



JUDICIARY OF
ENGLAND AND WALES

Patrick McKillen v Misland (Cyprus) Investments Ltd and others

Patrick McKillen v Sir David Barclay and others

High Court (Chancery Division)

10 August 2012

SUMMARY TO ASSIST THE MEDIA

Mr Justice David Richards has handed down judgment in these related proceedings which have been heard together, dismissing the claims brought by Patrick McKillen.

The proceedings relate to Coroin Limited (the Company) which owns and manages three hotels in London – Claridge’s, The Connaught and The Berkeley.

Patrick McKillen is the owner of a 36.2% shareholding in the Company. He was a member of the consortium of investors which established the Company to buy the Savoy group of hotels. The Savoy was sold but the other hotels were retained. There have since been a number of changes in the shareholders. Of the original members, Mr McKillen and Derek Quinlan (with 35.4%) remain. In January 2011, a company associated with Sir David and Sir Frederick Barclay bought Misland (Cyprus) Investments Limited (Misland) which then owned 24.7% and now owns 28.36%

Mr McKillen’s proceedings concern, principally, steps taken by Sir David and Sir Frederick Barclay and by companies associated with them (the Barclay interests) during 2011 to obtain control of the Company. Mr McKillen alleges that these steps involved breaches of an agreement among the shareholders and breaches of duty by directors of the Company appointed by the Barclay interests.

Both sets of proceedings are based on the same allegations. In one, Mr McKillen sought orders under sections 994-996 of the Companies Act 2006 on the grounds that the affairs of the Company had been conducted in a manner which was unfairly prejudicial to his interests as a shareholder. In the other, he sought damages in tort for conspiracy to cause loss by unlawful means and for inducing breaches of contract. The defendants to one or both sets of proceedings are Sir David and Sir Frederick Barclay, companies associated with them, directors appointed by those companies to the board of the Company and Mr Quinlan.

The principal allegations on which the claims are based fall into two broad categories.

The first relates to provisions in the shareholders’ agreement which (a) require shares to be offered round to other shareholders before being sold elsewhere (the pre-emption provisions) and (b) require the shareholders to observe certain duties of good faith to each other. Mr McKillen alleges that agreements made by Sir David and Sir Frederick Barclay or their associated companies with Mr Quinlan were in breach of the pre-emption provisions. In addition he alleges that charges over Mr Quinlan’s shares to secure Mr Quinlan’s bank borrowings had become enforceable, which would also

trigger the pre-emption provisions. In these and other respects Mr McKillen alleges that the contractual duties of good faith were broken.

The second category relates to alleged breaches of duty by three directors appointed by the Barclay interests. They are alleged to have promoted the interests of the Barclay brothers and their associated companies to the detriment of the Company. In particular it is said that they did so when one of those companies was negotiating with the National Asset Management Agency (NAMA), an Irish state-owned body, to purchase the Company's £660 million bank facilities which had been transferred to NAMA under Irish legislation.

The Court has held as follows:

1. No agreements were made with Mr Quinlan which triggered or breached the pre-emption provisions.
2. The security over Mr Quinlan's shares had not become enforceable.
3. There were no breaches of the duties of good faith in the shareholders' agreement.
4. The directors appointed by the Barclay interests did not breach their duties as directors of the Company, save that two of them breached the duty not to put themselves in the position where there was a conflict of competing duties (in this case their duties as directors to the company and their duties as executives of companies associated with the Barclay brothers) and one of them communicated with NAMA without disclosure to the Company.
5. Those breaches of duty caused no loss to the Company or prejudice to Mr McKillen as a shareholder.
6. There is no foundation for the claims in tort.

It follows that both sets of proceedings fail and will be dismissed.

Mr McKillen had originally claimed that the sale of Misland to a company associated with the Barclay brothers triggered the pre-emption provisions. That claim, which turned solely on the proper meaning of the pre-emption provisions, was tried as a preliminary issue and decided against Mr McKillen. Mr McKillen's appeal was dismissed on 24 February 2012: [2012] EWCA Civ 179.

Mr McKillen also claimed that the assignment by NAMA to a company associated with the Barclay brothers of the Company's bank facilities was in breach of the facilities agreement. NAMA agreed to be joined to the proceedings to determine that issue. As a result of a judgment of the Court of Appeal given on 27 June 2012 [2012] EWCA Civ 864, that claim has failed.

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This summary is provided to assist the understanding of the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.