

JERSEY / JUDGMENT

Aston Martin Lagonda Limited v Tara Ferguson and Alia Haskuri and Bespoke Limited

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Companies - Appeal from decision of the Royal Court [2023] JRC 250 [2024]JCA071 Court of Appeal
22 April 2024 Before : Lord Anderson of Ipswich KBE KC, President Jeremy Storey KC The Bailiff
of Guernsey Between Aston Martin Lagonda Limited Appellant And

- (1) Tara Ferguson And
- (2) Alia Haskuri
- (3) Bespoke Limited Respondents Advocate J. D. Kelleher for the Appellant Advocate J. D. Garrood for the First and Second Respondents Advocate J. W. Angus for the Third Respondent

judgment

storey JA: 1. This is the judgment of the Court.

Introduction

2. By an Act of Court dated 14 December 2023 the Royal Court (Commissioner Alan Binnington sitting with Jurats Averty and Entwistle) made an order to wind up a Jersey company, AMWS Limited ("the Company") on the ground that it was just and equitable to do so. The order had been sought by the Company's two professional directors, Tara Ferguson and Alia Haskouri ("the directors"), pursuant to Article 155 of the Companies (Jersey) Law 1991 ("the law"). The directors' Representation of 21 April 2023 had been supported by Bespoke Limited ("Bespoke") but opposed by Aston Martin Lagonda Limited ("AML"), the two shareholders in the Company. 3. The winding up was made following a two day trial on 8 and 9 November 2023 and was granted on three alternative grounds: (i) Deadlock between Bespoke and AML; or (ii) Loss of substratum; or (iii) Breakdown of trust and confidence. The evidence was given by way of affidavit from, inter alia, Ms Ferguson, Abdullah Zidan (a Bespoke appointed director of AMW Limited ("AMW")) and Michael Marecki (vice president, general counsel and company secretary of AML). None of the advocates had applied to cross-examine. The Royal Court's detailed reasoning was set out in its judgment of 14 December 2023. 4. AML appeals the winding up order. Factual background 5. The background to this dispute was set

out at paragraph 2 of the judgment: "The Company is a joint venture company incorporated for the purpose of facilitating the conduct of a business of an authorised dealer and repairer of Aston Martin cars, as well as operator of a business known as the Aston Martin Heritage business, through a wholly-owned UK subsidiary, AMW... The Company has an authorised share capital of £10,000 divided into shares of £1 each. It has two shareholders, the English registered company, ...AML and the Jersey registered company Bespoke..., each of which holds 500 ordinary shares representing 50% each of the issued shares in the Company. AML is in turn owned by Aston Martin Lagonda Global Holdings PLC, whilst Bespoke is a wholly-owned subsidiary of Pegasus Automotive Group Holding Company W.L.L. ("the Pegasus Automotive Group") which is in turn ultimately owned by the Al Roumi Group. The Pegasus Automotive Group are official dealers of Aston Martin, Rolls-Royce and Koenigsegg vehicles in the UAE, Kuwait, Switzerland and the United Kingdom". 6. The Company had been incorporated on 13 March 2010. Its shareholders were AML (40%) and Bespoke (60%). In April 2011 the Company acquired the issued share capital of AMW. In 2014, following the acquisition by private equity fund Investindustrial of a 37.5% stake in the Aston Martin Group, and at Investindustrial's request, Al Roumi/Bespoke transferred 10% of its stake in the Company to AML for nominal consideration of £100. As equal co-owners of the Company, AML and Bespoke each appointed three directors to the board of AMW. There was no formal joint venture or shareholders' agreement between AML and Bespoke. The Company's sole income is dividends from AMW. 7. In about February 2021 a dispute arose in the following circumstances. Bespoke alleged that AML had improperly effected unilateral adjustments and/or reallocations of revenue and/or profits within AMW and that substantial unauthorised cash transfers had been made from AMW to AML, at the direction of AML, which were said to have materially affected AMW's cash flow and financial position. Bespoke's complaints in relation to the operation of AMW were categorised as misappropriation, breach of duty and a failure in management on the part of AML. In January 2022 Bespoke referred the dispute to the Company as AMW's sole shareholder. An expert (Mr Polkowitz of Teneo Financial Advisory Limited, formerly PwC Advisory) was appointed by the directors of the Company in August 2022 to review AMW's accounts and to investigate the dispute. However, Mr Polkowitz was unable to issue a final draft without sight of material which AML had refused to provide (on the ground the information was confidential and proprietary to AML). As the judgment of the Royal Court recorded at [35]-[37]: "35... It had been expected by the [directors] that if the Teneo report rejected Bespoke's complaints, the status quo would prevail. However, if the Teneo report revealed culpable conduct by AML in the management of AMW, the Company could take action, whether to preserve the value of its assets or otherwise. As Teneo could not provide a final report, the ... directors of the Company found themselves unable to make an informed assessment as to Bespoke's complaints, and in their view the Company could no longer operate as a "buffer".

36. The [directors] now say that the Company is deadlocked in the sense that its shareholders are unable to reach any agreement, each having lost trust and confidence in the other.

37. The [directors] further say that they are unable to make any decision in respect of the future conduct of the affairs of the Company's wholly-owned subsidiary and its business and, in their view, there continues to be a risk of potentially serious misconduct having taken place, to the financial detriment of the Company and its shareholders". 8. At the time of the trial AMW's accounts for 2020, 2021 and 2022 had not been signed or filed because the three Bespoke appointed directors felt unable to approve them. Companies House had notified AMW that if no progress was made by the end of December 2023 to deliver the outstanding accounts proceedings would be commenced to dissolve AMW and remove it from the Companies House Register. 9. The Royal Court concluded, correctly in our view, at [65] of its judgment that: "It is not for this Court to determine the issues that have arisen within AMW. It is apparent to us that had AML been more cooperative with the [directors] and the Teneo investigation then the dispute might well have been capable of resolution. Equally, we have some sympathy with the suggestion by [AML] that [Bespoke's] demands made it unlikely that agreement would be reached in relation to the terms of a disclosure notice in the accounts..."

Legal framework

10. At [38]-[41] of the judgment under appeal the relevant legal principles were set out: "38. Article 155 of the ... Law ... provides: "(1) A company, not being a company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up by the court if the court is of the opinion that: -
- (a) it is just and equitable to do so; or
 - (b) it is expedient in the public interest to do so.
- (2) An application to the court under this Article on the ground mentioned in paragraph (1)(a) may be made by the company or by a director or a member of the company..."
39. In the Royal Court decision in *Financial Technology Ventures (II) QLP & Ors v ETFS Capital Limited & Graham Tuckwell* [2021] JRC 025, the Court recognised that there is no exhaustive list of circumstances in which a winding up order could be made on a just and equitable basis under Article 155(1)(a) of the Law, although it did acknowledge (at paragraph 49 of the judgment) the following traditional categories set out in *Hollington on Shareholders' Rights* (9th Edition) at 10-11: "[It] remains conventional for the purposes of exposition at least to follow the traditional categorisation of cases where a winding up order would be made on the just and equitable basis. There were four such categories, to which one can add a fifth:
- (1) loss of substratum;
 - (2) deadlock;
 - (3) justifiable loss of confidence due to mismanagement;
 - (4) expulsion of 'working partner'; and

(5) breakdown of trust and confidence".

40. It is accepted by the parties that the [directors] are relying only on categories (1), (2) and (5).

41. Although the above categories are a useful guide to cases involving a 'just and equitable' winding up, the Royal Court has acknowledged that the phrase is to be given a flexible meaning and that it would depend on the circumstances of each individual case. Thus, in its decision in *Re Green Equity Limited*

[2013] JRC 169, the Court, referring to the decision in *Jean v Murfitt*

[1996] JRC 237 said (at paragraph 10): "The Court held that it was appropriate to exercise its powers under Article 155. Bailhache Bailiff, said that the phrase "just and equitable" had to be given a flexible interpretation. It would be wrong to define fully the circumstances in which it would be just and equitable to wind a company up; it would depend on the circumstances of each individual case".

11. The legal meaning of (1) "deadlock",

(2) "loss of substratum" and (3) "breakdown of trust and confidence" were set out at (1) [49]-[55], (2) [46]-[48] and (3) [56]-[58] of the judgment under appeal. There is no challenge as to the Royal Court's conclusion of law as to (2) but errors of law are raised in relation to (1) and

(3) - see paragraph 14 below.

Issues

12. The issues before the Royal Court were summarised at [43]-[45] of the judgment: "43. The issues for determination identified by the parties included:

(i) whether there is deadlock within the sense described by Lord Briggs in *Chu v Lau*

[2020] UKPC 24, that is either:

(a) a functional deadlock, in which there is an inability of members to co-operate in the management of a company's affairs that leads to an inability of the company to function at board or shareholder level; or

(b) where a company is a corporate quasi-partnership, in which an irretrievable breakdown in trust and confidence between participating members in an analogy with the same grounds as would justify the dissolution of a true partnership; or (ii) whether the Company has lost its substratum.

44. ...a third issue for determination [is] whether, should the Court conclude that the board of the Company is deadlocked and/or that the Company has lost its substratum, there are nonetheless grounds for withholding the relief sought by the [directors].

45. ...a fourth issue for determination [is] whether, on an application for winding up on a just and equitable basis, the Court will have regard to whether an order for winding up is necessary, or whether there is an alternative course". The Royal Court's decision

13. The decision is recorded at [66]-[71] of the

judgment:

- (1) Deadlock: although the board of the Company was not deadlocked, there was an 'impasse' because the directors: "appear to be wholly unable to resolve the serious dispute that has arisen between their shareholders and thus between the two blocks of directors in [AMW] who represent the two shareholders. Unless resolved this risks AMW being struck off the Register of Companies or its value being significantly diminished": [67a] and first sentence of [69];
 - (2) Loss of substratum: there is a loss of substratum because the above "impasse relates to the very purpose for which the Company was formed, namely, to assist in the resolution of disputes between its members". The directors of the Company "are now wholly unable to resolve the current dispute... The continued existence of the Company is therefore acting as a block, rather than an aid, to a resolution of the issues between the shareholders. If the Company is removed from the structure, then the shareholders would be in a position to pursue...remedies in the English Courts" (such as an unfair prejudice claim or a just and equitable winding up of AMW): [67b] and second sentence of [69];
 - (3) Breakdown of trust and confidence: "there has been a significant breakdown in trust and confidence between the two parties to the joint venture which has affected the ability of the board of AMW to take major decisions and is likely to diminish the value of the Company's investment, if it has not already done so". In summary: "Despite the use of a company structure, the dispute has the hallmarks of a breakdown in the relationship between partners in a joint venture partnership": [67c] and third sentence of [69]; and
 - (4) Availability of alternative remedies: "The availability of alternative remedies, if the Company remains in place is, in our view, extremely limited and ...the Company's continued existence acts as a bar to some of those remedies":[70]. A winding up order would not deprive the investors of their investment because the Company does not trade. Following any winding up the "investment represented by the shares held by the Company in AMW will simply pass to Bespoke and AML." On the other hand, if a winding up order is refused, there is the real "likelihood of the dispute leading to a diminution in the value of the investment in AMW": [70]. The grounds of appeal
14. Five grounds are raised in AML's Notice of Appeal dated 8 January 2024:

- (1) Deadlock: the Royal Court found, correctly, that there was no deadlock in relation to the management of the Company. However, it misdirected itself as to the correct test by considering the position of AMW, a subsidiary company. In any event, even at AMW level, the board was capable of taking routine decisions;
 - (2) Loss of substratum: the Royal Court was wrong to conclude that the main purpose of the Company was to function as a 'buffer' to assist in the resolution of disputes between its members because there was no evidence to support such a finding;
 - (3) Loss of trust and confidence: there had been no pleading of a quasi-partnership relationship nor was any evidence of such adduced. In any event, the Court erred in law by finding the necessary existence of a quasi-partnership when there were no "considerations of a personal character arising between one individual and another" - here there were two corporate shareholders and no personal relationships between the protagonists;
 - (4) Availability of alternative remedies: the Court failed to take into account Bespoke's claims in England (a double derivative action) or in Jersey (unfairly prejudicial conduct under Article 141 of the Law); and
 - (5) Change in circumstances: since the Royal Court's judgment the directors of AMW had signed and filed the accounts for 2020, 2021 and 2022. This justifies the Court of Appeal in re-exercising the Court's discretion (and refusing a winding up order). Bespoke's Respondent's Notice
15. Bespoke served a Respondent's Notice dated 19 January 2024 in relation to Ground 5. Should the Court of Appeal be minded to re-exercise the discretion vested in the Court, a winding up order of the Company should still be made. The signing of the three sets of accounts for AMW on 28 December 2023 did nothing to resolve the dispute between Bespoke and AML because the previous failure to sign was symptomatic not causative of such dispute. So any change in circumstances is not material. The dispute remains ongoing, the directors of the Company remain deadlocked and the Company cannot function as a 'buffer'. Findings of fact: the test on appeal
 16. This Court, identically constituted, in *HRCKY Limited v Hard Rock Limited and Hard Rock Café International (STP) Inc*
- [2024] JCA 069 restated the test for overturning findings on appeal: "19. The tests applied by this Court in determining whether to entertain appeals against challenges to findings of fact and evaluative judgements were summarised in *Financial Technology Ventures (Q) LP and ors v ETFS Capital Limited and Tuckwell* [2021] JCA 176 as follows: "37. As to findings of primary fact, it is well established that:

- a. in order for an appellate court to overturn a finding of primary fact in the court below, it must be satisfied that the decision was wrong and there was no evidence which could have supported it: *CSS v. Nautech Services Limited* [2015] JCA 021, at §18; *Pell Frischmann v. Bow Valley Iran Limited* [2008] JCA 146, at §108; AF198 14
- b. this court fully recognises and respects the advantages that a trial court enjoys by virtue of sitting through the entire trial process, particularly when it has had the opportunity to consider oral testimony, the terms in which that testimony is couched and the demeanour of the witnesses: *McGraddie v. McGraddie*

[2013] UKSC 58, at §3 – 4; *CSS Limited v. Nautech*, at §17;

- c. it is salutary to keep in mind all of the numerous justifications for this approach explained in *Fage UK Limited v. Chobani UK Ltd* [2014] FSR 29, at §114 – 115, but in this case we would draw particular attention to the fact that the trial court will have had regard to the whole sea of evidence presented to it, not all of which will necessarily have been expressly referred to in the judgment, and the significance of those matters which are discussed in the judgment below may not always convey the same weight when reviewed on appeal as they did to the trial court;
 - d. these principles have particular force in this jurisdiction, where the jurors decide the facts: *Pell Frischmann*, at §109 – 110;
 - e. finally, we also remind ourselves that a trial court is not required to deal with every piece of evidence or every argument presented to it.
38. In relation to appeals against the exercise of a discretion, or the exercise of an evaluative judgment, this court will only intervene if the court below has erred in law, or if it has failed to take into account a material factor or taken into account an immaterial factor, or if it has reached a decision which is plainly wrong (i.e. one that is irrational, in the sense that no reasonable decisionmaker could have reached it). This approach is well recognised as a matter of general law. More specifically, it is clearly illustrated in relation to appeals against orders made in the context of unfair prejudice proceedings by decisions such as *Re Cumana Limited* [1986] BCLC 430, at 437f – g; *Hawkes v. Cuddy* [2010] BCC 597, at §80; *Re Sprintroom Limited* [2019] BCC 1031, at §76 – 78; and *Biogen Inc v. Medeva Plc*

[1997] RPC 1, at 45."

20. The passage referred to by the Court of Appeal from the judgment of Lewison LJ in *Fage UK Ltd v Chobani UK Limited* bears setting out in full: "114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva Plc* [1997] RPC 1; *Piglowka v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Limited v United Parcels Service Limited* [2007] UKHL 23; [2007] 1 WLR 1325 ; *Re B (A Child) (Care Proceedings)* [2013] UKSC 33; [2013]

1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include:

- i. The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed. ii. The trial is not a dress rehearsal. It is the first and last night of the show. iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case. iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
 - v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence). vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.
115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039; [2003] 2 WLR 210; *Bekoe v Broomes* [2005] UKPC 39; *Argos Limited v Office of Fair Trading* [2006] EWCA Civ 1318;

[2006] U.K.C.L.R. 1135." Jurisdiction

17. Advocate Garrood for the Respondent directors asserted that the Court of Appeal could not entertain AML's appeal because leave to appeal had not been obtained from the Royal Court. The winding up was said to be an interlocutory order because the Royal Court had declined to make any of the consequential orders sought by the directors (e.g. the appointment of a liquidator, because of a disagreement between the parties as to the identity of an appropriate appointee). The winding up order could, for instance, have been deferred. Advocate Angus for the Respondent Bespoke did not support the argument other than to submit that, if leave is required, it should be refused because there was no real prospect of success, a submission supported by Advocate Garrood. Advocate Kelleher maintained that no leave was required (although in correspondence from his firm on 19 January 2024 AML agreed to apply to the Royal Court for leave if Advocate Garrood persisted in his contention, in response to which the directors simply reserved their position as to whether to take the point in due course).

18. Article 13(1) of the Court of Appeal (Jersey) Law 1961 (Limitation on appeals) provides that: "No appeal shall lie under this Part - ... (e) without the leave of the court whose decision is sought to be appealed from, or of the Court of Appeal, from any interlocutory order or interlocutory judgment...". An application for leave should be made to a single judge of the Court of Appeal: Article 13(2).
19. For an order to be final the relevant application must be determinative of the action, whichever way it is decided: *Planning and Environment Committee v Lesquande Limited* [2003] JLR 15, Birt DB, as he then was, at [8]. This has been approved by this court in *Acorn Finance Limited v Powell* [2016] JCA 063 at [27]-[29]. These decisions followed the pre-CPR law of England and Wales in *O59 r1A(3)*. Paragraph 5(d) of that Rule specified a winding up order as a 'final' one, but at paragraph 6(ee) "an order made in the course of... a liquidation and any other order ancillary to or consequential on a winding up order" is 'interlocutory'.
20. Although the proceedings have not yet been concluded, the Royal Court was asked to decide whether or not the Company should be wound up. This was a question determinative of the "final relief" sought by paragraph 13(iv) of the Representation, whichever way it was decided. In our judgment the Act of Court under appeal was therefore 'final' and no leave is required. If we are wrong about this, we remind ourselves that a failure to apply for leave to appeal is not necessarily fatal: *Acorn Finance* at [31]. In view of the legal issues that are raised in the Notice of Appeal and the significance of the judgment to the parties, we would have granted leave to appeal in order to allow argument to be heard.. Ground 1: Deadlock
21. The question whether deadlock exists is a question predominantly of fact in each case (see [41] of the judgment under appeal quoted at paragraph 10 above and *Ebrahimi v Westbourne Galleries Limited* [1973] AC 360, HL, per Lord Wilberforce at 379A/B-380B). There is no precise definition of the word for the purpose of winding up on the just and equitable ground (see [49] of the judgment under appeal). Advocate Kelleher was critical of the test being equated to an 'impasse' (which he submitted was a lesser test) but support for this approach can be found in *In Re Deep Sea Trawlers Limited* (1984) 2 NZCLC 99, 137 at 148 per Jeffries J, approved by the Royal Court in *Bisson v Barker* [2008] JRC 193 at [16], citing *Applications to Wind Up Companies* (2nd ed), French, at 7.10.2 (now 8.282 of 4th ed): see [49] of the judgment under appeal. In our judgment, the Royal Court did not use the word 'impasse' to mean anything different to Lord Briggs' "functional deadlock" of a "paralysing kind" between members in *Chu* at [14] and [17].
22. We now turn to the second error of law raised by Advocate Kelleher - that the Royal Court considered deadlock at the AMW level when it ought to have considered only the position at the Company level. We think this is a misreading of the judgment. The Royal Court fully understood Advocate Kelleher's distinction (see [51]-[53]) but it considered at [50] separate examples of shareholder deadlock from Singapore, England, New Zealand and Canada before considering the factual situation before it. As Lord Briggs (giving the majority Opinion of the Board) accepted in *Chu* at [23] "the breadth of the parties' falling-out over...

business matters [other than the company] may be very relevant to the court's assessment of the question whether an apparent deadlock within the subject company has become irremediable".

23. The finding of fact that the directors of the Company and of AMW are perfectly capable of making routine decisions is not the complete answer to the question of deadlock as Advocate Kelleher has argued. The Royal Court found that the directors of the Company were deadlocked due to a breakdown in the relationship between the Company's shareholders: [66] and [67a]. It is clear that the directors had become unable to pursue their investigation into (let alone resolve) the serious dispute between AML and Bespoke, the Company's shareholders (and between the two blocks of AMW directors who represented those shareholders), which first arose in early 2021. The consequence, as the Royal Court found, was the twin risks of the Company's sole asset being significantly diminished and of AMW being struck off the Register of Companies for not filing accounts.
24. Advocate Kelleher sought to argue that the Company was no more than a holding company well able to perform its regulatory, administrative and accounting functions, so the directors had fully discharged their limited duties by seeking answers to their queries concerning the dispute. We think this is far too narrow a view. The Company was required to hold, protect and preserve its only valuable investment and there was nothing more the Company could do concerning the dispute because of a deadlock or impasse between its shareholders. The Royal Court was entitled to conclude that the Company had a function going beyond a purely formal or administrative one:

[62] and [70] (and see Ground 2 below). We also note that French has expressed the view at 8.208 (4th ed) that a court may feel less compunction about ordering a winding up of a holding company with no trading activities.
25. Advocate Kelleher's suggestion of the appointment of a seventh AMW director would not solve anything because the new director would have to inform himself or herself about a dispute (where fraud had been alleged) before deciding how to vote: [67b] of the judgment.
26. We accordingly reject this ground of appeal. This disposes of the appeal, subject to grounds 4 and 5. In case we are wrong on ground 1 we move next to grounds 2 and 3. Ground 2: Loss of substratum
27. The Royal Court, at [46]-[47], adopted the definition of 'loss of substratum' used by Birt DB in *Re Leveraged Income Fund Limited* [2002] JRC 209 at [11] and by Commissioner Clyde-Smith in *Euro Value Investment Co v Greater Europe Deep Value Fund II Limited* [2012] JRC 146 at [73]. No criticism was made of this approach.

28. The issue on ground 2 is whether the finding of fact that the Company's original object cannot be achieved or that the business for which it was established cannot be carried on was plainly wrong or irrational (see the approach spelt out at paragraph 16 above). This required the Royal Court to examine the written evidence to ascertain that object or business.
29. The Royal Court recorded at [17] a consensus between the parties that the Company had been formed to hold the shares of AMW for the purposes of acting as a "buffer" - a term used by each of the parties - between the Aston Martin Group and the Al Roumi Group. The task of the Court was therefore to decide what this meant.
30. The Court's conclusion that this meant to assist in the resolution of disputes between its members (see [60], [67b] and [69]) - and why such purpose might well have been intended at [62] - is robustly challenged by Advocate Kelleher. He says there was simply no such evidence and that the only evidence adduced was to the contrary.
31. It is correct to note, as the Royal Court did, that there is no shareholders' agreement and no reference in the Articles or Memorandum of the Company to any dispute resolution mechanism between shareholders with equal holdings.
32. We have examined with care the evidence referred to on the table produced by Advocate Angus, together with the comments added by Advocate Kelleher. Such evidence included that of Mr Malecki of AML that the Company was established to act as an "intermediary between its shareholders, Bespoke and AML, and the Company's primary asset AMW". Mr Zidan of Bespoke had agreed with this and asserted that the Company had been set up as an "intermediate holding company". Mr Zidan also claimed that the Company had attempted to fulfil its purpose by using its best efforts to mediate the conflict between Bespoke and AML: "the Company is no longer able to act as a buffer between its shareholders and consequently no longer performs any real purpose. The Company itself is therefore also deadlocked in respect of what is, by Mr Malecki's admission, the main purpose behind its existence". This original purpose was also evidenced by the fact that it was Ms Ferguson who first suggested to AMW (a) the appointment of a third party appointee to resolve the deadlock - and this of course resulted in Teneo's appointment, and (b) that the Company be included as a party to the mediation to assist in facilitating the mediation on a timely basis. Subsequently, when such mediation failed, Mr Zidan of Bespoke referred the dispute to the Company for it to consider.
33. We have no hesitation in deciding that the Royal Court was entitled to conclude that the original main purpose of the Company was to assist in the resolution of any disputes between equal shareholders. Accordingly ground 2 must also fail. It follows that deadlock and loss of substratum were separate grounds for winding up the Company, each independent of the other. Ground 3: Loss of trust and confidence
34. Our conclusions on ground 3 are immaterial given we have dismissed grounds 1 and 2.

35. For equity to enable the court to subject the exercise of shareholders' legal rights to equitable considerations (which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way) there must typically be "something more" than a small or private company, such as "an association formed or continued on the basis of a personal relationship, involving mutual confidence" (Ebrahimi at 379F, quoted in the judgment under appeal at [42]). Many of the cases refer to a "quasi-partnership" but Lord Wilberforce warned that such an expression may be confusing. But where there is a corporate quasi-partnership or similar the court can order a winding up even in the absence of deadlock or a loss of substratum. As Lord Briggs remarked in *Chu* at [25]; "Where the subject company is a corporate quasi-partnership... what matters is the relationship between the quasi-partners, and the extent to which the necessary basis of trust and confidence has evaporated. For this purpose, no aspect of the business relationship is likely to be irrelevant".
36. The problem of quasi-partnerships was considered by this Court in *Financial Technology*. Crow JA summarised the law as follows: "64. The term 'quasi-partnership' owes its origin to the landmark ruling in *Ebrahimi v Westbourne Galleries* [1973] AC 360. The valuable observation in Lord Wilberforce's speech (at 379A-G) was that, in deciding whether to exercise its discretionary power to wind up a company on the just and equitable ground, the court is entitled to look at the reality of the human and business relationships which lie behind the legal personality of the company... even if there has been no pre-existing partnership, where a joint venture company is formed on the basis of a relationship of mutual trust and confidence between a small number of individuals, perhaps on the understanding that they will each contribute money and/or management skills and/or technical expertise to the business, and on that basis they will each share in running the company and participate in its profits, then the court will take those circumstances into account when deciding whether it is just and equitable to wind the company up if the relationship between its corporators has irretrievably broken down and one or more shareholder/director has been excluded...
66. In *Saul D Harrison*
- [1994] BCC 475, Hoffmann J tried to capture the concept by referring to 'legitimate expectations' (an expression he borrowed from public law). The word 'expectation' reflected the fact that the court was willing to take into account understandings and arrangements that were not independently legally binding as contracts. The word 'legitimate' reflected the fact that, in exercise of its power in relation to unfair prejudice, the court would not take into account all and any hopes and aspirations a member might harbour.
67. Neither *Westbourne Galleries* nor *Saul D Harrison* said anything radically new at the time, but flowing as they did from the pens of Lord Wilberforce and Hoffman J they were expressed in terms of vigour and clarity that made them instantly memorable. And, as a result, each case then produced unintended consequences. The decision in *Westbourne*

Galleries spawned the idea that the outcome of any claim based on unfair prejudice depends (both in terms of liability and in terms of the appropriate relief) on whether or not the relevant company can be classified as a quasi-partnership. And the decision in *Saul D Harrison* encouraged the notion that such claims would succeed or not depending on whether the claimant could establish a 'legitimate expectation' if not a legal right. Neither notion should gain traction in this jurisdiction.

68. The term 'quasi-partnership' is a convenient short-hand, but like many other such labels it disguises as much as it reveals. Most importantly, it should be recognised that the expression 'quasi-partnership' is not a term of art. It does not identify a single category of company with an exhaustive list of qualities. Rather, it is a broad, descriptive term which embraces a range of different factual situations, as Lord Wilberforce's speech expressly recognised. Nor should the court even be thinking in terms of different categories of company when it is applying the test of unfair prejudice under Article 141. The test is open-textured and fact specific, and the court should resist any temptation to adopt a formulaic approach. The exercise of the court's adjudicative function depends on an evaluation of all the circumstances of each case, not on whether a company can be classified in the 'quasi-partnership' box. There will be many situations in which the court would be entirely free to find unfair prejudice not involving a breach of any legal right or duty in circumstances where the company could not on any view be described as a 'quasi-partnership'."
37. Paragraph 8.363 of French (4th ed) states: "Without the 'something more' mentioned by Lord Wilberforce there is no basis for a legitimate expectation that limits not expressed in the company's constitution will apply to the exercise by the board and the company in general meeting of whatever powers they are given by that constitution. In a petition for the winding up of a company it is not enough to allege without explanation that the company is a quasi-partnership company: facts must be alleged to show that it is appropriate for the court to take account of the petitioner's legitimate expectations not expressed in the company's constitution. This involves showing the 'something more' referred to by Lord Wilberforce. It may be possible to do this without showing all of the three 'elements' mentioned by his Lordship or, indeed, any one of them, but the three elements are the usual means of demonstrating that a quasi-partnership exists..."
38. The Royal Court did find that the relationship between Bespoke and AML "at its outset was based on a significant degree of trust and confidence such as one might see in a partnership between individuals": [60]. This corporate quasi-partnership was founded at
- [59] upon (i) the sale by Bespoke, the majority shareholder, of a 10% shareholding in the Company to AML for £100; (ii) the lack of any shareholders' agreement or bespoke Articles for the resolution of disputes at either the Company level or in AMW; and (iii) the (apparently informal) agreement that at the AMW level each party would nominate three directors, which had the potential to result in an impasse if the two parties did not agree.

39. No claim of a quasi-partnership was ever made by Bespoke to the Royal Court. The claim of a quasi-partnership by the directors was not pleaded. In our judgment it should have been. AML was entitled to know what case it had to meet (see, for example, the remarks of Lawton LJ in *Rolled Steel Products (Holdings) Limited v British Steel Corporation* [1986] Ch 246, CA, at 309 and *Re a Company No 007936 of 1994* [1995] BCC 705 per Roger Kaye QC at 708C-709H). Further, it seems to us that no evidence was adduced that there were considerations of a personal character arising between the two protagonists at formation or subsequently that might justify an expectation of mutual trust and confidence. Clearly the matter of importance to the Royal Court at (i) above only arose in 2012, although its conclusion was that the personal relationship had arisen at the outset (i.e. 2010). This contrasted with the directors' written contentions below, at paragraph 31, that the initial commercial relationship transformed into a relationship based on mutual trust and confidence in 2014 when the 'partners' became 'equal' and when the use of formal agreements gave way to informal understandings. Advocate Kelleher had pointed out to the Royal Court that (1) the sale of Bespoke's 10% shareholding in 2012 was made at the request of Investindustrial, not AML, so as to increase AML's holding in the Company from 40% to 50% and (2) formal written agreements continued until 2016.
40. Advocate Kelleher is critical of the Royal Court's approach (a) as a matter of law and (b) as a matter of fact. As to (a): there was no attempt to identify any personal relationship between any of the protagonists, nor did the Court identify any common understandings on which the shareholders acquired their shares or conducted/continued their business. As to (b): there was an inconsistency between the finding of the required relationship at the outset in 2010, upon the sale of shares in 2012 and the change from formal to informal agreements post 2016 (and the directors' case at trial of a new relationship first arising in 2014). More importantly, there had simply been no evidence from any of the directors, AML or Bespoke, of a relationship of mutual trust and confidence.
41. Advocate Garrood submitted to us that a quasi-partnership was justified because here there was "something more": (i) a 50:50 company; (ii) anodyne constitutional documents; (iii) no shareholders' agreement; and (iv) no dispute resolution mechanism.
42. We do accept that the participants of a quasi-partnership can be companies, as was the case in *Deep Sea Trawlers* and in *R&H Electrical Limited v Haden Bill Electrical Limited* [1995] BCC 958, Robert Walker J. However, in our judgment the Royal Court was plainly wrong to have found at the outset (or subsequently) a quasi-partnership or the presence of "something more". First, the relevant allegation was not pleaded. Second, the relevant evidence was not adduced (see paragraph 39 above). As to the three factors relied upon at [59]: those were all neutral for the reasons put forward by Advocate Kelleher (and there could have been other sound reasons for (i) and (iii), alternatively there may have been oversight) and anyway (i) applied only from 2012.

43. Although we have not upheld the Royal Court's third ground for granting a winding up order, given our dismissal of grounds 1 and 2 this is academic. Ground 4: Alternative remedies
44. The relevance of alternative remedies to an application under Article 155 of the Law is because a winding up order on a just and equitable basis should only be granted as a last resort: *FT v ETFS Capital Limited and Tuckwell* per MacRae DB at [50]. What is meant by this?
45. As is made clear in *French* (4th ed) at 8.147 a petitioner for winding up on the just and equitable ground must consider alternative remedies and an order may not be made if the petitioner is unreasonably asking for it rather than pursuing a suitable alternative remedy. In *Chu* Lord Briggs said this: "[20] It is well established that winding-up is a shareholders' remedy of last resort. But this does not mean that winding-up is unavailable to members if they have any other remedy. The member retains a significant element of choice in the remedy to be sought, even though the court has the last word. As is clearly enshrined in s167(3) of the 2003 Act, the court carries out a three stage analysis, asking:
 - (a) Is the applicant entitled to some relief?
 - (b) If so, would a winding-up be just and equitable if there were no other remedy available?
 - (c) If so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding-up?
- [21] The legal burden of proof is on the applicant at stages (a) and (b). But it shifts to the respondent at stage (c)... s167(3) is in substantially the same terms as was s225(2) of the UK Companies Act 1948..."
46. S167(3) was a reference to the BVI Insolvency Act 2003 which provided: "Where an application to appoint a liquidator is made by a member under s162(1)(b), if the Court is of the opinion that
 - (a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and
 - (b) in the absence of any other remedy it would be just and equitable to appoint a liquidator; it shall appoint a liquidator unless it is also of the opinion that some other remedy is available to the applicant and that he is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy". This mirrors s125(2) Insolvency Act 1986 of England and Wales.
47. Here the parties were not in agreement as to who bore the burden of proof on the differently worded Jersey Law. Clearly it is for the petitioner to show that it is just and equitable to wind up the company (if there were no other remedy available). We are of the view that when considering 'other resorts' it must be for the convened party, opposing the winding up, to prove that the petitioner has unreasonably failed to pursue an available alternative remedy. As Lord Briggs cautioned in *Chu*: "[52] As already explained, section 167(3) of the 2003 Act

enables the respondent to a just and equitable winding-up application to resist it by showing, the onus being on him, that the applicant has unreasonably failed to pursue an available alternative remedy, either in or out of court. Bearing in mind the onus of proof, a judge may reasonably expect the respondent (especially if represented by an experienced legal team) to put forward one or more remedies which it is alleged were both available and sufficiently attractive as an alternative to make it unreasonable to continue to seek a winding-up. It is not for the judge to imagine every potential alternative remedy and deal with it, in the absence of a properly formulated invitation to do so...

- [58] ...The Board would add that unfair prejudice in the management of a company is a different allegation from either deadlock or breakdown of trust and confidence. It is not likely to be assumed that an applicant who can prove the latter will equally be able to prove the former..."
48. As is also clear from what we have stated above the unpursued alternative remedies must be those of the petitioner (not Bespoke). No alternative remedies for the directors were suggested by Advocate Kelleher. If we are wrong and it is Bespoke's alternative remedies that are relevant, those have been described by Mr Zadin as currently 'unworkable' and we can well understand how that might be the case. The view of an expert had been sought but nothing of relevance had been forthcoming. AML had not then suggested any alternative way forward. As Lord Briggs stated the relevant remedy must be "sufficiently attractive as an alternative to make it unreasonable to continue to seek winding-up". As Advocate Kelleher acknowledged in his written contentions at paragraph 63 the Company has not taken action "because [according to Ms Ferguson] it has insufficient information to properly take that course". The appointment of a liquidator would break the current impasse because the directors would be relieved of their duties to investigate the dispute and to protect and preserve the Company's assets.
49. In the circumstances the Royal Court was correct to conclude that the availability of alternative remedies was "extremely limited". We reject ground 4. Ground 5: Change in circumstances
50. AML submitted that the signing and filing of the Company's accounts for 2020-2022 since the judgment of the Royal Court entitles the Court of Appeal to-exercise the Court's discretion under Article 155 of the Law and should do so by refusing any winding up order on the grounds of deadlock or loss of substratum, even where the Court of Appeal has rejected grounds 1 and 2.
51. The first issue for us to determine is whether or not to admit this new evidence. Rule 12 of the Court of Appeal (Civil) Rules 1964 provides as follows: "(1) The Court shall have full discretionary power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before the Viscount or on commission. Provided that in the case of an appeal from a judgment after hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters

which have accrued after the date of the trial or hearing) shall be admitted except on special grounds... (3)...the Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties".

52. Rule 12 was considered by the Court of Appeal in *Mayo Associates SA and others v Cantrade Private Bank Switzerland (CI) Limited* [1998] JLR 173. The words in parenthesis in the proviso to Rule 12(1) did not require consideration because the new evidence sought to be admitted concerned matters which had occurred prior to the date of the hearing. The Court confirmed at 185 lines 16-22 that the test in England, under *Ladd v Marshall* [1954] 1 WLR 1489, CA, was equally applicable in Jersey when considering any "special grounds" relied upon, i.e. the evidence (i) could not have been obtained with reasonable diligence for use at the hearing; (ii) would probably have an important, although not necessarily decisive, influence on the result; and (iii) was credible.
53. We have no hesitation in following the same approach, even in relation to matters which have occurred after the date of the hearing. The words in parenthesis in the proviso were taken from the English O59 r10(2). English case law on the words confirmed that the need for finality in litigation should prevent the admission of evidence relating to matters which have occurred post-trial, unless it would be an affront to fairness not to admit it (SCP 1999 59/10/18 and *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 per Brooke LJ at [35]).
54. The *Ladd v Marshall* test is no longer followed slavishly in England - evidence may be admitted where the test is not fulfilled or not admitted where it is, if either is dictated by the furtherance of the overriding objective (e.g. *Al Sadeq v Dechert* [2024] EWCA Civ 28 per Popplewell LJ at [141]) or where the interests of justice require (e.g. *R (Iran)* at [33] - [34]). Although a degree of flexibility would also be welcome in this jurisdiction it must be remembered that the trial is the first and last night of the show, not the dress rehearsal.
55. Clearly there is no difficulty over limbs (i) and (iii). When addressing us on limb (ii) Advocate Kelleher argued that the new evidence falsified the basis on which discretionary relief was granted because the Royal Court was strongly influenced by the parties' inability to agree the accounts.
56. Advocates Garrood and Angus took issue on this for two reasons. First, the accounts were signed by Bespoke without prejudice to (i) any claims Bespoke might have against AML regarding AMW and (ii) Bespoke's allegation of deadlock at the level of AMW and the Company. Express reference was made to the dispute in the strategic reports within the accounts. Second, although the Royal Court undoubtedly attached importance to the lack of accounts and the risk of removal from the Register, that was by no means the only concern: [18], [22], [63], [65], [67a] and [69]. We accept the submissions of Advocates Garrood and Angus that the failure to sign the accounts was symptomatic of the dispute but not causative of it. Teneo was appointed to investigate the dispute as well as to address accounting issues.

The dispute remained as far from resolution as before the signing of the accounts.

57. In our view limb (ii) of Ladd v Marshall is not satisfied and the interests of justice do not require the admission of this new material. We accept the submissions set out in the immediately preceding paragraph and so the fact of the accounts being signed and filed would not have had an important influence on the result.
58. We are therefore not willing to re-exercise the Court's discretion and so we reject ground 5.

Conclusion

59. The appeal is dismissed.
60. The parties may make any consequential representations within 14 days of the handing down of this judgment, to be accompanied by brief written contentions. Authorities Companies (Jersey) Law 1991. Representation of Ferguson and Anor re AMWS Limited [2023] JRC 250. HRCKY Limited v Hard Rock Limited and Hard Rock Café International (STP) Inc [2024] JCA 069. Court of Appeal (Jersey) Law 1961. Planning and Environment Committee v Lesquande Limited
- [2003] JLR 15. Acorn Finance Limited v Powell [2016] JCA 063. Ebrahimi v Westbourne Galleries Limited [1973] AC 360, HL. Re Deep Sea Trawlers Limited (1984) 2 NZCLC 99, 137. Bisson v Barker [2008] JRC 193. Applications to Wind Up Companies (2nd ed), French, at 7.10.2 (now 8.282 of 4th ed. Re Leveraged Income Fund Limited [2002] JRC 209. Euro Value Investment Co v Greater Europe Deep Value Fund II Limited [2012] JRC 146. Rolled Steel Products (Holdings) Limited v British Steel Corporation [1986] Ch 246, CA. Re a Company No 007936 of 1994 [1995] BCC 705. Deep Sea Trawlers and in R&H Electrical Limited v Haden Bill Electrical Limited [1995] BCC 958. BVI Insolvency Act 2003. Insolvency Act 1986 of England and Wales. Court of Appeal (Civil) Rules 1964. Mayo Associates SA and others v Cantrade Private Bank Switzerland (CI) Limited [1998] JLR 173. Ladd v Marshall
- [1954] 1 WLR 1489, CA. SCP 1999 59/10/18 and R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982. Al Sadeq v Dechert
- [2024] EWCA Civ 28.

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://www.jerseylaw.je/judgments/unreported/Pages/%5B2024%5DJCA071.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/aston-martin-lagonda-limited-v-tara-ferguson-and-alia-haskuri-and-bespoke-limited-2024>

Prepared on 22 October 2026 · Esheria