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Judgment: approved by the Court for handing down | *Delivered:* **24/04/2018**
*(subject to editorial corrections)**

2018/30264

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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BETWEEN:

ANDREW CUTHBERT

Plaintiff

-and-

CLINISHARE LTD

Defendant

_____

(Ex tempore Judgment)

McBRIDE J

Introduction

[1] The plaintiff seeks an interim injunction pending the trial of this action to:

> "Restrain the defendant from divesting the plaintiff of his shares for nil value and treating him as a 'good leaver', in the defendant company, which would be a breach of contract".

[2] The application is based on a grounding affidavit sworn by the plaintiff on 21 March 2018.

[3] When the case was listed for review the parties agreed directions in respect of the date for filing replying and rejoinder affidavits and skeleton arguments. The plaintiff was in default of the agreed directions as his rejoinder affidavit and skeleton argument were filed just prior to the hearing. As a consequence the defendant had to file his skeleton argument without sight of the plaintiff's skeleton argument.

[4] Normally the court will not grant leave for a defendant to file a reply to a rejoinder affidavit. In the present case however, the court would have been minded to grant leave, if it had been sought, as many of the issues relevant to the determination of the present application were first raised and placed upon a proper evidential basis in the plaintiff's replying affidavit, as opposed to his grounding affidavit. The defendant however did not seek leave to file further affidavit evidence as the defendant indicated it required the matter to proceed to hearing as delay would have been prejudicial to it. This prejudice arose from the fact that a meeting with an investor whose investment was required to ensure the company's survival was scheduled to take place the day after the hearing. The investor's decision whether to invest or not was dependent upon the outcome of the court's decision in respect of the interim injunction.

[5] During the hearing, the case adjourned to allow discussions between the parties. These discussions did not come to fruition and the hearing therefore resumed. In the interim period the investor agreed to reschedule its meeting and the investor's meeting was rescheduled to take place the day after the resumed hearing.

[6] At the start of the resumed hearing the defendant applied to file a further affidavit. I refused this application. This was because the defendant had been given ample opportunity to file all the evidence he wished. Secondly, the further affidavit did not contain evidence which was not previously available. The only reason given for failure to file the evidence now contained within the supplemental affidavit was that the plaintiff was a person with high functioning autism and counsel found it difficult to obtain clear instructions from him. I am satisfied that when the application was launched counsel must have been satisfied he had sufficient instructions to ground the application. In these circumstances I find the application to file further affidavit evidence was made to seek to "plug a gap" in the evidence which arose as a result of matters raised during the initial hearing. The defendant objected to the admission of further affidavit evidence on the basis of prejudice. I am satisfied that the defendant would have been prejudiced by the admission of further affidavit evidence as he would have been denied the opportunity of responding because the delay required to permit a response would have led to a real risk that the investor may have refused to invest in the company and as a result the solvency of the company was at risk.

[7] The plaintiff was represented by Mr Coyle of counsel and the defendant was represented by Mr Dunlop of counsel.

Factual Background

[8] From the various affidavits filed it appears that the plaintiff is the founding director of the defendant company ("the company") which is a start-up business seeking to develop a software platform for sharing clinical data. The company shares are held by the plaintiff, a number of private investors and a venture capital

company known as Crescent Capital ("Crescent Capital"). The plaintiff owns approximately 44% of the company's shares.

[9] Crescent Capital is an external delivery organisation under mandate from Invest NI. It primarily manages and invests monies that are made available to it in order to grow the entrepreneurial sector in Northern Ireland. These monies originate from the European Regional Development Fund and are combined with pension and private sector funds.

[10] In and around January 2017 Crescent Capital invested just over £600,000 in the company and as a consequence of this entered into a number of agreements with the plaintiff, the other shareholders and the company.

[11] In particular on 27 January 2017 Crescent Capital entered into the "Investment Agreement" with the plaintiff, the other shareholders and the company. The plaintiff executed a number of agreements with Crescent Capital including a Deed of Assignment of the intellectual property rights; a Service Agreement governing his position as an employee of the company as its CEO and a Disclosure agreement. The Disclosure agreement required the plaintiff, in particular, to identify any expenses for business trips undertaken by him up to the date of the agreement.

[12] On 27 January 2017 the company resolved to accept new Articles of Association.

[13] On 10 February 2017 Deirdre Terrins, a senior investment manager in Crescent Capital e-mailed the plaintiff to say that he should not incur any expenditure without Board approval and business assent.

[14] The plaintiff responded by email on 12 February 2017. In this he states that he disputes any divergence from the business plan and confirms:

> "I will put you on notice that should this worrying behaviour continue I will be forced to resign and soon".

The e-mail then sets out matters the plaintiff is unhappy with including the appointment of a non-industry chair. He advises that he seeks an informed meeting with Ms Terrins to review the business plan and considers that such a meeting is not possible before the next Board meeting. He then states:

> "As you state previously we need to work together. If I am to continue I need to feel safe."

Thereafter he sets out his update for the Board together with key decisions he states need to be looked at urgently/immediately following the Board meeting. The remainder of the e-mail sets out the plaintiff's view about various matters including investor's market research, product development etc.

[15] On 13 February 2017 the plaintiff submitted a claim for expenses relating to the period July 2015 to December 2016. This e-mail led to a chain of correspondence and disquiet by the defendant about the plaintiff's attempt to seek such payments.

[16] The Board met on 23 February 2017. The plaintiff as CEO gave a sales update. As appears from the minutes of this meeting there was no discussion of any of the matters relating to business planning which were outlined by the plaintiff in his email to Ms Terrins.

[17] On 24 March 2017 the plaintiff tendered his resignation. In his resignation e-mail he stated:

> "… It is with due regret that I must stand down as CEO as a company … but I feel I cannot finalise a business plan, command the respect of fellow directors and I am unable to make or articulate clear decisions as a result am unable to complete projects to a level I am personally satisfied with. I am now certain that the recent company culture is not one where I can effectively lead a team to delivery and therefore it is with due regret but for the good for the company that I must stand down in my role."

[18] On 29 March 2017 the plaintiff e-mailed Mr Geddis, the current CEO of the company stating:

> "I spoke with Andrew, Alison, Brendan and Ryan after we talked. The truth is the reality is complicated. I do not want to leave but feel pressurised to now and also to be honest see the way back as very difficult for everyone."

He then references "the Board reviewing the plan before we had started" and he affirms:

> "truthfully after being demotivated by the Crescent investment event I gave up. I am at no more 20% efficiency. My e-mails and communications have flown off the handle. I have lost my mojo. That would time and confidence to get back".

The remainder of the e-mail then sets out details of his business plan for the company.

[19] On 4 April 2017 the plaintiff sent a further e-mail to Ms Terrins and after referring to his resignation email stated:

> "I would like to iterate that my decision to send the e-mail was based on a number of financial concerns and a feeling of a lack of clarity and key issues. The pace of decision-making and in fact all considerations were reviewed by the Board slowed things down. I although I verbalised this to many of you I have not stated it in writing. Frankly if these processes could be improved and I felt I would have the support to deliver I would be open to reversing/changing my decision and committing to the future of the business.
>
> No doubt there will need to be change on both sides for this to be realised but if Deirdre was open to this idea I would consider it and work fervently towards its successful execution of the business."

[20] The Board accepted the plaintiff's resignation by letter dated 7 April 2017. The plaintiff worked his six month notice period and his employment terminated on 24 September 2017.

[21] On 23 February 2018 the defendant obtained a valuation of the shares in the company as of 24 September 2017 from Grant Thornton. They reported that the ordinary shares had a nil value.

[22] On 22 March 2018 the company agreed to implement the "good leaver" provisions contained in the Investment Agreement, to the effect that the plaintiff was immediately deemed to have given notice to the Board of a transfer notice to offer all of the shares held by him for sale at that time at nil value.

[23] Thereafter the plaintiff and company entered into correspondence which culminated in the plaintiff issuing the present proceedings.

[24] The plaintiff in his replying affidavit dated 17 April 2018 sets out, inter alia, that he had a difficult relationship with fellow executors and Board members. At paragraph [5] he avers that he was told to "forget about the business plan" before his resignation and sets out details of what he avers are differences of strategic directions with his fellow directors. These included:

> "The Board, not wishing me to be an executive, the Board wishing to continue to pay investment directors, the Board failing to recruit or appoint a replacement full-time CEO, the Board making certain staff redundant, the Board rejecting offers of investment from Mike Irwin and

> aiming to influence terms between myself and himself should an investment occur. The Board choosing to make myself the only non-paid non-executive within the Board. The Board elected to have me removed from office."

At paragraph 5 he refers to the e-mail he sent to Deirdre Terrins dated 12 February 2017 as proof of the differences in strategic direction which led to his resignation.

Other evidence before the court

[25] In an affidavit sworn on 5 April 2018 Ms Terrins avers that she is a senior investment manager in Crescent Capital and refers to an approach made by the plaintiff to raise funds to buy out the Crescent Capital shareholding. Although the plaintiff was given a three month period to do this his efforts to buy out the shareholding ultimately failed. She further avers that Crescent Capital would consider investing a further sum of £250,000 in the company but this would be strictly conditional on the deemed transfer of the plaintiff's shares in accordance with the Investment Agreement. In the event the plaintiff remained a shareholder, Crescent Capital would not invest further funds in the company.

[26] Affidavits filed by Alison Young, Chief Operating Officer, Dr Brendan McCann, Chief Scientific Officer and Dr McLaughlin, Chief Technology Officer, employees in the company, all aver that following the plaintiff's resignation the atmosphere at work improved. They further state that, if the plaintiff was to be involved in the company in any influential capacity in the future, they would either resign or find it extremely difficult to continue in their current employment.

Relevant provisions of the investment agreement

[27] The parties agreed the relevant provision in the Investment Agreement, for the purposes of this application, was Clause 12. It provides as follows:

> "12. **Good leaver up to year 3**
>
> 12.1 Subject to the provisions of Clause 12.2, if at any time during the initial period any initial shareholder becomes a good leaver:
>
> 12.1.1. The good leaver shall (unless the Board resolves otherwise) immediately be deemed to have given notice to the Board of a transfer notice to offer all of the shares held by such good leaver at that time (the 'good leaver shares') for sale at the good leave for sale price (as defined in Clause 12.2 below) and the provisions of Article 6.5 to 6.11 of the articles will then be deemed to apply to such offer for sale mutatis mutandis; and

> 12.1.2 The good leaver 'sale price' for each of the good leaver shares for a sale pursuant to this Clause 12 shall be the fair value (as defined in Article 6.6 of the Articles).
>
> 12.2 It is agreed that where there is a genuine divergence of opinion between Andrew Cuthbert and the other directors on any matters of strategy regarding the future of the company during the initial period that results in a breakdown of the working relationship such that Andrew Cuthbert resigns or agrees to settle his employment rights and terminates his employment with the company he shall not be considered to be a good leaver and the visions of this Clause 12 shall not apply to him."

[28] Article 6.6 of the Articles of Association states:

> "The price at which the sale shares are sold (the 'sale price') shall be the price agreed by the vendor and the directors and with Crescent Consent (sic) or if the vendor and the directors are unable to agree a price within 28 days of its transfer notice being given … an expert shall be appointed to determine … in his opinion the fair value thereof on a going concern basis (if appropriate) as between a willing seller and a willing buyer …"

Expert is defined within the agreement as "the auditors ..."

Relevant principles regarding the grant of interim injunctions

[29] The grant of an interim injunction, being in its nature equitable relief, is a matter which lies within the discretion of the court. This fundamental principle is contained within section 91 of the Judicature (NI) Act 1978 which empowers the court to grant a mandatory or other injunction 'in any case where it appears to the court to be just and convenient to do so for the purpose of any proceeding before it'.

[30] Lord Diplock in American Cyanamaid v Ethicon [1975] 2 WLR 316 laid down guidelines on how the court's discretion to grant an interim injunction should be exercised. Whilst these guidelines are important, they are not statutory provisions and therefore must be applied with flexibility and in accordance with the court's overriding objective that an injunction must only be granted if it is "just and convenient" to do so.

[31] As the underlying purpose of the American Cyanamaid guidelines is to enable the court to make an order that will do justice between the parties, I consider

that it is appropriate in the first instance to follow the sequential steps set out by Lord Diplock.

[32] The sequential steps or questions to be answered were set out in Drennan v Walsh, unreported 21/3/18, at paragraphs [19] and [20] as follows:

> "[19] Therefore when determining whether to grant an interlocutory injunction the court should ask the following questions sequentially:
>
> (i) Is there a serious issue to be tried?
>
> (ii) If yes, are damages an adequate remedy for the plaintiff and is the defendant in a financial position to pay them?
>
> If yes, no interlocutory injunction should *normally* be granted.
>
> (iii) If damages would not provide an adequate remedy for the plaintiff the court should then ask; would the defendant be adequately compensated under the plaintiffs' undertaking as to damages?
>
> If yes, there would be no reason under this ground to refuse an interlocutory injunction.
>
> (iv) Where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both then the court should ask; where does the balance of convenience lie?
>
> This basically means that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. Whilst it is as Lord Diplock notes unwise to attempt even to list the various matters which may need to be taken into consideration in this exercise in National Commercial Bank Jamaica Ltd v Olint Corporation Ltd [2009] 1 WLR 1405 Lord Hoffmam set out some matters which he considered the court may take into consideration. He stated at paragraph [18] as follows:
>
> > "Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the

> defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases."

If the balance of convenience lies in favour of the grant of an injunction then normally the court should grant the injunction. Similarly if the balance lies against the grant the court should normally refuse to grant the injunction, but this is subject to the exercise of its overall discretion to do what is just and convenient.

(vi) In the event the balance of convenience is evenly balanced the court should take such measures as are necessary to preserve the status quo. The preservation of the status quo involves a consideration of whether the injunction would postpone the date upon which the defendant is able to embark upon a course of action which he had not previously undertaken or whether it would interrupt him in the conduct of an established enterprise and therefore cause much greater inconvenience to him since he would have to start again to establish his enterprise in the event that he succeeded at trial. In respect of this heading the court may take into account any delay by the plaintiff which has resulted in the defendant's activities now being at an advanced stage.

(vii) The court needs to consider whether there are any special features in the case.

[20] In the exercise of its overall discretion and in determining whether it is just and convenient to grant an injunction the court should take into account all of the above matters, any special features which exist in the case and all matters which are relevant to the grant of equitable relief including any delay by the plaintiff and whether he/she comes to the court with 'clean hands'. "

Serious Question to be tried

[32] The plaintiff submits that the company cannot deem that the plaintiff has given notice to the Board of a transfer notice to offer all of the shares held by him for sale, as Clause 12.2 applies. He submits that he resigned on the basis there was a genuine divergence of opinion between him and the other directors as to the strategy regarding the future of the company. In support of this submission he relies on his affidavit evidence and in particular paragraphs 3, 4, 5, 9, 10 and 25 of his replying affidavit sworn on 17 April 2018.

[33] The company submits that the plaintiff has not established an arguable case as it is not sufficient to rely on mere bald assertions about strategic divergence in the absence of supporting evidence. The company submits the available documentary evidence, which includes the minutes of the Board at meeting and the resignation letter by the plaintiff, does not illustrate any divergence in strategic direction or that any such divergence in strategic direction led to the plaintiff's resignation. The company submits that the correspondence shows that the real reason for the plaintiff's departure from the company was a dispute about the payment of expenses.

[34] Lord Diplock in American Cyanamaid at page 407 said:

> "It is no part of the court's function at this stage of litigation to try to resolve conflicts of evidence on affidavits as to the facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration."

[35] The court therefore needs only to be satisfied that there is a serious question to be tried on the merits. All that needs to be shown is that the plaintiff's claim has substance and reality. Whilst this is a low hurdle to surmount, if a case is hopeless, the courts will find that there is no serious question to be heard.

[36] I am satisfied that there is a serious question to be heard, namely whether Clause 12.2 applied in the present case. I accept that even though the plaintiff could and should have provided more evidence in support of the case he was seeking to make there is sufficient evidence before the court for it to be satisfied that an arguable case has been made out by him. In particular there is the evidence of the plaintiff that there was a divergence of opinion in respect of strategy direction between him and the other Board members which led to his resignation. These bald assertions alone however would rarely, if ever, be sufficient to establish an arguable case. In the present case however, there is other evidence before the court which, I find, makes out an arguable case.

[37] First, in the e-mail dated 12 February 2017 the plaintiff refers to strategic matters he is unhappy about and seeks a meeting to discuss these issues indicating they are relevant to his continuing to remain in the company's employment. Whilst there may be a dispute as to the true construction to be placed upon this e-mail I am satisfied that on one construction it raises an arguable case that the provisions of Clause 12.2 were met. Although the defendant argued that the minutes of the Board meetings did not record any divergence of opinion I am satisfied that this is because, as the plaintiff stated in his email dated 12 February 2017, he needed to work on key decisions after the Board meeting. For this reason the strategy set out by him to Ms Torrens was not discussed at the Board meeting.

[38] Second, I find that on one reading of his resignation letter he links his resignation to a failure to agree the business plan with his fellow directors and to work with them collectively. Again, all this points to an arguable case that the provisions of Clause 12.2 are met.

[39] Third, in the email to Mr Geddis the plaintiff indicates that he would return to employment with the company if there was a change in the business plan. I find that this indicates that there is an arguable case that he resigned initially because of a divergence of opinion relating to the strategic planning relating to the future direction of the company.

[40] Fourth, having regard to the affidavit of Alison Young which refers to the fact the relationship with the executive team and the Board improved after the plaintiff resigned, indicates that there were clearly difficulties before the plaintiff's resignation. Whilst this does not definitively indicate that the differences were strategic in nature I find that when this affidavit is read in conjunction with the other correspondence it supports the view that there was a divergence of opinion on matters of strategic direction regarding the future of the company between the plaintiff and the other directors which led to the plaintiff's resignation.

[41] Whilst the defendant disputes the construction that the plaintiff wishes to put upon these various pieces of correspondence and submits that the real reason for his resignation was a dispute over payment of expenses, it is not the function of this court at this stage to conduct a mini trial. Rather, the court only has to be satisfied that the plaintiff raises an arguable case. On the basis of all the correspondence and in particular the e-mail dated 12 February 2017 and the resignation email I find that the plaintiff has established an arguable case that the provisions of Clause 12.2 are met. I therefore find that the plaintiff has established an arguable case that the defendant is not entitled to deem that he has served a notice to offer all his shares for sale.

Adequacy of Damages

[42] Given my finding that there is a serious question to be tried, the court must then consider the question whether the plaintiff will be adequately compensated by

an award of damages at trial. If so, that is usually the end of the matter and the injunction will be refused.

[43] The present claim by the plaintiff is for breach of contract. In such a case damages are often an adequate remedy. The plaintiff submitted however that damages were not an adequate remedy because:

(a) As a shareholder the plaintiff has rights which include voting rights, rights to call meetings of the company etc., and loss of these rights would lead to damage which is non-pecuniary in nature.

(b) Damages are difficult or impossible to assess. If the court had to assess the value of his shareholding in the context of a start-up company it would be involved in speculation and the reality is that no valuer can assess the true value of the shareholding given that its value may increase exponentially.

(c) If, as the defendant submits, the plaintiff's shares have a nil value, damages therefore are an inadequate remedy to compensate his loss as a shareholder.

[44] In contrast the defendant submitted that damages were an adequate remedy for the plaintiff as this was a breach of contract case and therefore the court would grapple with the question of the value of these shares. It was simply a valuation exercise.

[45] I find that damages are not an adequate remedy for the plaintiff. Damages in a case such as this are very difficult to assess given that this is a start-up company and valuation would be little more than mere speculation. Secondly, even though the plaintiff is not a majority shareholder in the company he still holds a significant shareholding. As averred by a number of the defendant's witnesses it is this shareholding which gives him influence in respect of the future conduct of the company. I therefore find that loss of such a shareholding is non-pecuniary.

[46] The company enjoined the court not to grant an injunction on the basis that the damages undertaking proffered by the plaintiff was inadequate. It submitted that if the injunction was granted the company would become insolvent as appeared from the affidavit evidence of Ms Terrins who averred Crescent Capital would not invest further in the company. In those circumstances the plaintiff's undertaking was insufficient to compensate the company as its losses would be unquantifiable. It was further submitted that the plaintiff's undertaking would not realistically compensate the other investors, whose shareholding was, on the present valuation, valued at nil. They therefore stood to lose very large investments in the event the injunction was granted and the plaintiff's undertaking simply did not address this loss.

[47] As stated by Lord Diplock in American Cyanamid at page 408:

> "If damages in the measure recoverable under such an undertaking would be an adequate remedy and the (plaintiff) would be in a financial position to pay them, there would be no reason upon this ground to refuse an interim injunction. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience arises."

[48] In a case where the court considers damages are not an adequate remedy it must then consider whether the plaintiff's undertaking as to damages, (whether in the normal form which gives protection to the defendant alone or whether in extended form which gives protection to third parties as well as the defendant), is adequate to compensate the defendant and any third parties for any loss caused by the grant of an injunction, if it later appears that the injunction was wrongfully granted.

[49] Having read the affidavits in support of the plaintiff's undertaking in damages and having regard to the potential loss the defendant and the third party private investors may suffer, I am satisfied that there is a doubt as to the adequacy of the undertaking provided by the plaintiff to protect the company and the third parties.

[50] Although the inadequacy of a plaintiff's undertaking in damages can be a reason for refusing the injunction, as was the case in Morning Star Co-operative Society v Express Newspapers Limited [1979] FSR 113, I am of the view that Morning Star was an exceptional case and the present case can be distinguished on its facts.

[51] In Morning Star the plaintiff had a weak cause of action, had more liabilities than assets and there was no realistic chance the plaintiff could honour its undertakings in a case where the defendant was likely to suffer appreciable unquantifiable damages. In contrast, in the present case the company's loss would not be unquantifiable and whilst there is doubt as to the adequacy of the plaintiff's undertaking, he has vouched the ability to give an undertaking in the sum of £250,000. In addition I have held that the plaintiff, unlike Morning Star has an arguable case. For all these reasons I find that the case of Morning Star can be distinguished.

[52] Given that the court can grant an injunction where the plaintiff is legally aided where it is otherwise a proper case to grant an injunction, I find that the court should, in most cases, where there is doubt as to the adequacy of the plaintiff's undertakings in damages, go on to consider the question of the balance of convenience. I therefore intend to do that in the present case.

Balance of Convenience

[53] Lord Diplock at page 408 in American Cyanamid said:

> "It is unwise to attempt even to list all the various factors which may need to be taken into consideration in deciding where the balance lies."

[54] Lord Hoffman in National Commercial Bank Jamaica Limited v Olint Company Limited [2009] 1 WLR 1405 *PC* held that the balance of convenience is an exercise in seeking to determine whether granting or refusing the injunction will cause "irremediable prejudice" and the extent of this.

[55] Mr Geddis at paragraph 60 of his affidavit avers that the company is about to become insolvent unless there is an injection of capital. The affidavit of Ms Terrins makes clear that Crescent Capital will not invest if the injunction is granted. Mr Geddis avers that in those circumstances the company will become insolvent.

[56] The plaintiff accepts that the company has financial difficulties and even avers that it is already insolvent. He submits however that he can provide a loan to the company to save it from insolvency.

[57] I find the reality however is, that the plaintiff's offer has already been rejected by the Board as is confirmed by Ms Terrins and therefore it is not a viable means to save the company from insolvency.

[58] In these circumstances therefore, if the injunction is granted it is almost virtually certain that the company will become insolvent.

[59] Therefore, if the injunction is granted a number of employees will lose their jobs, the third party investors will lose their investment as their shares are valued as having nil value, the plaintiff will have a shareholding which is of nil value and will be unable to enforce any claim for damages he may have against the company. In the balancing exercise I consider that these are matters of some weight. The granting of an injunction will also indirectly impact on the wider public given the investment by Invest NI and the beneficiaries of pension funds investing in Crescent Capital. These are matters of less weight in the balancing exercise.

[60] In contrast, if the injunction is refused the plaintiff will lose his shareholding but he will continue to enjoy a realisable claim for breach of contract against the company as the company will be re-financed and will be in a position to meet any claim that he may make against it.

[61] I am therefore satisfied that the prejudice the company would suffer if the injunction is granted greatly outweighs the prejudice that the plaintiff would suffer

if the injunction is not granted. The balance of convenience is therefore strongly tipped against the grant of an injunction.

[62] In the exercise of my discretion I do not consider that it is either just or convenient to grant the injunction and accordingly I refuse the application.

[63] I will hear the parties in respect of costs.