Brooks, Kenneth Williams v Millar, Christian Gurth Hoyer and Another [2006] SGHC 109

Case Number : Suit 851/2005, SUM 401/2006

Decision Date : 26 June 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Michael Kuah and Yeo Lih Wei (Lee & Lee) for the plaintiff; Chandra Randhir Ram (Haridass Ho & Partners) for the first defendant; P Jeya Putra and Wendy Leong (AsiaLegal LLC) for the second defendant

Parties : Brooks, Kenneth Williams — Millar, Christian Gurth Hoyer; 3DM (Asia) Pte Ltd

Civil Procedure – Injunctions – Application for cancellation of shares issued and rectification of share register – Whether American Cyanamid Co v Ethicon Ltd requirements for mandatory injunction satisfied

26 June 2006

Judith Prakash J:

Introduction

1 The plaintiff, Kenneth Williams Brooks ("Mr Brooks"), and the first defendant, Christian Gurth Hoyar Millar ("Mr Millar"), are two of the shareholders of the second defendant, 3DM (Asia) Pte Ltd ("the company"). Mr Brooks is the chairman of 3DM Worldwide plc ("3DMW"), a company listed on the London Stock Exchange that specialises in dealing with and the development of patents worldwide. It is Mr Brooks' position that the company was incorporated in order to further 3DMW's commercial interests in the Far East and that as he was unfamiliar with the region, he had approached Mr Millar for help in setting up the company. On the company's incorporation, both Mr Millar and Mr Brooks held one share each in the company and were directors of the company. Subsequently, however, Mr Brooks ceased to be a director and Mr Millar became managing director of the company. According to Mr Brooks, there was an oral shareholders' agreement between himself and Mr Millar by which the affairs of the company were to be regulated.

2 3DM Technology Inc ("3DM Inc"), a company incorporated in the United States, is a sister company of 3DMW. In June and September 2004, 3DM Inc granted licences to the company to use certain technology belonging to 3DM Inc.

3 This action was commenced on 25 November 2005. Mr Brooks claims that Mr Millar and the company have caused and/or suffered the affairs of the company to be conducted in, and the powers of the directors to be exercised in, a fraudulent, illegal and oppressive manner, to his extreme prejudice. He claims that there were illegal and unauthorised allotments of shares in the company on 30 August 2004 and 18 July 2005. He has asked for declarations that the resolutions passed in connection with these allotments and the subsequent issue of shares are null and void. He also wants ancillary relief in respect of these actions. Further, Mr Brooks claims that the meetings (one being a board meeting and others being general meetings) held on 24 March 2005, 14 September 2005 and 22 September 2005 were improperly convened. He has asked for declarations that the resolutions passed at such meetings are null and void and for an order that one Michael Shone ("Mr Shone") be removed from the board of directors and one Richard Hancock be reinstated to it. Mr Brooks is also claiming damages.

The summons in chambers

4 The main action has yet to come to trial. These grounds of decision are delivered in respect of a summons in chambers taken out by Mr Brooks on 26 January 2006. The application was made in respect of events that had taken place between 7 November 2005 and 19 January 2006. The main prayers asked for were that:

> 1. The 1st and 2nd Defendants be ordered to rectify the share structure of the 2nd Defendants by restoring the share structure of the 2nd Defendants to the position existing before the Annual General Meeting of the 2nd Defendants (the "AGM") held on 2 December 2005 by taking all necessary steps including but not limited to the following:-
>
> a. Cancelling any shares purportedly issued to the 1st Defendant after the AGM held on 2 December 2005 pursuant to item 4.1 of the Notice of Meeting dated 7 November 2005.
>
> b. Rectifying the share register.
>
> c. All other consequential steps necessary to facilitate the cancellation of such allotment.
>
> 2. The 1st Defendant (whether by himself or his servant or agents or nominee or any other person) be restrained, and an injunction be granted restraining the 1st Defendant either directly or indirectly from taking any steps or by any other means and/or otherwise acting on the resolutions purportedly passed at the AGM held on 2 December 2005 including and not limited to exercising his rights and voting powers as majority shareholder pending the outcome of the hearing in this action (or any appeals there from).
>
> 3. The 2nd Defendants be restrained, and an injunction be granted restraining the 2nd Defendants either through their directors, nominees, agents or any other person from directly or indirectly taking any steps to issue new shares pursuant to the resolutions purportedly passed at the AGM held on 2 December 2005 pending the outcome of the hearing in this action (or any appeals there from).

5 Both defendants contested the application. After hearing the arguments, I refused to make an order that would result in the rectification of the share register. I did, however, grant some injunctive relief to Mr Brooks. Despite this, I ordered costs to be paid by Mr Brooks as I took the view that he had failed in the main relief that he had sought. The orders I made were as follows:

> (a) That prayer 1 of the summons be dismissed.
>
> (b) That the first defendant should not either directly or indirectly (whether by himself or his agents or nominees) take any steps that may or will result in any change in the present shareholding structure of the second defendant and shall not in any way encumber his shares in the second defendant and, further, is restrained from appointing or participating in any action to appoint any further director of the second defendant.
>
> (c) That the second defendant is restrained until further order from issuing or allotting any new shares in its capital or from registering any transfer of any shares that have already been issued and allotted.

Mr Brooks has appealed against those orders and wishes them to be replaced by orders in terms of his application.

Events leading up to the summons in chambers

6 Many of the events that took place before the issue of the summons in chambers are a matter of record. There are, however, factual disputes and disputes over the intentions of the parties. I shall first set out an account taken from Mr Brooks' first affidavit in support of his application and will then set out the salient points of the reply affidavits filed on behalf of the defendants. It should be noted that Mr Brooks' first affidavit was affirmed on 10 January 2006.

7 After giving a long history of the company and the relationship between himself and Mr Millar, Mr Brooks turned to the most recent events. On 7 November 2005, a notice of meeting was issued informing the shareholders of the company that the AGM of the company would be held on 25 November 2005. The agenda included changes to the share structure in the company. Item 4.1 of the notice of meeting dealt with a resolution authorising the directors to issue shares while item 4.2 contained a resolution for a subdivision of shares and the change of the authorised and paid-up share capital of the company. Mr Brooks received the notice of meeting on 16 November 2005. He considered that the proposed resolutions were an attempt by Mr Millar to wrongfully wrest control of and entrench himself in the company contrary to the shareholders' agreement.

8 On 19 November 2005, Mr Brooks' solicitors wrote to the company seeking a postponement of the AGM to 12 December 2005 in order to allow him to attend it in person or be represented by proxy. On 21 November 2005, he was informed that the other shareholders were only agreeable to postponing the AGM to 28 November 2005. Due to prior commitments, this postponement of three days did not enable Mr Brooks or his proxy to fly to Singapore and attend the AGM. A suggestion was made that Mr Brooks attend the AGM by teleconference but he was not happy with that suggestion. On 23 November 2005, his solicitors were instructed to confirm his participation in the teleconference on 28 November 2005 under protest. In the meantime, Mr Brooks instructed his solicitors to commence an action under s 216 of the Companies Act (Cap 50, 1994 Rev Ed). The writ was served on Mr Millar on the afternoon of 28 November 2005 shortly before the AGM commenced. As a consequence, the AGM was postponed to 2 December 2005.

9 As at the date of the filing of the writ, the shareholders of the company were Mr Brooks (5%), Mr Millar (35%) and an English company called Sibbasbridge Services plc (60%) ("Sibbasbridge"). Sibbasbridge is a company owned by Battlebridge Group Limited ("Battlebridge"), a business associate of Mr Brooks, and by Mr Millar himself. Mr Brooks believed that as Battlebridge owned one more share in Sibbasbridge than Mr Millar did, he would be in a position to control the company by controlling Sibbasbridge. However, sometime prior to November 2005, Mr Millar commenced an action in England challenging the ostensible share structure of Sibbasbridge and claiming that one of the shares held by Battlebridge was actually held on trust for him. As a result, there was a deadlock in Sibbasbridge pending the resolution of that court action.

10 After service of the writ, Mr Brooks through his solicitors proposed that the AGM be further postponed from 2 December 2005 to 12 December 2005 in order that he or his proxy would be able to attend it. By a letter dated 1 December 2005, Mr Shone replied that this request would be refused because neither he nor Mr Millar would be in Singapore on 12 December 2005. As Mr Brooks was still hopeful for an amicable resolution of the dispute, he instructed his solicitors to reply on the same day that he would attend the AGM by teleconferencing but reserved his rights to take such measures as may be necessary if steps were taken to pass resolutions relating to the issuance of new shares and the alteration of company's share structure. At the meeting on 2 December 2005, Mr Brooks recorded

his objections to previous actions taken by Mr Millar and Mr Shone and requested that items 4.1 and 4.2 of the notice of meeting not be tabled at the AGM. Despite his protests, however, the resolutions were passed.

11 In para 92 of his affidavit, Mr Brooks said that by reason of the facts set out the affidavit, he believed that an injunction ought to be granted restraining the defendants from taking any further action on the resolutions. His first affidavit did not contain any account of what had happened after 2 December 2005.

12 Mr Brooks affirmed a supplemental affidavit on 25 January 2006. This was filed on 6 February 2006. In it, he said that at the AGM of 2 December 2005, Mr Shone (who purported to act for the company) and he agreed to meet in London to try to resolve the disputes amicably. The date of the meeting was ultimately fixed for 20 December 2005. However, on 14 December 2005, Mr Brooks received a notice of offer for application of shares whereby the company proposed to issue 199,920 new shares at a par value of $0.50 each at $1 per share to each of its shareholders in proportion to their existing shareholdings. The reason given for the issuance was so that the company could raise funds to furnish the security for costs requested by 3DMW who were defendants in an action in England that the company had started against it ("the English litigation").

13 Mr Brooks said that he was shocked. Mr Millar had become involved in the company only through Mr Brooks' invitation and he had then not only taken it over through underhanded means but was now causing it to litigate against 3DMW which Mr Brooks had founded. What was more, Mr Millar was now offering Mr Brooks shares, the consideration for which would be used to fight a case against Mr Brooks himself. There was no way Mr Brooks could subscribe to the new shares. He also knew that Sibbasbridge was lacking in funds and could not take up the share offer.

14 The meeting with Mr Shone on 20 December 2005 took place. Mr Shone suggested mediation. Mr Brooks agreed. The two men left the meeting having agreed to work towards mediation in February. There were, however, still a lot of minor details to be agreed upon. Subsequently, Mr Shone sent Mr Brooks a list of potential mediators and appeared to be taking the possibility of amicable resolution seriously, especially as Mr Shone stated that he was willing to discuss an adjournment of an extraordinary general meeting of the company that had been called for 12 January 2006.

15 On 31 December 2005, Mr Brooks sent Mr Shone an e-mail outlining what he understood to be the terms that had been agreed between them thus far. These included an agreement that all steps in furtherance of litigation would be stayed until conclusion of the mediation; that the company would not issue new shares and that if the mediation failed, there would be a moratorium period of 20 days during which there would be no issue of shares or alteration of the share structure of the company. Mr Shone replied the same day and Mr Brooks considered that the reply contained an agreement to all the proposed terms except the length of the moratorium period.

16 On 7 and 9 January 2006, however, Mr Brooks received letters from solicitors for Mr Millar and the company respectively denying that any agreement had been reached between himself and Mr Shone. He was stunned as the denials came extremely close to the 10 January 2006 deadline for accepting the new offer of shares. It appeared to him that the defendants were reneging on the agreement and that they had been trying to buy time to put into effect the disputed resolutions passed on 2 December 2005. Mr Brooks had, as a precaution, previously instructed his solicitors to prepare papers to injunct the defendants from causing shares to be issued in the company. He had withheld filing this application because of the ongoing negotiations.

17 On 9 January 2006, Mr Brooks' solicitors informed the defendants of his displeasure at their

last-minute change in position. Their letter also stated that any unilateral action taken by Mr Millar or the company or anyone acting on his or its behalf pursuant to any of the purported resolutions passed on 2 December 2005 would be resisted. Four days later, Mr Brooks said that he received yet another offer of settlement by e-mail from Mr Shone proposing settlement of all the disputes in the various jurisdictions. Discussions for settlement were therefore still on the cards and he was still hopeful that an amicable resolution could be reached.

18 On 19 January 2006, Mr Brooks found out that the defendants had caused shares to be issued by the company. No acceptance having been conveyed by Sibbasbridge and Mr Brooks himself, Mr Millar had subscribed to the entire allotment and had become the majority shareholder of the company. Mr Brooks said that where Mr Millar had once needed the concurrence of Sibbasbridge he was now in a position to run the company as he saw fit. Mr Millar and the company had acted in a totally reprehensible manner and ought not to be allowed to alter the status quo existing at the time of the action by issuing new shares under the disputed resolutions.

19 Mr Millar affirmed an affidavit on 6 February 2006 in response to Mr Brooks' first affidavit. Most of his affidavit consisted of responses to the allegations made by Mr Brooks. Those responses are irrelevant for present purposes. In relation to the summons in chambers, Mr Millar's position was that the company had needed to issue the additional shares in order to raise capital to put up security for costs in the English litigation. The action being pursued was against 3DMW for failure to pay moneys due under a consultancy agreement with the company. The security had been requested by 3DMW and the English litigation could not proceed without such security being provided.

20 As far as the events of November and December 2005 were concerned, Mr Millar said that Mr Brooks had had ample opportunity to attend the AGM after he received the notice of meeting dated 7 November 2005. As an additional courtesy, the meeting had been adjourned to 28 November 2005 to give Mr Brooks extra time. He used this time to commence the action. In reality, the crux of the matter was that funds were needed. Mr Brooks had not mentioned in his first affidavit the circular issued to shareholders and sent out on 14 December 2005.

21 Mr Millar also stated that in view of differences between Mr Brooks and his companies and the defendants, the only recourse open to the company was to litigate and protect the only assets it had – the licences from 3DM Inc and the payments due under the consultancy agreement from 3DMW. In the English litigation, 3DMW had obtained an order for security for costs of £30,000. The company had to raise funds to finance the security and the litigation. Hence, the rights issue. The security had been paid into court on 18 January 2006. In Mr Millar's view, Mr Brooks was seeking by way of the application for the injunction to prevent the company from litigating on and preserving the only assets it had.

22 Mr Shone affirmed an affidavit on 3 February 2006. He made it in his capacity as a director of the company and on the latter's behalf. He stated that the company's third AGM was duly convened and held on 2 December 2005. It was attended by Mr Millar as the corporate representative of Sibbasbridge, Mr Shone as Mr Millar's proxy and by Mr Brooks by way of a telephone conference. At the meeting, various resolutions were passed including one giving the directors authority to issue ordinary shares of the company and one subdividing the authorised share capital of the company from $100,000 comprising 100,000 ordinary shares of $1 each into $100,000 comprising 200,000 ordinary shares of $0.50 each. The paid-up capital of the company was subdivided from 40 ordinary shares of $1 each into 80 ordinary shares of $0.50 each.

23 Mr Shone also gave some evidence on the English litigation against 3DMW. He stated that the amount claimed was £110,000, alternatively, damages, plus interest and costs. The English litigation

was slated to be set down for trial in approximately three months from February 2006. Mr Shone then stated that the company was, according to its latest audited accounts, insolvent. The company had agreed to provide security for costs in the English litigation because it was not ordinarily resident in the United Kingdom and was insolvent. Due to the company's insolvent position and financial health, the company had had to raise funds to provide the security, fund working capital requirements and also to protect the assets of the company including the licences granted by 3DM Inc.

24 Accordingly, on 14 December 2005, a circular and notice of offer for application of shares and an application for shares were sent to all shareholders. In January 2006, the company received a cashier's order for the sum of $69,972 from Mr Millar being the consideration for Mr Millar's subscription for 69,972 ordinary shares in the company pursuant to the new share issue. By 10 January 2006, no further application for shares or funds for shares were received from any of the other existing shareholders. On 12 January 2006, a directors' meeting was held. It was resolved that pursuant to the authority given by members in the ordinary resolution passed at the AGM on 2 December 2005, 69,972 shares and 121,948 shares of $0.50 each at a premium of $0.50 per share be allotted and issued to Mr Millar and Mr Shone respectively. Pursuant to a directors' resolution in writing made on 16 January 2006, it was resolved that 8,000 ordinary shares of $0.50 each at a premium of $0.50 per share be issued and allotted to Mr Shone.

25 It would be noted that as a result of the actions taken in December 2005 and January 2006, by the time this application was filed, Mr Shone was the single largest shareholder in the company and Mr Millar held the second largest block of shares. It was the allotments made pursuant to the resolutions passed on 12 January 2006 and 16 January 2006 that Mr Brooks sought to set aside by way of the injunction orders that he wanted me to grant. As at the date of the hearing, the shareholding of the company was as follows:

Name of shareholder	No of shares
Mr Millar	70,000
Mr Brooks	4
Sibbasbridge	48
Mr Shone	128,948
Total no of issued shares	200,000

The decision

26 In coming to my decision I was guided by the well-known principles established by the case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*"), an authority that has been repeatedly applied in Singapore. I was also mindful of the fact that the first relief that Mr Brooks wanted was a mandatory injunction rather than a prohibitory one. What he was seeking to do was to

change the share structure of the company and to have me nullify the issue of shares that had been paid for by not only Mr Millar, a defendant in the action, but also by Mr Shone who was not a party to the action and was not directly represented although he was the person giving instructions to the company's solicitors. I considered that before a mandatory injunction of this sort could be granted, I would need a higher degree of assurance that the order would not wreak more injustice than in the situation where an injunction prohibiting action was sought. I was particularly mindful therefore of the fundamental principle expressed in many cases that the court should take whatever course appears to carry the lower risk of injustice if it should turn out to have been wrong at the trial in the sense of granting relief to a party who fails to establish his rights at the trial, or of failing to grant relief to a party who succeeds at trial (see *Supreme Court Practice 2005* (Jeffrey Pinsler, gen ed) (LexisNexis, 2005) at para 29/1/9).

27 Turning to the *American Cyanamid* guidelines, the first matter to be considered is whether the person seeking an injunction has established that there is a serious issue to be tried. In this case, there was no doubt that there was such a serious issue as between Mr Millar and Mr Brooks. The two men had set up the company together and Mr Brooks had continued to be a shareholder both directly and indirectly even after he stepped down as director. It was also clear that the company's business relationships had been intertwined with other entities owned by Mr Brooks or in which Mr Brooks had an interest. Over the years, the parties' relative positions in the company appeared to have changed and whilst there were documents that Mr Brooks had signed which apparently gave Mr Millar the authority to do many of the things that Mr Brooks subsequently complained of, Mr Brooks had explanations for these acts and his allegations of wrongdoing on the part of Mr Millar were substantial enough to be seriously investigated. There was no real question to be tried, as far as I could see, between Mr Brooks and the company. However, it is usual in cases of oppression for the company concerned to be made a nominal defendant so that orders made by the court will bind the company. In this case, of course, since Mr Brooks was seeking to annul several resolutions passed by the company and to change the shareholding structure of the company as a consequence, it was necessary for the company to be a defendant.

28 The next stage of the exercise was the application of the balance of convenience test. This involved deciding whether damages would be an adequate remedy for the plaintiff. If they were, then no injunction would issue. If damages were not an adequate remedy, then I would have to proceed to the second part of this test which was to determine what the balance between risk and justice was and which course would carry the lower risk of injustice. In this case, it seemed fairly obvious that if Mr Brooks had a good case against the defendants, then damages would not be an adequate remedy. If Mr Brooks succeeded in the action, it would be because he had been able to establish that Mr Millar was in breach of the oral shareholders' agreement and had in effect stolen the company from Mr Brooks. Mr Brooks would have been deprived of a valuable asset and this asset would have been used in ways that were contrary to Mr Brooks' interests primarily in relation to the issue of the licences and the litigation against 3DMW. It would be hard to assess damages for such breach and for the deprivation of Mr Brooks' proprietary interests.

29 I therefore moved on to consider whether on the balance of convenience the injunctive relief should be granted. At this stage, I had to consider whether if the injunction were granted, the defendants would suffer damage that could not be compensated in monetary terms. It appeared fairly clear to me that this would indeed be the consequence of issuing an injunction that compelled the company to cancel the recent share issue and reimburse Mr Millar and Mr Shone the moneys paid for the allotment of the new shares. This was because the primary reason for the share issue was to provide security for the English litigation and to fund that litigation. Granting the injunction would in effect mean putting an end to the English litigation, which would not be in the company's interests as it would mean that the company would lose its opportunity to recover the sums claimed against

3DMW. As the company was insolvent before the latest share issue, this action would also put the company in danger of going into liquidation. Consequences like these could not be compensated for by an order for damages.

30 I was also concerned about the fact that granting the injunction would mean interfering with the property rights of a third party, to wit, Mr Shone, before Mr Millar's case had been proved. I did not think that it would be correct at this stage to divest Mr Shone of shares that he had provided valuable consideration for. Whilst Mr Brooks had shown that there was a serious question to be tried, Mr Millar had denied Mr Brooks' allegations and contested his factual assertions and I was not in a position to assess who would ultimately succeed at the trial. If Mr Millar were to be successful, then Mr Shone would have been wrongfully deprived of his property rights.

31 It appeared to me too that as long as no further action was taken to change the company's share structure, Mr Brooks would not suffer irremediable harm if the mandatory injunction were not granted. Mr Brooks had already questioned various actions of the company taken before November 2005 and these actions formed the basis of his claim for oppressive conduct on the part of Mr Millar. If Mr Brooks were to succeed in establishing that Mr Millar had been oppressive or had conducted the affairs of the company unfairly, then all the actions in question could be unwound and the natural consequence of this would also be an unwinding of the actions taken after November 2005. At the end of the day, once Mr Brooks had established his claim, he would be able to reclaim control of the company without regard to Mr Shone who would lose the shares he had subscribed for and would have to vacate his position as director of the company. From this point of view, the balance of convenience therefore lay with the defendants, in particular, the company, rather than with Mr Millar.

32 There also appeared to be some basis in the allegation made by the defendants that Mr Brooks had had an ulterior motive in making his application for the mandatory injunction in late January 2006. They asserted that what he really wanted to do was to stultify and/or prevent the company from proceeding with its action in England against 3DMW (which Mr Brooks appeared to be of the view was an action against himself notwithstanding his own contention that 3DMW is a listed company on the London Stock Exchange) and its action in the US against 3DM Inc. There was substance in the argument that Mr Brooks' conduct was not undertaken in the best interests of the company.

33 In coming to this conclusion, I considered the facts as they appeared in the various affidavits. Mr Brooks was from the very beginning given notice of all intended actions on the part of the company. The application for new shares was sent out to him on 14 December 2005 and the new shares were only allotted on or about 12 and 16 January 2006. Mr Brooks was aware that Sibbasbridge had no funds to subscribe for shares. He was also aware that security for costs in the sum of £30,000 (approximately $90,000) was required to enable the company to proceed with the English litigation. Yet, Mr Brooks refused to subscribe for any shares himself because he thought that the English litigation was in effect an action against himself. Whilst Mr Brooks is not obliged to fund such an action, it is hard for him to complain about the company seeking funds elsewhere for this purpose. If Mr Brooks considered that raising such money and spending it on the English litigation would be a waste, then he could have applied for a prohibitory injunction before the issue and allotment of shares took place. Mr Brooks had more than sufficient time to do so. He also had solicitors in Singapore acting for him and these solicitors had at some stage, according to Mr Brooks, in fact prepared papers for an injunction application which he then withheld. Indeed, his first affidavit was affirmed on 10 January 2006 but the present application was only filed 16 days later.

34 Mr Brooks knew full well by mid November 2005 the nature of the resolutions sought to be passed at the AGM on 2 December 2005. He attended the AGM and knew that the resolutions that he

objected to had been passed. Yet, he failed to take any action thereafter until 26 January 2006. He knew subsequently that the company was issuing new shares for reasons that included the funding of the English litigation and that the offer to subscribe for the shares was to close on 10 January 2006. Correspondence had been flowing between the parties' respective solicitors in early January 2006. Whilst there may have been discussions proceeding between him and Mr Shone, he was aware as early as 7 January 2006 (and this awareness was reinforced on 9 January 2006) that the defendants were denying that any agreement had been reached. If he had taken action on 10 January 2006, he could have forestalled the issue of the shares. Yet he continued to keep quiet. Eventually, when he did file the application, he did not mention in his affidavit that the shares had already been issued and that the ostensible reason for the issue was to fund the English litigation.

35 At the hearing, I agreed with the submission made on behalf of the company that since the new shares had already been issued and allotted, there did not appear to be any urgent need for the relief asked for by Mr Brooks to be granted. I agreed too that the company would suffer a severe and irreparable injury if the mandatory injunction asked for was granted as it would be compelled to abandon its proceedings in England and the US (in respect of the licences). Thirdly, even if the injunctive reliefs were granted, the position of Mr Brooks as a minority shareholder would not be changed. This was because even if the shares issued after the AGM on 2 December 2005 were cancelled, Mr Brooks would still be a minority shareholder. A full trial would be required before the reliefs asked for by him in the statement of claim could be granted so as to restore his position to what it had been prior to July 2004 when Mr Millar embarked upon the actions that Mr Brooks complains about in these proceedings. The interim reliefs therefore would serve no purpose other than to frustrate the company's legal proceedings abroad.

36 At the end of the hearing, it was clear in my mind that to grant the first relief asked for by Mr Brooks would be the course that carried the higher risk of injustice if it should turn out to have been wrong in the sense that relief had been granted to the person who had failed to establish his rights at the trial. There was a lower risk of causing injustice if I refused Mr Brooks the order asked for even if he were later to succeed at the trial. I agreed, however, that the company could not go on altering its share structure and therefore granted prohibitory injunctions to this effect. As it was clear from the arguments that Mr Brooks' main interest was in unwinding what had been done in January 2006, and as he had failed in this attempt, I thought that the defendants had in fact succeeded in resisting the application despite the prohibitory injunctions ordered. I therefore ordered Mr Brooks to pay the costs of both defendants incurred in the application and fixed the quantum of those costs.