

Case Name: Petition of Fotheringay Limited for orders under ss.994 & 996 of the Companies Act 2006

in relation to the affairs of West Ranga Developments Limited

Case Ref No: P628/24

Date, Time and Duration of Hearing: Thursday 26 June 2025 at 10.30 am (1 day)

Division and Senators (*if known*): Extra Division (*Lord Malcolm, Lord Doherty and Lord Clark*)

Livestreamed Hearing?: ☒ Yes

Agents and Counsel (*if known*):

Agents / Counsel for the Reclaimers (*West Ranga Property Group Limited*):-

Agents: DAC Beachcroft Claims Scotland LLP (as Edinburgh agents for Levy & McRae Solicitors LLP, Glasgow)

Counsel: Jonathan Brown

Agents / Counsel for the Respondents (*Fotheringay*):-

Agents: Harper Macleod LLP (Edinburgh)

Counsel: Andrew MacKenzie, sol adv

Link to Judgment Reclaimed / Appealed (*if available*):

No judgment is available, the Lord Ordinary produced a note issued to parties

Case Description:

This case is about the management of a property development company.

Company law provides that those running a company must act in the interests of the company's shareholders (its members). If those running a company are claimed not to have acted in the interests of the company's members, or some of its members, those members may petition the court under s994 of the Companies Act 2006 for a remedy. This is such a petition.

The petitioner is Fotheringay Limited. Mr David Reid, a chartered surveyor and property developer, is the director and 50% shareholder of Fotheringay. Fotheringay owns 20% of West Ranga Developments Limited, the company about which this petition is brought (“the company”). The company was created in 2021 to enable a joint venture between West Ranga Property Group Limited (“WRPG”) and Mr Reid. At that time, Fotheringay held 25% of the shares of the company; it now holds 20% after another company, Romar CS Ltd, became part of the arrangement. Separate shareholder agreements were entered into at the time of Fotheringay and Romar’s investments.

Fotheringay now claim that WRPG, Romar, and the other directors and shareholders of the company have managed its affairs in such a way as to unfairly prejudice Fotheringay’s interest in the company. In particular, Fotheringay complain that (i) since 8 May 2024 WRPG has excluded it from the company’s affairs and the company has failed to hold a board meeting since that date, which it is obliged to do at least once every two months per the first shareholders' agreement; and (ii) WRPG has diverted development opportunities to another group company, or had organised its affairs such that it had been, or would be, deprived of profits rightfully belonging to it. Fotheringay ask the court to order WRPG to buy Fotheringay’s shares of the company at a fair market value.

Both parties made preliminary pleas as to the relevancy of the other’s written pleadings. By Opinion dated 1 April 2025 ([2025] CSOH 34) Lord Braid refused both parties’ preliminary pleas and ordered a hearing on further procedure. At that hearing, Lord Braid made an order (known

as “*interim* interdict”) prohibiting the respondents from causing the company to enter into any form of insolvency until this case is over.

At a further hearing on 1 May 2025 Lord Braid granted a further *interim* interdict prohibiting the 4th, 5th and 7th respondents from voting on any proposed decision of the company which concerns any transaction arrangement or dealing between (a) the company and/or one of its subsidiaries and (b) WRPG and/or one of its subsidiaries, without the authorisation of David Reid and the 6th respondents.

The company and WRPG now appeal against Lord Braid’s decisions to grant the *interim* interdicts. They argue that the consequence is that the company is insolvent but cannot be placed into any insolvency process. Its directors are being forced to trade an insolvent company against their wishes, and WRPG is compelled to continue to support it. In any event, it cannot complete its outstanding property development projects because it has no funds to do so and no access to credit. Fotheringay resist the appeal, arguing that the company’s position is as a result of the unfairly prejudicial conduct alleged in its petition and that, having engineered a situation where the company’s financial position is precarious, WRPG is now effectively seeking to rely upon their own wrongdoing in order to resist the *interim* interdicts.

The matter will be heard before an Extra Division of [Lord Malcolm](#), [Lord Doherty](#), and [Lord Clark](#), at 10:30am on 26 June 2025.