

ENGLAND AND WALES / JUDGMENT

Oncoqr ML GmbH v Frederick Jacobs & Ors

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF JUSTICE BUSINESS & PROPERTY COURTS IN BIRMINGHAM
INSOLVENCY AND COMPANIES COURT LIST (CHD) BETWEEN ONCOQR ML GMBH -AND- (1).
FREDERICK JACOBS (2). PAUL BROOME

(3) TYG ONCOLOGY LIMITED

- - - - -

- - - - -

[2025] EWHC 1567 (Ch) 17 TH JUNE 2025 Petitioner Respondents MARIA MULLA COUNSEL FOR
THE PETITIONER THE FIRST AND SECOND RESPONDENTS APPEARED IN PERSON THE
THIRD RESPONDENTS DID NOT APPEAR SEPARATELY HEARING DATE: 25 AND 26
MARCH 2025

- - - - -

JUDGMENT

INTRODUCTION

The Petitioner 1. The Petitioner is Oncoqr ML GmbH, a company registered in Austria and 50% shareholder in TYG. The directors and shareholders of the Petitioner are Mr Christof Langer and Dr Geert Mudde who, along with the First and Second Respondents are directors of TYG. Page | 1
The Respondent 2. 3. 4. The First Respondent is Mr Frederick Jacobs. He is a director and 25% shareholder in TYG. The Second Respondent is Dr Paul Broome. He is a director and 25% shareholder in TYG. The Company is the nominal third Respondent. It has not been separately represented at the trial of this action and adopts a neutral position. THE RESPECTIVE POSITIONS OF THE PARTIES

Introduction

5. In formulating this decision, I have endeavoured to have regard to all of the matters placed before me in submission and all of the documents to which my attention has been drawn. This is the case notwithstanding that I may not explicitly mention each and every one of those matters in the course of this judgment. 6. What I have not done is sought to comb the

papers and submissions for facts which could have been highlighted or arguments that could be made, but which have not been. 7. Not only is the same physically unrealistic when faced with a case of this nature and a 3200 page hearing bundle, but I do not consider that it would even be appropriate for me to do so. I am acutely conscious of the need on my part of avoiding falling in to the judicial ‘third man’ trap identified in *Al-Medenni v Mars* [2005] EWCA Civ

1041. As noted in that matter, it is for the parties to litigation to identify the issues to be determined, and the Court thereafter to determine those issues. It is not the role of the Court, in an adversarial judicial system, to identify issues for the Parties and then determine the same. As noted in *Sainsbury’s Supermarkets v Mastercard In* [2020] UKSC 24 [at 242] In the adversarial system of litigation in this country, the task of the courts is to do justice between the parties in relation to the way in which they have framed and Page | 2 prosecuted their respective cases, rather than to carry out some wider inquisitorial function as a searcher after truth 8. As cases such as *Al-Medanni* make clear the starting point is the pleadings. Turning to the same. The Petition 9. At a high level of abstraction, OncoQR contends that it is just and equitable for the Company to be wound up on a number of grounds, namely:
- a. The Board of the Company, comprising the two Respondents plus CL and GM, is functionally deadlocked as all votes of substance divide along partisan lines- with the result that no decision requiring a majority can be taken. 1 As a consequence the decision making process of the Company is effectively paralysed. Absent any realistic alternative to breaking the deadlock, the only appropriate remedy is to wind up the Company;
 - b. The Company ought properly be considered to be a corporate quasi- partnership, founded upon personal relationships of trust and confidence. The relationship between CL/GM and FJ/PB has now entirely broken down owing to allegations of fraud, deceit and conflict of interest levelled against CL and GM by FJ and PB. 10. As a consequence of these matters, TYG has become a company where the management has become entirely improperly conducted. There are no alternative remedies save for the winding up of TYG on just and equitable grounds. The Amended Points of Defence 11. Throughout the trial of this Petition, the case for the Respondent was presented by Mr Jacobs. It is a trite observation that self representation in Court proceedings can be challenging exercise in the simplest of cases. At the risk of further triteness, any petition for just and equitable winding up is very far removed from simple litigation. 1 Article 7 of the Articles of Association requiring majority decision Page | 3 12. One of the principle challenges for any participant in court proceedings, let alone one self represented, is to draw out the focus of their case so that the Court, in reaching its decision, can accurately divine precisely (i) the position that party is adopting and (ii) the basis (fact, law or a combination thereof) upon which it is being said that the Court ought to adopt that position as contended for. 13. Whilst Mr Jacobs applied himself diligently to the tasks of both cross examination and submission, identifying the key allegations (and the proper scope of the same) being raised by the Respondents in

opposition to the Petition was not without difficulty in this matter. Accordingly in reaching this decision, in addition to the evidence advanced and arguments made on behalf of the Respondents, I have had particular regard to the Amended Points of Dispute. 14.

Consideration of this document, along with the written skeleton argument and oral closing submission, illuminates the following contentions advanced in opposition to the winding up of TYG. 15. In summary, the Respondents submit that the Petition is a deliberate attempt to contrive the winding up of TYG in order to obscure what are characterised as serious breaches by CL and GM (as directors of both TYG and the Petitioner) of the fiduciary duties owed by them to TYG as directors. 16. In particular suggests that the Respondents sought to rely upon the following principal arguments;

- a. Have acted in a dishonest way, by receiving the sum of approximately €1,000,000 paid by the Company to S-TARget and the Petitioner in the period 2019 to 2022, as pleaded at paragraph 24 of the Amended Points of Defence and set out Exhibit 2 of the statement of PB.
- b. Such funds have been paid to companies (S-TARget and the Petitioner) in which both CL and GM have an interest, without the interest that CL/GM have in such transactions being declared by them to their fellow directors. Page | 4
- c. Furthermore the extent to which CL/GM have profited from such transactions remains unknown, as the purposes to which such monies were put once paid over remain obscured from FJ and PB
- d. Have misappropriated the funds of the Company, explicitly in the period 20th to 23rd December 2022 when approximately £100,000 of funds were transferred from the Company's accounts to various recipients including Velalabs/S-TARget/Redl Patent/MFG Solicitors.
- e. Such payments, made without the authorisation of the Board of TYG are said to not only constitute a breach of fiduciary duty but also constitute a criminal offence under the Theft Act 1968
- f. Failed to act in the best interests of TYG by diverting away business opportunities, most particularly a contract with Nuance valued at \$12 million and with Apollomics valued at \$100 million.
- g. Have failed to act in the best interests of the Company to promote its success, most notably by the issuing of a press release in 2016 which sought misrepresented developments which were, in fact, the successes of TYG as successes of OncoQR INDIVIDUALS AND ENTITIES 17. The following individuals and entities were referred to in the course of argument, and thereafter in this judgment Name Description TYG Oncology Limited "TYG" "the Company" The Third Respondent and company subject to the Petition OncoQR ML GmbH "OncoQR" The Petitioner and a company incorporated under the laws of Austria Mr Christof Langer and Dr Geert Mudde are sole shareholders and directors 50% shareholder in TYG S-Target Therapeutics GmbH A company incorporated under the laws of Austria Page | 5 "S-TARget" Mr Christof Langer "CL" Director of TYG Director and Shareholder in OncoQR Dr Geert

Mudde “GM” Director of TYG Director and Shareholder in OncoQR Mr Fred Jacobs “FJ” First Respondent Director and Shareholder in TYG Dr Paul Broome “PB” Second Respondent Director and Shareholder in TYG WITNESSES 18. The Court heard from the following witnesses; a. b. c. d. Mr Christof Langer (“CL”) Dr Geert Mudde (“GM”) Mr Frederick Jacobs (“FJ”) Dr Paul Broome (“PB”) 19. I propose to deal with the factual determinations in the context of the individual issues in which they arise. Nevertheless I make the following observations which inform those determinations. 20. The most obvious is the burden and standard of proof. I remind myself that the burden falls upon a party who asserts the matter to prove the same. 21. 22. Furthermore the standard of proof is the balance of probabilities. In evaluating the evidence, this is a matter for the Court alone. In assistance with that task, whilst I consider the totality of the evidence, I am mindful that contemporaneous documentation may be of particular assistance in the exercise per *Gestmin SGPS S. A. v Credit Suisse (UK) Limited and another* [2013] EWHC 3560 (Comm). Page | 6 23. Inevitably in reaching a conclusion there will be instances where I must prefer the evidence of one party over another. At this juncture I confine myself to high level observation about the witnesses themselves, reminding myself at all times that the court ought to be slow to draw sweeping conclusions about the contents of a parties evidence from the manner in which the same is given. 24. Having heard from the witnesses, I am satisfied that all came to Court with a desire to do their best to assist the Court.. Having heard from each witness I am satisfied that each told me their perception of events as they genuinely held them to be. I remind myself that a witness can be mistaken, but that does not make them dishonest. 25. As regard matters of honesty, it would be appropriate to record that both GM and CL were subject to close and often hostile questioning from FJ, who put their honesty- or more accurately lack of the same, squarely to them and before the Court. 26. In response, both CL and GM were broadly measured and composed. It would be right to note that on occasion tempers became a little frayed, but little more than that- which having regard to the fact that the witness and questioner were both interested parties in the litigation might be expected. 27. My overall impression of the evidence of both CL and GM was positive. Their answers were, as referenced measured and composed. Overall I generally found their answers to be truthful and reliable. 28. The same broadly positive impression may be drawn from the evidence of the Respondents. In particular I would make clear that I was equally satisfied that both FJ and PB were being truthful with the Court and I consider them to be honest witnesses. 29. Likewise it would be appropriate to record that, although on occasion their evidence (and particularly that of FJ) was marked by moments of rancour, I did not have difficulty in accepting their evidence as genuinely and honestly given. 30. Turning to a more detailed consideration of the witness evidence given on behalf of the Respondents, I might observe as follows. The concept that witness evidence may Page | 7 be tainted by “confirmation bias” (whereby the witness subconsciously reinforces their evidence to reflect their beliefs to the detriment of their credibility) is a well recognised phenomenon. If criticism can be made on the Respondent’s evidence, and particularly that given by FJ, it would be that the same did in my view exhibit signs of such subconscious bias. 31. Explicitly I did find that he was so certain in his own mind that there had been breach of fiduciary duties on the part of

CL/GM, that his belief in the existence of such a breach somewhat, in my view, clouded his judgment as to whether there had been such a breach in reality. Indeed on occasion even he described himself as being “passionate about fiduciary duties”, and acknowledged that he may have been “over- zealous” on occasion with his allegations. 32. Whilst that self reflection is welcome, it did mean that, on occasion the weight, indeed credibility of his evidence was inevitably diminished by the general impression given that FJ saw all actions of his fellow directors CL/GM in a poor, indeed in his view, illegal light. Further, and again to the detriment of his evidence, one unfortunate side-effect of FJ’s deep held conviction that he was correct, was to lead him into being drawn in to argument in the course of his evidence (either with those he was cross examining or Counsel when being cross-examined), and moreover on occasion for him to make sweeping (and serious) allegations of impropriety against his fellow directors which, when considered against the apparent absence of any evidence to support such allegations, undermined the overall credibility of his evidence. 33. Accordingly where there was conflict in the evidence, I found that given by CL/GM to be preferable. 34. However the reality for this case was that there was not, in the context of this litigation as it is before this Court², much by way of factual dispute. As I was at pains to point out to all involved during the hearing, the focus for the Court at this stage was simply to consider whether it would be appropriate to wind up the Company on just and equitable grounds. The time permitted for the final hearing simply did not ² There may be greater contention in other forums Page | 8 permit the Court to examine and determine all of the issues which, sometimes only in passing, were ventilated between the Parties. 35. The relevance of this is that whilst when one looks at the dealings of the Parties in their totality, whilst the serious allegations of impropriety raised might in principle (as they are denied in their entirety) give rise to factual dispute it does not, in my view, necessarily follow that determining the issues in these proceedings requires determination of those disputed factual matters. 36. The focus of the hearing and this judgment is upon, and remains upon, the matters requiring determination in order to determine the proceedings. Those are (i) is the Company functionally deadlocked and (ii) has there been an irretrievable breakdown in the relationship between the directors- such that (for either reason) the Court should exercise its discretion to order the winding up of the Company on just and equitable grounds? 37. If I am persuaded to order that the Company be wound up then, as regards to the various transactions complained of, these are matters in my view for proper consideration by the liquidator of the Company who will be in a far better position than I, operating in the tight confines of this hearing, to investigate such matters in the depth required. It is important, in my view, that the Court in this hearing leaves the “field clear” for such investigations if they are considered to be required. 38. Confining the evidence to the matters strictly necessary to determine the question in these proceedings, the scope of the evidence required to determine the matter- and therefore the scope of the factual disputes in this case, is dramatically narrowed. Ultimately there is no real factual dispute between the parties as to the state of their relationship with each other. There is no real factual dispute that approximately the sum of €1,000,000 odd has been transferred from the Company to STAR-get/OncoQR along with £100,000 odd transferred from the Company in

December 2022. 39. There is a dispute as to whether such transfer amounted to a breach of fiduciary duty on the part of CL/GM such that they are now debarred from the equitable remedy of is required (as it goes to the arguments over clean hands), but these are matters of submission and are matters of law. Page | 9 40. The consequence of this is that although witness evidence was heard from all of the Company directors, I do not consider this is a case which turns to any great extent (in the context of the issues I have to consider) on the Court's view of the witnesses or the factual evidence. The primary focus of this matter and determination of the question of whether the Court should order just and equitable winding up lies, in my view, in the law and on the submissions. I therefore turn to these. **FACTUAL NARRATIVE AND BACKGROUND** 41. By way of the highest level summary only, the proceedings concern the company TYG Oncology Limited which was incorporated on 28 January 2013. The company was formed in order to develop treatments for gastro-intestinal cancers generally, and pancreatic cancer explicitly. 42. The Company constituted a joint venture between four individuals, CL/GM/FJ and PB with each contributing their experience in matters scientific and commercial. The shareholders of the Company are FJ/PB along with a second company OncoQR- itself jointly owned by CL and GM. Additionally CL and GM are directors of OncoQR, along with a further company S-TARget. 43. 44. Each of CL/GM/FJ and PB are directors of the Company. Under the terms of a licence agreement between the Company and OncoQR, dated 23 February 2016, OncoQR granted the Company exclusive rights to use both S- TARget and OncoQR patents in the development of cancer treatments. 45. The licence between the Company and S-TARget/OncoQR has now expired. I understand that it has not been renewed. 46. Initially the Company met with some success in its endeavours and concluded valuable agreement with external third parties- namely Nuance Biotech in 2018, and thereafter in 2022 Apollomics Incorporated. 47. Unfortunately whilst all involved initially had high hopes for the Company, the personal relationships between the four directors deteriorated markedly, with serious allegations (considered further below) being made by the directors, broadly divided in to factions CL/GM and FJ/PB against each other. Page | 10 48. Matters have culminated in the presentation, by OncoQR for the just and equitable winding up of the Company on grounds that (i) the Company is in functional deadlock and (ii) there has been a loss of mutual trust and confidence between the Parties (OncoQR embodying its directors and sole shareholders GM/CL). 49. The winding up is opposed by FJ and PB, who assert- amongst other matters that CL/GM ought to be precluded from an entitlement to seek winding up of the Company as they are barred from seeking such equitable remedy upon the basis that they do not come before the Court with clean hands. 50. Following exchange of pleadings, the matter was listed for trial for two days and was heard on 25th and 26th March 2025. **LEGAL BACKGROUND Just and Equitable Winding Up** 51. Before any determination of the Petition can be made, it is necessary to consider the basis and scope of the remedy. 52. Section 122(1)(g) of the 1986 Act states as follows, that a company may be wound up if "the court is of the opinion that it is just and equitable that the company should be wound up." 53. As is reflected in Section 125(2) of the 1986 Act, the remedy ought properly been seen as a remedy of last resort, and ought not be ordered where alternative remedies are available and the Court is of the view that the petitioners are acting

unreasonably in seeking to have the company wound up as opposed to pursuing their other remedies. 54. Following the decision in *Lau v Chu* [2020] UKPC 24, the legal burden of proof in establishing (i) an entitlement to relief is placed upon the petitioner and (ii) that winding up on just and equitable grounds would be, absent an alternative remedy, appropriate. Once discharged by the petitioner however, the burden of proof shifts to the respondent to the petition to demonstrate that the petitioner has unreasonably failed to pursue some other available remedy rather than seeking to have the company wound up. Page | 11 55.

Assuming that there are no such other alternative remedies, the question for the Court is whether it is “just and equitable” that the company be wound up. 56. The principle of “just and equitable” is a wide concept, and is not limited to any particular set of circumstances or any firm test. Per *In Re Westbourne Galleries*

[1973] AC 360 at 374H, the Court expressly deprecated creating categories under which the principles of “just and equitable” might be invoked- the words were general, the Court found, and ought not be reduced to only applying in particular circumstances but rather may be invoked whenever the facts command it. 57. Further, whilst the remedy is often invoked in situations where the company concerned can be considered to be, in substance, a partnership (most obviously in *Re Westbourne Galleries* itself), it is clear that the jurisdiction is not limited to such cases alone and may be invoked whenever justice and equity require it. 58. Whilst situations where it would be appropriate for there to be a just and equitable winding up are not limited, and the Court will have regard to all the circumstances, examination of prior cases where the Court has considered it appropriate to order winding up on just and equitable grounds include, with particular resonance to the current claim, the following; a. Where there is deadlock in the management of the company, where the directors and/or shareholders refuse to co-operate with each other- see *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426 b. Where a company is properly to be regarded as a quasi-partnership³, where there has been a loss of confidence or other breakdown in the relationship between members of the company Deadlock 59. Deadlock merely requires that the decision making ability of the company be impaired, usually by a divide along partisan lines in the company’s decision making processes. Per *Chu v Lau* [2020] UKPC 24 (at [23]) it is the management of the company, rather than more general decision making, which the Court considers. ³ This is only a grounds for just and equitable winding up in the case of quasi-partnership- see *Chu v Lau* [2020] UKPC 24 at [14-17] Page | 12 60. Winding up on the basis of deadlock does not rely upon either party having conducted themselves in a manner prejudicial to either the company or their fellow members. As a consequence of such deadlock the only solution is to wind up the company. The question of whether deadlock exists is a matter to be considered at the date of the trial rather than at the date of the petition. Loss of Confidence 61. Where the company is properly to be regarded as a quasi-partnership, a loss of confidence between members, often manifesting itself in the total breakdown of the parties personal relationship, will provide a basis upon which the Court will exercise its power to order winding up. 62. Whilst the justification for the winding up is similar to that found in circumstances of

deadlock, i.e. that the decision making apparatus of the company has broken down, the situations where an order for winding up on these grounds is not identical to the situations where there is functional deadlock. As observed in *Chu v Lau*

[2020] UKPC 24 (at [17]), where a company is a quasi-partnership then winding up may be justified even absent complete functional deadlock. This reflects the fact that, in a quasi-partnership, the individuals involved have agreed to work together on the basis of mutual trust and confidence. Where that trust and confidence is gone, it is appropriate to order a winding up of the company. Director's Fiduciary Duties 63. Central to the Respondents' submissions are allegations that CL/GM are guilty of a range of misfeasance, and that such conduct on their behalf acts to preclude OncoQR from an entitlement to the remedy of a just and equitable winding up of the company. 64. Specifically the Respondents allege, by reason of the allegations set out above, that KL and GM have breached their director's fiduciary obligations, along with their general duties as directors. Page | 13 65. The duties owed by CL/GM as directors (as with any director) are those codified at Sections 171 to 175 of the Companies Act 2006. Of these, the duties expressly relied upon by the Defendants were;

- a. Duty to promote the success of the company- s172
- b. Duty to avoid conflict of interest- s175
- c. Duty to declare an interest in a proposed transaction or arrangement- s177. 66. The requirements of these duties are, in brief, as follows: Duty to promote the success of the company- s172 67. This requires the director to act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of the members of the company as a whole. 68. In acting in accordance with this duty, the director will be required to consider, amongst other matters, the likely consequence of any decision made in the long term, the interests of the company's employees, the need to foster the company's business relationship and the need to act fairly as between members of the company. 69. Whether a director has acted in accordance with this duty is a subjective one- namely whether the director honestly believed that his act was in the interests of the company4 Duty to avoid conflict of interest- s175 70. This duty replicate the no-conflict rule, under which directors must not without the consent of the company place themselves in to a position where there is a conflict or possible conflict between the duties that they owe to the company. The obligation applies in a range of situations, including the ability to of the company to exploit a business opportunity. 71. A further aspect of the duty is the no-profit rule, exemplified by *Regal (Hastings) Limited v Gulliver* [1967] 2 AC 134. Where, in breach of the duty, a director has 4 See *Re Regentcrest plc v Cohen* [2001] BCLC 80 at 120 Page | 14 made a profit then absent the informed consent of the company, they may be liable to account for profits made in breach of the duty. 72. Unlike s172 the test as to whether there has been a breach of s175 is objective. Duty to declare an interest in a proposed transaction or arrangement- s177. 73. Pursuant to this duty a director may not have an interest in a transaction or arrangement with the company unless the interest has been authorised by

the members. 74. Such authorisation requires the director to disclose their interest in the transaction before the transaction is entered into. The duty will not be infringed where either the situation cannot reasonably be regarded, when considered objectively, as likely to give rise to a conflict of interest- see s175(6)(a) or per s175(6)(b) of which the other directors are aware⁵. Further, under s175(5), the s175 duty does not require the director to declare an interest either which (a) the director is not aware.

SUBMISSIONS

On behalf of the Petitioner 75. On behalf of the Petitioner, it was submitted that the Court ought to order winding up of TYG on just and equitable grounds by reference to two distinct matters;

- a. The Company is in functional deadlock such that, to all intents and purposes, the corporate governance of the company has ceased to operate. In such circumstances the company ought to be wound up.
- b. The Company ought to properly be regarded as a quasi-partnership. The personal relationships between CL/GM on one hand, and FJ and PB on the other, have irretrievably broken down with the consequence that the mutual relationship of trust and confidence, a central foundation of the company, has gone. As a result the only response is now to order winding up of the Company. 5 Such directors being treated as being aware of anything which they ought reasonably to have been aware Page | 15 Functional Deadlock 76. In support of her arguments for winding up on the grounds of functional deadlock, Counsel for the Petitioner highlighted that the Board of the Company had been deadlocked for a considerable period of time, well before the petition. For example she cited that as far back as 2021 the Company had been unable to reach a decision as to whether TYG ought to pursue a potential arrangement with Nuance. 77. Turning to authority, Counsel drew my attention to a range of caselaw on deadlock, of which of particular relevance were *In re Yenidje Tobacco Company Limited*

[1916] AC 426, along with *Chu v Lau* [2020] UKPC 24. As regard to the latter authority, Counsel highlighted that (per Chu at [19]) merely because a Petitioner is, to some extent, the cause of the deadlock will not act to preclude them from the remedy of a just and equitable winding up. Loss of Trust and Confidence 78. The primary thrust of Counsel's submission concentrated upon the alleged breakdown in trust and confidence between CL/GM and FJ/PB. 79. Firstly (so as to establish that this basis for just and equitable winding up is open to the Petitioner), Counsel submitted that TYG ought properly to be considered to a quasi-partnership- satisfying all of the core indica⁶ of such a company as set out in *Ebrahimi v Westbourne Galleries* [1973] AC 360 in that;

- a. The company was one involving personal relationships of trust and confidence
- b. There was an understanding that all members would participate in management
- c. A restriction on the transfer of shares

80. In current matter, Counsel submitted, there had been an utter breakdown in the relationship between the Respondents and CL/GM. In particular Counsel highlighted multiple instances of emails passing between CL/GM and, in particular, the First 6 Albeit, as Counsel reminded in the course of submission, these are indicators not strict legal requirement and the absence of one or other does not preclude a conclusion that the company is a quasi-partnership- see Chu at [31] Page | 16 Respondent where the latter raised allegations of fraud, misappropriation and allegations of criminal conduct.
81. Whilst making clear that such allegations were, as a matter of substance denied, Counsel articulated that the effect of such serious allegations was to destroy the personal relationship between the parties. The unusual feature of the current case, it was observed, was that it was the party raising the allegations of impropriety (including allegations of criminal conduct) who wished to oppose the making of the winding up order. This, Counsel submitted, was an entirely unrealistic position to adopt. The relationship between the parties had irretrievably broken down and the only thing that remained to be done was to wind up the Company on just and equitable grounds. Discretionary Considerations- Clean Hands 82. Turning to the allegations made on the part of the Respondents that the Petitioner ought to be barred from the equitable remedy owing to a lack of clean hands, Counsel whilst acknowledging that in principle the conduct of the Petitioner may act to bar equitable relief, submitted that the same does not in the current matter either upon the basis that;
- a. The matters raised by the Respondent do not constitute mis-conduct on the part of the Petitioner (or more accurately its directors), such that it would be appropriate to deny the Petitioner the remedy;
 - b. Alternatively, such conduct has not operated so as to cause the deadlock, TYG already being in a state of functional deadlock, and therefore that such conduct ought not act to bar the equitable remedy sought;
 - c. That in any event, the Respondents are equally culpable for the deadlocked state of TYG. Looking to Ebrahimi and Chu, taking matters at their highest for the Respondent each “side” (i.e. CL/GM and FJ/PB) share culpability for both the deadlocked nature of the governance of TYG, along with the breakdown of trust and confidence between them. In such circumstances there are no bars to the Court granting the equitable relief which the Petitioner seeks. Page | 17 On behalf of the Respondent 83. On behalf of the Respondents, it was denied that the company was in functional deadlock, but rather it was contended that such deadlock as there was a contrivance on the part of CL/GM (and through them the Petitioner) in order to obscure serious breaches of fiduciary duty and misconduct, up to and including allegations of criminal activity, namely theft. 84. Explicitly the Respondents averred that the directors of the Petitioner had- throughout the period 2019-2022 received, via their interest in OncoQR and S- TARget (to whom the funds were paid) sums approaching €1,000,000.00 from TYG. These, it was said, constituted breach of their duties as directors on the part of CL/GM (and by extension the Petitioner), by reference to s175 and s177 of the Companies Act 2006. Additionally as regard to the directors duties, the Respondents alleged

that- in breach of s172, there had been a breach of the duties upon CL/GM to promote the success of TYG. 85. Further, with respect to a series of transactions in December 2022 (amounting to approximately £100,000.00 odd), it was said that such funds had been misappropriated from TYG by CL and GM. Such actions were said to constitute criminal activity on the part of those directors, pursuant to the Theft Act 1968. 86. More broadly, it was submitted by the Respondents that CL/GM have sought to abuse the Court's process- both by issuing a statutory demand with respect to a sum of money for which the liability of TYG for was highly contested along with issuing this winding up petition on the grounds of functional deadlock when (i) if CL/GM had removed themselves from the decision making process as they ought to have done where they had an interest in the decision there would be no deadlock and (ii) such deadlock as there is, along with the petition generally, is a contrivance engineered by CL and GM to mask their activities with respect to misappropriating funds from TYG. 87. In summary, the Respondents sought dismissal of the petition on the grounds that there have been substantial and sustained breaches of the fiduciary duties owed by CL/GM as directors. In such circumstances they cannot avail themselves of the equitable remedy of winding up as they lack the necessary "clean hands". Page | 18 88. In addition, the Respondents sought other "Investigative and Remedial Orders" seeking a full inquiry in to allegations of whether the funds of TYG had been misappropriated, along with consequential orders to recover such sums from CL/GM in the event that such misappropriation was demonstrated.

DETERMINATION

Functional Deadlock 89. In reaching my determination I have at the forefront of my mind the decision in *Re Yenidje Tobacco Company* [1916] AC 426. 90. To an extent arguments over deadlock have come, particularly at trial, to be overshadowed by arguments (considered below) that there has been a loss of trust and confidence between the members of TYG, such that it would be appropriate to wind up the company on those grounds. 91. During the final hearing, each side was able to point to instances where (dependent on their position on deadlock) the company had either been able to reach the necessary decisions and where it had not been able to. 92. Further, it was the position of the Respondents- both in cross examination and submission, that whilst the Company Articles require unanimity, under the proper operation of the Articles (and Article 14 expressly) any decision involving CL/GM in which they had an interest- then they ought to be excluded from the same. Were they to be excluded then there would be no issues with FJ/PB reaching decisions on the required unanimous basis. 93. As such it was the clear position of the FJ/PB that "deadlock" could not occur in situations where there was a conflict of interest between CL/GM and the Company – such that they (CL/GM) were properly to be excluded from the decision making process. 94. The difficulty with determining this point was, as Counsel for the Petitioner observed, one of evidence. On a number of occasions she, properly, challenged FJ as to the lack of evidence in support of his allegations with regard to the €1,000,000 sum allegedly misappropriated from the Company. His response was, credibly in my Page | 19 view, that he could not prove such misappropriation as the same relied upon the production of documents and

evidence that had never existed- and it was the lack of existence that he sought to rely upon. 95. However by contrast, I consider that same criticism of lack of evidence could equally be levelled at the Petitioner in the context of the argument over deadlock. The Petitioner seeks winding up of the Company on the grounds that the same is deadlocked. As noted above, assessment of whether the Company is in that state is a matter to be determined at final hearing. Turning to evidence, as the Petitioner relies upon assertion of deadlock it follows, in my view, that the Petitioner bears the burden of demonstrating deadlock. 96. In that respect, and surprising considering the 3000-odd pages I was presented with at trial, evidence of deadlock in the day to day activities of the Company remained, in my assessment, thin. The antipathy between the Parties was well documented, but that in my view were matters which have greater resonance in the context of the argument that the mutual trust and confidence has been lost. Those are matters with which I am concerned below. 97. However, if deadlock is concerned with the ability (or more accurately inability) of the Company to be managed on a day to day basis, then there was in my view, less evidence on which I could conclude that the Company was unable to “carry on”. It is perhaps a credit to the personalities of all involved that, whatever their wider differences, in the day to day management of the Company they have been able to put those differences aside. 98. Perhaps no more powerful evidence of that fact can be seen beyond that seen in the fact that although the directors (and explicitly CL/FJ) were levelling accusation at each other in January/February 2021, the Company was clearly still continuing to function throughout that period- and thereafter for the balance of that year until (at least December 2022 when matters appear to finally deteriorate further). 99. Beyond that point however, even with the limited evidence before me, it does appear that the inner workings of the Company began to break down as the relationship between CL/GM and FJ/PB broke down further. This situation reached something of a nadir when both “faction” appointed their own sets of solicitors. Perhaps Page | 20 unsurprisingly the intervening 2 years of litigation has done little to balm the situation. Looking to the position at trial, and in to the future compels the observation that, no matter how the Company has managed to get through these personality challenges in the past, can it in the future or is it now functionally deadlocked? 100. In determining this, I consider that it is important to have in mind the scope of what the Court is being asked to consider. In particular, I have squarely in mind that whatever the limitations of the evidence concerning the existence of deadlock in the past- the assessment as to whether or not the company is in “functional deadlock” is a matter to be assessed at the date of trial, see *Chu v Lau* @ [41-43]. It is a forward looking exercise- as it was in *Re Yenidje*, concerning whether it is realistic to consider whether the business (and the persons involved) can realistically be expected to continue in business into the future.

101. What therefore are the prospects of the parties to this litigation (and explicitly CL/GM/FJ/PB) being able to continue in business together? In determining this point, I have dwelt on the observations made by FJ that there really ought not be any instances of deadlock- for the instances for potential disagreement/deadlock only arose in situations of conflict. In such situations, under the terms of the Article 14, the conflicted directors were precluded from taking part in the decision making process- in effect removing potential for deadlock by removing the potential for conflict.

102. Whilst I note the superficial merit of his point, I am unconvinced that it is sufficient to defeat contentions of functional deadlock to find that the solution to avoid deadlock was simply to exclude half of those with a vote. Candidly if that is the only way that a deadlock can be avoided, then it speaks loudly as to both the state of the relations between those conducting the business. Moreover it illustrates how realistic it is to conclude that- looking to the future, those parties- and by extension the company they constitute, will be in a position to continue. 103. Turning considerations of future management, I would note that whilst inevitably some of the transactions on which the Board of TYG will be required to vote are those in which CL/GM may have an interest (primarily dealings with OcnoQR Page | 21 and/or S-TARget) there are likely to be many more which they do not have such an interest and from which they therefore are not excluded by operation of the Articles. In those situations the directors will be required to meet and reach a unanimous decision together. 104. Much as the Court considered in *Re Yenidje* (where the directors were not on speaking terms), the question must be asked as to whether it is realistic to consider that these directors either are, or more importantly will in the future, be in such a position. Is it realistic to consider that the parties in this case will be able to reach unanimity on transactions where all four are required to vote? Or, as Counsel for the Petitioner contends has already occurred, is it the case that the Board will split along factional lines with CL/GM on one side, and FJ/PB the other. 105. Having considered matters in this case I am entirely satisfied that it is unrealistic to expect that any of the directors are likely to be in a position where the future management of this Company is possible. Having listened to matters in Court I cannot see, particularly by this stage where there has now been lengthy, contentious and expensive litigation in the interim to date and thereafter looking to the future (and to an extent disregarding how the parties have managed in the past), that there is any real prospect that the parties will be able to continue in any kind of business together- let alone take decisions where unanimity is required. 106. Considering future decision making, and the observations of Counsel of the reality (and risk) that decisions merely split along factional lines, the inevitable answer is that the opposing “camps” in this matter (being the Austrian Directors CL/GM on one hand, and the British⁷ Directors FJ/PB the other) will inevitably divide between each other. 107. In all these circumstances even if there has not been historically deadlock in the management of the company in the past, it is unrealistic in my view to think that there will not be in the future. 108. I acknowledge that there are considerable overlaps between by observations here, and below with respect to a loss of mutual trust and confidence. Nevertheless as a freestanding argument, I am satisfied that the Petitioner has made out that, at the 7 Reference to their place of residence- with due apology to FJ who, I believe, is American by birth. Page | 22 time of the final hearing, the governance of TYG is in a state of functional deadlock as between the Austrian and English directors. Loss of Mutual Trust and Confidence Quasi- Partnership 109. The first consideration is whether the Company is properly to be considered a quasi- partnership. In determining this matter I have regard to the indicators of such in *Ebrahimi*, whilst accepting that the same do not amount to a legal “test” for quasi- partnership. 110. Consideration of the evidence amply demonstrates in my view that TYG was formed upon

the basis of mutual trust and confidence between CL/GM and the Respondents. For example, consideration of the terms of the licence agreement executed between the Company and OncoQR sets out explicitly that it was the intention of all that, following the execution of the licence, CL/GM/FJ/PB (described collectively as the co-founders of TYG) were to enter in to a shareholder agreement for the purposes of ensuring that they all were to benefit equally from the activities of TYG. 111. Although no such shareholder agreement was ever executed, I consider that the fact that one was considered so as to facilitate an equal sharing of the fruits of the activities of TYG amply demonstrates the mutual nature of trust and confidence reposed by each director/member (CL and GM being directors of OncoQR) in each other. 112. Further, examination of the Articles, and explicitly Article 8 requires unanimity of each of the directors in decision making. Such clearly supports the notion that all expected to have a role in the decision making process. Whilst I acknowledge that strictly Ebrahimi speaks of the shareholders, rather than directors, taking part in the management of the company- the commonality of shareholders in OncoQR and directors of TYG demonstrate that the expectation of involvement in management of the directors of TYG (who additionally are the shareholders of OncoQR), evidences an understanding that all of the shareholders of TYG would participate in management. Page | 23 113. Absent finalisation of the shareholder agreement which had been envisaged when TYG was incorporated, restriction on the transfer of shares is not immediately apparent. However, it is uncontroversial that the indicators of quasi partnership identified in Ebrahimi are not a strict legal test, and the absence of one or more does not prevent a company being properly considered to be a quasi partnership. Such is the case in the current matter. Having considered the evidence I am entirely satisfied that it would be appropriate to consider TYG to be a quasi-partnership. 114. As a consequence of this it may be appropriate to wind up TYG on just and equitable grounds where there has been a breakdown in the personal relationship underpinning the quasi partnership. Conclusion on Loss of Mutual Trust and Confidence 115. In the current matter, the Petitioner submits that the personal relationship between CL/GM on the one hand and FJ/PB on the other has so utterly broken down that the only proper solution for the Court to adopt is to order the winding up of TYG. 116. In support of that contention Counsel drew my attention to what she characterised as multiple instances (by way of example only) of FJ seeking to “effectively blackmail” his co-directors CL and GM. 117. Considering the statements of case, along with the evidence, it is readily apparent that on multiple occasions the Respondents have levelled accusations of criminality or dishonesty at their fellow directors.

118. Whilst I do not share the analysis that the same constituted blackmail on the part of FJ, it is clear that the relationship between CL/GM and FJ/PB has seriously broken down. A comprehensive review of such instances in the documents is impractical, but cursory examination of the evidence reveals the following examples:

- a. Amended Points of Defence at paragraph 27a- “The First and Second Respondents have alleged that by transferring money from the Company to MFG Solicitors, representing that this expenditure was approved by the Company, and refusing to instruct the return of Company money, one or both Page | 24 of Mr Langer and Mr Mudde have satisfied the elements of a criminal offence.”
- b. Email 18 June 2021 from PJ to CL- “When we go through mediation you will not be required to provide the nature and detail of the STR expenditures, but when it comes to criminal court, all will be revealed.”
- c. Email 8 June 2022 from FJ to CL/GM “You and Geert appear to be dishonest and conflicted directors”
- d. Email 9 June 2022 from FJ to CL- “All will be revealed in criminal court and me and Paul are not the criminals”
- e. Email 17 June 2022 from FJ to CL- “I am truly sorry we offered you the chance to resign. I sincerely hope you don't resign by Tuesday at 9am, as you should be held accountable for your crimes and poor behaviour.”
- f. Email 19 June 2022 from FJ to GM- “All will be revealed in criminal court”;
- g. Email 21 June 2022 from FJ to CL- “Your repeated failure to declare your direct and indirect interests in TYG funds provided to OncoQR and S-TARget help to establish the criminal liability. This is not insanity. This is the slow legal process that is required for you to receive what you so richly deserve.... Eventually, we will get to criminal court and all of the evidence required will be revealed.”
- h. Email 21 July 2022 from FJ/PB (described collectively as the UKD) to the Insolvency Service calling for an investigation in to the activities of CL/GM (described collectively as AUD)- “We believe your enquiries will show that both civil and criminal offences have been committed by the AUD. The UKD would encourage you to send a report to the appropriate prosecuting authority (such as the police or the Criminal Investigations Team).... We would ask for the maximum civil and/or criminal penalties for the AUD, Christof Langer and Geert Mudde”
119. I emphasise that it would be incorrect to suggest that the antipathy evident in the email exchanges between the directors of TYG was all “one-way traffic”. There are Page | 25 instances in the emails where PJ was the recipient of hostile communications from CL/GM- (for example Email 9 June 2022 from GM to FJ “Look in the mirror what do you see? Sad isn't it?”). 120. Furthermore, my identification of the above transactions ought not be misconstrued as suggesting a course of personal rudeness between the directors and particularly from FJ, and even less any sort of implied criticism of FJ as to his conduct in making these allegations. It is entirely unnecessary when making out a case for just and equitable winding up to make findings of personal rudeness between directors.⁸ 121. Nor, as I stressed at the hearing can I, or should I, in anyway adjudicate upon the legitimacy or otherwise of the clearly held belief that the activities of CL/GM comprised a criminal act.

Such are not matters for these proceedings or this Court. 122. However what these exchanges do clearly demonstrate is the total breakdown of the personal relationship between the directors of TYG. 123. Against this factual position, how should the Court proceed? In Ebrahimi, the Court noted: “People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the relationship should be ended - unless, indeed, the party who wishes to end it has been solely responsible for the situation which has arisen” 124. Considering the evidence, both documentary and oral, it cannot reasonably be suggested in my view that these gentlemen could ever hope to work together again- either in the way that was originally contemplated or even at all. I would go further and, with due respect to the parties, suggest that it was patently apparent from physically sitting in their presence over the course of trial that these are people who realistically cannot be expected to tolerate being in the same room as each other 9 (unless compelled by necessity- such as a trial), let alone carry on business together. 8 See Lindley on Partnership as quoted in Re Yenidje- per Re Paramount Powders (UK) Limited [2020] BCC 152 at [35]. 9 1. compelled to leave the Court room. Indeed at one point in the evidence matters became sufficiently emotionally charged that GM felt Page | 26 125. In the current matter the Petitioner, in the form of CL and GM, wishes to end the Company. Can it be said that they are, per Ebrahimi, solely responsible for the situation that has arisen? From the evidence, this is self evidently not the case. I reiterate that in making that observation I make no personal criticism of any other directors and, explicitly, FJ. I anticipate throughout that he has genuinely believed that the accusations he has levelled were justifiable and appropriate. Whether they were I leave, save as considered below where absolutely necessary, to others. 126. But justified or not they have undermined, fatally in my view, the mutual trust and confidence on which TYG- in keeping with all quasi partnership companies, is dependant. Loss of Substratum 127. For completeness I note that during the course of closing, Counsel for the Petitioner referenced for the first time a potential argument that TYG ought to be wound up owing to a loss of the substratum of TYG, owing the fact that following the expiration of the licence between OncoQR and TYG to permit TYG to use the S- TArget Patents, TYG was no longer in a position to pursue or otherwise exploit development of a pancreatic cancer vaccine- the same being dependant on the technology licenced to TYG by OncoQR- and now withdrawn. 128. Absent the same, it was submitted, the Company would no longer be in a position to pursue the purpose for which it had been formed. As a consequence the substratum of the company had disappeared and it ought to be wound up. 129. In the course of trial there was oblique reference made by FJ that such technology was no longer essential to TYG, and therefore the purpose for which the Company had been formed- the development of vaccines to treat pancreatic cancer, was very much still in existence. However, beyond reasonably generalised assertion, no substance was provided to that assertion. 130. Nevertheless the failure of the Respondent’s to adequately advance evidence in response to that assertion cannot, in my view, weigh heavily against them in circumstances where this assertion was neither explicitly pleaded nor, realistically, developed in much detail before

me. All told I suspect that the argument was Page | 27 advanced (to the extent at all) as something of an afterthought. It did not form much of an aspect to the Petitioner's case. 131. I therefore do not consider it either necessary or appropriate, particularly in light of determination elsewhere, to determine this issue as part of my overall determination of the case. SECTION 125(2) AND THE AVAILABILITY OF ALTERNATIVE REMEDY 132. As outlined above, the remedy of winding up is draconian and ought only be considered as a remedy of "last resort". Accordingly it is necessary to consider whether, per s125(2) of the 1986 Act, an alternative remedy apart from winding up is available.

133. Whilst the legal burden remains on the Petitioner to demonstrate that the winding up order would be appropriate on just and equitable grounds if there were no other alternative remedies available, the burden thereafter shifts to the Respondent to demonstrate that the Petitioner has unreasonably failed to pursue some other remedy rather than seek a winding up. 134. During the course of closing submission, FJ articulated a number of potential alternatives to winding up, namely;
- a. An invitation to CL and GM to resign from the Board, cease their further involvement in the Company (converting their shares accordingly in to non voting shares) and thereafter concentrate on the wider S-TIR platform;
 - b. Cure their alleged breaches of fiduciary duty (which I take to breach of their duties as directors under the 2006 Act), and the parties thereafter continue in afresh in business;
 - c. A voluntary restructuring of the Board to remove issues of deadlock. In particular FJ extended an offer, apparently for the first time in submission, to resign from the Board to facilitate the breaking of the deadlock between the parties; Page | 28
 - d. That he would be prepared for the other shareholders, and principally CL and GM to buy out his 25% shareholding in the Company. Absent formal valuation evidence, FJ suggested the value of his shareholding as being £125,000.00.
135. Whilst on a personal level FJ, whose belief in the Company and wish for it to endure was apparent from both his evidence and submission, deserves credit for the insight that his resignation might solve the impasse that has clearly developed within the Company, I do not consider that any of the proposed alternative remedies represent a realistic alternative to winding up, let alone being one that the Petitioner has unreasonably failed to pursue. 136. Firstly, and fundamentally, I struggle to see how the Petitioner's can properly be said to have failed to pursue, let alone unreasonably so, alternatives that were proposed to them for the first time in closing submission. 137. Thereafter, as regards to (a) and (b) above, I do not consider- particularly in circumstances where both CL and GM reject any suggestion of wrong doing on their part, that it is unreasonable for either of them to refuse an alternative which requires them to accept wrongdoing on their part which they refute. Further, and explicitly with respect to option (b), noting the serious allegations levelled by the Respondent's against CL and GM and the very considerable ill feeling between all that radiated from the parties during the course of the final hearing, I find the suggestion that

the parties could somehow “put matters behind them” and work together as representing, unfortunately, something of the triumph of hope over experience.

138. With respect to the suggestions made (c) and (d), I cannot see from the evidence before me as to how any Board restructuring might be achieved in practice. There is, for example, no evidence before me that any other person might be prepared to join the Board on an “independent” basis. 139. Finally, whilst buy-out is often an alternative remedy ordered by the Court 10, option
- (d) above cannot in represent an realistic alternative remedy on the facts of this case. 10 Particularly in the context of remedy under petitions founded upon allegations of unfair prejudice under s994 of the 2006 Act- a parallel but by no means coterminous remedy. Page | 29 I have been taken to no evidence in support of the valuation of FJ’s shareholding in either in the suggested valuation of £125,000 or at all. 140. In circumstances where the licence, essential (on the evidence as it stands 11) for the development of the Company’s sole product has been withdrawn, a valuation of that order of magnitude seems ambitious and would require supporting evidence. In the absence of the same for the Petitioner not to pursue such an alternative is not, in m view, unreasonable. DISCRETIONARY CONSIDERATIONS Cleans Hand 141. This matter concerns whether the Petitioner ought to be refused relief because it, as a consequence of the actions of CL and GM its sole directors and shareholders, does not come to the Court with clean hands. 142. In considering whether the Petitioner ought to be refused relief, it is appropriate to consider the nature and breadth of the maxim concerning clean hands. 143. As noted in Snell’s Equity at 5-011, the maxim¹² does not require a simple mechanical application of the principle. Nor is the maxim concerned with questions of moral culpability. The question is whether the relief, to which the Petitioner would otherwise be entitled, ought to be denied because there is a sufficiently close connection between the alleged misconduct and the relief sought. 144. The operation of the principle of ‘clean hands’ in the context of just and equitable winding up is summarised in *Chu v Lau* [2020] UKPC 24 at [64] as follows; “The clean hands doctrine finds appropriate expression in this context by the requirement, expressed in the *Ebrahimi* case, that the application should not have been the sole cause of the breakdown of trust and confidence or of the 11 It was suggested by FJ in the course of the final hearing that it may be possible for the Company to “work around” the absence of the licence. Bearing in mind the apparent fundamental part the proprietary S-TIR platform played in the initial development of TYG100, the withdrawal of the licence for the S-TIR platform clear evidence would be required to substantiate the assertion. 12 I.e. that “He who comes into equity must come with clean hands” Page | 30 deadlock.... The Board sees no reason to disturb that well-known, long standing analysis from the highest authority” 145. The position adopted by the Respondents is that the breaches of fiduciary duty are sufficiently egregious on the part of the Petitioner (acting through its directors CL and GM) that the remedy of just and equitable winding up ought to be barred. 146. By contrast the Petitioner, whilst acknowledging that in principle the conduct of the Petitioner may act to bar equitable relief, submits that the same does not in the current matter either upon the basis that;

- a. The matters raised by the Respondent do not constitute mis-conduct on the part of the Petitioner (or more accurately its directors), such that it would be appropriate to deny the Petitioner the remedy;
- b. Alternatively, such conduct has not operated so as to cause the deadlock, TYG already being in a state of functional deadlock, and therefore that such conduct ought not act to bar the equitable remedy sought;
- c. That in any event, the Respondents are equally culpable for the deadlocked state of TYG. Looking to Ebrahimi and Chu, taking matters at their highest for the Respondent each “side” (i.e. CL/GM and FJ/PB) share culpability for both the deadlocked nature of the governance of TYG, along with the breakdown of trust and confidence between them. In such circumstances there are no bars to the Court granting the equitable relief which the Petitioner seeks 147. Determination as to this discretionary consideration involves consideration as to whether the actions of CL/GM raised by the Respondent constitute a breach of their duties as directors. Turning to those. Duty to promote the success of the company- s172 148. As noted previously, the question when considering this duty is subjective- namely whether the director in question honestly believed that their actions were in the interests of the company. Page | 31 149. Having considered the evidence, I am unpersuaded that the actions of either CL or GM, individually or collectively, represented activities on their part which, subjectively considered, were not in the interests of the company. 150. Considering the evidence, as regards to the potential for agreement with either Apollonis or Nuance, I was taken to any sufficient evidence (or indeed, really any evidence at all) that might satisfy me that these were either opportunities that the Company had which were diverted or otherwise that the actions of CL/GM in respect to either potential corporate partner where decisions which were not taken in the interests of the company. 151. In circumstances where the Respondents bear the burden of proving their allegations, having reflected on the evidence, I am still entirely unclear what those opportunities (if indeed they were opportunities) represented, let alone how it is said that decisions taken with respect to the same constituted a breach of the duty to act in the best interests of the company. 152. There was one particular decision, namely that to issue a press release in the name of OncoQR, that the respondents did highlight with sufficient particularity such that I was in a position to consider whether the same might represent a breach of this duty. The difficulty for the response, is that the question of whether the publication of this press release was in the best interest of the company or not (in essence the subjective decision making of CL/GM), was not extensively explored in either cross examination or submission. I do not therefore consider that the respondents have sufficiently made out any allegation that the issuing of this singular press release constituted a breach of this duty. 153. Moreover, there was nothing in the evidence that I was taken to which might explain how it was said (beyond the highest levels of abstraction) the publication of this press release had been contra to the interests of the company. 154. Clearly, where the burden of proof rests upon the Respondents, if the Court is not in the position to divine how it is said that an action of a director was not in the interests of the

company (and upon the evidence that I was taken to in this case I am not in such a position), then it naturally follows that the Court cannot determine that Page | 32 such an action was not in the interests of the company for what constitutes “the interests of the company” cannot be determined. 155. I therefore do not consider that the Respondents have made out their case that the actions of CL/GM represent a breach of the duties owed by them to the company under s172 of the Companies Act 2006. Duty to avoid conflict of interest- s175 156. Considering the submissions on this point, it appeared that the Respondents contended that the arrangements between S-TARget and OncoQR and TYG, and in particular the sum of approximately €1,000,000 paid by the Company to S-TARget and the Petitioner in the period 2019 to 2022. 157. Such arguments upon closer consideration concern a contention of a conflict of interest said to arise from a transaction or arrangement with the Company. The importance of this is that section 175, and the duty therein, does not apply to a conflict of interest which arises in relation to “a transaction or arrangement with the company” (s175(3)). Section 175 ought therefore, in my view, be considered to be mutually exclusive with the duty under section 177. 158. Accordingly matters such as where there are contracts with a company of which the director is a shareholder (i.e. transactions between TYG and OncoQR/S-TARget) are not in my view within the scope of s175 and fall be considered under s177. In *Re Dinglis Properties* [2020] 1 BCLC 107 @ [308], the Court opined “In my view, Mr Hubbard is right to say that the broader formulation of section 175(3) is the correct one: i.e., it excludes from the scope of section 175 all cases where the conflict arises in connection with a transaction or arrangement with the company, regardless of who is entering into the transaction. I say that for two reasons: (i) That is what section 175(3) says: it is not in terms confined to cases in which the transaction is one with the director personally and (ii) It makes sense to read section 175 together with section 177, as David Richards J. did in *Re Coroin* (No. 2) [2012] EWHC 2343 (Ch), in holding (at [583]) that the effect of section 175(3) is to make sections 175 and 177 mutually exclusive. The duty under section 177 arises in any case in which the director is interested, directly or indirectly, in a Page | 33 proposed transaction or arrangement with the company. An indirect interest obviously arises even in a case where the person or entity proposed to enter into the transaction is a third party, and not the director himself.” 159. As a consequence, argument with respect to the transactions between TYG and OncoQR/S-TARget and whether the same constitute breach of directors duty fall to be determined by reference to s177. Duty to declare an interest in a proposed transaction or arrangement- s177. 160. There were two elements of the dealings between TYG and OncoQR/S-TARget that the Respondent’s focused upon in their submission concerning the payments 2019-

2023. These were;

- a. The interest of CL/GM in being both directors of TYG and shareholders of OncoQR and;
- b. The apparent lack of transparency with respect to the funds received and in particular the extent to which CL/GM, as shareholders of OncoQR and/or S- TARget have profited from such funds.

161. With respect to (b), it is a trite observation but OncoQR and S-TARget are entirely separate entities to TYG. Provided the potential interest of CL/GM in the transactions between those companies and TYG were adequately disclosed, to which I will turn, I am unpersuaded that there is any legal basis for an entitlement of TYG to examine what either OncoQR and/or S-TARget have done with the monies received by them from TYG. 162. I am unaware of any principle, and certainly have not been taken to one, which would entitle the payer company to examine where funds are spent once the payee company receives them. Candidly, what the payee does with the monies is, as far as I can see, not the business of the payer and I have heard nothing in evidence or submission that might persuade me otherwise. 163. Clearly though, where CL/GM clearly do have interest in transactions between OncoQR/S-TARget and TYG, such transactions do fall within the scope of s177 and Page | 34 there is an obligation on CL/GM to declare such an interest, unless an exemption applies. 164. In the course of evidence I was not taken in the case of either CL or GM by Counsel to evidence that prior to TYG entering in to a transaction with either OncoQR or S-TARget, the clear interest that both CL and GM, as shareholders of OncoQR and S-TARget was declared.
165. What Counsel for the Petitioner did focus upon however, was the effect of s177(6) (b), which absolves the director of the obligation where their fellow directors either are, or are treated as being, aware of the interest. 166. Considering the evidence in this case, I am entirely satisfied that prior to TYG entering in to transaction with either OncoQR and/or S-TARget, the interests of CL/GM in those latter companies was well known to both FJ and PB. Both FJ and PB were well aware of CL and GM's position as shareholders in both OncoQR and S-TARget. Indeed consideration of the licence agreement dated 25 February 2016, under the terms of which OncoQR licenced use of various of its patents to TYG, the role of CL in particular is explicitly clear as it is he who signs on behalf of OncoQR. 167. Both OncoQR and S-TARget were publicly registered companies and information about shareholdings, directors etc was readily available had it been required. At no point in the evidence was I taken to anything that suggested that the role played by either CL or GM had been obscured from their fellow directors in TYG. 168. In the circumstances whilst I am satisfied that the transactions between TYG and OncoQR and/or S-TARget were those which attract an obligation of declaration under s177, I am likewise satisfied that the interest of either CL and GM in such transactions was either (a) known to their fellow directors or (b) ought have been known. 169. Consequently the exemption under s177(6)(b) in my view applies. Any failure on the part of CL/GM to declare their interest in the transactions between TYG and OncoQR/S-TARget with respect to the approximately €1 million sum paid in the 2019-2023 period does not constitute a breach of their duties as directors under s177. Page | 35 170. In like way, I am satisfied that the receipts of these payments from TYG did not represent a breach of the no profit/conflict rules (to the extent that the same stand separate to the codified duties within the Companies Act 2006. 171. The first, obvious, issue is that I do not have any direct evidence that either CL or GM have profited from those transactions with OncoQR/S-TARget. Whilst it is a reasonable presumption that as shareholders of those entities, CL and GM would have drawn profit, in my view if serious findings were to be made

against CL/GM it would require at least some evidence in support of the contention to support a finding on the balance of probabilities. In the evidence that I have seen, there is none. 172. Secondly, as set out above in the context of the codified director's duties, there is clear exemption for directors in circumstances where their fellow directors were aware of the potential interest in the transaction. For all the reasons set out above, I am satisfied that FJ/PB were aware of the interest that CL/GM had with the €1,000,000.00 series of transactions between TYG and OncoQR/STARget. I do not therefore consider that such transactions could represent a wider breach of the no profit/no conflict rule on the part of CL or GM. 173. Accordingly, by way of an overarching conclusion on the €1,000,00.00 odd payments made between 2019 and 2022 (as pleaded at paragraph 24(a) of the Amended Points of Defence), I am satisfied on the evidence placed before me that it has not been demonstrated that the same were paid either in breach of the director's duties owed by CL/GM under the Companies Act 2006 or otherwise. I do not therefore consider that the "clean hands" principle operates to deprive the Petitioner of the remedy with respect to these transactions. Payment of TYG Funds in Period 20th-23rd December 2022 174. During the course of trial FJ made considerable reference, both in cross examination and submission, to allegations of misappropriation of TYG to the approximately sterling value of £100,000.00 between 20th December 2022 and 21st December 2022. Those funds were helpfully summarised by FJ at page 4 of his written opening note, as follows

Date	Payee	Amount
20 December 2022	OncoQR	€25,000.00
20 December 2022	Velalabs	€1,392.00
20 December 2022	STARget	\$30,011.07
20 December 2022	Redl Patent	\$30,005.54
21 December 2022	MFG Solicitors	\$12,991.62
21 December 2022	MFG Solicitors	\$18.25
21 December 2022	MFG Solicitors	£12,444.00

175. During the course of cross examination, it was put to GM that neither he nor CL had sought authorisation from the board of TYG before those payments were made in December 2022. It was accepted by him that this was the case, but in his view this approach was justified because during this period FJ/PB had transferred substantial funds from TYG account (essentially the balance of all funds in the account- approximately £300,000.00) odd to their own personal accounts without the authorisation of CL or GM. 176. Furthermore, I was told, the payments themselves were entirely justifiable- representing payments which were necessary to secure the long term future of the work that TYG had been doing- i.e. patent attorneys or for the secure storage of materials (Velalabs) generated by the research undertaken by TYG. 177. Considering all of the evidence, it was abundantly clear that the actions of both the Austrian and English directors were in neither case entirely above criticism. Whilst I can understand the apparent benefit to TYG of preserving patents etc, I am unpersuaded that such a need alleviated the obligation on the part of GM, in particular, to seek approval of his fellow directors. That was what the Articles required. 13 Assumed reference should be £, although nothing turns on this. Page | 37 178. The lack of director approval for the payments of such funds is thrown in to even starker relief when consideration is given to the purpose of the payment of such monies. In particular the sums paid to MFG Solicitors were being paid in the context of advice/drafting to bring insolvency proceedings to wind up TYG. Whether it was permissible to deploy company funds to effectively bring the company to an end is a matter which, even, superficially calls for

explanation by CL/GM and such explanation has not, to date, been provided. 179. Nevertheless two important points of qualification occur. 180. Firstly, considering this entire episode against the wider factual background of the case, the period amply demonstrates- if further evidence were in fact needed, that the relationship between the Austrian and English directors had entirely broken down by this period. Listening to the evidence it was readily apparent how much mistrust had existed, and remained, between CL/GM and FJ/PB. Indeed the transfer by the latter of the balance of the funds held by TYG to their personal accounts (where on the evidence the funds have stayed apparently untouched) was justified by FJ on the belief that the funds would otherwise be misappropriated by one or other of the Austrian directors. There could be, in my view, no stronger evidence of how completely the personal relationships of trust and confidence between CL/GM and FJ/PB had broken down. 181. Secondly, it is important in my view to consider the relevance of these transactions to the overall argument in these proceedings. As I explained to the Parties at the final hearing, in the same way that it is not the role of the Courts in these proceedings to adjudicate on allegations of criminal conduct, in like way it is not the purpose of these proceedings, unless required for the purpose of determining the ultimate question as to whether TYG ought to be wound up, to adjudicate on whether the monies (in the abstract) have been misapplied or misappropriated. Such is a matter, at least in the first instance, remains a matter to concern any liquidator appointed and unless necessary, and it would be unhelpful to make determinations which might fetter the decisions of others (liquidator etc) on a later date. 182. This would be even more unwise, in my view, in light of the very limited evidence I have been able to consider in these proceedings. Whether as a consequence of the Page | 38 Respondents being self representing or simply because the time estimate of 2 days did not allow for the same, the evidence that I have been taken to in the course of the final hearing in this action was sufficiently limited to give me cause for concerns if I were required, even on the balance of probabilities, to draw firm conclusions about the legitimacy or otherwise in the actions of the Austrian directors in December 2022. 183. The question therefore turns to, whether the same is in fact necessary? In the current case, the Respondents deploy arguments over these transactions in support of the contention that the Petitioner ought to be deprived on the equitable remedy of winding up as these transactions prevent the Petitioner coming to Court in this case with suitably “clean hands”. 184. However, as *Chu v Lau* makes clear (at[64]), per Ebrahimi, it is necessary for the Petitioner not to be the sole cause of the breakdown on which they rely. It is not, on my reading of the authorities, necessary for them to be free of all blame before they can invoke the just and equitable winding up of the company. 185. Further, the doctrine of clean hands is not concerned with general moral culpability on the part of those seeking to invoke the equity. The issue for the Court, when considering the doctrine, is whether the relief sought should be denied because there is sufficiently close proximity between the conduct of the party seeking the relief and the relief sought. 186. In *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2017] EWCA Civ 1567 Lord Briggs and Hamblen LJ, citing *Aikens LJ in Royal Bank of Scotland Plc v Highland Financial Partners LP* [2013] EWCA Civ 328 14 , note that (when considering how the clean hands doctrine operates) “the key part of

it, which dates back to the 18th century, is that the misconduct or impropriety of the claimant must have "an immediate and necessary relation to the equity sued for", and that it must be shown that the claimant is seeking "to derive advantage from his dishonest conduct in so direct a manner that it is considered unjust to grant him relief". 14 Neither of which were cited in argument, but both which are referenced in Snell's Equity and which I have considered during the course of preparing this judgment. Page | 39 187. Considered in light of those principles, the necessity of determining whether the transactions in December 2022 were legitimate or not, becomes otiose. Even if such payments were improper (and I do not suggest that they were), this would have no bearing in my view as to whether the Petitioner (through CL/GM) ought to be otherwise denied the equitable remedy of just and equitable winding up. 188. I reach this conclusion because it cannot in my view be suggested that such transactions (if they even represented impropriety) had any connection- let alone the requisite close connection with the equitable remedy sought. CL/GM seek to wind up TYG on the basis that the company is deadlocked and/or that there has been a total breakdown in the trust and confidence underpinning TYG as a quasi partnership. 189. As I have found, the relationship between the directors- and thereafter the shareholders, has completely broken down. The instances of transactions in December 2022 by GM (and for completeness FJ/PB) may have been symptoms of the mistrust and breakdown in the parties relationships- but they do not in my view represent the cause of the same. 190. Accordingly I am of the view that there is an insufficiently close connection between the transactions of December 2022 of which the Respondents complain, and the remedy sought by the Petitioner, that the former ought to deprive the Petitioner of the latter. In these circumstances, and for the reasons that I have already outlined, as I do not consider it necessary to conclude whether those transactions were legitimate or not (for it has no resonance in the "clean hands" argument), I do not make any findings with respect to the legitimacy or otherwise of any of the transactions between 20th-23rd December 2023. Investigation of the same, if required at all, is the purview of the liquidator and I make no findings which might ultimately jeopardise that activity. 191. Entirely for completeness, whilst I am satisfied that the €1,000,000.00 odd transactions between 2019-2022 paid by TYG to OncoQR did not represent a breach of CL or GM's duties as directors. Like reasoning applies to such transactions that, in my view, there is insufficiently close connection between such transactions and the remedy sought that it would not be appropriate to deprive the Petitioner of the Page | 40 equitable remedy by reason that these transactions, even if improper or otherwise in breach of duty, render the Petitioner's hands unclean. OVERALL CONCLUSION 192. In light of all of the above, I am satisfied that CL and GM, and thereby the Petitioner have made out their contention for the just and equitable winding up of TYG on the grounds of (i) functional deadlock between members and (ii) a loss of trust and confidence between the members, in circumstances where TYG can be considered to be a quasi-partnership. 193. Either ground alone would be sufficient in my view to justify the winding up sought. However, when taken together and considered against the backdrop of the evidence seen and, in particular heard, it is clear that they are collectively greater, and thereby more persuasive, than the sum of their individual parts. Regrettably so totally has the relationship between CL/GM and FJ/PB

broken down, that I do not consider that there is any realistic alternative other than to order the winding up of TYG and appointment of a liquidator. 194. In reaching this conclusion I have had regard to (i) whether the Petitioner ought to be deprived of the remedy sought by reason of the conduct of CL/GM and (ii) whether there is an alternative remedy which might be appropriate short of the draconian remedy of winding the company up. 195. For the reasons set out above, I do not consider that any of the matters raised by the Respondents are of such sufficient connection with the remedy sought that they might deny the Petitioner the remedy sought upon the basis that the Petitioner does not come to Court with clean hands. 196. Furthermore, having considered the alternative proposed remedies, I do not consider that there is any alternative in this case save to make the order that the Company be wound up. 197. Following circulation for corrections, this matter will be formally handed down on a date to be confirmed with the Parties. The Parties need not attend that short hearing. Thereafter I will list a substantive hearing with a time estimate of two hours to Page | 41 consider further matters that arise as a consequence of this judgment. I would urge the Parties to try and come to compromise as to the outstanding matters of the form of the Order and the costs. However if matters remain outstanding, I will consider the same at that second hearing. District Judge Philip Mantle 17 June 2025 Page | 42

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://caselaw.nationalarchives.gov.uk/ewhc/ch/2025/1567
CASE PAGE	https://chat.esheria.ai/case-law/england-and-wales/JustandEquitableWindingUp-court-unknown--6a3ea5013b1caa9129801013

Prepared on 27 October 2026 · Esheria