Helping a business owner reclaim company

We are often asked how shareholders can use the law to protect their interests in companies in which they have invested or founded. This is a complex area of law and there are volumes of academic work on the subject of shareholder rights, but in a recent case we successfully helped a client by using statutory protections for shareholders found in the Companies Act 2006.

In October 2019 Justin McConville, a senior associate in our dispute resolution team, was instructed by the founder and former owner of a London based healthcare business. Several years previously he had invited two other individuals ("respondents") to join his business and manage it on a day-to-day basis whilst he was occupied with his medical studies. In return, the Respondents each received a third of the company's shares. Unfortunately, however, the parties overlooked the importance of a written shareholders' agreement which would have regulated the conduct of the shareholders, decisions which required unanimous consent and the procedure to be followed if and when a dispute arose.

The business performed successfully but when the respondents had 'learned the ropes' they attempted to force our client out by excluding him from any participation in the management of the company. The Respondents argued that their simple majority was sufficient to make important changes to the structure and strategic aims of the company, whilst our client argued that unanimity was required as this was, and was always intended to be, a quasi-partnership in which all major decisions would be taken by the three of them collectively. In early 2020, having taken advice from us, a petition was presented to the High Court asking for relief on the ground that the company's affairs were being conducted in a manner that was unfairly prejudicial to our client (under sections 994 – 996 of the Companies Act 2006).

Whilst unfair prejudice actions are not uncommon, and the courts have a very wide discretion in relation to the orders it can make in such cases, this petition was unusual because of the relief being sought. Rather than seeking some form of monetary compensation for our client we were asking the court to order the two other shareholders to sell their shares to our client. Our client was not interested in being compensated for the prejudice he had suffered (which would usually be by way of a purchase of his shares at their fair value without any minority discount), but rather he wanted his company back!

Disputes such as this are usually made more challenging by the parties' entrenched positions following a complete breakdown of trust and confidence in their relationship. This dispute was a case very much in point. The litigation continued for a little over two years and from the outset was extremely bitter and contentious. However, with a week-long trial of the case looming and our continued confidence in a successful outcome for our client (including the recovery of his costs), the respondents finally agreed to negotiate a settlement rather than take their chances at trial. We were then able to agree terms such that our client wrested back control of his company by buying the respondents' shares.

The client commented: "Justin McConville expertly navigated me through this business dispute, and I am delighted with the final outcome. Justin was knowledgeable about the law and litigation procedure and his calm head and guidance was tremendously useful to me in very contentious and personal circumstances. Justin was always approachable and personable, clear in his advice and tactics, and really worked a miracle with his negotiation skills in getting my business back, especially in view of the difficult personalities and unrealistic expectations of my former business partners."

Will Angas

Partner

Justin McConville

Managing Associate