I say it was casual in case it should be seen that I can be intimidated so easily which warrants me calling a lawyer. You will no doubt recall, as my wife and I clearly do, the incident in 2012 when Mr Vogt had claimed to speak to my wife about the front lawn and no such conversation ever took place whatsoever. I go no further on this point, at least for now.

Last week, your gardener, who identified himself as Jakob, no less confronted me with a very menacing and aggressive approach and tone respectively, in which he told me I was "wasting everybody's time" and that I should pay him "at least 20 to 25 quid" to clear the leaves. He told me that he was employed by you and that you had told him to ask me. Having spoken to me in this manner, he goes on to ask, menacingly, "can you speak English?". Ironically, a first generation immigrant, who can hardly string a grammatical sentence in the language [*illegible*], asks this of a second one! It seemed obvious to me that he had been put up to the whole task; this had shades of the past of course to which I refer above. For the record, I was educated in the English medium, attended two (English medium) top ranked Universities, was an adviser or to the UK CBI (in English), adviser to the Dti (in English) and adviser to the Prince of Wales (in English), am a Visiting Professor in a leading (English speaking) University, and a director of an English company of which all matters are discussed in English and am a father and husband within a house where only English, with poor but passable French, is the 'mother tongue' and more (in English); we can therefore reasonably deduce that I have passed the English test and I would thank you not to send your gardener around to ask such rude and impertinent questions. I trust this type of incident will never again take place. I now have a note from Jakob for £700.00 for the clearance of my garden. This is clearly intimidation and harassment. You might like to remind him that I have paid my dues for his welfare as a recent immigrant himself and that as house owner in the close he will in future treat me and more immediately my family with more respect – as in the alternative I will take swift and pretty harsh action – please do not underestimate me on this. If you think me a shrinking violet – I warn you to think carefully, again please.

… Attempted intimidation and harassment and indeed coercion of a young family but a few weeks after we have become permanent residents is an invidious thing to do – yet with this email it has been done. I have sought to have the view of acquaintances to your email below to which one of the following comments have been made which I want to quote: outrageous; and 'I would not want to have neighbours like this'.

… You have set a precedent in which it seems to me that you (and possibly others) intend somehow to bully me and my family – a totally invidious thing for me to think leave alone write– but I would like to leave you and your fellow directors under no illusion about the following: we are not ones to be bullied. Putting this to the test would result in a very sad state of affairs. We will live here in peace as we have always done and go about our daily lives without

> coercion or the threat of unfounded allegations and the insinuation of blackmail. The email below demonstrates a woeful lack of decency and seeks only to shame its author.
>
> It is hugely regrettable that you have chosen to write to me in the manner in which you have and given that you are a solicitor, I would have expected better. I shall always remain surprised at this incident. I do think you have misjudged my mild manner for that of being one of a pushover. I would caution you to think again.
>
> Finally, I do reflect and wonder how on earth it is that a mere sum of c£375.00 (for which I am not the debtor) has resulted in such an aggressive, unwarranted and horrible letter but weeks after we have had the joyous occasion of becoming permanent residents.
>
> I look forward to your (and your fellow directors') response to the pertinent points above".

104. On 4 February 2016 a follow-up letter was sent by Mr Chandrasekaran's lawyer, Mr Archer to Mr Birley. Mr Archer referred to the "ill-judged" email of Mr Birley. He spoke highly of Mr Chandrasekaran, explained how he had been referred to Mr Archer as a client and that he "is a quiet, peaceable, non-contentious and very respectable gentleman with a young family who are all very happy at the Close". He said that he did not understand why the Company was demanding that Mr Chandrasekaran pay the arrears of service charge as Mr Birley's earlier email of 16 January 2016 confirmed that Mr Chandrasekaran would only be liable once the new deed of covenant had been entered into. He added: "I am instructed to inform you and the Board that PC is happy for you to address this issue to shareholders in the AGM as you have suggested – but that he and I must also have a copy of it. Naturally, it is presumed that the content will be truthful and avoid slander or defamation". He then asked Mr Birley to confirm the apportionment calculation.

105. On 7 February 2016, Mr Chandrasekaran wrote to Mr Beckwith referring to a first draft of a letter which it appeared he wished to be circulated to the Company's directors. He said:

> "It's a very sad state of affairs that the board believes it can blackmail and bully me and I'm surprised you have not come to our support as you know me well – and even more surprised that a retraction and apology is denied. I will take this all the way as I will not allow me nor my family to be treated like this".

106. Mr Beckwith replied early the following morning saying that he was waiting to hear from Mr Birley once Mr Birley had received promised documents from Mr Chandrasekaran's solicitor, "Hopefully it can then be resolved".

107. Mr Chandrasekaran replied:

> "no communications from Pitman [Mr Chandrasekaran's solicitors] on this front will be forthcoming until this matter is resolved. I could not respect myself if I put up with this sort of bullying from day one and as we both know the docs that are supposed to be required from Pitmans is simply a red herring. I will write to

> the board later. I am not having the piss taken of like this and any other businessman who has seen this seems more outraged than I am as the victim".

108. On 9 February 2016, the Company sent a letter to Mr Chandrasekaran, drafted, it seems, by Mr Birley, but signed by all three of the Company's then appointed directors. It started:

> "We regret if you consider that we have been discourteous as none was intended.
>
> Further we confirm that you and your company have been treated no differently from any other buyer of a property in Prospect Place and that we hope that we can all be on good neighbourly terms".

The letter (the "Letter of Regret") continued to explain that a new share certificate could be provided upon Mr Chandrasekaran providing the usual indemnity and setting out details of the outstanding service charge, calculated from the date on which Lily bought the property and how it could be paid.

109. A response was received from Pitmans on 11 February 2016. The opening paragraph stated:

> "This matter has been passed to our Litigation Department following the receipt of your unsatisfactory letter of 9th February 2016 which fails to address the significant concerns to which your original email of 3rd February gave rise".

The letter which extends beyond two pages referred to the threats made in the Company's email of 3 February 2016 which "were manifestly an improper attempt to coerce our client into making payment of the sums which you had already acknowledged that he was under no obligation to pay". It continued:

> "The nature of your current conduct strongly indicates that you intend to continue to threaten to make further untrue allegations which are defamatory and actionable, in order to bring pressure to bear on our client to accept liabilities which as a matter of law are not for him to discharge. The threatened publication, prior to the AGM, of defamatory and misleading allegations pertaining to our client which are of a wild and unsubstantiated nature would self-evidently cause our client serious harm of a nature actionable under the Defamation Act 2013. Our client's position in relation to these threats, and the course of conduct of which they are examples (and which is undoubtedly also actionable under the separate head of harassment) is expressly reserved. He is entitled to take formal legal measures to protect himself and his position up to and including the issue of interim injunctive proceedings without notice".

The letter concluded that in the absence of Mr Chandrasekaran receiving by noon on Monday, 15 February 2016 (i) an unreserved apology of the "disparaging and untrue comments made (and threatened to be made) about our client and his conduct"; (ii) an assurance of fair and equitable treatment, backed by an indemnity against future costs that Mr Chandrasekaran may be obliged to incur in securing the company's performance of the same; (iii) an undertaking that this type of conduct will never be repeated; and (iv) prompt payment of his legal costs "in relation to this exercise" (which I understood to mean the costs Mr Chandrasekaran had incurred in instructing

his solicitors in relation to the service charge dispute), he would be advised to commence formal proceedings without further delay.

110. The Company instructed its own lawyer, Miss Wright of SW19 Lawyers LLP. This resulted in a letter of apology being drafted by Pitmans for the Company's directors to sign (the "Apology Letter"). As Ms Wright explained to them: Mr Chandrasekaran's litigation solicitor "agrees it is 'punchy language', but says that the less we change, the more quickly his client will accept". By 18 February 2016, all three of the Company's directors (the Fourth Respondent Mr Vogt and two of the other directors who have now retired, Mr Beckwith and Mr Birley) signed the letter which was delivered by hand to Mr Chandrasekaran:

> "… In our email to you of 3rd February we accept that we used injudicious language in writing to you as we did. We also recognise that the content and the insinuation contained within it was distasteful, and would have seemed in any view coercive in its manner and with hindsight we see that we were in error. For this we apologise unreservedly whilst also fully retracting the offensive email in question.
>
> We recognise that the debt for the period before your purchase of the property is not due from you or the company which is now to be the legal owner of number 7 and that in attempting to go after you for that debt, we erred.
>
> We also apologise for the conduct of the gardener and will ensure that this will not be repeated.
>
> In conclusion, the events between the completion of your property purchase on 15th January and the present fell well below the standard we would expect of ourselves and we will ensure that in our future conduct we will treat you fairly and equitably, just the same as we would any other shareholder of Prospect Place. Having said that, in consideration of the distress caused to you, we wish to pay your reasonable legal costs up to £500.00. We wish to have good neighbourly relationships going forward, and trust that this will reassure you of our good intentions in that regard".

111. On 18 February 2016, Ms Wright emailed a copy of the Apology Letter to Mr Chandrasekaran's litigation solicitor saying:

> "As discussed, I attach a copy of the letter, and sent it on the basis that this settles the matter and will be kept private and confidential by your client. We will send the original letter to your office today by post".

112. Following this incident, the directors decided to instruct a local firm of solicitors, Peacock & Co ("Peacocks"), to deal with the Company's day-to-day notices and accounting records. On 24 February 2016, Mr Birley wrote to Peacocks enclosing copy correspondence with Mr Archer and instructing them to ask Pitmans to send the documents which Pitmans had first been asked to send by email dated 16 January 2016 and to check that they were in order. It appears from an earlier email in the bundle that those documents were the former owner's share certificate, the share transfer form, a copy of the legal transfer of 7PP to Lily, Lily's certificate of incorporation and the DoC between Lily and the Company. The letter explained to

Peacocks that the Company had accepted that Lily would only be liable for the service charge on an apportioned basis from the date when it purchased 7PP and instructed them to ask Pitmans for the last address they might have for Mr Gallas.

113. Peacocks sent a client engagement letter on 3 March 2016. On 7 March 2016 Pitmans wrote to Mr Birley chasing the registration of Lily's share in the Company. The letter concludes:

> "Mr Chandrasekaran is not at all anxious about becoming a shareholder but as this firm owes a duty of care to Lily to finalise this we are writing to ascertain if indeed you are, contrary to your assertions during the period in which Messrs SW19 Lawyers LLP were acting for you, looking to prejudice its position by preventing its rights under the freehold to become one. Please can you state your position by return?"

114. The letter was also sent by email to Mr Vogt. He forwarded it to Mr Birley who replied:

> "Pitmans know what is required of them to complete the formalities".

Mr Vogt replied to Mr Birley also by email:

> "Will you reply to Pitmans just stating that Peacocks have been appointed? Hopefully it will then become less personal!"

115. Mr Birley sent a brief email to that effect at 3.51pm on 8 March 2016.

116. On 14 March 2016 Mr Chandrasekaran wrote to Mr Beckwith, copied to Mr Archer and Ms Bianca Belby at Pitmans:

> "Dear Peter,
>
> Given our planned discussion after 6pm today, I am forwarding this to you with a copy to David and Bianca, ahead of instructing them to send it to the board. I have gone from being upset to being very, very angry. I seldom if ever get this angry as you know, but all my supporters – a number of whom you know, have told me that I do not need to accept being treated this way – and I certainly do not. I have done nothing to invite this hostility and despicable behaviour and enough is enough …"

It is unclear from the bundle which letter or document Mr Chandrasekaran was forwarding that made him so angry but it appears to have related to the continued absence of Lily's share certificate. Mr Beckwith immediately emailed Mr Vogt asking why Peacocks were not "dealing with this promptly". Mr Vogt replied saying that when speaking to Mr Archer, it would be worth emphasising that in view of Mr Beckwith's impending departure from Prospect Place, the Board had decided to appoint Peacocks to handle all administrative matters including finalising the outstanding issues with 7PP, but that formalities with Peacocks had only been completed late the week before and that explained the delay. There had been no wish to obstruct finalisation.

117. The share certificate was sent by Peacocks to Mr Archer on 16 March 2016.

118. Mr Chandrasekaran's solicitors do not appear to have made any pre-completion enquiries of the Company to check that all service charge payments had been made. It was only when Mr Birley wrote to Mr Archer on 16 January 2016, asking for a cheque from Mr Chandrasekaran for the whole year's service charge, that Mr Archer asked Mr Birley to confirm his understanding that the Company would apportion the annual charge so that Mr Gallas would only be liable to 15th January and Mr Chandrasekaran would be liable for the remainder of the year. Mr Birley's response, that the Company was not concerned with the apportionment agreed between vendor and purchaser and that Mr Gallas remained liable under his covenant until released did not appear to me to answer the question. Neither the Company's Articles nor the DoC includes any mechanism for apportionment.

119. The tone of Mr Birley's email of 3 February 2016 (saying that if the service charge was not paid, the directors would have to report the fact to the other shareholders – "I feel sure you do not want your neighbours to have a bad impression of you") was hostile and brusque. His email was, on any reading, far from welcoming and the statement that he would inform the other members if it had not been paid, was clearly intended to bring pressure to bear on Mr Chandrasekaran to persuade him simply to discharge the full annual sum of £750. It was a potentially inflammatory letter, tempered slightly, in my view by its concluding invitation, should Mr Chandrasekaran decline to pay the service charge, to provide a written note explaining his decision, for the directors to consider.

120. Whilst I found Mr Birley's letter to have been potentially inflammatory, I consider Mr Chandrasekaran's response to have been incendiary. This was the first of many occasions when he chose to portray himself as a victim, at the mercy of others whom he perceived to want to bully, harass and generally treat him unfairly. The language he used both in his correspondence and during cross-examination was emotional and resentful. He said in cross-examination that he considered Mr Birley's letter to be "More than irritated. I think he's sending me a message. I'm prepared to fall in but that is an unnecessary and threatening email that threatens to impugn …" . He said: "What he's saying is that he disapproves of how I've bought the house or disapproves of us". He said that he considered the letter to be a clear indication of how his family would be treated and he wanted it to stop.

121. Mr Archer's letter, the next day (by which time he had seen the exchange between Mr Birley and Mr Chandrasekaran) stated that he too was:

> "perplexed as on 16th January you confirmed by email that [Mr Chandrasekaran] (through his company Lily) will only be liable once the new Deed is executed".

122. Mr Archer did not appear to recognise that Mr Birley's response had said nothing about apportionment. On 8 February 2016 Mr Birley suggested to Mr Vogt that he send a reply to Mr Archer saying:

> "I did not confirm that Lily … is not liable pre its purchase. That company's name was never mentioned in our conversation. Nor did I say that Mr Chandrasekaran was not liable.

> As I have said before Mr Gallas remains liable on his covenant until released and were the Management Company to litigate against him, he would no doubt rely on the covenant for indemnity which his solicitors should have obtained for him".

That reply does not appear to have been sent. Instead, Mr Vogt suggested that it might be better to send Mr Archer a copy of the Letter of Regret "as this pretty much covers the situation".

123. Despite Mr Birley's expectation that such matters should have been resolved pre-completion between vendor or purchaser, the Letter of Regret confirmed that Mr Chandrasekaran would no longer be pursued for the arrears which accrued during Mr Gallas' period of ownership.

124. The Letter of Regret was not acceptable to Mr Chandrasekaran and he insisted upon the Apology Letter.

125. The service charge demand clearly comprised an act on the part of the Company. As service charges are payable as an incidence of homeownership which itself entitles and compels membership as a shareholder, the demand concerned Mr Chandrasekaran's interests as a member. Objectively speaking it was not unfair for the Company to demand monies which were due in respect of 7PP and which Mr Birley considered should have been resolved between vendor and purchaser of 7PP before completion. At that stage, threatening to inform the other neighbours which homes had not paid the annual service charge, may have been hostile and prejudicial, but not unfairly so. The Company decided to withdraw its demand and its directors apologised for the tone of Mr Birley's email. Nothing further appears to have been said about the matter to the other homeowners. Whilst this incident provides important background information, I do not find it amounts to unfair prejudice.

The gardener

126. The petition complains that the directors failed, in May 2018, when Mr Chandrasekaran asked them to do so, to take suitable steps to terminate the gardener's contract. Mr Chandrasekaran's email of 3 February 2016 referred at length to his encounter with the gardener. At that time, the gardener was employed by Mr Birley.

127. The Apology Letter apologised for the gardener's conduct and said that the Company would ensure that it would not be repeated. In his witness statement, Mr Chandrasekaran confirms that:

> "Presumably someone had a word with him because he has not confronted me in the same way since, though he is generally haughty on the occasions when our paths cross".

Nevertheless, he says that:

> "His presence on the estate has been a regular and upsetting reminder of the event in 2016 and caused my family continuing discomfort. It has been a constant reminder of the apparent contempt the board has towards my family".

128. During cross-examination, counsel referred to the Apology Letter, describing the directors as having abased themselves to give Mr Chandrasekaran all that he wanted. Mr Chandrasekaran replied that was not correct because he wanted the gardener to be removed.

129. I find that, by the wording of the Apology Letter, Mr Chandrasekaran did not ask for the gardener to be removed; rather he asked the directors to assure him that the gardener's behaviour would not be repeated. His own evidence confirms that it was not. Mr Chandrasekaran chose to interpret the gardener's continued presence as a reminder of the contempt that he perceived the board to feel towards him and his family. I saw no evidence surrounding the issue of the gardener to suggest that this was the case. I find nothing prejudicial or unfair in the directors taking on the employment of a gardener whose alleged offensive conduct towards Mr Chandrasekaran, they had ensured, was not repeated.

The gate entry system

130. On 27 September 2016 Mr Vogt (who had by then been appointed as a director) learned from DS Systems that Mr Chandrasekaran's assistant, Rosie Town had contacted them regarding the gate system. He emailed Ms Town saying:

> "If you could let me know the nature of your request the Board will be happy to look into it. I am aware that the gates were working rather slowly but hopefully this has now been rectified. As you are probably aware, ds look after the intercom and cctv whereas city gate look after the gates".

131. Ms Town replied two weeks later explaining that she had been newly appointed as Mr Chandrasekaran's personal assistant and apologising for contacting DS Systems directly. She said she had misunderstood Mr Chandrasekaran's instructions and that Mr Chandrasekaran would discuss the matter "which is quite technical" with a member of the Company's board of directors.

132. Mr Vogt was at that time in Malta. Nevertheless he appears to have taken the matter up with DS Systems whose Mr Cathcart emailed him also on 12 October 2016 explaining that whilst 7PP still had intercom access, it had lost video signal but that as all the other homes seemed still be to receiving it, he suspected it may have been caused by damage to the cables when building works were being carried out at 7PP. He asked Mr Vogt whether DS Systems should investigate the matter. A manuscript note on the email suggests that Mr Vogt replied to say that they should investigate but that it would be for 7PP to meet the costs if caused by the building work.

133. Mr Vogt also appears to have spoken to Mr Stonebridge to see whether he knew anything about the issue. Mr Stonebridge sent Mr Vogt an email the same day saying:

> "He approached me last night when I saw him outside and started talking about getting digital controls in his new house rather than analogue and how he can check up on his house whilst he's away etc."

134. Just under a month later, Mr Cathcart of DS Systems reported further to Mr Vogt:

> "I've spoken to number 7 now and they're still talking about an upgrade to the intercom system. I think they're trying to gather support amongst residents. There is a BPT system available that can have handsets in the house and also use an app as well if required on mobiles and tablets. It would involve changing every component of the system and also having a good broadband line at the controls by the gate. The existing cabling could probably be used though.
>
> I'll pass on the name of the system to number 7 but will obviously not "recommend" an update as such to a system that works perfectly well".

135. Mr Vogt forwarded the email to Mr Stonebridge:

> "Please see below messages from ds. Let's await details – my first reaction is that there is more scope for problems than with the existing system which works well … Rgds Paul".

136. Mr Stonebridge replied:

> "I think you know my feelings about him by now, lets see if he approaches us in the proper manner regarding this on the 28th?"

This was a reference to the Company's forthcoming AGM on 28 November 2016.

137. On 9 November 2016 Mr Beckwith forwarded to Mr Chandrasekaran DS Systems' most recent email and Mr Vogt's brief reply:

> "Further to our telephone conversation of this morning I now enclose a copy of the email from Brian Cathcart at DS to Paul Vogt.
>
> In order to resolve the matter, [Mr Vogt] is asking if DS will come to my house at 4pm on Thursday 10th November to present the BPT System and at the same time confirm whether or not the existing cabling can probably be re-used throughout and if not with what amendments e.g. converter?
>
> Obviously your presence at that meeting is mandatory.
>
> I will confirm as soon as possible that the meeting is on".

138. Mr Chandrasekaran replied an hour later:

> "Dear Peter,
>
> Firstly, thank you.
>
> I have read the email from both DS and from Mr Vogt, in reply.
>
> Rosie Town (copied) and Jerome Mohamed (copied) have been dealing with Brian Cathcart of DS.
>
> To say we are exasperated is an understatement as for three months we have been in dialogue with DS systems which has, amongst others, gave us misinformation. We have had to put the folks there right numerous times. The nature of the

writing in the communications below is of course revealing and telling. Rosie, has never before expressed to me her exasperation at dealing with any matter as she has this one – and in particular with Brian Cathcart whose conduct I know you would not yourself tolerate.

For the record, we have never tried to 'gather support amongst other residents'. The rest of what is said in BC's email which I note has pejorative overtones about us, is at best specious. The patience we have shown and the goodwill we have given to DS in educating them as to what is in the market and that which they should get trained up on is something you may not be aware of.

Alas for the record, DS have themselves told us that the current system is antiquated and needs updating and has said that they themselves cannot gain support from the board to change it! To then see a change of stance on this is rather extraordinary.

The work to the house is being severely held up by this intransigence on behalf of this supplier. It is now costing us dearly in time and money and I brought it to your attention after all these months, to seek assistance.

As to Brian Cathcart saying he will not "recommend" such a system - well, at the very least this is prejudicing a shareholders interest, presumably at the behest of somebody else as he seems to be quoting it and we do wonder why it is that we continue to be at the wrong end of unneighbourly treatment. It is perplexing.

I cannot attend tomorrow I'm afraid even if I wanted to as my diary is conflicted. In any event, as I say above, the nature of the writing below between the supplier and the board is telling and any attendance would I fear be a waste of time".

139. A few hours later, having been copied into Mr Chandrasekaran's email, Jerome Mohamed wrote directly Mr Vogt:

"I have been dealing with DS for works at 7 Prospect Place by request from Paran C. I believe there has been some misunderstanding. DS were contracted to make a simple connection from the gate system to the telephone system. After numerous visits over several months the work was finally completed. During the process numerous unrelated issues were discovered including a major piece of renovation at the control box for the gate. This had nothing to do with number 7 but Paran asked me to assist DS for the benefit of all the residents of Prospect Place. Throughout the process it was stressed to me by DS that the entry system was old technology and in need of updating. I watched DS troubleshoot the issues. Either they did not know what they were doing or the system is in such poor condition that they were hounded by multiple consecutive issues making troubleshooting problematic i.e. one problem led to another. This is not the sign of a stable and reliable system.

I note from a comment below that it is suggested that broadband would be required. This is a false assertion. The obvious solution is to install a new system that is reliable and therefore provides lower cost of ownership and numerous other benefits (a good example is the Siedle system).

> I must contest the suggestion that a new system will be more scope for problems. The current system has already proven to be unstable and out of date (by DS's own admission). A new system can only be more reliable.
>
> I am a senior networking and security consultant of two decades, I am happy to be of more assistance if required but do feel that we need a better level of cooperation from DS systems".

140. The proposed meeting had to be rescheduled. Mr Chandrasekaran was informed and on 10 November 2016 Mr Vogt replied to Mr Mohamed:

> "Thank you for your message.
>
> There may well be some misunderstandings and I am grateful for your input.
>
> We (the Board) were first approached by DS systems on 27 Sept. I then had various exchanges with Rosie and following her request to arrange a meeting I advised that Bill Stonebridge would be available.
>
> There was a discussion a few days later but only about generalities (the wish to have a more comprehensive and modern system) rather than specifics. We then suggested to DS that they should contact No 7 with availability of systems but pointed out that any new system would be subject to residents support.
>
> Incidentally the Board has never received a request from DS to update the system and have been informed that it is working well. Similarly there have been no complaints from other residents.
>
> I feel sure that both The Board and the residents will be willing to consider any request to upgrade.
>
> I therefore suggest that you (considering your technical expertise) make a proposal including the cost and advantages of a new system. Ideally this could be considered at our agm on 28 Nov when all residents are invited to attend.
>
> Meantime we are trying to set up a meeting with Brian Cathcart [of DS Systems] but he is on site in Bristol this week. Would you like to attend this meeting?
>
> Finally I would like to emphasise that we are not in any way trying to be obstructive or unneighbourly. We are here to represent the interests of all residents equally and fairly".

141. Mr Mohamed replied by email on 10 November 2016:

> "… I cannot comment on what DS systems might have been telling your board, but I can confirm that on numerous occasions they told me that the current system is outdated.
>
> Whilst Paran would encourage me to help in whatever way I can, I do not feel it is appropriate for me to attend a meeting for reasons which will become clear in this email. I am also not a retailer of such systems and therefore cannot put forward a proposal with costings, rather this should surely be a task for DS

> systems as your appointed supplier, however I question their breadth of knowledge for this.
>
> What I say I do of my own free will and that is that for some 7 (seven) months I have struggled to get cooperation from DS to complete a simple task (project start date was 21st March). I believe this was due to a lack of understanding of the technology. More recently my colleague Rosie Town has received push back at every instance which is severely hampering the completion of works at number 7. We have therefore been very reasonable in the patients we have shown.
>
> Today, we finally received contact from DS with information about how to add a phone at number 7. Whilst this is very nice to know, our request was for them to install the phone so the builders may continue work that has been put on hold. In that same email DS suggested a new gate entry system. I am perplexed that a. this was sent to us and not to you and b. why communications with me concur with the need for a new system yet those with you suggest the opposite? I refer here to the email from DS systems of seventh November.
>
> If I may say, I am very surprised that such a fuss has been made out of such a trivial job".

142. On 11 November 2016, Mr Vogt wrote to Mr Stonebridge and Mr Beckwith to report that Mr Mohamed's response "was not too helpful …" but that he understood:

> "the immediate problem 'holding up the works' has been solved (I will recheck with DS) and in which case there is no need for an urgent meeting. I will also get reconfirmation from DS that the present system works well. DS are doing some work on an upgraded system and this will give us an idea of the cost/scope which we can present to the agm".

143. Further correspondence between the directors, DS Systems and Mr Chandrasekaran led to Mr Vogt emailing Mr Chandrasekaran on 16 November 2016:

> "Thank you for your message. I am sorry that you are experiencing problems and we will do our best to assist. I should clarify one point – DS contact me/the Board on matters affecting the community but matters affecting one specific house are dealt with direct as has been the case with no 7. If you can let me know exactly what is outstanding with DS I/we will endeavour to get a satisfactory response".

144. Mr Chandrasekaran replied:

> "I am most grateful and understood.
>
> With regards to number 7: as you may have ascertained from the emails which have flowed, DS tells us
>
> 1. the gate entry system is outdated and cannot accommodate our request for a gate entry system to work with our home automation system.
>
> 2. DS inform us that everything must be sanctioned by the Board (which is of course understandable).

> We require at least now another entry system to be installed and are not receiving any cooperation from DS. The matter is urgent please.
>
> We have been at it for seven months with DS. This is now causing delay to our renovation. Frankly I was dismayed to see the email of 7 November to you which implies that they are in fact not inclined to deal with us directly. No calls are being returned.
>
> If it would help to clarify the position, I would be glad to speak with you".

145. Correspondence continued with DS asserting that they were waiting for Mr Chandrasekaran to confirm whether Mr Chandrasekaran required a video or audio handset and to let them know when "the cables have been installed as we understand your builders are doing this". A visit took place on site followed by Mr Mohamed writing to DS saying: "I am still awaiting a response regarding the additional phone installation. Can you please come back to me today".

146. Correspondence regarding the entry system at one stage also raised the issue of the barking dog, below. At 9.19pm on 24 November 2016 Mr Chandrasekaran wrote to Mr Vogt to inform him that he was finding it very hard to sleep due to a barking dog at 8PP which he said had been left outside in the rear garden, late into the night. He asked Mr Vogt to inform him what the Board might do to "bring a level of awareness to the owners that this must at least be curtailed if not stopped altogether – even if only for the sake of the poor dog itself".

147. The email appears to have been forwarded or copied to Mr Beckwith as he replied to Mr Chandrasekaran at 7.26am the following morning:

> "Paran – its precisely this sort of issue you sd be raising at AGM on Mon!".

148. At 8.45am, Mr Chandrasekaran replied to Mr Beckwith, copied to Mr Vogt and Mr Stonebridge:

> "I have obviously brought this to the board's attention by way of the email of last night. I cannot do more by attending any meeting. I see writing often (not always) as a good form of communications and am rather confused about this suggestion that I must attend an AGM. Plenty of residents do not, I am reliably informed, including the owners of number 8 and number 6, attend such meetings. Why am I being harangued to attend?
>
> For the record, I shall not be attending any meeting of the board not least after the unprovoked and horrendous events of last year which we settled by way of the board assuring us that they will treat us in the same manner as others. This clearly is not the case given that DS tell us that they cannot cooperate without the board consent. Why? As you know I did invite the chairman to call me to discuss the DS matter so the request to attend AGM's is a peculiar one, at least to my mind. We continue to suffer great financial loss and time at DS's lack of cooperation. What will the board do to assist given that we now find that 4 others have asked for an upgrade to the system yet we are being told that the current system works perfectly well and repeatedly told by DS that they need the board to instruct them to work on number 7?"

149. Mr Vogt responded swiftly, first to DS Systems at 9.31am the same day saying:

> "For the avoidance of any doubt this is to confirm again that you are free to discuss any requirements from number 7 directly with them. The Board only has an interest in matters affecting the whole community rather than specific issues".

150. Mr Chandrasekaran accepted that Mr Vogt's responses to his complaints about DS Systems were polite and cooperative: "On the face of it, yes".

151. It was clear from Mr Chandrasekaran's emails that he took offence that Mr Cathcart had reported him to be seeking to gather the support of neighbours. When counsel asked him about this, saying that he would naturally need the support of other residents before persuading the board to spend money upgrading or changing the system, he replied that he would need the cooperation of the board. When asked: "You think that the suggestion you were gathering support is offensive?", Mr Chandrasekaran replied that Mr Cathcart had said that DS Systems had been told not to cooperate with him. When counsel suggested that Mr Chandrasekaran had imagined that the board was trying to thwart his proposals to upgrade the system, Mr Chandrasekaran replied that he had not formed that view on the contents of Mr Cathcart's email alone; there was plenty of other evidence. I have not seen any such other evidence.

152. When he was taken to Mr Vogt's email inviting Mr Mohamed to attend the AGM, Mr Chandrasekaran conceded that it appeared to be cooperative but qualified it by saying that he thought Mr Vogt was pandering to Mr Beckwith who wanted a similar system to Mr Chandrasekaran's and that "Without Peter Beckwith I don't think they'd be replying like this".

153. Mr Mohamed stated in his witness statement that some of the obstacles arose not because of the scope of the work required by Mr Chandrasekaran but due to the existing system being decrepit and in need of an upgrade. He said that as discussions with DS Systems progressed about upgrading the system:

> "the process became hampered by poor conduct and communications by DS which appeared to be orchestrated by the Prospect Place management company who were discussing matters with DS Systems from behind the scenes. This is evident from several of my conversations with DS Systems staff who repeatedly described the gate entry system as being in very poor condition.
>
> This is further evident in the email from DS Systems to Mr Paul Vogt on 7 November 2016 clearly showing collaboration. Mr Cathcart states "*I'll pass on the name of the system to number 7 but will obviously not "recommend" an update as such to the system that works perfectly well.* This email completely contradicts my discussions with the DS Systems engineers who were clear in their advice that the system was old, in poor condition and in need of upgrading. The email also shows that there had been previous conversations between DS Systems and Prospect Place Management company which clearly led to a change in advice (which was technically incorrect)".

154. During cross examination, Mr Mohamed was asked what evidence he had seen, beyond the email, to conclude that the discussions were going on behind the scenes

with those representing the Company and DS Systems. He replied: "It felt like that" and that "I believed it was the case".

155. My understanding of the dispute over the alarm system was that (i) the Company's directors were led to understand by their appointed contractors, that Mr Chandrasekaran's loss of a video signal was unique to his property and most likely caused by the renovation works he had undertaken at his property; and (ii) Mr Chandrasekaran wanted the Company to upgrade the current system to one which would integrate with his new home security system. At that time, the board had not received requests from other residents to replace or upgrade the system.

156. In my judgment, there was nothing prejudicial or unfair in the Company authorising their contractors to deal directly with Mr Chandrasekaran to resolve problems which it was told were only being encountered at his property and to leave them to it.

157. I accept the evidence of Mr Mohamed that he was told the entry system was old and in need of an upgrade. That, however, is not the same as saying that it immediately needs to be replaced.

158. Mr Chandrasekaran's frustration with the existing system and with DS Systems led him to infer that the directors had deliberately sought to thwart his renovation works by telling DS Systems not to cooperate with him.

159. I have seen no evidence of the directors instructing DS Systems not to cooperate with Mr Chandrasekaran or his staff. I have seen no evidence which would lead me to interpret, as Mr Chandrasekaran did, and apparently also Mr Mohamed, that Mr Cathcart's statement that he would not "recommend" an upgrade to the system was because he had been told by any of the directors to be obstructive. Mr Vogt appears to me to have gone out of his way, even whilst on holiday, to try to assist. He immediately clarified with DS Systems that they did not need the board's authority to deal directly with Mr Chandrasekaran, he sought to check that the issue holding up the work to Mr Chandrasekaran's house had been resolved, he wrote to thank Mr Mohamed for his input and invited him to put a proposal to the AGM for other members to consider and I infer from his email of 11 November 2016 that he also spoke to DS Systems about a possible upgrade.

160. I was not shown any evidence that the Board sought to block such an upgrade to the system. The contemporaneous documents support Mr Vogt's statement that until the most recent AGM none of the other residents had proactively contacted the board to request an upgrade to the system or to complain that the gates were faulty or, as alleged in the Petition, that they amounted to a potential health and safety issue.

161. There was no evidence before me of a breach by the directors of their duties in relation to the manner in which they dealt with Mr Chandrasekaran's complaints about the entry system.

162. I find nothing unfair or prejudicial in the way in which the Company handled Mr Chandrasekaran's complaints about the gate entry system.

The barking dog

163. In response to those parts of Mr Chandrasekaran's email of 9.47pm on 24 November 2016 regarding the barking dog, Mr Vogt sent an email to Mr Chandrasekaran at 9.40am the next morning saying:

> "I am sorry to hear of the disturbance caused by your neighbours dog. I will have a word with them and suggest you do the same".

On 28 November 2016 he also emailed Mr Stonebridge saying:

> "I went round to No 8 yday but no reply. In case you see anyone from there perhaps you could have a friendly word".

164. The issue with the dog continued. The bundle contains a letter dated 27 December 2016 to the gentleman living at 8PP informing him that the incessant barking was causing those who signed the letter (who appear to be Mr and Mrs C, Mrs Stonebridge and one other) "to become very stressed. The children are unable to sleep" and asking him to address the issue.

165. On 2 January 2017 Mr Chandrasekaran wrote to the directors wishing them all a happy new year and reporting that with thanks to the action taken by Mrs Stonebridge, steps were taken to attempt to climb over the gate to try to rescue the dog, whereupon they discovered that someone was, in fact, at home, who then took the dog inside. He concluded his letter:

> "Of course I had written to the board on this previously and never had a response".

166. Mr Stonebridge responded an hour later:

> "Pavan
>
> You love an email don't you!
>
> Your email doesn't tell the whole story.
>
> I have knocked at your front door numerous times including today but no one answers the door.
>
> Maybe when you feel like it you could talk to me as your neighbour about this and also inform me as to when your builders will be finished so that me and my family can get some peace and quiet once again!"

167. Mr Chandrasekaran replied shortly before 1pm:

> "Thanks – I think for your email which sounds extraordinary.
>
> I don't understand what problem is – I was passing something on for the records of the board which is a good discipline. As for not telling the whole story – I would be pleased if you could recount it in full if I have missed aspects.

> As the knocking on our door '*numerous times*' I'm afraid I'm really perplexed as nobody else has complained of this. I am aware you knocked today but as my wife is severely unwell and as I was on an urgent call, our little 7 year old who saw you and vice versa could not open the door; I'm sure you understand this rule of any youngster. Please let me know the other times at which you have knocked. Given your present state of mind – and given I have experienced how misunderstandings can lead to tensions, I would appreciate it if you did not come around to house as our children are exceedingly timid and I will not expose them to any possible confrontation. I'd be glad to address any concerns you have over email and of course you and indeed Pat are always welcome to come over for a drink – although a little later in the year as we are so busy just now.
>
> As for the builders they will finish when they do.
>
> Happy New Year".

168. Mr Stonebridge replied later that evening:

> "Love thy Neighbour
>
> Why would I want a 'confrontation' with You?
>
> X"

169. Mr Beasley's skeleton states that the Company's objects "necessarily includes the reasonable and peaceful use by [the 8 freehold properties] of their land". I find no basis, and none was advanced, to explain why the Company's objects should extend beyond their rights in respect of the shared road and common areas to each homeowner's peaceful use and enjoyment of their own land. Mr Chandrasekaran suggested that he would have found a rule book of assistance when he first moved into the estate. This perhaps displays a misapprehension on his part about the Company's objects, powers and duties. The Company is not a residents' association, dealing with matters of community concern nor does it have any right to regulate anything which homeowners may choose to do on their own land. Its rights and obligations are limited to the shared private road and communal landscaped areas.

170. Problems arising from matters such as the barking dog fall outside the scope of the Company's affairs. Any prejudice suffered by the Chandrasekaran family as a result of the barking dog was not in their capacity as a shareholder. It was a matter for neighbours to resolve between themselves. I find that the Chandrasekaran family's complaints were not, as alleged, legitimately raised with the Board. Despite this, Mr Vogt and Mr Stonebridge did try to help.

Garden waste and children cycling on the land

171. On 8 August 2017, Mr Vogt sent an email to all residents saying that the council had asked them to clarify certain issues regarding rubbish collection, particularly garden waste. He proceeded to explain the correct use of green bins, brown bins, the collection of cardboard and concluded saying that it would be appreciated if dustbins could be removed as soon as possible after they had been emptied.

172. Mr Chandrasekaran replied by email a few days later on 13 August:

> "Can I ask you to kindly confirm that this email was in fact sent to all residents? For the avoidance of doubt, we the residents of number 7 have not transgressed the protocols listed below.
>
> Whilst writing, may I ask that the newly paid for brown bin lid (as the council has run out of full brown bins) finds its way back to its rightful owner at number 7 in order that it can be labelled as most often it seems to be claimed by number 1, your fellow director [Mr Stonebridge lives at 1PP]. This is a brand new bin with a green base and cannot be confused with tattered and aged brown ones.
>
> May I also suggest to the board that it would be a good idea to remind other neighbours – especially new ones, of the boundary of communal and private land. For example, the grass at number seven and indeed the entire drive has been used by children from other houses as a biking track and a play area; this is of course private property. This is of course private property and I feel a word from the board would be helpful. I feel if in fact it were to happen to one of the directors' land, then swift action might be taken".

173. Mr Vogt sent a draft reply to Mr Stonebridge and then, at 10.28am on 14 August 2017, to Mr Chandrasekaran:

> "I confirm that the message was sent to everyone ("dear all"). The Council binmen marked the garden waste bins last Monday. If they marked them wrongly then no doubt this can be corrected so that everyone has the right one by next week.
>
> Regarding children cycling etc I had the same situation which was resolved by a friendly word".

174. Mr Chandrasekaran's next email followed ten minutes later:

> "An email marked "Dear all" with blind copies does not necessarily indicate it was sent to all 8 residents – it may have been a subset; hence the query.
>
> The bin point may seem pedantic and indeed according to our values it is. But many items have gone missing and accusations made in the past that on advice I was acting to ensure that this issue, no matter how small, was on record. The new bin, which was the property of no. 7 has consistently found its home at number one after being emptied. The wrong bin in the wrong house is not the or care bin men would be my own guess. I would like the one we paid for to be returned to us by next week at the latest.
>
> Children cycling: I did have a friendly word as is our nature so to do. The problem thereafter persisted".

175. Mr Vogt forwarded the email to Mr Stonebridge under cover of a note: "Bill – I don't plan to reply!" However, Mr Stonebridge emailed back to say that he had rubbed the No1 off the bin and returned it "to our friendly neighbour so he should be happy now".

176. Mr Chandrasekaran wrote again on 25 August 2017, saying that he was writing on behalf of Lily and asking:

> "if the Board would consider writing a general memorandum to all residents asking for them to recognise the boundary of private properties and therefore to respect the fact the gardens and grounds are not common and are *private*?"

177. Mr Vogt replied:

> "This is not really a matter which falls within the Board's responsibilities, nevertheless I have had a word with the new residents and would not expect the problem to re-occur".

178. The issue regarding the children reached a conclusion with Mr Chandrasekaran's reply:

> "I trust the word was not one of a personal complaint as I have always believed some kind of 'rule book' would always help residents. I know we would have welcomed it when we moved in – that was one of the reasons for the request".

179. Further problems followed regarding the removal of garden waste. On 27 November 2017 Mr Chandrasekaran wrote to Mr Vogt saying:

> "At 07:40 this morning we had the most extraordinary call from the gate with a gentleman accusing us harshly of not paying the bins and he went on to admit this had been advised to him by another resident. Voluntarily he said it was not from number 6 or number 5.
>
> There have been numerous incidents of which I have not written to you which directly relates to the conduct of members of the board and I feel sure you will be aware of them. If in the event this morning's episode was triggered by the action of the board or one of its members, I would be grateful for your open and honest indication".

180. Mr Vogt forwarded the email to Mr Stonebridge who replied:

> "He needs help
>
> I was told by the gentleman who collects the garden waste that he had 10 bins of waste to empty but only 6 had been paid for.
>
> No other conversation took place other than I told him that two of them had been left out since the last collection two weeks ago.
>
> As I have no idea who has or has not paid why would I have discussed this with him?"

181. Mr Vogt replied to Mr Chandrasekaran at 11.15am the same day:

> "You have my assurance that no board member has "accused you of not paying the bins",

> The waste collector advised a Director this morning that there were 10 bins of waste to empty but only 6 had been paid for. The conversation went no further than that.
>
> Turning to your second paragraph I am sorry that you appear to be dissatisfied regarding the conduct of the Board. I believe this criticism to be unfounded however if you wish to give me specific instances I will look in to them.
>
> If the residents generally are not happy with the Board then it would be better to appoint new Directors or to have (at great expense) an independent management company.
>
> The Directors freely give their time and efforts for the good of the community. Personally I would be delighted not to have this responsibility any longer".

182. Mr Chandrasekaran's reply sent at 7.01pm also on 27 November 2017 extended beyond two pages and addressed various matters. In relation to the incident regarding the waste collection he said:

> "If indeed there are 10 bins – why then does the board not write perhaps a note to the offending household? I know from my own experience, even when we are not out of order, we get stern reproaches. Why not those who are offending now and thereby disadvantaging households like number #7.
>
> This is the direct responsibility of the board.
>
> Why is it that the Collector was told by your director that we are the offending party and that our bins should not be taken? This is now two collections in a row".

183. I consider Mr Chandrasekaran's first email, when he learned that his bin would not be emptied, was inflammatory. His request for an "open and honest indication" implied that the Board had previously been dishonest. When counsel put this to him, he replied: "One doesn't think of every word in an email".

184. When counsel highlighted that nothing was said by the refuse collector to suggest that the Board or one of its members had been involved, but that he chose to interpret what was said to him in that way and chose to consider it part of a malicious campaign against him , he simply replied that counsel had chosen to call it a "malicious campaign".

185. When counsel suggested that he was lying and that the refuse collector did not say that he had been told that he had not paid for his bin, he replied that he knew where he was and that he took the call and that "certainly [Mr Stonebridge] persuaded the bin collector not to take my bin". This seems to me to be different from saying that Mr Stonebridge (or any other director) told the refuse collector that Mr Chandrasekaran had not paid for the bin, and it also does not explain how Mr Chandrasekaran could apparently be so certain that Mr Stonebridge "persuaded" him not to take Mr Chandrasekaran's bin.

186. A few days later, despite the offensive email he received from Mr Chandrasekaran in reply to his explanation of what happened when the refuse collectors called, Mr Vogt stepped in to try to assist and emailed all residents about the bins.

187. Mr Stonebridge would not have known who paid the council for garden waste removal and who did not. I find that on the balance of probabilities, Mr Chandrasekaran was frustrated that his bins were not emptied and put two and two together and in finding five, concluded, wrongly, that Mr Stonebridge must have procured that unfortunate outcome. His assertion is not based on any evidence but is a mere assumption. As such it carries no evidential weight and must fail.

188. Coordinating the collection of garden or other waste does not fall within the scope of the Company's affairs within s994(1)(a) nor is it an act or omission of the Company within s994(1)(b). Nevertheless, far from the directors seeking to take advantage of this incident as part of the alleged campaign to make the Chandrasekaran family's life at 7PP unbearable, Mr Vogt stepped in and tried to help. His reply was prompt, polite, helpful and measured.

The appointment of JCF, directorships, Mr Joseph's appointment to the Board and Mrs Maheswary Chandrasekaran being told to park outside the estate

189. These issues overlap in the correspondence. I shall first set out a summary with extracts from the relevant documentary evidence and then address each allegation in turn.

190. On 26 February 2018 Mr Vogt wrote to all shareholders:

> "As you may be aware I handle the day to day administration of the company at present, however I wish to be relieved of this responsibility.
>
> I have therefore approached JCF Property Management who are willing to undertake this task and a copy of their proposal is attached. Your directors recommend acceptance.
>
> Apart from other considerations I feel it will be beneficial to have a professional, independent and always available third party looking after the estate. Their intention is to continue with our present suppliers subject to review. Kindly let me have your approval.
>
> Please also give some thought to the composition of your Board. In accordance with the articles there should be minimum two and maximum four directors. Currently Bill Stonebridge and I are the two directors following the sad passing of Cynthia Hipps. Richard Joseph of Prospect House has signified willingness to join the Board and he would replace Bill who wishes to retire, so this leaves up to 2 places open for any shareholders who may be interested in joining".

191. As Mr Vogt's email reflects, in or around the beginning of 2018, the Fifth Respondent, Mr Joseph purchased 3PP and, I understand started fairly extensive refurbishment works to the property. On 26 February 2018, Mr Chandrasekaran wrote to him saying:

> "A few months ago, I did in fact suggest to Paul Vogt that it would be good if you were to consider joining the board as issues were causing considerable stress amongst the community in the estate. I am therefore delighted to hear that you have signalled your willingness so to do. However, I would like if I may to have a word with you on the phone at a time of mutual convenience about this issue and to that end can I ask for your availability this week to take a call? I am rather grasping the nettle in writing to you – together with a modicum of embarrassment. However, I think on balance, it is probably the right course of action".

192. Mr Joseph replied the following evening:

> "Good to hear from you and I hope you and your family are well. I'll happily give you a call on Thursday, would 5 PM be okay for you?
>
> I'm happy to join the board but only in the capacity of representing the owners when it comes to dealing with the maintenance contractors for the common areas of Prospect Place or appointed managing agents in a professional manner but unfortunately only have time to manage this and not other issues outside this remit. I'm assuming this is acceptable for the shareholders".

193. Also on 27 February 2018, but before receiving Mr Joseph's reply, Mr Chandrasekaran wrote to Mr Vogt, in response to his letter of 26 February:

> "On behalf of Lily Property Nominees and also my family as residents, I now repeat the request I have made in previous correspondence and I would hope that on this occasion you would kindly do me the professional courtesy of a response.
>
> Why is it that despite the time at Prospect Place, no invitation has been made to the residents of #7 to join the board – and are passed over by invitation to new ones?"

194. Mr Vogt forwarded the email to Mr Joseph:

> "Richard the background to this is that PC believes that he has been treated unfairly/badly by the Board (and to date has not paid His service charge). In his email of 27 Nov he expressed surprise that he had not been approached to act as a Director but advised that he was "in no way applying for the post in the slightest" …. He also suggested that you should be approached.
>
> I replied that the Board would welcome new Directors and invited anyone interested to get in touch. There the matter rested.
>
> Board appointments were last confirmed at the agm in November 2016 (which PC did not attend)
>
> I will draft reply to PC along the lines that if he has changed his mind then Lily would be welcome to propose his appointment.
>
> Bill has already decided to retire from the Board and once JCF are fully in place it will be expedient for me to retire as well in view of the lack of trust in the present Directors by number 7".

195. Mr Vogt replied to Mr Chandrasekaran on 1 March 2018:

> "Dear Mr Chandrasekaran
>
> I refer to your recent email. I really have very little to add to my reply of 4 December. Richard Joseph was approached following your suggestion to that effect in your message of 27 November in which you also advised that you were in no way applying for the post (of Director).
>
> Yours sincerely"

196. In relation to the appointment of JCF, on 1 March 2018 Mr Vogt wrote to Mr Stonebridge and Mr Joseph:

> "I have now received a draft management agreement from JCF. It looks pretty straightforward – let me know if you would like a copy.
>
> … I have not heard from any shareholders yet however members 1/2/3/4 are obviously in agreement and Oliver Beaumer in number 5 introduced JCF so will presumably also be in favour (the Directors have the authority to appoint JCF but we are consulting shareholders as a matter of courtesy)".

197. On 11 March 2018, some two weeks after Mr Vogt sought shareholders' views regarding the proposed appointment of JCF Property Management, Mr Chandrasekaran wrote to Mr Vogt specifically in response to Mr Vogt's email of 1 March but also addressing the appointment of JCF.

> "In your email of 4 December, you state:
>
> 'The Board would welcome new directors. Our Articles of Association require us to have a minimum two and maximum four. The Articles set out the procedures for new director appointment. In summary, a person has to be recommended, either by the Board or, through a procedure, by a shareholder, and then appointed at a general meeting by a majority of shareholders. The Board can also appoint a new director temporarily until their appointment is confirmed at the next general meeting. There are no specific criteria for appointment, other than a willingness to act, any specified in the Articles and any there might be by law'.
>
> It was indeed I who made the suggestion to appoint Mr Richard Joseph once he was in residence and I now see that you have in fact, invited him prior to him being in residence. Presumably you did so following the guidelines above? I would be grateful for your confirmation of this as all I did as a shareholder was to make the suggestion, once RJ was in residence.
>
> My Trustee and I requires to know why that privilege has never been offered to #7. You have had ample (I repeat, ample) time and opportunity to make an invitation to board in the past, of me but have never done so and it has been obvious to all that it would never have come. Your response below therefore, I regret to say, is wholly disingenuous and avoids answering the question posed in my email of 26 February. It is clear from this terrible history of this relationship that both the interests of number 7 and any possible inclusion of its

> representations at the board have been thwarted, if not blocked. The interests of #7 have on several occasions, been prejudiced.
>
> For the record, I do not agree with your decision to appoint JCF Property Management (JCF). There has been, to my knowledge no tendering. Whilst the services of such an agent is basic, we are concerned that you alone seem to have the responsibility of appointing them and thereafter directing them at your own discretion. We are keen not to have a repeat of the issue with DS Systems whereby they were asked not to cooperate with us. JCF seem not to have experience with the newer technologies that will inevitably be needed by all neighbours in the future. Therefore their experience of handling such situations would I think be a pre-requisite – at least by way of a question, before their appointment".

198. A board meeting took place on 5 March 2018 when Mr Joseph was appointed as a director. An email records that Mr Stonebridge had agreed that he was willing to continue as a director at least in the short term.

199. On 8 March 2018, Mr Vogt wrote to the First Petitioner regarding the service charge for 2017/2018 noting that it had not yet been settled. Mr Chandrasekaran replied on 11 March 2018:

> "I do not propose to go into the vast and detailed reasoning as to why we have not paid as it should be fairly obvious given what has been well documented in the past. To give some context however, given that board members can be abusive me personally and that my views are totally misrepresented at board meetings, it is an amazement to us that we are asked to pay to be prejudiced against. We have also incurred considerable losses by the unnecessary actions of the board and also believe that we have been defamed. We are of course more than willing to fall in as we have always done since purchasing the property, once we have fair and equitable treatment and are able to live in peace in our home which is the right of anyone.
>
> I remain open and willing to receive to any fair proposal you may wish to make. Our objective is peace and the welfare of our home and the estate in which we all live. If in the event you are using shareholders' funds to instruct peacocks, as before, to further your position, unfairly and unjustifiably, then please make this position clear".

In a postscript, he added:

> "I am not prepared to pay until we have equal and fair treatment and the losses we have incurred are recognised.
>
> I also need to be on the board to protect our interests. Pls let me know when I can have the draft letter for this matter. Thank you – in haste whilst chairing a meeting".

200. Mr Vogt forwarded the email to Mr Joseph and Mr Stonebridge. He suggested a meeting. Mr Joseph agreed and also suggested that it would be a good idea for the directors to offer to meet Mr Chandrasekaran face to face to try to resolve the

outstanding issues. Mr Vogt pursued the suggestion and wrote to Mr Chandrasekaran to suggest that he and Mr Joseph have a meeting with Mr Chandrasekaran to try to resolve outstanding issues amicably. Mr Chandrasekaran replied asking how much Mr Joseph had been told about past disagreements. Mr Vogt replied at 11.05am on 19 March:

> "Richard is only aware generally of the main issue i.e. your feeling that you have been unfairly treated by the board. At our meeting I will seek to explain that this is not the case and in particular we can discuss the misunderstanding in respect of DS Systems and the directorship issue.
>
> Richard has been involved in the prospective appointment of JCF and we will explain the process followed in this respect.
>
> With goodwill on all sides I hope that we can put our disagreements behind us, we all share your objective of peace and harmony in the estate".

201. Mr Chandrasekaran replied at 9.44pm on 22 March 2018:

> "Given what my family and I have endured and that which one observer commented on as follows – 'I wouldn't want to have neighbours like this' and with a view to making any potential forthcoming meeting profitable, I attach a letter from my legal advisers which I had already set underway prior to receiving your last email. Not wanting to waste the effort and above all the content, I have, as a gesture of hope, thought to send it to you as the Chairman of the Board myself rather than the solicitors themselves. My gesture in doing so should not be taken as one which mistakes my resolve to take it all the way if necessary. At the very least it may serve as a briefing note or an aide memoir. Please may I ask you to read it carefully. As it says, it is not an exhaustive list as to make it so would be an unnecessary waste of costs at this stage".

The attached letter was from Gardner Leader, solicitors and over three pages set out the history of Mr Chandrasekaran's complaints including mention that Mr Chandrasekaran's elderly mother, an octogenarian, was asked by a gentleman not to drive into the estate, rather to leave her car outside on the main road. The letter states that Mr Chandrasekaran would not put up with any attempted intimidation of his mother along any such lines. The letter concludes with a request for an agenda for the meeting with Mr Vogt and Mr Joseph but states that if a satisfactory outcome could not be reached, "and the prejudice continues" he would not hesitate to take further action as a shareholder "and in pursuit of his legitimate right to live in peace and have quiet enjoyment of his property".

202. Mr Vogt forwarded the email and letter to Mr Joseph the following morning, apologising when doing so as he acknowledged that Mr Joseph did not wish to be involved in past disagreements.

203. Mr Vogt replied to Mr Chandrasekaran on 10 April 2018 explaining that Mr Joseph preferred to postpone the proposed meeting "until the outstanding matters of which he has no knowledge have been addressed". He attached a longer email addressed to both Lily and Mr Chandrasekaran on behalf of the Company and in which he stated that "we would like to clarify various misunderstandings" in relation to the

management of Prospect Place. He sought to reassure Mr Chandrasekaran that DS Systems was not instructed to refuse to cooperate with 7PP but that considerable efforts were expended to assist. He further explained that the issue was correctly reported to shareholders at the AGM, that no shareholders' funds had been used for inappropriate correspondence and that the correct procedure was followed to appoint JCF. His letter concluded:

> "let us now move forward positively in the efficient running of the estate. We totally share your objective of peace and harmony".

204. By virtue of the fact that I am writing this judgment, that clearly was not achieved. Mr Chandrasekaran wrote at length in response to this email and another to say that he found the reply insulting and was prepared to take further action:

> "…For you to suggest that you are not responsible for the actions of others, is once again, disingenuous. Practically all negative reactions to us as residents have come about when the board have been involved. It may be time now to flush out what your exact motive is when it is ourselves who have repeatedly asked if not pleaded for peace and harmony. It is clear to any onlooker that the board seeks others to do its bidding. The evidence attached to this email is but one example".

The evidence he refers to is various exchanges between Mr Vogt and DS Systems which I have referred to already.

205. There are just two further pieces of correspondence to which I wish to refer before setting out my findings in relation to each allegation.

Correspondence with Mr Joseph

206. On 23 September 2018 Mr Chandrasekaran wrote to Mr Joseph. It followed Mr Chandrasekaran's complaint, raised in Gardner Leader's letter, that his mother had been informed that she may not enter Prospect Place and park her car on Mr Chandrasekaran's drive. The email ran to several pages. I pick up halfway through:

> "Whilst apparently you personally have no knowledge of the incident involving my mother, you and the board go on to use the law firm (whose only duty was to look after the shareholders' register) to suggest, that should my mother be turned away again, we can do nothing about it. Do you really think I will allow this to stand?
>
> You make much of the fact that your appointment would only be to deal with the maintenance contractors and the managing agent. Well, given the Gardner is a racist, your use of shareholder funds to defend him against a resident – and especially one who sponsored your appointment, needs explanation. You say you have no time for anything else but evidently you do.
>
> The unilateral cancellation of the meeting by you in March of this year after significant inconvenience to my own hectic diary had a characteristic level of chutzpah which I now recognise as being part of the make up of the current board. With no notion of any form of regard for a much longer resident and a

> shareholder, which despite your assertions to the contrary, we are, you cancelled the meeting and embarked on 'armigerous' and 'pugilisitc' litigation and used shareholders funds for this purpose. I presume and would certainly hope that if a supplier to the estate made an anti-Semitic remark, you'd move quickly to, at the very least, remove it from further custom using shareholder funds. I understand that whilst you would like to enjoy the privileges of being on the board, you wish to have no responsibility for the legacy issues which it faces or its current conduct safe to say, you are obviously a part of it. I am genuinely curious to know what a Court will make of this, as a matter of company law.
>
> You have purchased the trophy house in the estate and may be of the view that this gives you some disproportionate sense of standing. It may interest you to know (if you don't already), that for quite some time, the previous owner very much encouraged us to buy it; our trustees felt the price per square foot was unnecessarily high for this area. After the price dropped, we were encouraged again but my wife and I, recognising amongst others the restrictions on the property from its Grade II status, felt it was going to be difficult to bring up our children in a house which would create a chasm between them and their peer group, many of whose families live modestly. Consequently, we rejected the notion of purchasing it from a value system perspective. I say this as had we purchased it, we would not have given ourselves any form of grand-standing".

Pitmans' letter of 1 August 2018

207. Pitmans' letter of 1 August 2018 sets out, over six pages, the events and circumstances which led Mr Chandrasekaran to conclude that the board and its members had treated Lily and Mr Chandrasekaran differently from the other shareholders in a manner which amounted to a campaign of harassment, prohibited by the Protection from Harassment Act 1997. Earlier in the letter Pitmans refer to the employment by the Company of the gardener whom Mr Chandrasekaran reported shouted racial abuse at him. The letter states:

> "by continuing to retain the gardener your client is also effectively condoning his racism towards Mr Chandrasekaran. This amounts to a form of continuing discrimination in the form of victimisation under s.27 of the Equality Act 2010".

208. In relation to a failure on the part of the board to communicate Mr Stonebridge's decision to remain on the board, Pitmans' letter states:

> "We find it difficult to believe that such an elementary piece of company business has gone unmentioned to the Company's shareholders and can only presume that, once again, Mr Chandrasekaran and the Company member he represents have been selected for special treatment by the Board. Our client believes that his treatment is motivated by racism towards him".

Failure to consult Mr Chandrasekaran regarding the appointment of JCF Property Management

209. Articles 70 and 71 of Table A were incorporated into the Company's articles of association. Article 70 provides that subject to the provisions of the Companies Act, the memorandum and articles and to any directions given by special resolution, the

business of the company shall be managed by the directors who may exercise all the powers of the company. Article 71 provides that the directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they may determine, including authority for the agent to delegate all or any of his powers.

210. Lily's relationship with the Company was governed by its memorandum and articles of association as well as the DoC. The DoC was silent on the appointment of agents other than to include the cost of employing managing agents in the list of items of expenditure to which homeowners would contribute.

211. I have already stated why I do not consider the parties' relationship included the equitable duties comprising the Understanding. Consequently in my judgment, there was no equitable obligation on the directors' part to consult with homeowners before appointing agents. The directors were entitled to appoint JCF without reference to the Company's members. In fact, the Company did consult with residents regarding the proposed appointment. The majority of residents concurred in the proposed appointment; others did not reply. Mr Chandrasekaran did not reply for over two weeks. By then the majority view had prevailed. JCF were appointed on a trial basis. The decision could be reversed if considered appropriate at a later date.

212. There was, in these circumstances, no breach of Lily's rights as a shareholder in the appointment by the directors of JCF and no unfair prejudice.

Directorships –Mr Chandrasekaran never being informally approached to join the board.

213. Mr Chandrasekaran stated that he did not want to be appointed as a director. By his email of 4 December 2017, Mr Vogt set out the procedure for directors to be appointed and said:

> "With the reduction in the size of the Board in recent times, none of the other residents has shown interest in joining. I am glad to know that there may be interest to enlarge the Board, and would invite anyone interested to get in touch, including our new neighbour Richard Joseph if he would like to. I shall be 80 next year and feel it is time to hand over".

214. Mr Chandrasekaran's reply on 18 December 2017 states: "I repeat that I seek no such appointment". It is only recently that his position appears to have changed.

215. I have found, on the balance of probabilities that Mr Chandrasekaran did not discuss his own appointment to the board during his telephone conversation with Mr Joseph. Even if I am wrong in this, he does not appear to have followed up the alleged proposal. I have seen no evidence of any other attempt on his part to seek the support of his fellow shareholders to be proposed for appointment as a director pursuant to Article 76 of the Company's Articles of Association.

216. Instead he seeks to rely upon the intervention of equity to impose upon the Respondents, whether as members or directors, an equitable duty to procure his appointment. This comprises part of the Understanding, the imposition of which on the directors and the Company's members, I have rejected.

217. There is no claim and no evidence that the Respondents sought to obstruct any shareholder exercising its right under Article 76(b) to propose Mr Chandrasekaran (as Lily's nominee) be appointed as a director. In *Re Legal Costs Negotiators Ltd* [1999] BCC 547, Peter Gibson LJ, sitting in the Court of Appeal considered an appeal regarding a company run as a quasi-partnership. Approving an earlier decision of Knox J he stated (in relation to section 994's predecessor, section 459 of the Companies Act 1985):

> "the section is not apt to deal with the case where the petitioner can himself readily put an end to the unfair prejudice alleged".

218. Mr Vogt and Mr Stonebridge have expressed a desire to step down as soon as new directors can be appointed. Mr Chandrasekaran may want them to propose him, but I find no legal or equitable basis upon which they are compelled to do so. Mr Vogt has explained why he is not prepared voluntarily to do so. Lily has a potential remedy under the Articles and should pursue that solution before complaining to the Court that its interests as a member in that regard are being prejudiced.

Mrs Maheswary Chandrasekaran being asked to park outside Prospect Place

219. In her first witness statement, Mrs Maheswary Chandrasekaran says:

> "in the late Spring/Summer of 2017, which was after they finished the refurbishment of their property, I was asked by a gentleman in the estate not to enter the estate but park outside on the main road. I did not recognise this man. I was taken aback by this but wanted to do as I was told. I did find this difficult not least is parking outside often meant reversing into a slot between cars which I find difficult to do at my age. Especially so on such a busy road. Of course, driving straight onto my family's drive is far preferred because it is much easier. … However, I did not want to cause any disturbance for my family so stuck to this routine for some time until my Son insisted that I enter the estate and park on their drive.
>
> … At the time of the incident, my Son was very busy with his work and so did not immediately know of what had transpired. My Daughter however was at home and was upset at me having parked outside. She insisted that I parked inside when I had already left the car on Copse Hill. Although I told her I would in future enter inside the estate, when it came to it, I just found I could not. I was afraid to cross the people involved in this matter as I was already aware at their distaste towards my family. I was worried not to exacerbate it which is why I disobeyed my Daughter.
>
> … I attended an AGM meeting in November 2018. There I saw the man who told me to park outside. Of course I have seen him in and around the estate previously. I understand him to be Mr William Stonebridge".

220. In her second witness statement dated 25 February 2020, Mrs Maheswary Chandrasekaran stated:

> "firstly, I would like to clarify… my First Statement where it states "*I did not recognise this man*". What I meant by this statement is that I did not know his

> name. I do say at paragraph 14 of my First Statement, speaking of when I attended the AGM, "*of course I have seen him in and around the estate previously*". In short, I recognised him as someone who lived on the estate, but I did not recognise him (or know him) as William Stonebridge at the time of the incident".

221. Mrs Maheswary Chandrasekaran proceeded to describe in her second witness statement two incidents that occurred after the AGM in November 2018, in the Spring of 2019 which both involved Mr Stonebridge staring at her in a manner that she found menacing, on the first occasion involving him "walking closer and closer until he could not proceed any further" and the second, more fleeting "because I simply drove past him with haste".

222. Gardner Leader's letter of 22 March 2018 appears to be the first mention of Mrs Maheswary Chandrasekaran being asked to park outside the estate. The issue gained momentum in exchanges between each side's solicitors. The Respondent's solicitors, Peacocks responded to Gardner Leader's letters of 22 March 2018 and a subsequent letter dated 25 April 2018, on 3 May 2018. In relation to this incident their letter states:

> "Incident with client's mother
>
> You give no particulars and so a full reply is not possible. However, we assume it is Mr Chandrasekaran's mother to whom reference is being made, LPN being a company and having no human relations. That being so, no discourteous or other adverse treatment of her (none being admitted) can possibly amount to unfair prejudice of the required kind".

223. Pitmans recited this paragraph in their letter of 1 August 2018:

> "This is an extraordinary statement plainly intended to antagonise our clients. The attempt to use the authority vested in the Company to intimidate family members of a Company member absolutely can constitute, and in this case has constituted, unfair prejudice for the purposes of s. 994 of the Companies Act. The fact that LPN is a company as opposed to an individual is entirely irrelevant, a fact of which we have no doubt you are all too aware".

224. By the same letter Pitmans required the Respondents immediately to confirm (among a list of 11 points) that:

> "Mr Chandrasekaran's mother and all his visitors may park in the estate and on his drive and a written apology signed by the Board to Mrs Chandrasekaran for wilfully instructing Peacocks to withhold answering this point".

225. Each firm's correspondence continued to fan the flames of argument between the respective sides. On 4 September 2018, Peacocks stated:

> "Obviously, you do not require confirmation that Mr Chandrasekaran's mother can park her car on the drive of no.7. This is an entirely imaginary and artificial grievance, contrived to lend spurious substance to a vacuous claim. It is not open to our client to prohibit such parking, hence we have not seen the need to say

> anything on the point. Certainly, you have not asked for confirmation before, as you should if you or your clients thought any was needed".

226. Eighteen months later, on the eve of trial, one of the apparent obstacles preventing the parties settling this dispute was the Respondents' refusal to offer any form of apology to Mrs Maheswary Chandrasekaran. They refused to do so on the basis that they do not accept that they did exclude her from the estate and consequently would offer no apology or quasi-apology. Peacocks letter of 27 February 2020 nevertheless stated:

> "However, the Respondents repeat once more that Mrs Chandrasekaran senior is always welcome to enter Prospect Place".

227. During cross examination, counsel pressed Mrs Maheswary Chandrasekaran to admit that she told a "white lie" when she informed her daughter-in-law that she had been asked to park outside on the main road. She denied this was the case.

Counsel asked her how she was "already clearly aware at their distaste toward my family". She confirmed that her awareness arose as a result of what she had been told by her son and daughter-in-law. She also confirmed that when she described her son's request from the Company for an explanation for why she was required to park outside being met with a "very aggressive and unnecessarily legalistic letter which I found disgusting", she did not see the letter at the time; her son told her about it.

228. On the balance of probabilities, I consider that Mrs Maheswary Chandrasekaran was told by someone that she could not park on the estate but that she was mistaken in recognising Mr Stonebridge as the person who made the request.

229. In *Cusack v Holdsworth and Quantum Survey Management Limited* [2016] EWHC 3084 (Ch), Registrar Briggs (as he was) explained how the fallibility of memory should be taken into account when the Court is determining issues of fact. He said:

> "Memory is an active process, subject to individual interpretation or construction. Each witness will have produced their witness statements many months ago, will have been asked to read or re-read their statement and review documents before giving evidence in court. There is high level commentary that reveals that this process reinforces a memory, even if the memory was false to begin with, and may cause a witness's memory to be based not on the original experience of events but on the material which has been read and re-read.
>
> This is supported by the recent research undertaken by Elizabeth Loftus, professor of law and cognitive science at the University of California which reveals the malleability of memory by showing that witness testimony can, after the fact, be shaped and altered.
>
> That is not to say that all the oral evidence given was unreliable. The Court has previously explained that it is safer to base factual findings in commercial cases on inferences drawn from the documentary evidence, common ground and known or probable facts."

230. During cross-examination Mr Chandrasekaran said that he learned about the incident a couple of weeks after it is alleged to have taken place. In light of the speed and

vehemence with which Mr Chandrasekaran brought matters to the Company's attention, I consider, on the balance of probabilities, that if he had understood or even suspected such a request to have been made by anyone acting on behalf of the Company, he would very quickly have written to the Company to complain.

231. I find it more likely than not, that after many years of possibly seeing Mrs Maheswary Chandrasekaran or her car drive in and out of the estate, and knowing that visitors to 7PP have a right to pass over the common parts of Prospect Place's drive to park on Mr Chandrasekaran's private drive, Mr Stonebridge would not have asked her not to do so. I found his evidence that he would have more respect for an elderly lady, that he could understand why she would have been upset but that he was not the person to have said it, to be credible.

Mr Stonebridge's behaviour

232. Mr Stonebridge has clearly grown to dislike Mr Chandrasekaran. His dislike appears not to have arisen until after Lily purchased 7PP for it was apparently Mr Stonebridge who informed Mr Chandrasekaran that Mr Gallas wanted to sell the house and suggested that Mr Chandrasekaran may wish to buy it.

233. It did Mr Stonebridge no credit, during cross-examination, to profess that his "Love thy neighbour" email was kindly meant and "light-hearted". It was clearly intended to be sarcastic.

234. I consider his evidence regarding his interactions with the Chandrasekaran children to be reliable: he said that he talks to them for no reason other than because he finds it enjoyable to do so. He said it was lovely to have young people living on the estate, that the children had always enjoyed engaging with the Stonebridges' older dog and that they seemed to be very nice children.

235. The explanation given by Mr Stonebridge as to why he would not, as alleged, have driven fast towards Mr Chandrasekaran and his children, then apparently stopping suddenly, was also credible: his wife had recently undergone a double mastectomy, was uncomfortable sitting in the car with a seatbelt on and he was not able at that time to drive fast anywhere when she was in the car.

236. I also found Mr Stonebridge's account of an event when Mr Chandrasekaran had friends at his house for a BBQ to be credible: Mr Stonebridge needed to reset the gates by accessing a box at the back of 8PP. He accepted that he startled Mr Chandrasekaran by appearing from behind him but that it was not his intention to do so.

237. I found it more likely than not that Mr Stonebridge's use of capital letters, when writing to Mr Chandrasekaran whilst on holiday to inform him that his house alarm had gone off several times, was not, as he maintained, merely to ensure that Mr Chandrasekaran read it but was intended to convey how angry he felt that the alarm was repeatedly going off.

238. Mr Chandrasekaran perceives Mr Stonebridge's actions and demeanour towards him to be designed to threaten and intimidate him. Pitmans have written directly to Mr Stonebridge saying there is a clear pattern of conduct that meets the criteria set out in

the Protection from Harassment Act 1997 and that the Chandrasekaran family should not have to live "in such a constant state of anxiety".

239. Any unpleasantness between Mr Stonebridge and Mr Chandrasekaran is only relevant to these proceedings if it concerns his directorship of the Company or an act or omission of the Company. Pitmans' letter concludes by stating that Mr Stonebridge's alleged acts of harassment form part of the unfair prejudice petition and that it was hard to believe that his conduct was without the knowledge or approval of Mr Vogt and Mr Joseph.

240. Noticeably, however, it was not put to any of the Respondents in cross examination that Mr Stonebridge was being goaded to act in a certain way as part of the alleged campaign to force him to leave Prospect Place. They both stated in cross examination that they had no reason to consider Mr Stonebridge capable of the alleged behaviour. I neither read nor discerned in the parties' correspondence or during cross examination any evidence of Mr Vogt or Mr Joseph doing anything with the intention of upsetting or harassing Mr Chandrasekaran or his family. Mr Joseph tried to encourage the parties to meet to resolve their differences. Mr Vogt responded quickly, trying to address any complaint or concern that Mr Chandrasekaran brought to his attention.

241. For one neighbour at Prospect Place to behave in a manner which is perceived by another to be hostile without, as I have found, the knowledge or support of the Company, its directors or other shareholders, does not amount to an act or omission of the Company within section 994. If and to the extent that it is capable of litigation, it does not belong in this Court.

The AGMs

242. Mr Vogt's explanation that they had deliberately chosen to avoid discussing the litigation at the 2018 AGM in order to avoid any suggestion of acting improperly, was credible and consistent with the Company's then directors' desire to keep the Apology Letter confidential and the discretion which Mr Vogt is reported to have shown by initially providing Mr Joseph with only very limited information about the dispute. The petition had, by then, been sent to the Company in draft and I found no evidence to support the allegation that the directors' failure to mention it indicated that they were not proposing to address the Petitioners' concerns.

243. I also found credible Mr Vogt's explanation regarding the choice of venue for the 2019 AGM. There was no evidence of an intention on the part of the directors to deter Mr Chandrasekaran from attending. I accept Mr Archer and Ms Constantine's evidence that they considered the demeanour of those present to be hostile. By then very grave allegations had been made about the directors, including Mr Joseph who had sought only to try to restore harmony.

A campaign

244. Having considered, in detail, the documentary and oral evidence concerning the incidents relied upon in the Petition, and the conduct of the Respondents and of Mr Chandrasekaran in relation to each of them, I have seen absolutely no evidence to support Mr Chandrasekaran's firmly held belief that the directors wish to diminish his family's quality of life, whether to cause them to sell 7PP or move or otherwise.

245. I have seen no evidence that the Company has been run other than in good faith in the interests of all of the homes at Prospect Place, including 7PP. Mr Vogt, in particular, expended considerable effort trying to appease Mr Chandrasekaran. Mr Joseph wanted to be no part of the historic dispute, seeking only to encourage the parties to find an amicable solution.

246. There appear to have been some errors in the manner in which the Company's affairs have been conducted. For example: (i) if it is correct that the Company's members, having been told that Mr Stonebridge would imminently retire, were not informed that he decided to stay on, then the directors erred in not conveying that information; and (ii) the directors recognised and apologised for the delay in completing Lily's DoC. Such errors do not appear to have caused any lasting damage to Lily's shareholding.

247. Applying Slade J's reasonable bystander test (set out at paragraph 46 above), objectively I do not consider that a reasonable bystander observing the consequences, whether separately or cumulatively, of the various incidents relied upon (and I include here also events referred to in evidence but not the Petition, such as potholes outside 7PP's driveway) would regard them as having unfairly prejudiced Lily's interests as a shareholder in the Company.

Conclusion regarding the Petitioner's claim

248. I have found no justification for imposing upon the Company or its members equitable duties over and above those set out in statute, common law, the Company's constitution and the DoC.

249. Even taking into account the breadth of the jurisdiction set out in Mr Beasley's submissions, I have found, in relation to each of the incidents relied upon in the petition, either that they do not fall within the scope of section 994, or that there was no unfair prejudice and no abuse of power on the part of the Company that requires judicial intervention.

250. I have seen no evidence of a campaign on the part of the Respondents to harass or force the Chandrasekarans to leave Prospect Place.

251. The unfair prejudice petition is dismissed.

Counterclaim

252. The Petitioners' Points of Reply and Defence to Counterclaim:

i) requires the Company to prove that in demanding the total sum of £2,250, it has complied with the requirements of Clause 2.1 of the DoC including that the sums demanded amount to reasonable expenditure and were or would properly be incurred in relation to matters referred to in the Schedule to the deed; and

ii) seeks to set off any sums found to be due under the Petition.

253. Clause 2.1 requires homeowners to pay to the Company on demand such annual or other periodic sum as shall from time to time be conclusively determined by the Company to represent one eighth of the reasonable expenditure properly incurred on

the matters in the Schedule and on demand such sums as are conclusively determined by the Company to represent an estimate of such proportion of expenditure for the following twelve month period.

254. The basis upon which the directors set the service charge and their circulation to members of the accounts to 31 July 2017 and a budget for 2018 and the explanation for the increase in budget for the year to 31 July 2019 (following the appointment of managing agents) is set out in the Counterclaim.

255. The Company has estimated the annual service charge, provided the accounts for previous years and divided the ensuing total by eight. It should be paid by all members of the Company.

256. These steps entitled the Company conclusively to determine the amounts demanded.

257. Having dismissed the Petitioner's claims of unfair prejudice, there are no sums to be set off against the Petitioner's liability to pay the service charges.

258. Lily remains liable for the amount of the counterclaim upon which the Company is entitled to claim interest under section 35A Senior Courts Act 1981 from the date specified for payment in the demand until payment.

Insolvency and Companies Court Judge Burton

31 July 2020