



Neutral Citation Number: [2024] EWHC 2689 (Ch)

Case No: BL-2024-001477

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

31 October 2024

Before :

NICOLA RUSHTON KC

(Sitting as a Deputy Judge of the High Court)

Between :

THOMAS RUSSELL WILLIAM ABREY

Claimant/Applicant

- and -

- (1) RICHARD SYMON ABREY**
(2) ROBERT ABREY
(3) GILES MATTHEW RICHARD ABREY
(4) MATTHEW ROBERT ABREY

Defendants/Respondents

Mr Dale Martin KC (instructed by **Howes Percival LLP**) for the Claimant
Mr Edward Peters KC (instructed by **Roythornes Limited**) for the Defendants

Hearing dates: 18 and 21 October 2024

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 31 October 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

NICOLA RUSHTON KC:

Introduction

1. On 21 October 2024 I granted an interim injunction in favour of the Claimant against the Defendants to prevent them from impeding the Claimant's participation in the business of the partnership between them, which is a substantial family farming business, in the specific respects set out in that order. Given time constraints, I said I would provide my reasons in a reserved judgment. This is that judgment and those reasons.
2. Previously on 18 October 2024, in a separate judgment given *ex tempore*, I concluded that the Court had jurisdiction to hear the Claimant's application for an interim injunction and that that application at least should not be subject to a stay under s.9 of the Arbitration Act 1996 ("**the 1996 Act**") and/or pursuant to CPR rule 3 or the inherent jurisdiction of the Court, the Defendants having applied by application notice dated 16 October 2024 for such a stay. That determination was on the basis that even if the claim was otherwise liable to be stayed due to the existence of a relevant arbitration agreement, the exceptions in sub-sections 44(2)(e) and (3) of the 1996 Act would apply. Those sub-sections provide that the Court has the power to grant an interim injunction in relation to arbitral proceedings on the application of a proposed party to such proceedings if the case is one of urgency, which I determined it was. The issue of whether the present claim should otherwise be stayed under s.9 of the 1996 Act and/or pursuant to CPR rule 3 or the inherent jurisdiction of the Court remains to be determined.
3. The Claimant's claim was issued, with Particulars of Claim, on 10 October 2024, at the same time as his application for an interim injunction, which was certified as urgent. The Defendants have served an Acknowledgement of Service dated 16 October 2024 which states an intention to dispute jurisdiction.
4. The Claimant's application was supported by his own witness statement dated 9 October 2024 with exhibit, and by statements from his father Christopher Abrey and from employees Edward Beatty, Justyna Bilska, Alexei Mironescu, Mariyana Trantina and Leondri Fourie.
5. The Defendants relied in opposition to the Claimant's application on a witness statement from the Third Defendant, Giles Abrey, dated 17 October 2024, together with exhibit.
6. There are 2 other sets of related proceedings, to which I will make reference below. First there is claim BL-2023-001340, issued by A. F. Machinery Limited ("**the Company**") against Thomas Abrey in October 2023 but which was not pursued ("**the Company Claim**"). Second there is BL-2024-000553, issued in April 2024 by the Defendants in the present proceedings, against Thomas and Christopher Abrey, seeking a dissolution of the partnership between them all ("**the Dissolution Claim**"). The Dissolution Claim has been referred to arbitration by a consent order dated 26 May 2024. The arbitrator is Sir Paul Morgan, the former High Court Judge, who is a specialist in partnership and agricultural disputes, and the arbitration is ongoing.
7. The Claimant's claim is for wrongful exclusion and/or purported exclusion from the partnership business in breach of his rights as a partner. It is essentially directed at regulating the position while the partnership subsists and pending any dissolution.

The Partnership

8. The dispute concerns a third-generation family farming partnership, known as R G Abrey Farms, which operates a business on 6,500 acres in Norfolk and Suffolk (“**the Partnership**”). Originally started by Russell Abrey in the 1930s, the current partners are his three sons, Christopher, Richard and Robert Abrey, and their respective three sons, Thomas (the Claimant), Giles and Matthew Abrey (collectively, “**the Partners**”). For clarity, and intending no disrespect, I will refer to the Partners in this judgment by their first names. Thomas’s claim, in which he is supported by his father Christopher (who is not a party) is accordingly made against his two uncles and his two cousins.
9. The business specialises in large scale production of crops, especially potatoes, onions and carrots, combinable crops and renewable energy feed stock crops, producing around 100,000 tonnes per year. It is successful: the partnership has assets which I am told have a value in the region of £80m, with annual turnover in the most recent full financial year of £25m and profits of around £7.5m, despite the dispute outlined in this judgment. The business employs around 93 employees, some of whom live on the farm, as do the Partners.
10. The Partnership is presently governed by a written Partnership Agreement dated 3 May 2013. There is also the Company, which is closely connected to the Partnership and which employs the staff and owns most of the plant, equipment and machinery used by the business. I am told on behalf of Thomas and it does not appear to be disputed, that the main farming assets and the business are owned by the Partnership rather than the Company, and that the only formal Company meetings which have taken place were one in April 2024 and one on 27 September 2024, both of which related to removal of Thomas as a director.
11. The Partnership Agreement provides, among other things, that:
 - i) By clause 2.1, the Partners shall continue to carry on business as Partners on the terms of that agreement.
 - ii) By clause 3.1, the farming business of the Partnership shall be carried on from the Partnership Property and other property as the Partners may determine.
 - iii) By clause 9, each Partner shall perform the duties set out in Schedule 1. That Schedule provides among other things that each Partner shall at all times:
 - a) By sub-paragraph 1.1, “*devote such time and attention during the usual business hours to the Business as shall be reasonably necessary for the proper conduct thereof*”;
 - b) By sub-paragraph 1.2, “*be just and faithful to the other Partners and to each of them*”;
 - c) By sub-paragraph 1.4, “*forthwith on request by any other Partner give to such other Partner full information concerning any act matter or thing concerning the Partnership or the business thereof which might affect the Partnership of which he has knowledge*”.

- iv) By clause 10, most matters requiring a decision of the Partners shall be by majority vote, each Partner having one vote. However there are exceptions, one of which is that the expulsion of any Partner requires unanimity of the remaining Partners.
 - v) By clause 11, no Partner shall without the consent of all the other Partners do or permit any of the things specified in Schedule 2, which includes by paragraph 2, not, without the prior written consent of the other Partners, to “*do or knowingly suffer to be done anything whereby the good name of the Partnership or the business or reputation thereof may be prejudiced*”.
 - vi) By clause 14 there is a dispute resolution procedure, which includes provision for reference to arbitration by a single arbitrator, in accordance with the 1996 Act.
12. In practice I am told that Christopher, Richard and Robert have stepped back from much of the day-to-day management of the farm, although they are involved in significant management decisions. Thomas and Giles are involved in day-to-day management. Matthew is said to be on long term sick leave, although there are also suggestions that he has withdrawn from working on the farm because of the dispute with Thomas. Giles says that Robert has covered some of Matthew’s work.
13. The parties agree that the business of the farm is and historically has been divided into largely different divisions, led by different Partners and teams. These include the onion division, which is led and managed by Thomas, and the potato division, in which he is not involved. However there are some functions which entail a degree of coordination across different divisions, including cropping (crop planning), haulage, irrigation and spraying.
14. Negotiations for the splitting of the partnership assets have been continuing on an open basis in parallel with the arbitration proceedings but have not reached any resolution. I am told on behalf of Thomas that the alternative would be a sale as the Partners are not in a position to buy each other out.

History of the dispute

15. Both sides agree that relations between Thomas and Christopher on the one hand and the remaining Partners on the other have broken down, and that they were deteriorating badly from at least 2021. Thomas claims that he has been progressively excluded from the Partnership business, culminating in his removal as a director of the Company on 27 September 2024 for the stated purpose of preventing him from giving directions to employees. He claims that his authority has been undermined by Robert and Giles, by criticism of him in front of employees, and that information about the business has been withheld from him. He also claims that his belief in Scientology has motivated the negativity of the other Partners against him.
16. On behalf of the Defendants, Giles says in his statement that Thomas is extremely difficult to work with and has been the subject of a large number of complaints from employees about his behaviour, which is said to be overbearing and potentially bullying. Giles says that Thomas’s behaviour is causing serious day-to-day issues in running the business and is causing a toxic working environment. He relies among other things on a report from a Mr Youngman in November 2023 who he says conducted an independent investigation following complaints from staff including Scarlett Carr and Marianne

Goodchild and who concluded that the matters complained of were likely to be considered bullying, but for which he says Thomas refused to be interviewed. The reliability of this report is disputed by Thomas, who says the investigation was conducted in a highly irregular fashion, which is why he was not willing to be involved in it.

17. In October 2023, the Company issued the Company Claim, which was based primarily on the allegations which were the subject of Mr Youngman's report, and which sought an injunction against Thomas to prevent him attending the farm premises, contacting any employees or harassing, victimising or discriminating against any employees. The application had to be vacated for lack of time and ultimately was not pursued by the Company, I am told because negotiations for the separation of the Partnership business ensued.
18. However in April 2024 the Defendants issued the Dissolution Claim, they say because those negotiations had not progressed. That claim was also based on allegations that Thomas had an abusive style with employees, poor personnel management and interfered excessively with employees' work, which they said created a real risk that key staff would depart, as well as complete breakdown of relations between the Partners. As that claim makes clear, the Defendants cannot expel Thomas from the Partnership because he is supported by his father, who would block any such vote. Thomas applied for a stay of that claim under s.9 of the 1996 Act and, as set out above, it was referred to arbitration by consent.
19. The allegations of misconduct towards employees are disputed by Thomas, who claims they have never been properly and independently investigated, and that complaints against him have been instigated by the other Partners as a means of trying to remove him. He relies on statements from other employees, who work in the onion division with him, to the effect that it is Robert who is angry and difficult and causes problems and that they have not had difficulties with Thomas.
20. Thomas also relies on a statement from Leondri Fourie, who worked in irrigation and has very recently left employment at the farm. Mr Fourie says that there have been increasing problems with management at the farm since what started as a family dispute has become a management and a farm dispute, and that his impression is that there is an effort to get rid of Thomas and Christopher. He says that in September 2023, Robert and one of the farm managers, Chris Marsh, were pushing him to report complaints against Thomas and in support of Ms Goodchild. More recently he says they ordered him to support Mr Marsh in what was described as his battle against Thomas. He also says he received an instruction originating from Robert in April 2024 not to give Thomas requested information about tractor hours and in July 2024 to ignore Thomas's cropping list and use Matthew's instead. He says that Jenny Tortice (another employee) and Robert referenced Thomas's Scientology as a cause of problems and a reason not to trust him, but Mr Fourie says this did not ultimately affect his views.
21. Matters came to a head in August 2024. On 27 August 2024 the Defendants' solicitors, Roythornes, served on the Claimant's solicitors, Howes Percival, notice of a general meeting of the Company which was being called for the purpose of removing Thomas as a director of the Company, despite negotiations as to working arrangements which had been proceeding in the meantime. As to the purpose of this action, Roythornes stated in their letter that *"...The effect of this is to remove your client's standing to give instructions to employees of the company in order to protect the employees themselves*

together with the business by extension, in the hopes that loss of staff and employment claims as a result of your client's actions can be avoided." In response Howes Percival said by letter on 4 September 2024 that any such step would be unlawful as the Company was a quasi-partnership arrangement, and that if they proceeded Thomas would apply for urgent injunctive relief.

22. In their reply of 9 September 2024, Roythornes said:

"6... Our clients' intention for the removal of your client as a director is to protect the best interests of the company, as by his removal he will lose his standing to give instructions to staff. This is necessary because of his serious misconduct in terms of treatment of staff. This has been documented extensively over years of his involvement in the business. In such circumstances, your client will not be entitled to relief such as you suggest as the measures taken are justified – a point made by Lord Cross in the House of Lords decision in Ebrahimi v Westbourne Galleries & Ors [1973], and by Lady Arden in Chu v Lau [2020].

7. Our clients are not seeking to otherwise remove Thomas Abrey from the running and management of the business. The alternate working arrangements our clients have suggested would mean he would stay as a director and would continue to run the onion department..."

23. In reply on 18 September 2024, Howes Percival said:

"Your Letter confirms that, apart from seeking to prevent Thomas Abrey giving 'instructions to staff', your clients are not seeking to 'otherwise remove Thomas Abrey from the running and management of the business.' That purported nuance is not understood. The suggestion that he could 'continue to run the onion department' whilst being unable to give instructions to staff is nonsensical. If what you say is correct, removing him as a director is merely for show. As if Tom Abrey can continue to participate in the running the Business effectively without being a director, it means that the removal serves no useful purpose. It would however provide your clients with grounds to instruct staff not to listen to or pay regard to any instructions provided to them by Tom. Indeed, this is already happening upon the ground, with staff members refusing to follow the instructions of Tom or Chris Abrey based upon instructions provided to them by Robert Abrey, with one staff member this week stating to Chris Abrey: 'Robert said we don't have to communicate with you'."

24. In response on 23 September 2024, Roythornes said:

"We do not agree that the proposed removal of your client as a director is for show. As you know, the employees are employed by the Company, not the Partnership. If your client is no longer a director, he loses his standing to issue instructions. This is sadly necessary in circumstances where he refuses to agree working arrangements that would hopefully avoid further incidents and escalations and that would let the parties focus on a settlement. Your client would remain a partner of the Partnership and so would retain his right to be involved in the running and management of the same, for instance in decisions requiring unanimity of the partners. That does not extend to the giving of instructions to staff who are not employed by the Partnership."

25. In their reply of 25 September 2024, Howes Percival said that it was self-evident that the management of the partnership business included the right to issue instructions to employees and it was difficult to see how a partner could properly participate in management of the business without such a right, which had never been delegated to the Company. Their letter continued:

“However, your repeated assertions, on behalf of your clients, that Thomas’s removal as a director will remove his standing to issue such instructions (see your letters dated 27 August 2024 and 23 September 2024) reveals that the intention of your clients is to use Thomas’s (proposed) removal as a director to justify his exclusion from the business, in breach of his rights as a partner.

We therefore see the decision to be taken on Friday, if indeed our client’s directorship is terminated on Friday, to be a watershed moment in terms of your client’s stated aims to exclude our client from rights which are accorded to him as a partner. At that point, your clients will have taken an irrevocable step in that regard.

Accordingly, if your clients pass the resolution to remove Thomas as a director at the general meeting on 27 September 2024, our clients will have no option but to treat this as a threat to undermine his right to continue to participate in the partnership business and to issue an injunction to restrain the same.

... Please now be under no misapprehension; our clients have provided us with instructions to issue such an application should the ordinary resolution be passed this Friday.”

26. On 27 September 2024 Roythornes wrote to Howes Percival confirming that the general meeting of the Company had proceeded that morning and the resolution to remove Thomas as a director had been passed. On 10 October 2024 Howes Percival served on Roythornes the present proceedings, application for injunction and supporting evidence.
27. Also in August and September 2024, and Thomas says in an attempt to head off the threat of his removal as a director, but also with the purpose of smoothing workplace relations, Thomas agreed to abide by a set of restrictions in his movements and actions in the workplace, referred to by the parties as the “Working Arrangements”. They were as follows:
- i) He would not attend the “Farm Office” (a portacabin next to the Main Office and onion grading building);
 - ii) He would not attend the divisions of the business concerning potatoes, including attending the separate Snetterton site at all;
 - iii) He would confine himself to the Main Office, onion grading building, fields and onion stores, and would only attend the workshop and sprayshop between 10am and 12 noon each day;
 - iv) He would not contact close family or members of staff except where there was a relationship with them pre-dating September 2024;
 - v) He would not contact the spouses, children or grandchildren of the Defendants or their partners.

- vi) He would not contact Fleur Tortice – she is not an employee but is the adult daughter of Stephen and Jenny Tortice, who are employees
- vii) There is some dispute as to whether he agreed not to contact Mr and Mrs Tortice, or only offered this in the event he was not removed as a director.

Application for an interim injunction

- 28. I heard argument over 2 days (including the argument as to jurisdiction to make the injunction) on Thomas's application to restrain the Defendants from excluding him from participating in the management of the business of the Partnership and/or interfering with his right to participate in the management of the Partnership business, in a number of listed ways, including directing workers, excluding or impeding his access to the Partnership property and failing to provide him with information. Mr Dale Martin KC appeared on behalf of the Claimant and Mr Edward Peters KC on behalf of the Defendants, and I am grateful to them both for their detailed written and oral submissions and assistance.
- 29. On any view this is a difficult situation and a dispute which has become embittered and hostile. There are widespread disputes of fact, in particular as to whether and how Thomas is being excluded from the Partnership business, as to how he has behaved in relation to employees and his fellow Partners, and as to the conduct of others, in particular Robert.
- 30. These are factual issues with which Sir Paul Morgan will have to grapple in due course if the parties are unable to reach a negotiated exit from their Partnership - as I would strongly urge them to try to do. I am emphatically not in a position to reach a conclusion on any of these factual disputes and I do not seek to do so on this application. As Lord Diplock said in *American Cyanamid Co v Ethicon Limited* [1975] AC 396 ("**American Cyanamid**") at 407: "*It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to 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...*"
- 31. The present case is a classic example of a situation where I should apply the three-stage approach to interim relief laid down in *American Cyanamid*. It is also necessary to apply a degree of caution, for the reasons expressed by Hoffman J (as he then was) in *Films Rover International v Cannon Film Sales Ltd* [1987] 1 WLR 670 at 680:

"The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle."
- 32. Applying *American Cyanamid*, the test for determining whether to grant an interim injunction in the present case is accordingly that:

- i) Thomas as applicant must show there is a serious issue to be tried;
- ii) The Court must consider whether damages would be an adequate remedy for either party;
- iii) Assuming this is not the case, and a cross-undertaking in damages is offered (as it has been here), the Court must consider the “balance of convenience”, and in particular the course which would appear to do the least harm if wrong.

Serious issue to be tried

- 33. On behalf of the Defendants, Mr Peters disputed that there was any serious issue to be tried as to whether Thomas was being, or there was a risk of him being, excluded from participating in the management of the Partnership business. He submitted that despite the contents of the letters from Roythornes as to the purpose of removing Thomas as a director, Thomas was wrong in his apprehension that he was going to be excluded from the Partnership business. He said that the business had always been operated in divisions, with the different partners “keeping to their lanes”; that Thomas’s role had always been focused on the onion division; and that Thomas knew that in truth there was no intention on the part of the Defendants to exclude him from managing the onion division. He said further that the broad terms of the Partnership Agreement should be treated as modified either by express agreement or by conduct in that the parties had agreed to this sort of compartmentalisation. He submitted further that Thomas was not a key person in the business as a whole as he claimed, so far as broader farm functions were concerned.
- 34. On behalf of the Claimant Mr Martin submitted that the starting point was the Partnership Agreement, which governed the Partners’ rights and duties, and this gave the Partners rights which were general and far-reaching. While they might have areas of specialisation, they retained their rights generally and the proposed order reflected the reality that the Partners’ powers and duties were broad. The majority had to act in good faith, hear what Thomas had to say and take it into account. The proposed order for provision of information reflected paragraph 1.4 of Schedule 1 to the Partnership Agreement, and more generally the proposed order arose from the terms of that Schedule. He submitted while it had been alleged that Thomas had behaved badly, the evidence did not support this and there had also been a number of allegations against Robert which had not been properly addressed by the other Partners. He said the farm was Thomas’s life, and Thomas had provided great detail in his statement of all the ways he was practically involved and the workers he needed to deal with, which extended beyond the onion division to wider matters such as being ultimately responsible for getting crops sprayed, irrigation planning, integrated crop management strategy and haulage. Sometimes there was a very tight timeframe for doing work.
- 35. Mr Martin submitted that Thomas had provided examples from the run up to this summer of a chipping away of his authority by the other Partners, and he relied on Mr Fourie’s statement as being evidence which was rare to get and was compelling. He submitted that the reasons given in correspondence by Roythornes for the removal of Thomas as a director made it clear that the intention was to prevent him giving instructions to staff and so participating in the business. He submitted that what Thomas sought to enforce were his basic rights as a Partner, and exclusion from such rights was one area where the courts had been willing to grant injunctions, going back to the Victorian era.

36. In my view, on the face of it the Partners' rights and obligations are straightforwardly set out in the Partnership Agreement. However it is also undisputed that the business has for a long time largely been operated as "divisions", including with Thomas specialising in the onion division. The issue of whether the terms of the Partnership Agreement have been modified by implied agreement or conduct and/or whether there is any other agreement between the Partners as to division of management is a complex one which I cannot resolve on this application and on which I express no view either way.
37. However, given the express terms of the Partnership Agreement, the removal of Thomas as a director on 27 September 2024 and the reasons for this as summarised in the correspondence from Roythornes, together with the witness evidence that there have been efforts by other Partners and by Mr Marsh to exclude Thomas, including Mr Fourie's statement, I consider that there is a serious issue to be tried both as to whether there has been exclusion of Thomas from the Partnership business and whether there is a risk this will continue if not prevented by an injunction. I do not consider that evidence as to the conduct of the parties in the short period between 27 September 2024 and the hearing of this injunction, at a time when it was known an injunction was being sought, tells me much about the risk of exclusion if no injunction is granted.
38. I accept Mr Martin's submission (which I do not think is seriously disputed) that the right of a partner to take part in the management of the business of the partnership is a basic right, enshrined in s.24(5) of the Partnership Act 1890 and one which may be protected by the Court by injunction in an appropriate case.
39. In the Victorian case of *Hall v. Hall* (1850) 12 Beavan 414, relied upon by Mr Martin, a final injunction was granted preventing one partner from obstructing or interfering with the exercise of the rights of the other partner under their partnership agreement. I note that, having concluded that the Plaintiff had a plain right to protection from the Court, the Master of the Rolls said further at 419: "...*Having such a right, the Court ought not to interfere more than is absolutely necessary for the protection of these parties. I think I may interfere to the extent of preventing the Defendant... from obstructing or interfering with the Plaintiff in the exercise of his right under that agreement.*"
40. Equally I consider that the "Working Arrangements" are an important part of what has regulated relationships recently, and they are likely to have reduced tensions insofar as they relate to workers in particular. I will return to this in the context of the terms of the order which I granted.
41. I also accept that there is an issue, which I cannot resolve on this application, as to whether Thomas's management style has caused difficulties with workers and whether this has had an impact on the running of the business. I do note however that the business has continued to be very successful. However uncomfortable it is for the Partners, it is going to be necessary for them to work together in the business until terms of a dissolution, split or sale are reached either by negotiation or by arbitration. While the separation of the business into different crop divisions helps significantly with managing the stresses in this situation, there will inevitably be some overarching matters where the Partners will have to communicate and work together.

Adequacy of damages

42. I accept the submissions on both sides that damages would not be an adequate remedy for either the Claimant or the Defendants. If Thomas is wrongly excluded from the Partnership because an injunction is not granted, then I accept that it would be difficult to assess the consequences in financial terms. I also accept that such an event would cause an unreasonable imbalance in the negotiations between the parties as to dissolution and/or division of assets. Equally I accept Mr Peters' submission that it is insufficient for Mr Martin to argue, as he does, that the effect of any employees leaving and/or bringing a claim against the Partnership as a consequence of Thomas's alleged behaviour can readily be assessed in damages. The effects of unhappiness among employees, if that transpires, are not in my view easy to quantify in money terms either.
43. Accordingly, this is a case where it is necessary to turn to the question of the balance of convenience.

Balance of convenience

44. This is the central and most challenging issue in this case. There are very strong feelings on both sides and it is patently clear that these Partners are struggling to continue to work in business together and that there is a need for the situation between them to be finally resolved, whether through arbitration or negotiation and whether by a division of assets or a sale.
45. On behalf of Thomas, Mr Martin submitted that the Partnership has been working successfully for years and has just had its best year ever, which shows that Thomas's presence in the business is not having a negative effect and should be protected. He also said that Thomas was willing to agree to the continuation of the "Working Arrangements" in some form, although if they were unduly restrictive they would not work, and that what had worked since August might not work at different times of the year when the needs of the business were different. He also observed that while Giles had said in his witness statement that he would be prepared to give undertakings, he had not put forward any specific proposal or competing wording. Mr Martin said this was tactical, because the Defendants had decided it would maximise their chances of the application failing if they did not do so, but this was a risk for them.
46. During the hearing I raised the possibility of Thomas giving undertakings to abide by the Working Arrangements as a condition of granting an injunction. Mr Martin objected to this course, submitting that this impacted on an important area of principle: Thomas had applied for an injunction on the basis that the Defendants had crossed important lines in denying his rights as a partner, and had made a case why his rights should be protected by an injunction, whereas there was no evidential basis for requiring such undertakings from him since the evidence was that the Working Arrangements were working on a voluntary basis. In contrast, he said, the Defendants had not applied for any injunction, and the application by the Company a year ago was not pursued. If the Defendants wished to seek their own injunction, it was open to them to do so and the Claimant would not take the arbitration point so long as it was urgent.
47. Mr Martin also submitted that there was evidence that if Thomas gave more formal undertakings, this might be abused. He emphasised that the Court should make the order which was likely to do the least harm if wrong; that if no order was made, the evidence

was that Thomas would be squeezed out or would be over a barrel in negotiations, whereas the risk regarding employees was less significant given none have left so far citing Thomas's behaviour as the reason, or sued the Partnership, there are no direct statements from other employees on the Defendants' side, and Mr Fourie's statement was that others had behaved unreasonably and that the Defendants had instigated complaints against Thomas. In balancing the risk of potential injustice, he said, Thomas was in a more vulnerable position than the Defendants. Further he submitted that Giles's statement, that if Thomas agreed not to attend the workshop and spray shed except between 10 and 12, he would tell other staff to avoid the area at that time, was effectively a plan to undermine Thomas's right to manage and his authority. He submitted that the proposed changes to the Working Arrangements were simply what was necessary for them to be workable. He submitted therefore that it was sufficient if the injunction recorded that Thomas agreed to abide by the amended Working Arrangements (as recorded in the order), and that the order made was modified so the obligations on the Defendants only took effect insofar as consistent with those Working Arrangements.

48. On behalf of the Defendants Mr Peters submitted that there was a toxic environment and the current status quo could not continue. He said that the division of responsibilities in practice kept the parties apart and enabled different parts to work together sufficiently, but this was not something new, it had always been the case and could be expected to continue without any injunction. He said that the staff in the spray shed had told the Defendants they did not want Thomas there and it was a sign of Thomas's unreasonableness that he was not willing to keep away, as Robert had agreed to do with the onion building. If he was meant to be creating a successful business, why was Thomas not willing to do what was necessary to keep the staff happy, i.e. keep away?
49. Mr Peters submitted that the order sought by Thomas was too broad and on the basis of Giles's evidence would create an unworkable situation. If the farm managers received conflicting instructions, this would cause them to leave. Mr Tortice was not willing to have anything to do with Thomas. However Mr Peters welcomed the shift in Thomas's position during the hearing by which he had agreed to follow the Working Arrangements as part of the order. However he criticised the order sought as lopsided because Thomas's agreement to abide by the Working Arrangements was not backed by a penal notice, which he said should cut both ways. Where arrangements had been working successfully for some time, as was the position with contact with Scarlett Carr (contact being in writing only), that should continue. In relation to the provision of information, if an order was made, it should be qualified by a limitation of reasonableness, but it was not appropriate to have such a requirement in an injunction at all, especially since there was no history of information being shared between those in different divisions.
50. He said that the main points relied on by the Defendants in resisting any injunction on balance of convenience grounds were: (1) the importance and relevance of the staffing issues; (2) the number and significance of the complaints against Thomas; and (3) Thomas's reaction to the complaints, which was to say that there were staff who liked him, he hadn't been given a chance to comment on the complaints, it was all a conspiracy and he did not need to change, all of which suggested that Thomas would continue to behave poorly if an order was made. Mr Peters relied in particular on a signed complaint from Mr Marsh, Mr Tortice and Paul Churchyard dated 12 August 2024, exhibited to Giles's statement, in which they objected that Mr Marsh had been targeted relentlessly by Thomas, undermining his decisions, that Thomas was not professional and was not fit

to be a director and should be removed from the role and from the business and that they could run the farm perfectly well without him.

51. Mr Peters also submitted that it was not correct that Thomas was being excluded. Partnership meetings had not been happening at all for over a year, because of the difficulties between the Partners, it was not that Thomas was being left out. The farm functioned fine with agronomists and farm managers giving orders, and chaos ensued when Thomas tried to intervene. No order should be made because there was in fact no dispute that the business was divided into divisions and functioned that way.
52. This is a very difficult situation where the Court's concern is to do the least harm and only intervene to the extent necessary, and also to "hold the ring" as much as possible.
53. I was persuaded on the evidence before me that if an injunction was not made, there was a clear risk that Thomas would increasingly be excluded from the Partnership business in a way which breached his rights as a Partner and which would make it harder and not easier for a final settlement to be reached or an arbitration to proceed reasonably swiftly, because he would feel his position to be increasingly vulnerable. I was convinced that the position needed to be "frozen" so that rather than pushing for advantage on the ground, the two sides could concentrate on resolving the dispute, and that an injunction was needed to achieve this. The voluntary "Working Arrangements" alone would not in my view achieve this because they only related to Thomas and were formulated primarily as an attempt to avoid his removal as a director. I also considered that the fact that the business continued to be very successful and there was no evidence to date of staff leaving because of Thomas tended to suggest that his involvement was at least tolerable if not valuable.
54. I was also satisfied that both the separation of Partners and teams of workers into different divisions, or separate "lanes" as Mr Peters put it, and the continuation of the Working Arrangements were important elements in reducing tension and stabilising the situation pending a final resolution. I recognised that there were some aspects of managing the farm that did cut across the different divisions, including haulage, spraying, cropping and irrigation, and I considered that it was at least reasonably arguable that Thomas was playing an important part in these aspects and was not solely limited to running the onion division. In those areas a degree of cooperation between the two sides, including by workers who in some cases have unfortunately ended up identifying with one side or the other, is going to be needed. I can only urge both sides to be sensible and practical, avoid obvious flashpoints, stick to their own areas as far as possible, and not to insist on pushing their own point of view where this is not essential.
55. Accordingly I granted an injunction which protects Thomas's rights as a Partner, but which also carves out limitations in what is protected by reference to the Working Arrangements (as amended, the amendments being quite limited), and by reference only to the onion business and to necessary overarching farm functions. In addition, the order records that Thomas will not contact certain specified people who have asked not to be contacted by him and where it is agreed there is no business reason for him to do so. With certain other people, it is recorded that he will only contact them in writing, and with still others, where some face-to-face contact will foreseeably be required, only to the extent strictly necessary. I have included provision for the supply of information concerning the Partnership business, because this reflects the Partnership Agreement and it is at least

reasonably arguable that this has not always been provided, but this provision is subject to limitations of reasonableness.

56. I accept Mr Martin's submission that on the evidence before me and where the only application is one made by Thomas, it would not be appropriate as a matter of principle to make the injunction conditional on him giving formal undertakings to abide by the Working Arrangements, in circumstances where I am persuaded that an injunction should otherwise be made. I do accept however Thomas's formal, recorded agreement to abide by the Working Arrangements and am firmly of the view that the injunction needs to be limited by reference to them.
57. I also concluded that the application for an injunction was urgent. This was essentially on the basis, which was the same as in my decision on jurisdiction, that the removal of Thomas as a director, for the reasons stated by Roythornes, was a step which heightened the apparent risk of his exclusion from the Partnership and to which any response needed to be rapid.
58. These are my reasons for granting an injunction in the terms in which I did. There will be a consequential hearing to deal with any matters arising from the order and this judgment, including if necessary any further directions for management of the application for a stay and the claim generally.