Neutral Citation Number: [2025] EWHC 2938 (Ch)

Case No: BL-2025-000552
and Case No: CR-2025-002533

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

IN THE MATTER OF PLANTATION WHARF MANAGEMENT LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Building
Fetter Lane
London, EC4A 1NL

19 November 2025

Before:

NICOLA RUSHTON KC

(Sitting as a Deputy Judge of the High Court)

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Between:

~~**(1) PLANTATION WHART MANGEMENT LIMITED**~~
(2) HAROLD HENRY TRAVER
(3) GABRIELLE MARGUERITE GROSVENOR
(4) JONATHAN MARK EDWARD LAWES
(5) STUART CAMPBELL LOGGIE
(6) EVAN KEITH MARSHALL
(7) ALEX STEWART-CLARK
(8) CINNAMON (PLANTATION WHARF) LIMITED

Claimants/Applicants

- and -

(1) VANESSA LILLIAN BRADY
(2) BENJAMIN IAN GOULSON
(3) MICHAEL JOHN WATERSON
(4) MARTIN HINDLEY

Defendants/Respondents

- and –

(5) PLANTATION WHARF MANAGEMENT LIMITED

Fifth Defendant/Respondent

- and –

THE REGISTRAR OF COMPANIES

Respondent/Third Party

- -
- -

Mr Maxim Cardew (instructed by **McCarthy Denning Limited**) for the **Second to Eighth Claimants/Applicants**
Mr Marc Glover, Mr Thomas Dawson and Mr Sami Allan (instructed by **Joelson LLP**) for the **First to Fourth Defendants/Respondents**
The **Fifth Defendant** and the **Third Party** did not attend and were not represented

Hearing dates: 22-23 September 2025

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 19 November 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

NICOLA RUSHTON KC:

1. This is an application for an injunction and declarations concerning the validity and effects of a disputed general meeting of the company Plantation Wharf Management Limited ("**the Company**") which took place on 20 March 2025 ("**the March GM**"), and a subsequent board meeting on 1 April 2025 ("**the April BM**"). The purported effect of those meetings was essentially to amend the Company's Articles as to who could be a director, and to remove and replace the board.

2. The Company is the management company of a mixed commercial and residential estate known as Plantation Wharf, in Battersea, London ("**the Estate**"), built in 1986. The Estate includes flats owned on long leases, offices and other commercial space including cafés. As will become apparent, there are also garages and storage rooms which can be and have been separately leased on long leases.

3. The Eighth Applicant ("**Cinnamon**") is the freehold owner of the Estate. The Second to Seventh Applicants are all directors who were purportedly removed, together with others. The Respondents claim to be the "new" board, save that Mr Goulson was an existing director who has since resigned. The Respondents' driving force is the First Respondent, Ms Brady, who is said to have been appointed chair of the board by a resolution at the March GM.

4. By an application notice dated 28 April 2025 and an (unissued) Part 8 Claim Form dated 30 April 2025 in case BL-2025-000552, the Applicants applied for (i) declarations that the March GM and April BM were invalid, that the directors were persons from the "old" board and the Articles were the previous version, and (ii) an injunction preventing Ms Brady, Mr Waterson and Mr Hindley from holding themselves out as directors and from taking various steps qua directors. The application notice sought an urgent interim injunction and declarations, and the Claim Form sought a final injunction and declarations in the same terms, but no other relief other than costs. There is no dispute that this is therefore a case where any interim injunction and declarations would most likely finally dispose of the claim as a whole.

5. The application initially came before me for a hearing on 12 June 2025, when the Respondents applied for an adjournment on the basis they needed more time to prepare their response. I granted that adjournment, but also granted an interim injunction which sought to "hold the ring", without prejudice to the issues in dispute, by naming eight persons to act as the directors in the interim and making other orders to regulate the Company's management until the next hearing. Further evidence was also filed and served by both sides.

6. The hearing before me on 22-23 September 2025 was accordingly the adjourned hearing of the Applicants' application for an interim injunction and declarations. I have now therefore had the benefit of full argument from all counsel on the substantive issues relevant to that interim application, for which I am grateful, together with both sides having had the opportunity to put in the evidence on which they wish to rely. At the end of the hearing on 23 September 2025, I made a revised interim order making provision for who should act as the directors of the Company, and other orders as to its interim management, pending the making of a final order. Case number CR-2025-002533 is a more limited company law application by Cinnamon, which the parties have agreed should be dealt with after the main case, BL-2025-000552.

7. The following issues arise on the application:

   i) The legal test which I should be applying on this interim application, and in particular the standard to which the Applicants must establish their case.

   ii) There is a key issue of construction on the Articles, from which much of the real dispute between the parties flows, as it affects who can nominate and be appointed as a director of the Company. This is whether the phrase "unit of accommodation" in Article 4 extends to garages and/or storage units. It is undisputed that since about July 2013, Cinnamon has only owned garages and storage units on the Estate and not any flats, offices or other commercial units. Consequently, there is an issue as to whether since that time Cinnamon as freeholder has had a power under the Articles to nominate directors. The parties are agreed that I should determine this construction issue, in the context of this interim application, since I have heard full argument and have the benefit of the relevant documentary evidence on it.

   iii) The validity or otherwise of a **Requisition Notice** dated 21 January 2025 organised by Ms Brady, requiring the convening of a general meeting of the Company. This being an interim application on written evidence, the question is whether the Applicants have established a sufficiently strong case that the Notice was invalid.

   iv) In any event, whether the March GM and the April BM, were validly called and/or properly conducted. Again, the question is whether the Applicants have established a sufficiently strong case that this did not happen.

   v) Other related construction issues, as to whether various categories of directors had automatically retired or are still in post.

   vi) Taking into account my conclusions on all these issues, whether in the exercise of my discretion, an injunction and/or declarations should be granted and if so, in what terms. In any event, whether I should order a Company general meeting to take place to implement the consequences of my judgment.

The Company and the disputed meetings

8. The Company was incorporated on 19 September 1988. Its Articles have been amended on a number of occasions. The Applicants say the current and only relevant version is that dated 18 December 2020 ("**the December 2020 Articles**"). The Respondents say I also need to consider the version in force in July 2013 when they argue Cinnamon ceased owning any "units of accommodation". Those are the Articles dated 11 October 2011 ("**the October 2011 Articles**"). I have been helpfully provided with all of the various versions of the Articles.

9. The Company has 222 issued shares, of which:

   i) 2 ordinary A shares are issued to Cinnamon. These have certain super-voting rights, in that they count as 1,000 shares each "*in matters that may have a material effect on the capital value of the land and buildings known as Plantation Wharf"* (in identical terms in all relevant versions of the Articles).

   ii) 174 ordinary B shares are issued to Plantation Wharf long leaseholders.

iii) 46 ordinary D shares are owned by Molasses House Management Ltd ("**MHML**"). Molasses House is a separate block on the Estate with different management arrangements, which it is agreed is not relevant to this application.

10. Three types of directors are also provided for in the Articles, at least in their more recent versions. Different rules apply as to who can be and who appoints those directors. In broadbrush terms, there are directors appointed by the freeholder, subscribers or related persons ("**Freeholder Directors**"); directors who are appointed by the long leaseholders ("**Qualifying Directors**"); and a director appointed by MHML (the "**MH Director**"). These are the terms used in the December 2020 Articles, which I will use for convenience.

11. A key issue between the parties is whether the power to appoint Freeholder Directors (by Cinnamon or anyone else) terminated in July 2013, and if so, what the consequences were for any existing Freeholder Directors.

12. The October 2011 Articles provided as follows as to the categories of Freeholder Directors and Qualifying Directors (although those terms are not used in those Articles):

> "22 Until all the Units (except in Molasses House and Cotton Row) shall have been let to Owners the Subscribers, the freeholders of the Estate from time to time and their respective nominees and personal representatives shall have the power to nominate, remove and replace up to four Directors (in aggregate) to whom the regulations in Table A concerning the retirement of Directors by rotation shall not apply.
>
> 23 The qualifications of a Director (other than the first Directors or any Directors appointed under Regulation 22) shall be the holding of one share in the Company and upon a Director ceasing to be an Owner his office shall automatically be vacated.
>
> 24 After all of the Units (except in Molasses House and Cotton Row) shall have been let to Owners the Directors shall retire from office at the next following Annual General Meeting and at every Annual General Meeting thereafter one-third of the Directors for the time being or of their number is not three or a multiple thereof then the number nearest one-third shall retire from office but shall nonetheless be eligible for re-election.
>
> 25 Unless and until otherwise determined by the Company in General Meeting the number of Directors shall not be less than one nor more than nine."

13. The letting of all of the "Units" on the Estate to "Owners" was therefore a trigger in the October 2011 Articles for a change in the Company's structure. Until that point, Cinnamon had the power to nominate and remove up to four directors of (at most) nine, but that power then terminated. Following that event, there was then an apparently general provision for all the Directors to retire at the next AGM.

14. The Respondents' case is that "Units" does not include garages and/or storage rooms, so Cinnamon lost this power of appointment in July 2013 and the then Freeholder Directors were obliged to retire at the next AGM, under Article 24.

15. The Applicants' case is that "Units" includes garages and/or storage rooms, so that Cinnamon has retained this power of appointment, and any existing Freeholder Directors were and remain validly appointed. The power to appoint had been slightly reformulated by the time of the December 2020 Articles, where it is now in Article 24.

16. As quoted above, Article 23 of the 2011 Articles set out restrictions as to who could be a director, applicable to those not appointed by the freeholder or others under Article 22. These restrictions were modified in later versions of the Articles.

17. While Mr Glover, who appeared for the Respondents with Mr Dawson and Mr Allan, reserved his position on whether all the versions of the Articles were validly passed by the relevant AGMs, I have seen no evidence that they were not, save for the disputed March 2025 amendments. Accordingly, I proceed on the basis that earlier versions were validly passed, and that the ones in force in early 2025 were the December 2020 Articles.

18. On any view, the December 2020 Articles therefore define who can be a Qualifying Director. This is prescribed in Articles 25 and 26, which read:

> "25. There shall only be one director appointed per Unit. A director shall only be eligible for office if he or she lives in the Unit for a minimum of 6 weeks per annum.
>
> 26. In order to qualify to be a director of the company (other than the first directors, the directors appointed under Article 24 [Freeholder Directors] and the MH Director appointed subject to Article 27 below) each 'Qualifying Director' must be an Owner and hold one B Ordinary share in the company or be the spouse or civil partner of a holder of one B Ordinary share in the company. Upon a director ceasing to be an Owner his or her office or that of a spouse or civil partner shall automatically be vacated. A director may not vote in board meetings if he or she (or his or her spouse or civil partner) is indebted to the company."

19. In addition to the issue of whether the power to appoint Freeholder Directors was lost in July 2013, there is also an issue as to whether as a consequence, and when, the offices of existing Freeholder Directors terminated. Further there are issues as to the status of Qualifying Directors who failed to retire in accordance with the provisions in the Articles.

20. I will consider the detailed terms of the Requisition Notice below. However, reduced to its essentials, it was an attempt by Ms Brady and other members who supported her to force the issue of whether Cinnamon still had the power to appoint Freeholder Directors; achieve the retirement of the existing Freeholder Directors and those of the Qualifying Directors who they considered should have retired; and then to replace them almost completely with a new board led by Ms Brady as chair.

21. Upon being served with that Requisition Notice, the existing Directors took the view that the two proposed resolutions could not be passed, because they interfered with class rights of A and B shareholders, for which a separate class meeting would be needed. They concluded that they should not call a general meeting and declined to do so.

22. Following that refusal, on 19 February 2025 Ms Brady sent out a notice ("**the GM Notice**") to the directors and at least some of the shareholders, which was said to call a

general meeting under s.305 of the Companies Act 2006 ("**CA 2006**"). The Applicants say this notice was invalid and ineffective for numerous reasons. A meeting did take place, which was the March GM. The Respondents claim it passed the two resolutions in the Requisition Notice, thereby amending the Articles, removing the right of the freeholder to appoint directors and appointing Ms Brady as a director and chair. The great majority of the votes were by proxies.

23. Ms Brady claims then to have called a board meeting, which was the April BM. This purportedly removed or confirmed the removal of almost all of those who were the registered Directors immediately before the March GM. The exception was Mr Goulson, who was not due for retirement but who subsequently resigned on either 24 or 29 April 2025.

24. The Applicants' case is that the directors immediately prior to the March GM were:

    i) Harold Henry Traver (as a Qualifying Director and Chair); the Second Applicant;

    ii) Gabrielle Marguerite Grosvenor (as a Qualifying Director); the Third Applicant;

    iii) Jonathan Mark Edward Lawes (as a Freeholder Director); the Fourth Applicant;

    iv) Stuart Campbell Loggie (as a Freeholder Director); the Fifth Applicant;

    v) Evan Keith Marshall (as a Freeholder Director but also a B Ordinary Shareholder); the Sixth Applicant;

    vi) Alex Stewart-Clark (as a Qualifying Director); the Seventh Applicant;

    vii) Declan Scully (a Qualifying Director);

    viii) Benjamin Goulson (a Qualifying Director, now resigned); the Second Respondent;

    ix) Sukveer Orjela (the MH Director, since resigned).

25. Of these, the first six are Applicants. Mr Scully is not a party, but I am told he wishes to remain a director. Mr Goulson was a director until he resigned, although I understand from the hearing that he may wish to return as a director. Mr Orjela has resigned, has not been replaced and has taken no part in these proceedings.

26. As I understand it, the Respondents' case is that following the March GM and the April BM, and the resignations of Mr Goulson and Mr Orjela, the board consisted of Ms Brady, Mr Waterson and Mr Hindley (the First, Third and Fourth Respondents). Ms Brady was registered at Companies House as appointed on 20 March 2025; Mr Waterson on 15 April 2025 and Mr Hindley on 16 April 2025. They say this continued to be the position until the interim provisions of my order of 12 June 2025 took effect.

Issue 1: the correct test for granting an injunction

27. The starting point for any decision whether to grant an interim injunction is the principles in *American Cyanamid Co v Ethicon Limited* [1975] AC 396, which are:

    i) The applicant must satisfy the court that 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 and any necessary fortification is offered, the court must consider the "balance of convenience", including which course would appear to do the least harm if wrong. Any special factors should also be considered.

28. However, those principles are modified where, as here, the order sought will in practice finally dispose of the issues between the parties because it is very unlikely there will be any final hearing. The leading case on the test to be applied in such a case is the House of Lords decision in *NWL Ltd v Woods* [1979] 1 WLR 1294, where Lord Diplock held at 1306-7 that:

> "The nature and degree of harm and inconvenience that are likely to be sustained in these two events by the defendant and the plaintiff respectively in consequence of the grant or the refusal of the injunction are generally sufficiently disproportionate to bring down, by themselves, the balance on one side or the other; and this is what I understand to be the thrust of the decision of this House in *American Cyanamid Co. v. Ethicon Ltd*. Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial, is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other."

29. Mr Cardew, who appeared for the Applicants, submits that this, without more, is the test which I should apply. He further submits that the Applicants would be likely to succeed at trial in establishing that the March GM and April BM were unlawful, so that this higher merits threshold is satisfied.

30. Mr Glover submits, in reliance upon the decision of the Court of Appeal in *Cayne v Global Natural Resources plc* [1984] 1 All ER 225, that the test to be applied is akin to the summary judgment test, i.e. the Applicants must show that the Respondents have no real prospects of successfully defending the claim. He relies in particular on the following passages in the judgment of Kerr LJ in *Cayne* at 236b-f:

> "I doubt whether any of these things would happen; but, whether they happen or not, this action is never likely to be taken to trial if the plaintiffs obtain an injunction... But the overriding consideration for present purposes is that, if an injunction is granted, the effective contest between the parties is likely to have been finally decided summarily in favour of the plaintiffs.
>
> This being the position, the question is then whether, on the material before the court, the plaintiffs can justify such a result at this stage. As was pointed out by Eveleigh LJ during the argument, what the plaintiffs are in effect asking is for summary judgment in their favour. Admittedly, the plaintiffs have strong inferences about the defendants' real motives on their side. There are considerable

> grounds for suspicion. But Global has strong evidence on oath on its side, and, when this is read together with the exhibits, it is quite clear that Global has a fully arguable case, which it is entitled to have tested on its merits at a full trial.
>
> As was pointed out during argument, if this position were viewed as an application for summary judgment under RSC Ord 14, then it would be clear beyond argument that Global must be given unconditional leave to defend, because it would obviously be entitled to a full trial. However, the grant of an injunction would preclude this, so far as can be foreseen at present, for the reasons already stated. In these circumstances it seems to me that it would be wholly wrong for this court, in effect, to decide the entire contest between the parties summarily in the plaintiffs' favour on the untested material before us. This does not present any overwhelming balance on the merits in the plaintiffs' favour, or any other overriding ground for an immediate injunction without a trial. There is only a triable issue whose outcome is doubtful; and that issue should be tried and not pre-empted."

31. In support of his submission that the test to be applied was the same as for summary judgment, Mr Glover also prayed in aid the decisions of the Court of Appeal in *Araci v. Fallon* [2011] EWCA Civ 668 and *Autostore Technology AS v. Ocado Group Plc and others* [2021] EWCA Civ 1003.

32. *Araci* was a case in which the Court of Appeal, reversing the first instance judge, granted an injunction preventing the respondent jockey from riding a rival horse in the Epsom Derby, on the basis that this breached an agreement with the applicant. This was one of those cases where the grant or refusal of the injunction was clearly likely to resolve the whole claim. At [69], Elias LJ concluded that since he was satisfied even on the limited material available that the respondent's defence was fanciful and had no prospect of success, there was no reason not to grant the injunction even at that interlocutory stage.

33. One can entirely see why, in a case where the court is satisfied that the summary judgment test is met in favour of the applicant, it will conclude without needing any more analysis that this is sufficient to meet the merits test for granting an injunction. However, I do not consider that this assists me logically in deciding whether I have to be satisfied to a standard as high as, and no different from, that for summary judgment.

34. In *Autostore*, at [81] the Master of the Rolls accepted the argument that the court should not grant an injunction which had the final effect of preventing a foreign court from deciding, according to its own laws and procedures, whether a document should be admitted unless the applicant could "… *show a high degree of probability of establishing its case at trial*." Mr Glover submitted that this was the flip side of saying that the respondent's case had to be fanciful.

35. However, it seems to me that the formulation in *NWL v. Woods*, which remains the leading case as to the principle to apply, is more nuanced than simply applying the summary judgment test. What is clear is that it is necessary to consider the relative strengths of the two sides' cases; whereas in a classic *American Cyanamid* case, the court does not do so once it is satisfied there is a serious issue to be tried. In cases like *Cayne* and *Autostore* where the respondent had what was clearly a case with a real prospect of success which would be closed down if the injunction was granted, the courts have shown themselves unwilling to countenance that likely injustice. On the other hand, if the

respondent's case is indeed fanciful, the courts are not afraid to grant an injunction closing it down. Sometimes it is only if the application is decided in one direction that the effect will be final, which will also affect the balance of convenience.

36. The parties are agreed that the test for granting any interim declarations is the same as the one I apply in granting an injunction, in the present case.

37. My conclusion in the present case is that, since either a grant or a refusal of the injunction and declarations sought is likely strongly to influence if not determine who are the directors going forward, I should consider the relative merits of the two sides' cases as best I can on the available evidence and reach conclusions where possible as to which is strongest. This is especially so on issues which would most probably be determined on the documents already available rather than oral evidence. I will also consider options alternative to an injunction which are available to me, such as ordering a company general meeting to take place to make decisions following my judgment.

Issue 2: the meaning of "unit of accommodation"

38. Since the earliest version of the Articles, applicable upon incorporation, the definitions section, Article 4, has included the following definition:

> "'Unit' means a flat, office or other unit of accommodation comprised in any property [at the Estate] for the time being managed by the Company."

(The words in square brackets had been added by the time of the December 2020 Articles, but it is not suggested they affect the meaning.)

39. Article 4 also defines Owner as follows (in the December 2020 Articles):

> "'Owner' means the person being a lessee for the time being of a Unit in the Estate [excluding Molasses House] for a term of at least 150 years from its commencement and so that wherever two or more persons are for the time being joint Owners of any one Unit they shall for the purposes of these Regulations be deemed to constitute one Owner."

(Again, the words in square brackets had been added by December 2020 but it is not suggested they affect the meaning.)

40. As already indicated, a key issue between the parties is whether "unit of accommodation" is capable of including garages and storage units. Cinnamon continues to own 3 garages and 6 storage units, and long leases have been granted more generally of both garages and storage units.

41. On the first day of the hearing, I allowed both sides to put before the court late or arguably late witness evidence around whether B shares had been granted, or indeed subsequently rescinded, to persons who only owned garages or storage units. Concern was expressed by both sides around this evidence being late and whether this affected their ability to respond to it. However, it was also notable that neither side placed any significant weight on this evidence in their submissions, saying that this was essentially a construction issue on the Articles, although Mr Cardew submitted that the fact that B shares had been issued to owners of garages or storage rooms was part of the factual matrix from 1988.

42. My conclusion as to this witness evidence, taken in the round, is that it most strongly suggests confusion as to whether owners of garages or storage units were entitled to be issued with B shares or not. In any event this is a question of construction of a phrase which has been in the Articles since inception. As such, in my view evidence of how it has been subsequently interpreted in practice is irrelevant and I have placed no weight on it either way. The same conclusion applies to advice as to the correct construction which has been obtained by the parties.

43. Mr Glover submitted, and I did not understand Mr Cardew to dispute, that leading authorities on the construction of a company's articles are the Court of Appeal's decisions in *Holmes v Keyes* [1959] 1 Ch 199 and *Jones v BWE International* [2003] EWCA Civ 298. In *Holmes* at 215 Jenkins LJ said:

> "I think that the articles of association of the company should be regarded as a business document and should be construed so as to give them reasonable business efficacy, where a construction tending to that result is admissible on the language of the articles, in preference to a result which would or might prove unworkable."

44. In *Jones* Arden LJ said at [22] – [23]:

> "[22] Another aspect of the principle that articles are a business document is the principle that articles should be construed so as to make them workable. This was the approach of Jenkins LJ in *Holmes v Keyes* [Arden LJ then quoted the passage set out above.]
>
> [23] With that approach, I agree. The approach to be adopted in interpreting articles of association in this respect is very much the same approach as is to be applied to other commercial documents. The one qualification is that referred to by Miss Kyriakides that it is not in general possible to have regard in the interpretation of articles of association to extrinsic evidence. Furthermore, articles of association cannot be rectified. (On these points, see Buckley on the Companies Acts (15 edn, T[A i.4])). Moreover, it is to be noted that Jenkins LJ held that a document can only be construed so as to give it reasonable business efficacy where that is admissible on the language…"

45. More generally, the correct approach to contractual interpretation was affirmed by the Supreme Court in *Arnold v Britton* [2015] UKSC 36, where Lord Neuberger said at [15] and following:

> "[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean', to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was

> executed, and (v) commercial common sense, but (vi) disregarding subjective evidence
>
> [16] For present purposes, I think it is important to emphasise seven factors.
>
> [17] First, the reliance placed in some cases on commercial common sense and surrounding circumstances (e g in Chartbrook [2009] AC 1101, paras 16—26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision. of any party's intentions…
>
> [19] The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made…
>
> [21] The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties…"

46. Mr Cardew also relied on the more general points on construction that the Articles should be construed as a whole (as in *Phoenix Life Assurance Ltd v Financial Services Authority* [2013] EWHC 60 (Comm) at [19], [30], [43] per Andrew Smith J) and particular words should be construed in context (*Financial Conduct Authority v Arch Insurance (UK) Ltd* [2020] EWHC 2448 (Comm) at [67] per Flaux LJ and Butcher J.) I accept all of those principles as correct.

47. Both counsel also referred to the *ejusdem generis* principle. Mr Cardew relied on the way it had been expressed in *Biggin Hill Airport Ltd v Bromley LBC* [2001] EWCA Civ 1089 at [128] per Arden LJ. This was that where a phrase such as "*other…*" appears at the end of a list of specific items, this was usually a "sweep up clause" and should be interpreted as meaning items ancillary or similar to those already listed and limited accordingly. Mr Glover relied on the formulation in *Sun Fire Office v Hart* (1889) 14 App Cas 98, where Lord Watson said at 103-104:

> "It is a well-known canon of construction, that where a particular enumeration is followed by such words as 'or other', the latter expression ought, if not enlarged by the context, be limited to matters ejusdem generis with those specially enumerated."

48. Mr Glover accepted that since the list in the Article 4 was: "*a flat, office or other unit of accommodation comprised in any property*", "unit of accommodation" could not be limited to residential accommodation, since "office" was outside that. He accepted that the phrase could also extend to other types of commercial accommodation which were occupied and used by people, such as a café or restaurant. However, he submitted that a garage or storage room was too different to be included.

49. In contrast, Mr Cardew submitted that since the list included both residential and non-residential examples, it was wide enough to extend to garages and storage units as being other types of non-residential accommodation. He said this also avoided surplusage.

50. Both counsel also relied on dictionary definitions of "accommodation". Accommodation is a noun which in any event has a number of separate meanings. Mr Cardew relied on a definition in Collins dictionary as including "*space in buildings or vehicles that is available for certain things, people, or activities*", e.g. "*The school occupies split-site accommodation on the main campus*" or "*Some trains carry bicycles, but accommodation is restricted so a reservation is essential*".

51. Mr Glover relied on one of the Oxford English Dictionary's sub-definitions, that of "*room and provision for the reception of people, esp. with regard to sleeping, seating or entertainment; living premises, lodgings."* He also submitted that the word should be construed in its literal sense, and given its ordinary objective meaning, which he said would not normally be wide enough to include garages and storage units.

52. In his skeleton and in oral submissions Mr Glover submitted that this more restrictive interpretation was more consistent with the overall purpose of the Articles, and in particular Articles 22 and 24 of the October 2011 Articles and Article 24 of the December 2020 Articles. He said these were intended to be a "sunset" provision, whereby while the Estate was still being developed and flats and offices were being sold, the freeholder would retain significant representation on the board, but once they had been sold, the Company would become a more typical tenant management company. At that point the freeholder would no longer have an interest justifying such representation on the board (although it would still have the protection of the A shares as regards decisions which would significantly affect the capital value of the Estate). He submitted that it was inconsistent with that purpose for the freeholder to retain the right to appoint 4 directors when all it still owned was a small number of relatively low value storage rooms and garages.

53. Mr Cardew submitted that the inclusion of storage rooms and garages within the definition was entirely consistent with the commercial purposes of the Articles, since it was reasonable for the freeholder to retain an active interest in the management of the Estate for as long as it had a financial interest in units that were not yet subject to long leases.

54. I have been invited by the parties to reach a determination on this construction issue, in the context of this application, since all the relevant documentary evidence is before me and I have heard full argument on it. It will also assist the parties going forward to have a clear finding on it. I accept that invitation, for those reasons.

55. In my view the phrase "unit of accommodation" is one which needs to be seen in the context of the Articles as a whole and takes its meaning from them, because it is

potentially capable of bearing either of the meanings for which the two sides contended. However, I have concluded that in that context and taking into account all the relevant principles of interpretation, the phrase does not extend to either garages or storage units, even though these are capable of being separately let on long leases. I have reached that conclusion for the following reasons:

i) As a matter of natural, literal interpretation, I consider that a "unit of accommodation" would normally be restricted to self-contained spaces which are designed and intended for regular and extended occupation by people, i.e. living, working or possibly entertainment spaces. I do not consider that the phrase would naturally extend to spaces which people enter and use only briefly, such as garages and storage units, even if they are self-contained.

ii) I consider that the OED definition for which Mr Glover contends is more on point than the Collins definition on which Mr Cardew relies, since I consider that the latter is directed at slightly different, more general uses of the word. Mr Glover suggested that the Collins bicycle example is directed at the use of "accommodation" to mean ability to accommodate, rather than meaning a place, and there is force in this.

iii) Considering the context of the phrase and the Articles as a whole, the Estate is and was always intended to be a mixed use development with both flats and offices and some other commercial spaces such as cafés. The definition explicitly therefore envisages the phrase extending beyond residential accommodation, to office/commercial spaces. As I understand it, there is a substantial amount of office space, so it makes sense that the freeholder would have wished to retain the right to appoint directors while it still owned that space, as well as any residential flats.

iv) There is nothing in the Articles more generally which is inconsistent with this interpretation. Nor does it create surplusage – on any view the phrase would extend to cafés and restaurants, which are additional types of unit of accommodation.

v) The Articles do include an explicit "sunset" provision, which envisages that there will come a time when the freeholder will lose its right to appoint a substantial minority (4/9 or 44%) of the board. It only comes into effect when all "Units" have been let to an "Owner". It appears somewhat inconsistent with that structure for the freeholder to retain that right even if its ownership is *de minimis*, in the form of a few garages and storage units whose significance in the overall Estate is small. However, I see this as a relatively weak pointer: it can certainly be said that the freeholder still has a commercial interest in retaining such a right, and even on my interpretation, if Cinnamon had retained just one flat, it would still have retained its appointment rights.

vi) Primarily I therefore rely on the natural meaning of the words in context, rather than commercial effects.

56. It follows that I have also concluded that Cinnamon (and also the Subscribers and any nominees or personal representatives) lost their power to nominate, remove and replace up to four directors in July 2013, when it disposed of the last of the flats or offices which it owned, so that it owned only storage units and garages. The power was lost by reason of Article 22 of the October 2011 Articles, which were the ones then applicable.

57. So far as the December 2020 Articles are concerned, these should be applied on the basis that Article 24 has now been satisfied, i.e. all of the Units have now been let to an Owner (and have been since July 2013).

58. This is not the way in which the Articles have tended to be interpreted by Cinnamon or the board of the Company. Furthermore, it is undoubtedly true that a lax approach has been taken to following the rules in the Articles on the retirement of directors. As to that, Ms Brady claims that her aim has been to correct the position, but the Applicants claim she herself reassured them that they did not need to follow the retirement provisions strictly, when she was originally on the board (which was before December 2024).

59. I will return below to the consequences of my conclusions on this construction issue for the retirement and status of directors. However, first it is necessary to consider the validity and effect of the Requisition Notice and the March GM and April BM, since the Respondents' case is that these have overtaken events.

Issue 3: validity of the Requisition Notice

60. The Applicants' position is that the Requisition Notice of 21 January 2025 only contained improper and/or ineffective resolutions and no other business, and that as such, the directors were not obliged to call a general meeting. They rely on the decisions in *Rose v McGivern* [1998] 2 BCLC 593 and *Kaye v Oxford House (Wimbledon) Management Company Limited* [2019] EWHC 2181 (Ch) at [93]-[95]. They further say that it was not possible to save this flawed Requisition Notice.

61. The Respondents say that the resolutions were capable of being passed by a general meeting, but even if they were not, the directors were only entitled to refuse to call a general meeting if the objects stated in the requisition and/or proposed resolutions were impossible to pass or achieve in any form, even with any potential adjustments. They say this was not the case, so a general meeting should have been called.

62. The Requisition Notice, which the Respondents say was drafted by solicitors Gunnercooke, stated as follows:

> "**To: the directors of Plantation Wharf Management Limited (Company)**
>
> 21a Kingly Street, London, W1B 5QA
>
> In accordance with section 303(1) of the Companies Act 2006, we, the undersigned, require you to proceed to convene a general meeting of the Company, within 21 days from the date you receive this requisition, for the purpose of considering changes to the criteria for appointing board members, the removal of all Freeholder Directors in accordance with article 24 of the articles of association of the Company, the appointment of Dr Vanessa Brady to the board of directors of the Company, amendments to the articles of association of the Company and for the purpose of considering and, if thought fit, passing the following resolutions which are being proposed as one special resolution and one ordinary resolution respectively:
>
> PROPOSED RESOLUTION

> 1) THAT with effect from the conclusion of the meeting the articles of association of the Company be amended by deleting article 24 and also deleting article 22 and 26 and replacing them with the following new articles 22 and 26.
>
> > a) [Article 22] Unless otherwise determined by ordinary resolution, the number of directors shall not be less than four (to be made up of three Qualifying Directors and up to one director who is not a Qualifying Director) nor more than ten (to be made up of eight Qualifying Directors (to include the MH Director) and up to two directors who are not Qualifying Directors). Directors who are not Qualifying Directors may be any suitable person that is appointed by a members' special resolution.
> >
> > b) [Article 26] In order to qualify to be a director of the company (other than the MH Director appointed subject to Article 27) each "Qualifying Director" must be an Owner and hold one B Ordinary share in the Company or be the spouse or civil partner of a holder of one B Ordinary share in the company. Upon a director ceasing to be an Owner his or her office or that of a spouse or civil partner shall automatically be vacated. A director may not vote in board meetings if he or she (or his or her spouse or civil partner) is indebted to the company.
>
> 2) THAT with effect from the conclusion of the meeting and the passing of resolution 1 a) above Dr Vanessa Brady be appointed as a director of the Company and also as Chair of the board of directors until the next annual general meeting.
>
> We confirm that we are members representing at least 5% of the total voting rights of all members of the company having a right to vote at extraordinary general meetings of the company.
>
> Date:21st January 2025"

63. It is agreed that the proposed Second Resolution was dependent upon the passing of the first, since Ms Brady could not be appointed as a director unless the proposed amendments to the Articles were passed.

64. The Applicants say that the First Resolution could not be effective because it proposed variations to the rights of both A and B shareholders. Since it proposed variations of class rights, they say that it was necessary to comply with s.630 CA 2006, which provides that such rights can only be varied either upon consent in writing of at least three-quarters of the holders of that class of shares, or the passing of a special resolution at a separate general meeting only of the holders of that class of shares. They say that a general meeting of the Company as a whole could not satisfy that second requirement, so there was no point in the directors calling a general meeting in response to the Requisition Notice.

65. Section 630 CA 2006 provides as follows (so far as relevant):

> "(1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.
>
> (2) Rights attached to a class of a company's shares may only be varied—

> (a) in accordance with provision in the company's articles for the variation of those rights, or
> (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.
>
> (3) This is without prejudice to any other restrictions on the variation of the rights.
>
> (4) The consent required for the purposes of this section on the part of the holders of a class of a company's shares is—
>
> (a) consent in writing from the holders of at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares), or
> (b) a special resolution passed at a separate general meeting of the holders of that class sanctioning the variation.
>
> (5) …
>
> (6) In this section, and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights attached to a class of shares, references to the variation of those rights include references to their abrogation."

66. The Applicants say that by removing the rights of the A shareholders to appoint directors, the proposed resolution varied those rights. They also say that by adding a provision that persons who were not Owners and were neither the holder nor partner of the holder of a B share, could be appointed as a director, the proposed First Resolution would also vary the rights of B shareholders.

67. Furthermore, they say that Ms Brady acknowledged that the proposed First Resolution constituted a variation of class rights, since she included with the documents for the March GM, sent on 19 February 2025, a "*written consent relating to a variation of class rights*", for signature by B shareholders.

68. The Applicants rely on the case of *Cumbrian Newspapers Group Ltd v Cumberland & Westmorland Herald Newspaper & Printing Co Ltd* [1987] Ch 1, in which Scott J confirmed at 22 that the equivalent section in the Companies Act 1985 applied to any category of class rights, including in particular rights which were attached simply to membership of a particular class. Mr Cardew submits that that would therefore apply here, so far as the equivalent provision in s.630 CA 2006 is concerned.

69. In addition, the Applicants say that where directors have not called a class general meeting pursuant to s.630(4)(b), there is no power in the requisitioners to call such a meeting instead, since s.305 CA 2006 only applies to full Company general meetings and not class general meetings. The relevant part of s.305 states:

> "305 Power of members to call meeting at company's expense
>
> (1) If the directors–
>
> (a) are required under section 303 to call a meeting, and
>
> (b) do not do so in accordance with section 304,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting…"

70. In response, the Respondents say that:

i) The then directors would only have been entitled to refuse to call a general meeting under s.304 CA 2006 if the objects stated in the Requisition Notice had been impossible to pass in any form, even if the proposed resolutions themselves could not be passed. They say that the objects in the preamble in the Requisition Notice could on any view have been addressed at a general meeting.

ii) It could not be said that the First Resolution varied any rights of the A shareholders to appoint directors, because those rights had already lapsed in July 2013.

iii) Insofar as the First Resolution varied the rights of the B shareholders, this could have been addressed by holding a separate general meeting for that class. In any event, it did not vary their rights because they continued to have as good a right to appoint as many directors as previously.

iv) If a class general meeting was required, then the full general meeting which was called could also have been treated as a class general meeting.

v) The then directors were therefore obliged to call a general meeting within 21 days of the Requisition Notice, further to s.304, so that upon their failure to do so, the requisitioners were entitled to call such a meeting pursuant to s.305.

71. So far as the variation of class rights is concerned, my conclusions are:

i) The proposed First Resolution would not have varied the rights of the A shareholders to appoint directors since, on the basis of my conclusions under Issue 2, the A shareholders had already lost those rights in July 2013.

ii) The proposed First Resolution would however have varied the rights of the B shareholders. Without that resolution passing, the only rights to appoint directors would have been the existing rights of the B shareholders plus the right of MHML to appoint the MH Director. However, the proposed resolution would in my view have diluted those rights by providing for the appointment of additional directors, who did not have to meet the conditions necessary to be a Qualifying Director.

iii) Therefore, the provisions of s.630(4)(a) or (b) would have had to have been complied with for the First Resolution to pass.

iv) I accept the Applicants' submission that the requisitioners had no power to call a class general meeting under s.305 since that only applies to requisitions for a company general meeting under s.304, not to class general meetings. Unless the requisitioners were able to satisfy s.630(4)(a), i.e. obtaining consent in writing from the holders of at least three-quarters of the B shares, the First Resolution could not therefore be passed.

v) Further I also accept the Applicants' submission that a general meeting called under s.305 cannot be interpreted as also being a class general meeting for the purposes

of s.630, for reasons set out more fully below under Issue 4. The March GM could not therefore be a class general meeting.

vi) If the First Resolution could not be passed, then the Second could not be passed either.

72. However, this is not the end of the matter, since the Respondents also submit that the objects in the Requisition Notice could in any event have been addressed at a general meeting. Mr Glover relied in this respect on an extract from *Palmer's Company Law* at 7.510, as follows:

> "Under the previous law, it was held that where the requisition clearly stated the purpose of the meeting and to entertain certain consequential (unspecified) resolutions, it was valid even though some of these resolutions could not be passed at the meeting. But where the requisition was construed as only apply to considering two specific, ineffective, resolutions and no other business, it was set aside. That is clearly a matter of construction and a different approach was taken in *PNC Telecom PLC v Thomas*, where the objects of the requisition were clear (to dismiss the directors) and could be achieved by means other than the resolutions specified.
>
> Since the Companies Act 2006 still requires the general nature of the business to be specified in the requisition and only allows, rather than requires the text of a specific resolution to be stated, the pre-Act cases would seem to still apply."

73. One of those older cases, on which Mr Glover relies, is *Isle of Wight Railway Co v Tahourdin* (1884) LR 25 ChD 320, where Fry LJ held at p.344:

> "If the object of a requisition to call a meeting were such that in no manner and by no machinery could it be legally carried into effect, the directors would be justified in refusing to act upon it. But if the object stated in the requisition be such that by any form of resolution or by any machinery sanctioned by the Act, it can be carried into effect, then it is the bounden duty of the directors to call the meeting."

74. Mr Cardew acknowledged that in cases such as *PNC Telecom Plc v Thomas* [2002] EWHC 2848 (Ch); [2003] BCC 202 a flawed requisition notice which contained defective resolutions was nevertheless saved, but he submitted this could not have been done here. In *PNC Telecom Plc* Sir Andrew Morritt V-C said as follows, at [24]-[26]:

> "24. PNC contends that the form of requisition went beyond just stating the objects of the meeting and indicated that the intention was to move just one resolution for the appointment of four directors and another resolution for the removal of five. It is contended that as such resolutions must be invalid, there is no purpose in convening a meeting for that purpose.
>
> 25. An equivalent submission was upheld by Neuberger J in *Rose v McGivern* [1998) 2 BCLC 593. But the circumstances of this case are quite different. There is no doubt that the fax of November 8 indicated clearly the object of the meeting the signatories sought to convene, but there was no obligation to set out the resolutions in final form. That was done by the notice and circulars sent to the members on December 6. Those documents indicated the intention to move nine

> separate resolutions for individual appointment or removal. So what this objection boils down to is whether I should construe the requisition as confining the business of the meeting to a consideration of but two resolutions: one for removal and one for appointment. I see no reason to do so. The letter refers to resolutions in the plural. The nine individuals are named in separately lettered sub-paragraphs. Even without resort to the maxim commonly expressed in Latin but which may be translated as requiring the court to construe a document so as to validate rather than invalidate it if it can, I see no reason why in the context of the document as a whole and in the light of all the surrounding circumstances I should attribute to the author of this requisition the intention to specify such number of resolutions as would ensure that the requisition was ineffective. The requisition is equally, if not more, consistent with an intention to move nine resolutions, which no one has suggested would not be valid, as with an intention to move two only, which would be ineffective, at least with regard to the appointment of directors.
>
> 26. It was made plain by the Court of Appeal in *Isle of Wight Railway Co v Tahourdin* (1884) LR 25 ChD 320, that it is only if the requisition states an object which is incapable of being effectively achieved that the directors are entitled to refuse to act on it. This requisition is not in my judgment, of that sort…"

75. In the present case, as set out above, the Requisition Notice, in the preamble before asking for consideration of the two proposed resolutions, stated that the objects of the requested meeting were to consider changes to the criteria for appointing directors; remove all the Freeholder Directors, on the basis that the power to appoint them under Article 24 had expired; to vary the Articles in other respects; and to appoint Ms Brady to the Board.

76. Insofar as the objects were to remove the Freeholder Directors and/or to change the criteria for appointing directors and amend the Articles, I consider that these were objects which were capable of being effectively achieved, albeit by differently worded resolutions. Mr Glover submitted that a resolution could have been passed for example, to take legal advice on the position of the Freeholder Directors.

77. Accordingly, my conclusion is that the then directors of the Company should not have refused to act on the Requisition Notice; rather they should have called a general meeting, albeit they should have reframed the proposed resolutions to be ones which addressed the objects in the Notice but which could properly be passed by a general meeting. The directors could of course also have chosen to call class general meetings, although I do not consider that the Requisition Notice could require them to do so.

78. Strictly speaking, this being an interim application, albeit one on which I should consider the relative merits of the two sides' cases, the issue for me is whether the Applicants have established a strong case that the Requisition Notice was invalid. My conclusion is that they have failed to do so. However, given that this aspect of the case is also one which would be determined on the documents without the necessity for oral evidence, I consider it is possible to go further and conclude that the Requisition Notice was not invalid, but only on the limited basis outlined, i.e. that its objects could be met even though the proposed resolutions were invalid.

79. Since the directors did not call such a general meeting, it follows in my view that the requisitioners were entitled to call such a meeting pursuant to s.305 CA 2006.

Issue 4: were the March GM and April BM validly called and/or properly conducted?

80. The Applicants say that there were numerous issues both with the delivery of the GM Notice which was sent out on 19 February 2025, and also its substance. In particular they say:

    i) Since a special resolution would be required, 21 days' notice was necessary. Although some B shareholders were sent the notice and documents (by email) on 19 February 2025, not all were.

    ii) Since the notices could have been sent by leaving copies at the shareholders' units, the failure to serve everyone through email was not excusable and should not be treated as accidental pursuant to s.313 CA 2006. Further, the Applicants' solicitors objected to the validity of the GM Notice in advance of the March GM.

    iii) There were material problems with the treatment and handling of proxy votes:

        a) The GM Notice stated that a proxy appointment could be revoked no later than 17 March 2025, whereas s.330 CA 2006 requires that a proxy can be revoked at any time before the meeting (and there was no relevant variation to this in the Articles).

        b) The GM Notice required those wishing to attend to pre-register by 7 days before the meeting, when there was no such requirement in the Articles.

        c) Proxies were requested to be sent to the email address vote@plantation-wharf.co.uk. However, this email address was not one received by the Company's directors, but rather was controlled by Ms Brady, so the directors had no sight or record of proxy votes. This meant article 56 of Table A (1985, this being a pre-CA 2006 company), requiring the deposit of proxies to the satisfaction of the directors, could not be satisfied. Consequently it was not possible for the Company or the then directors to verify the proxies cast. Since the overwhelming majority of votes cast were by proxy, this is significant. Mr Cardew submitted that this was the most material of the defects for the purposes of the application.

81. In response, the Respondents say that:

    i) There is conflicting evidence as to the persons to whom the GM Notice was emailed. In any event, there was a genuine attempt to send it to all shareholders, such that any individual failure was accidental within s.313(1) CA 2006, applying the test laid down by Vos J in *Re Halcrow Holdings Limited* [2012] Pens LR 113 at [40].

    ii) The right to appoint a proxy is contained in s.324 CA 2006. Section 325 CA 2006 states that the notice of the meeting must include a statement informing the member of their right to appoint a proxy. However, s.325(2) states that "*Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting*." Therefore any misstatement of the members' rights as to appointing proxies could not invalidate the meeting.

82. It is on this issue that I am most conscious of the difference between the written evidence which is available to me on this interim application, and the evidence including oral evidence which would in theory be available at a full trial. On the question of whether all the shareholders were sent the GM Notice at least 21 days before the meeting, and whether, to the extent they were not, the failure can properly be characterised as accidental, I do not consider that it is possible for me to reach any firm conclusion as to the relative strength of the two sides cases. I do not therefore place any reliance on this aspect.

83. However, the notification in the GM Notice of an email address for proxy votes which was solely controlled by Ms Brady and was not copied to the directors or otherwise to the Company was in my view a serious failure and breach of the Articles. There is no dispute as a matter of fact that this happened, and it has had the consequence that the Company and its then directors have no record of the proxy votes cast or proxies appointed and no way therefore of checking the votes said to have been taken at the meeting. I have no doubt that this has contributed to a sense that the then directors were being shut out by Ms Brady from an awareness of what was happening at the March GM even before they were purportedly removed. It also casts doubt on the reliability of the votes recorded as cast at that meeting.

84. I have concluded, assessing the relative strengths of the two sides' cases on this issue, that it is most likely that the March GM was not therefore validly called and/or properly conducted, and that it was therefore unlawful. It follows from this that the April BM was also unlawful.

85. In any event, I have concluded that the two proposed resolutions in the Requisition Notice could not have been properly put to the general meeting. I reject the Respondents' submission that the March GM can also be treated as a class general meeting of B shareholders. I accept the submission of the Applicants that s.305 only permits the requisitioners to call a general meeting and not a class general meeting, and I do not consider that this can be avoided by treating the general meeting as also being a class general meeting. In any event there were insufficient proxy votes in favour to satisfy the requirement for three-quarters of all B-shareholders to have provided consent in writing, as required in the alternative by s.630(4)(a) CA 2006.

86. For all of these reasons I conclude that the two resolutions contained in the Requisition Notice were not validly passed.

87. This means that no such amendments were made to the Articles; no existing directors were removed (insofar as they were in place immediately prior to March 2025), and Ms Brady, Mr Waterson and Mr Hindley have not been appointed as directors of the Company. On these points I consider the evidence and arguments relied on by the Applicants are sufficiently strong for me to reach those conclusions. It follows that the current version of the articles is the December 2020 Articles.

Issue 5: consequences for the status of the directors and effect of retirement provisions

88. In those circumstances it is then necessary for me to consider whether the individuals who the Applicants contend were the directors of the Company immediately prior to March 2025 were indeed still directors, since the Applicants are asking for declarations that the Second to Seventh Applicants plus Mr Scully are the directors of the Company.

89. I heard a significant amount of argument on the effect of the different provisions in the Articles for the retirement or removal of directors. Overall, it is apparent that the position as to the status of those who claim to be directors is now very muddled.

90. In my view the best approach, at least so far as the Qualifying Directors are concerned, is going to be to cut the Gordian knot by ordering a general meeting of the Company at which new Qualifying Directors can then be properly appointed by the B shareholders, in accordance with the terms of the December 2020 Articles. Having said that, since I heard full argument on the effect of the retirement provisions for Qualifying Directors, I will express my conclusions on them.

91. However, this does not resolve the position so far as those who were appointed as Freeholder Directors are concerned. This is because even though Cinnamon lost the right to appoint such directors in July 2013, Mr Cardew submits that any existing Freeholder Directors remained in post until they actually retired, which they have never done.

92. Mr Glover's submission was that, applying *In re Consolidated Nickel Mines Ltd* [1914] Ch 883 at 888, a director's office is not normally perpetual unless terminated by some act, but is an office limited by the articles. Therefore, if a director is under a duty to call a general meeting at which he will have to retire but fails to do so, he should be treated as having retired on the last day on which such a meeting could have been called. A similar approach was taken by the Deputy Judge in *Re The Sherlock Holmes International Society Ltd (No 2)* [2016] EWHC 1076; [2017] 2 BCLC 14 at [102].

93. Mr Cardew sought to distinguish these decisions, so far as both Freeholder and Qualifying Directors were concerned, by arguing that automatic removal does not work where there needs to be a decision-making process to remove a director, and the ratio in *Consolidated Nickel Mines* did not apply here because the directors did not seek to avoid retiring or calling an AGM but relied on Ms Brady's advice that they did not need to retire.

94. So far as the Freeholder Directors are concerned, I consider that the relevant provisions are those in the October 2011 Articles, since the right to appoint them came to an end in July 2013. As set out above, Article 24 in that version provided that:

> "After all of the Units… shall have been let to Owners the Directors shall retire from office at the next following Annual General Meeting and at every Annual General Meeting thereafter one-third of the Directors for the time being or if their number is not three or a multiple thereof then the number nearest one-third shall retire from office but shall nonetheless be eligible for re-election."

95. Mr Glover submitted and I accept that the reference in this Article to "Directors" meant all directors, i.e. both those who are in later versions called Qualifying as well as Freeholder Directors.

96. I do not know when the next general meeting after July 2013 took place, but there is no doubt such a meeting did happen since I understand regular AGMs have taken place. Given my conclusions on Issue 2, all of the directors should have retired at that meeting pursuant to Article 24, with new directors (i.e. what came to be called Qualifying Directors) then being appointed. This did not happen because the directors were under the mistaken impression that the provisions of Article 24 had not yet been triggered.

97. In my view, applying the principle in *Consolidated Nickel Mines* to a case where an AGM does indeed take place, but the directors do not realise that they should be retiring because of a mistaken understanding of the Articles, those directors should nevertheless be treated as having retired at that meeting. Where an AGM has in fact taken place, I do not consider it necessary to resort to the backstop of the last date on which such a meeting could properly have taken place.

98. In my view therefore the then Freeholder Directors should be taken to have retired at the next AGM after July 2013. I do not know who those directors were at that time, or when that AGM was, but since Cinnamon could not have appointed any new Freeholder Directors, this means that the directors who are now said to have the status of "Freeholder Directors" cannot properly be said to be directors of the Company. This extends to Mr Loggie and Mr Lawes, and will also extend to Mr Marshall in that as I understand the position, he was purportedly appointed as a Freeholder Director and not as a Qualifying Director (even if he would in fact be eligible to be appointed as the latter).

99. For this reason, I would not in any event be willing to grant any declaration that Mr Loggie, Mr Lawes or Mr Marshall are directors of the Company.

100. So far as the Qualifying Directors are concerned, it is the retirement provisions in the December 2020 Articles which apply. Articles 31 and 32 provide as follows:

> "31. At each annual general meeting following the third anniversary from the original date of appointment of each director (excluding the MH director and the freeholder director(s)), the director must retire from office and may offer themselves for reappointment by the members.
>
> 32. In the event that more than three directors are up for re-election, a majority of those directors shall retire by agreement amongst themselves or in the event that an agreement cannot be reached as determined by the Chairman. The director(s) who have not been subject to the re-election as a result of this decision must stand down and offer themselves for re-appointment by the members at the following years' annual general meeting."

101. It is more problematic to apply the *Consolidated Nickel Mines* principle to these provisions since, as Mr Cardew says, there are currently at least four directors who should have retired, but it cannot be said which three would in fact have chosen to retire.

102. Nevertheless, in my view that principle should still apply, given the requirement that the directors "must" retire. In principle I consider they should still be treated as having retired on the last possible date on which they should have retired. However, on this aspect of the case I consider that the backstop for all four (or more) such directors, and so the date on which they would be treated as having retired, should be treated as the AGM *after* the AGM at which the first three should have retired. This is because at the very least they should all have retired by the end of that second AGM.

Issue 6: should an injunction, declaration or other order be made and in what terms?

103. The decision as to whether to grant any injunction, declarations or other orders is a discretionary one for me, taking into account my findings and conclusions reached above.

104. The Applicants have also applied for an order under s.1096 CA 2006 requiring the removal of the Companies House filings made by or on behalf of Ms Brady, Mr Waterson and/or Mr Hindley which purported to remove previous and add new directors.

105. The position of the Registrar of Companies, as set out in her letter of 5 June 2025, is that such an order is unnecessary where the court has declared that the Company did not authorise the delivery to the Registrar of those filings so that they are a nullity. The Applicants ask me nevertheless to make such an order. So far as the Respondents are concerned, I decline to do so given the response of the Registrar as to how she will implement the Court's declarations, meaning any order is otiose.

106. It seemed to me that the position might be different as regards those Freeholder Directors who are still registered as directors of the Company, since the filings appointing them were valid when filed. The Registrar has objected to an order being made under s.1096(b) in respect of these directors also, because the filings were valid when made. However, on the basis of my findings in this judgment, their registration as directors is now inaccurate. I will therefore make declarations that they are not now directors of the Company, but I will not make any order under s.1096 since that would have the effect of removing them *ab initio*, which would also not be accurate.

107. Given my conclusions as set out above, and all the circumstances, I have concluded that the orders I should make are as follows:

    i) I will grant the declaration sought that the March GM was unlawful, and the resolutions said to have been passed at it were invalid.

    ii) Similarly, I will grant the declaration sought that the April BM was unlawful, and the resolutions said to have been passed at it were invalid.

    iii) I will grant declarations that:

        a) Ms Brady, Mr Waterson and Mr Hindley were not validly appointed as directors of the Company in March/April 2025, so that the Registrar of Companies should remove any filings to that effect, and any other filings consequential upon my declarations above as to the invalidity of the March GM and April BM.

        b) Mr Loggie, Mr Lawes and Mr Marshall are not now directors of the Company.

    iv) I decline to grant any declaration as to who the current directors of the Company are. So far as those said to be Qualifying Directors are concerned, the position as to whether and when they should have retired is too unclear for me to be able or willing to do so.

    v) I will grant the declarations sought that the articles of association are the December 2020 Articles and that the lawful registered office of the Company is 21a Kingly Street, London, W1B 5AQ.

    vi) Given the consequently highly unsatisfactory situation as to who are currently the directors of the Company, I will make an order pursuant to s.306 CA 2006 that a

general meeting of the Company be called for the purpose of implementing the effects of this judgment and in particular to decide on the appointment of new Qualifying Directors. For the avoidance of doubt, any existing Qualifying Director registered at Companies House as such is to be treated as retiring at the meeting which I am ordering (without prejudice to their ability to be reappointed) insofar as they do not fall to be treated as having already retired by reason of my findings in this judgment.

vii) In principle I am willing to grant an injunction that Ms Brady, Mr Waterson and Mr Hindley are restrained from holding themselves out as directors of the Company pending any appointment at that meeting, given their previous actions which were claimed to be as directors of the Company. However, I acknowledge that this may not be necessary once the Respondents have had an opportunity to consider the contents of my judgment. I would prefer therefore to give the parties the opportunity to deal with this aspect by appropriate undertakings from the First, Third and Fourth Respondents. I am not willing to grant any more specific or detailed prohibitions at this stage, since I do not consider that this will be necessary in the light of the findings in this judgment and the other orders I am making.

viii) To stay the balance of the claim, with permission to apply.

ix) I will make any necessary consequential orders in case CR-2025-002533.

108. I invite counsel to agree the terms of an order reflecting these conclusions.