Neutral Citation Number: [2019] EWHC 2669 (Ch)

Case No: CR-2019-004846

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
RE: MATCH OPTIONS LTD (company number 08257332)
AND RE: MATCH OPTIONS FRANCHISING LTD (company number 07686490)
AND RE: THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

Royal Courts of Justice Rolls Building, Fetter Lane, London EC4A 1NL

Date: 17 October 2019

Before :

ICC JUDGE PRENTIS

- -

Between :

GABRIEL GATHERU RWAMBA **Claimant** **- and -**
THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY **Defendant**

- -

Hugh Sims QC (instructed by **Kaur Maxwell**) for the **Claimant Hannah Thornley** (instructed by **the Insolvency Service**) for the **Defendant**

Hearing dates: 17 September 2019

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APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para. 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

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Insolvency and Companies Court Judge Prentis

ICC JUDGE PRENTIS :

1. "An application under s 17 for leave always raises the question whether the grant of leave would be consistent with the need to protect the public": Sir Richard Scott V-C in *Re Dawes & Henderson (Agencies) Ltd (No 2)* [1999] 2 BCLC 317, 319.

2. Gabriel Rwamba makes his application under section 17(3) *Company Directors Disqualification Act 1986* (the "Act") for permission under section 1A(1) of the Act in what are understood to be novel circumstances: he is disqualified because of breaches of a previous section 17 order.

3. Despite this application raising, potentially, new principles, Ms Thornley's instructions from the Secretary of State do not extend beyond an expression of neutrality and a desire that, if permission is granted, it be subject to suitable conditions, which have been agreed in correspondence. Mr Sims QC has, though, presented the Court with full argument on behalf of Mr Rwamba, and I am grateful for his measured points.

Background

4. We must start with the first disqualification.

The 2009 Undertaking

5. Mr Rwamba came to the UK from Kenya in 1996. From 1999 he has been involved in the recruitment sector, and from 2000 has specialised in the recruitment of workers in the care and health industries.

6. On 9 June 1999 Mr Rwamba incorporated and became a director of Eulink (UK) Limited ("Eulink"), which traded in recruitment before entering administration on 14 March 2007.

7. We do not have a copy of the first disqualification undertaking, given on 16 November 2009, but we do have a copy of the section 16 letter dated 20 February 2009, and Mr Rwamba's own account in his evidence in support of this application.

8. The section 16 letter contained a single ground:

> "Between 30 June 2003 and Eulink… entering administration on 14 March 2007, you caused [it] to make investments totalling £525,000 to the detriment of Her Majesty's Revenue & Customs".

9. The particulars identify that whereas liability for PAYE and NIC was stated to be £70,668 in Eulink's annual accounts to 30 June 2003, by administration that liability was put in the statement of affairs at £500,000. HMRC's own claim within the administration was £243,318, but that was estimated because Eulink had failed to file P35s for the year ends 2005 and 2006. Further, while PAYE and NIC payments from 30 June 2003 totalled £160,529, investments recorded in the accounts rose from £45,062 at 30 June 2004 to an estimated £525,000 in the statement of affairs. The administrator realised nothing.

10. Mr Rwamba tells this Court that the investments were in Kenya; and that he accepts that "[I] had not monitored the financial matters of Eulink in the UK as I should have".

11. His undertaking was for 4 years, expiring on 17 November 2013 (the "2009 Undertaking").

The June 2010 Permission

12. Promptly on giving the undertaking, on 30 November 2009 Mr Rwamba made an application under section 17 for permission to remain a director of Match Options Limited (company number 06118219) ("MOL1"). MOL1 had been incorporated shortly before Eulink's administration, on 20 February 2007. Mr Rwamba had been appointed a director on 1 June 2007, and after two others

had been appointed for short periods he was joined from 3 January 2010 by Peter

Kihara Kihoro (the spelling of the surname is taken from Companies House). Mr Rwamba was a 40% shareholder in MOL1, his brother Simon Wachira Rwamba holding the balance; and he was managing director. MOL1 had purchased the assets and goodwill of Eulink from its administrators in 2007.

13. It can be inferred from the section 17 order made by Registrar Derrett on 18 June 2010, (the "June 2010 Permission") that interim orders permitting Mr Rwamba to act had been granted. Her order was subject to eleven conditions. Condition 6.2 was that Mr Rwamba "shall procure that [MOL1]… files returns due to HM Revenue and Customs on time, and makes payments due to HM Revenue and Customs in accordance with the schedule of repayment set out in the letter of Peter Kohoro [sic] to HM Revenue and Customs dated 14 January 2010 and makes all other payments due to HM Revenue and Customs on time".

The failure of MOL1

14. On 11 October 2012 Close Invoice Finance Limited appointed administrators over MOL1. On 1 November 2012 MOL1's name was changed to MO Realisations Limited. The administration continued until 10 April 2013, when MOL1 entered creditors' voluntary liquidation; and on 16 January 2019 MOL1 was dissolved.

15. In his evidence Mr Rwamba provides considerable detail about the appointment of the administrators and how he regards it as unjust because MOL1 was in his view a solvent company. Given that he accepts that he breached the June 2010 Permission I cannot see the relevance of those points. They were not insisted on by Mr Sims, who fairly draws my attention to the undertaking which Mr Rwamba gave in 2015 (which I will describe in a moment) acknowledging a deficiency in MOL1 of about £445,000.

The incorporation of MOL2 and MOFL

16. Again, steps were taken to purchase the business from administration. On 17 October 2012 Eulink Recruitment Ltd (company number 08257332) was incorporated. It changed its name on 5 November 2012 to Eulink Resources Ltd, and then again on 12 November 2012 to its current style, being another Match Options Ltd ("MOL2"). From incorporation Ms Lucy Rumanura has been a director of MOL2, and also took the initial issued share. I will describe other directors and shareholders later.

17. The re-adoption of the "Match Options" name and change in MOL1's style were doubtless consequent on MOL2's purchase of the business and assets of MOL1 which completed on 22 October 2012. The consideration of £38,500 was met by £6,500 on completion and then 8 equal monthly instalments. The administrators' proposals disclose that of the purchase price £31,995 was attributable to goodwill, and elaborate as follows:

> "The goodwill of the business has been built up over several years by the director and represents a significant asset of the Company. As the Company is providing a service, the business is reliant on the reputation and continuing involvement of the director, therefore justifying the value apportioned to it".

The director must be Mr Rwamba and not his wife, Purity Kirigo, because she had become a director of MOL1 only on 9 October 2012. 21 permanent employees of MOL1 were transferred by the sale to MOL2.

18. The June 2010 permission allowed Mr Rwamba to act only in relation to MOL1 and not MOL2. Notwithstanding the goodwill attached to him at the point of sale in October 2012, neither on the expiry of the 2009 Undertaking on 17 November 2013 nor since has Mr Rwamba become a director of MOL2.

19. The company of which he did become a director on the expiry of the 2009 Undertaking, and that briefly, was Cap Global Limited (company number 07686490). This company was incorporated on 29 June 2011, on which date Mrs Kirigo was appointed its sole director and took the only issued share. Mr Rwamba joined his wife on the board between 28 December 2013 and 15 July

2014. Ms Rumanura was appointed as director from 1 June 2015. Mrs Kirigo, now the owner of the 1,000 issued shares, tells the Court in her evidence that the company was incorporated as

"a special purpose vehicle to drive the [Match Options] name as a franchisor. [My husband] wanted me to be involved when he developed the franchising model in 2010".

Mr Rwamba's evidence is that while the company was incorporated

"on the advice of The Franchising Centre… it was largely dormant, and business transacted… has only really started to grow from 2017".

It may be that the growth has been since the company was on 16 March 2017 renamed "Match Options Franchising Ltd" ("MOFL").

The 2015 Undertaking

20. With effect from 28 May 2015 Mr Rwamba was disqualified again under the Act pursuant to an undertaking (the "2015 Undertaking"). The period this time is 6 years. The matters of unfitness are specified as follows.

"From at least 7 August 2010 I breached the terms of [the June 2010 Permission]… and as a result acted as a director of [MOL1] whilst I knew or ought to have known that I was disqualified from doing so. In particular:… I breached the s 17 Conditions in that I failed to procure and/ or ensure that MOL1:

-made all payments of VAT which fell due in respect of the periods ending June 2010, August 2010, November 2010, December 2010, February 2011, September 2011, November 2011, January 2012 and July 2012. Payments in respect of 6 of these periods were between 1 and 8 days late and payments in relation to two periods were 18 and 19 days late. The full amount of VAT due for the August 2010 period was not discharged at all.

-filed VAT returns on time in respect of the periods ending February 2011, September 2011, November 2011, April 2012 and July 2012. Returns for these periods were between 4 and 8 days late.

-paid Corporation Tax due for the tax years 31 March 2010 and 31 March 2011 on time. Payments in relation to these last tax years were 26 and 11 days late respectively.

-met its obligations to make payments due to HMRC in accordance with the schedule of repayments set out in the letter of my co-director to HMRC dated 14 January 2010 by falling into arrears in or around October 2010".

This application

21. By way of a claim form sealed on 19 July 2019, Mr Rwamba makes this application for permission to act in respect of both MOL2 and MOFL until expiry of the 2015 undertaking on 28 May 2021. Although listed today for directions, both parties were ready substantively, and I heard the matter over the afternoon. As indicated, the evidence has come from Mr Rwamba and his wife, as well as a statement from Mrs Lucy Njambi Cameron.

The law

22. By section 1A(1)(a) of the Act, the effect of an undertaking is that

"the person will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court".

23. As said by Arden J in respect of a section 6 disqualification in *Re Tech Textiles Ltd* [1998] 1 BCLC 259, 267 (and the position can be no different under a section 1A undertaking):

"As respects the exercise of the discretion to grant leave there is no express guidance in the statute. It is clearly relevant to the exercise of this discretion to consider the end which disqualification seeks to achieve and the reasons why that end is thought desirable. It is clear, however, from the leading authority of *Re Sevenoaks Stationers (Retail) Ltd* [1991] BCLC 325, [1991] Ch 164 that the purpose of s 6 of the 1986 Act is protective rather than penal, and this is the starting point. In practice the section also has a deterrent function since honest directors will not wish their conduct to result in disqualification proceedings…

Leave, however, in my view is not to be too freely given. Legislative policy requires the disqualification of unfit directors to minimise the risk of harm to the public, and the courts must not by granting leave prevent the achievement of this policy objective. Nor would the court wish anyone dealing with the director to be misled as to the gravity with which it views the order that has been made".

24. Particularly in the context of this application those seem to me wise and pertinent remarks.

25. The protective nature of disqualification was described in *Re TTL Realisations Ltd; Secretary of State for Trade and Industry v Collins* [2000] 2 BCLC 223, the first appeal against a section 17 order. There Peter Gibson LJ, whose judgment was agreed by Judge LJ and Ferris J, quoted approvingly at 231 submissions made by Mr Bompas QC for the appellant Secretary of State:

"He submits that the discretion must be exercised having regard to the purpose of the Act, which he rightly describes as the protection of the public, including all relevant interest groups such as shareholders, employees, customers, lenders and other creditors. He pointed out that that protection is achieved in a number of ways including the removal of the director from the management of companies for a specified period, deterring future misconduct by the disqualified director and other directors, and so encouraging higher standards in corporate management. He said that the court on a leave application must consider how far if at all the purposes of this Act will be

undermined by granting leave and assess the weight to be attached to the reasons suggested by the applicant for leave".

26. The interaction between the reasons for seeking leave and risk to policy had been addressed earlier the same year by Sir Richard Scott V-C in *Re Dawes & Henderson (Agencies) Ltd (No 2).* At 325 he quoted a dictum of his own from *Re Barings plc (No 3)* [2000] 1 WLR 634, 641:

"It seems to me that the importance of protecting the public from the conduct that led to the disqualification order and the need that the applicant should be able to act as a director of a particular company must be kept in balance with one another. The court in considering whether or not to grant leave should, in particular, pay attention to the nature of the defects in company management that led to the disqualification order and ask itself whether, if leave were granted, a situation might arise in which there would be a risk of recurrence of those defects".

27. He continued:

"I remain of the opinion expressed in that passage. In a case where no need has been demonstrated on the company's part to have the applicant as its director or, from a business point of view, on the applicant's part to be a director, there would need, I think, to be only a very small risk to the public which the granting of the leave might product to justify the refusal of the application. Per contra, if a substantial and pressing need on the part of the company, or on the part of the individual in order to be able to earn his living, could be shown in favour of the grant of leave then it might be right to accept some slight risk to the public if the leave sought were granted".

28. This balancing of interests was described by Chief Registrar Baister in *Re Liberty Holdings Unlimited*, 14 October 2015, thus at [19] and [26], adopting a passage from the third edition (2010) of Walters and Davies-White *Directors' Disqualification and Insolvency Restrictions* as "the approach of this court for some time":

> "…the test is better seen as one of whether or not, in all the circumstances, permission to act not withstanding disqualification should be granted. The 'circumstances' that will be relevant are those traditionally considered under the headings of 'need' and 'protection of the public' but under the suggested test no single factor is necessarily decisive. Thus, for example, the question of 'need' should be regarded as a flexible matter encompassing a spectrum of possibilities".

29. While "need" may be better expressed as "cogent reason" (which may, of course, given the unrestricted discretion vested in the Court, be something unrelated to company or commercial matters), it must always be present because the public protection inherent in the disqualification is an inextricable factor, and leave without a cogent reason would abuse that protection.

30. From the authorities above can be drawn two aspects to public protection. First, that protection must not be unduly undermined by the giving of a permission on conditions which risk not being met. As Scott V-C said, that itself involves a balancing exercise. Secondly, it is not enough for an applicant to show that there is no undue risk, because the grant may nevertheless undermine wider public protection, for example the deterrent effect conveyed by the perception of disqualification proceedings.

31. As it seems to me, while no different test can be imposed where the permission sought is from a disqualification brought about by breach of a previous permission because, while it could have done, the Act makes no special provision for such application, the second aspect of public protection must inevitably weigh more heavily in such a case. Permission given to one who has already been disqualified twice, and the second time for breach of an earlier permission, carries with it the unavoidable additional risk that the disqualification regime is perceived as lax and permissive, a perception which would lead to a lowering of corporate standards contrary to a purpose of the Act. So, the reasons in favour of permission are going to have to be that the more cogent if it is to be granted.

Further background

32. At paragraph 19 above I described the current directors and ownership of MOFL. Before looking at the reasons put forward by Mr Rwamba for permission, I must give more details of the main company, MOL2, which days after incorporation in October 2012 acquired MOL1's business from its administrators and has traded it since then.

33. It is apparent from the evidence of Mrs Cameron that trading for MOL2 was not initially easy. Mrs Cameron is a chartered management accountant. She first became a director on 11 November 2012, replacing Ruth Kitaka who had held office for only 17 days. Mrs Cameron resigned on 4 February 2013 because of the company's cashflow issues, caused in part by what she describes as the difficult relationship with MOL1's administrators.

34. Her resignation left Ms Rumanura as sole director until on 1 July 2013 Mrs Kirigo took up office.

35. After expiry of the 2009 Undertaking, on 27 January 2014 there was an allotment of 999 shares in MOL2, the result of which was that Ms Rumanura held 100, Mr Rwamba 300, and Mrs Kirigo 600. In about August 2014, in two tranches, Mr Rwamba transferred his shares to his wife. In August 2018 Ms Rumanura transferred her 10% shareholding to Franchising, owned as we have seen 100% by Mrs Kirigo. Mrs Kirigo is therefore the effective owner both of MOL2 and of MOFL.

36. Mrs Kirigo tells the Court that she came to this country from Kenya on 8 August
2011 (about 6 weeks after she became sole director and shareholder of MOFL). Before her marriage to Mr Rwamba in 2010 she was "a manager of a Healthcare Group". She was then company secretary of MOL1, transferring upon the sale of its business to MOL2. There she "worked very closely" with Ms Rumanura until becoming managing director on 1 July 2013. She says:

"Though I am not an accountant my experience with accountants and finance professionals have provided me with the knowledge and experience which I consider to be a reason for the current success of [MOL2]".

37. There can be little question that MOL2 is now trading successfully. Its 31 March 2014 accounts show net current assets of £48,452 and shareholders' funds of £125,664. By the 31 March 2018 accounts the figures are respectively £368,708 and £482,601. The draft 31 March 2019 accounts, which is as far as the evidence goes, show respective figures of £632,136 and £736,026.

38. As managing director, Mrs Kirigo describes her duties as being

"responsible for [MOL2] as a whole and in particular the formulation of operational policies and guidelines, their implementation and staff supervision. As well as dealing with the human resources, I instruct the accountant, make decisions in relation to marketing and have considerable experience in the business, both at operational and strategic level".

That account, including the last part, is confirmed by Mrs Cameron and indeed by Mr Rwamba.

39. Mr Rwamba comments that there is sometimes tension between the spouses because of the 2015 Undertaking:

"I cannot get involved with management decisions and this puts a huge responsibility on her which creates stress, which is adversely affecting our family. She would like me to do more".

40. Mr Rwamba on his own account, reflected in the proposals of MOL1's administrators, remains a man with a considerable reputation in the employment and supply of staff in the care and health industries, and that despite the disqualifications. He is associated with the "Match Options" name. As an employee and consultant to MOL2 (the 2018 accounts record a salary of £83,000 and consultancy fees of £58,115), he is involved in "developing the policies and drafting for the management's consideration", necessary under, for example, NHS framework agreements; and as franchising and training

coordinator, he trains both franchisees and the staff as recruitment consultants, and trains franchisees and their employees on running their own businesses, as well as ensuring that MOL2's employees have had necessary training.

41. Mr Rwamba describes the "fundamental transformation" in MOL2's business model

> "to allow it to thrive in market conditions which have changed over the past few years. Where before the business comprised 15 branches, all owned and ultimately run from the head office in Langley, now [MOL2] franchises the Match Options brand, so that there are at present twelve franchisees, each with exclusive rights to use the Match Options name in a defined jurisdiction".

He describes the advantages to MOL2 in the franchise model, not least the passing of employees and associated tax risk which would otherwise be the company's on to the franchisees. Each franchisee is, he says,

> "carefully vetted by the franchise consultant at the Franchise Centre and trained by me".

It is the Franchise Centre which recruits franchisees, having first been contacted by Mr Rwamba in 2010.

42. Besides Mrs Kirigo and Ms Rumanura, who is operations director, MOL2 has two other directors. Mrs Cameron rejoined the board on 4 July 2015 at Mrs Kirigo's request, as a non-executive. As stated in the minutes of the directors' meeting of 6 July 2015, she "had reviewed the company's recovery and thought it better to rejoin and support its growth". She oversees compliance with statutory filings as well as having real-time access to the online accounts system.

43. The other director is Michael Ndulue, appointed on 7 November 2016. He holds an MSC in finance, and is the business development director, albeit that he has now taken on part-ownership of a franchise himself.

Reasons for proposed permission

44. Mrs Cameron describes the reasons for permission as follows.

> "[MOL2] would like to pursue plans to expand and grow the franchising model and Gabriel has assisted by drawing up business plans in relation to that.
>
> Copies of the plans and financial projections [are exhibited]. These have been considered by me and I believe they offer [MOL2] and [MOFL] with good growth prospects.
>
> I understand that [Mrs Kirigo] does not wish to pursue these plans without [Mr Rwamba] becoming a director and that she wishes to spend more time with their 7-year old child. I believe that [Mr Rwamba's] work in supporting [MOL2] and the board over the past four years have helped [MOL2] to succeed and I believe it would assist [MOL2] greatly to have him appointed as a director now, rather than have to wait a further 2 years when the opportunities may not be the same".

45. Mrs Kirigo says this.

> "[MOL2] would like to pursue plans to expand and grow the franchising model and [my husband], who was the owner of the vision of the franchising model as early as 2010, has assisted the board by drawing up business plans in relation to that… These have been considered by me, [Mrs Cameron] and other board members and we believe they offer and demonstrate that [MOL2] and [MOFL] have good growth prospects.
>
> I do not wish to pursue these plans without [my husband] becoming a director of [MOL2] for two reasons. First, I wish to spend more time with our 7-year old child and be involved in assisting her with extra-curricular activities. Secondly, I do not believe the proposed plans would be successful without [my husband's] input and involvement. Even though he is not a director now many people who [MOL2] deals with still view him as being 'Mr Match Options' and even though I will ask them to do things they will come back to him. I believe that [his] work over the past four years has helped

[MOL2] succeed and I believe it would assist me and [MOL2] greatly to have him appointed as a director now, rather than to have to wait a further 2 years. Gabriel has also agreed to become a majority shareholder in order to increase and sustain further confidence.

On 29 June 2011 I became a director of [MOFL]… which is a special purpose vehicle to drive the [Match Options] name as a franchisor. [My husband] wanted me to be involved when he developed the franchising model in 2010. The franchise model has significantly grown and has allowed us to expand and cover areas that we would have been unable to manage if not for our franchisees. It is because of the established reputation of [MOL2] that we have had much success in growing the business. However, the growth of the business requires me to devote more time as the managing director, which is something that I am unable to sustain at this point. As a mother of a young family with a young child, I would like to take on less responsibility in [MOL2] in order to spend more time with my daughter. Granting [my husband] permission to act as a director would alleviate the pressure this job has placed on me. I believe Gabriel would be the most suitable person to take [MOL2] forward and continue to grow the business".

46. This is Mr Rwamba's account.

"I believe that there are significant opportunities for [MOL2], together with [MOFL], to continue to roll out the franchise model and cement a position as an industry leader. To do that [MOL2] will need access to finance and I will need to make more use of my contacts and reputation in the industry than I am at present permitted to do. I have assisted [MOL2] with developing business plans in this respect… As a test, and with a view to being able to release more funds to develop the franchising network, I have recently, in 2018, contacted various finance brokers. Unfortunately, my disqualification, which I always disclose… is a barrier… the funders are only willing to proceed with me involved as a director and significant owner who is involved in the management of the business. In theory [my wife] would qualify as an owner and manager who they could lend to, but [she] does not wish to expand the business without my involvement and support…

[MOL2] is the main source of my income and my family's income, and I feel it would be beneficial to [MOL2], and to all its stakeholders (including of course me and my family), if I were to be permitted to act as a director before the expiry of my disqualification…

[My wife] has told me that she now needs to devote more time to our youngest child… It would assist her greatly if I were able to act as a director… It might be argued that the Company could simply bring in an external director with a similar skill set to mine. I do not however think that anyone would bring what I would be able to bring… in terms of contacts (business and finance), experience, ability, and more importantly, commitment to its success".

Discussion

47. Two interlinked reasons are therefore put forward: the expansion and growth of the franchise model, and Mrs Kirigo's desire to spend more time (and certainly not less) with their child.

48. Especially given the background to this application, those reasons must be weighed critically.

49. The franchising model is one which was originally developed by Mr Rwamba in 2010, and which MOFL was in 2011 set up to exploit on the advice of the Franchise Centre. Save for a brief period in respect of MOFL, when it was carrying out little business, Mr Rwamba has never been a director of it or of MOL2. The exploitation has until recently largely been by MOL2, run by Mrs Kiriko since 2013, with the assistance of the other directors; and MOL2 at least has latterly been financially successful.

50. Thus, since 2010, Mr Rwamba has not had any meaningful directorial role with a franchising company; and has not as a director contributed to the financial success of MOL2.

51. Exactly why the ongoing expansion and growth of the companies would be assisted by a change in role for Mr Rwamba is not fully explained.

51.1 Mrs Cameron refers to current opportunities for MOL2 which may not exist when the 2015 Undertaking has expired, but does not identify what they are, or provide documentary support.

51.2 Mrs Kirigo believes that the proposed plans would not be successful without her husband as director, but the only reason she gives, that he is

"Mr Match Options", is a reason which has pertained since 2010. She does not begin to explain why the companies' current fortunes should decline if there is not an appointment.

51.3 Mr Rwamba also refers to significant opportunities, which are unspecified apart from being contained in the business plan he drew up. He says that the development of the franchising model in accordance with that plan requires finance, which itself requires there to be an individual who is a director and a significant owner; and that must be him as his wife does not wish to put herself forward.

52. The business plan and its exploitation can be examined in more detail.

53. While I must accept the evidence that Mr Rwamba's business plan and financial projections have been considered by his wife, Mrs Cameron, and "other board members", the board minutes do not disclose that they have been subject to any discussion at a board meeting.

54. The exhibited plans and projections consist only of a detailed profit and loss forecast for the year ends March 2018 through to 2022. So, they commence in April 2017. In business terms, that seems to me stale. It also leaves open the question of what a forecast would look like now; and how MOL2 has performed as against the forecast.

55. It also leaves unexplained both what the plan actually is, and why additional finance is required. There is no discussion of the need for finance in the board minutes, and the need is puzzling given that according to its accounts MOL2 currently has substantial resources of its own to hand.

56. Mr Rwamba's evidence as to the difficulties of obtaining business finance is also slight, and outdated. It is a single email of 28 November 2018 which does not indicate what exactly was sought nor whether the position would be any better were Mr Rwamba, though still subject to a disqualification order, given permission to act. There is no identification by any deponent of what other sources or bases of finance have been investigated.

57. There is also an opaqueness concerning the existing relationship between MOL2 and MOFL, which I see from the board minute of 3 June 2019 has also been identified by the company solicitors.

58. Mr Rwamba's evidence, part of which I have already quoted, is that

> "…[MOL2's] business model has undergone a fundamental transformation… over the past few years. Where before the business comprised 15 branches… now [MOL2] franchises the Match Options brand, so that there are at present twelve franchisees… The franchising contract is with [MOFL] and royalties are paid by the franchisees, but to date [MOFL] has largely been supported by [MOL2]".

59. Without further explanation that does not make sense, perhaps because it fails to distinguish the separate identities of MOFL and MOL2. The board minute records that after the meeting with the solicitors

> "the issue of a management contract between [MOFL] and [MOL2] arose. This is because the latter has been raising the… invoices in their name but on behalf of the former… this was acceptable since [MOFL] had no funds to run".

I still do not follow why this practice was considered acceptable, but from hereon the accountants were to be asked to treat franchise income as MOFL's.

60. If indeed that is now the treatment, it must have had an effect on the accounts and forecasts for both MOFL and MOL2. The MOFL accounts before the Court are, as reflected in this minute, not nearly as strong as MOL2's. After filing dormant accounts up to 30 June 2014, the accounts for the period to 31 March 2015 show net current liabilities of £17,462, and the same balance sheet

liability. Those figures in 2016 are both £21,940, and in 2017 £8,729. There is an improvement in the 2018 accounts, to the marginal positive of £1,591. That is as far as the MOFL accounting evidence goes. Without more, there must be some concern about its solvency.

61. Finally, there is no evidence that whether through the Franchise Centre or otherwise there has been any attempt to seek an outside director who could grow

the franchise business, and thereby alleviate Mrs Kiriko. In theory there seems little against an outside appointment: MOL2 is, as Mr Rwamba says, his family's breadbasket, and there is no indication that he will not remain involved in his current position, which has enabled its strong financial progress.

62. In short, I do not consider that this reason for permission has been fully and properly explained on a contemporaneous basis.

63. As to Mrs Kiriko's wish not to do more, again, and without calling into question the desire, I consider that evidence is lacking. It is not explained what childcare is currently in place, or could be in place; nor why Mr Rwamba is unable to provide further support. I am also unclear as to whether Mrs Kiriko wants to withdraw to some extent from her current position, as well as not taking on more work if the business is in some way to be expanded. Substantial evidence seems to me particularly important where what is urged on the Court is a matter rooted in personal choice.

64. There are other factors to be considered.

65. Mr Rwamba has provided an explanation for why he breached the June 2010 Permission. He says that he neither received nor retained a copy of it, so had to rely on his recollection. Rightly, he acknowledges that he should have ensured that he had a copy to hand.

66. He also points out that the breaches were not dishonest or caused by a desire to prefer one creditor over another.

67. Mr Sims also directs me to the extensive conditions, designed to address not only the particular failures under the June 2010 Permission, and indeed the 2009 Undertaking, in the filing and paying of tax, but the wider issues of public protection. So, for example, the companies' accounts are to be audited; Mr Rwamba will report to each monthly board meeting concerning his compliance; solicitors will attend the first and then quarterly board meetings after the granting of permission to ensure compliance; and breach of any condition will lead to the automatic lapse of permission.

68. As agreed by the Secretary of State, I consider that these are detailed and appropriate conditions. In light of them, I can conclude that there is little chance of Mr Rwamba breaching any conditions; and that, in relation to MOL2, there is little chance of a recurrence of the difficulties in reporting and paying Crown debt. The latter risk, though, in relation to MOFL is much greater on the current accounting evidence.

69. Mr Sims also relies on a factor considered relevant in *Liberty Holdings Unlimited*, that there is a relatively short time left under the disqualification order. He builds on that to suggest that there

> "is a wider legitimate public interest in a short 'licence' period in this case being applied- this will serve to enhance, rather than undermine, the public protection objective by encouraging positive habits and behaviour in the governance of [MOL2] and [MOFL]".

70. The first factor I consider of some weight, notwithstanding that there is no change in the quality of a disqualification over its time. That continuing quality is the answer to the suggested benefit in a "licence" period, which to the extent it is put as a general proposition is not only unsupported by the Act, but would run directly contrary to its policy of protection. Insofar as it is put as a particular feature of this case, I do not myself see how it assists the section 17 analysis. The encouragement of positive habits is a function of the 2015 Undertaking, and any permission to act will be subject to such stringent conditions that there is no meaningful alignment between Mr Rwamba's duties subject to permission, and those once his disqualification is over.

71. A further factor identified is the length of the 2015 Undertaking, being the bottom of the *Sevenoaks* middle bracket.

Conclusion

72. Weighing all the above, while the grounds put forward for permission are themselves legitimate, for the reasons I have given the evidence is simply too

fragile to ascribe to them much cogency. Any section 17 application must be supported by a full explanation of why permission is sought, with relevant corroborative evidence. Despite bundles extending to nearly 800 pages, that foundational requirement, especially having regard to my observations in paragraph 31 above, has not been met. Thus, to give permission on this evidence would be an undermining of the public protection policy within the Act.

73. Unless Mr Rwamba wishes to continue to pursue this application on better evidence it will be dismissed with costs. If he does so wish, I invite the parties to agree directions and provision for costs. It will be understood that nothing in this judgment can be taken to second-guess the outcome of any continued application.