

**Judgment : Mr Robin Knowles CBE, QC.** Sitting as a Deputy High Court Judge. Chancery Division 21<sup>st</sup> December 2006.

**The Davenant Centre**

1. The Davenant Centre is the name given to a community centre ("the Centre") in the East End of London. It is also the name of the company ("the Company") that established and operates the Centre. The Company is registered as a charity.
2. The objects of the Company, set out in its Memorandum of Association, include establishing, maintaining and managing the Centre, advancing education and training among those living in the London Borough of Tower Hamlets, the provision of recreational and other facilities in the interests of social welfare, and *"the provision of free legal advice and assistance to poor persons"*.
3. It is the ambition of the Company that the Centre become a *"Youth Centre of Excellence"*. To that end it embarked on a major rebuilding programme in 2004. The goals of this project are described by Mr Shafiq Siddiqi, the second-named Claimant as *"to enable a wider range of participation, including disabled users ... [and] ... to act as a 'one stop' for young people, ranging from sports and recreational activities, rehabilitation services to specialist vocational training . . ."*
4. The Articles of Association of the Company provide for it to be managed by a Management Committee ("the Committee"). Members of that Committee are in law the Company's directors, although in common with many charities many of the members of the Committee will have undertaken the responsibility for no financial reward.

**The litigation**

5. The affairs of the Company and of the Centre have come before the Court following the Annual General Meeting of the Company on 9 June 2006 ("the June 2006 AGM"). The first four Claimants ("the Claimants") say that this meeting was improperly "hijacked" by the Defendants. The Defendants say that the meeting was "abandoned" by the Claimants and properly conducted in their absence.
6. The Claimants have commenced these proceedings, and they are roundly defended by the Defendants. On this application the Claimants seek a wide range of interim remedies. These include interim declarations that their view of the constitution of the Company is correct and that the Defendants have acted wrongly. They also include interim injunctions requiring the Defendants to vacate offices, deliver up property, change back mandates, and "to set aside any transactions that the Defendants ... have entered into purportedly on behalf of the [Company]". The Defendants' position is that the Company, its assets and its affairs, are in proper and safe hands.

**The impact of the litigation and of the disagreements behind it**

7. It is a matter of the greatest regret and sadness to find this type of allegation and counter-allegation in relation to the affairs of a charity. The Company does not "belong" to either the Claimants or the Defendants, in the sense that it is theirs to "take over" (as the Claimants say the Defendants have done) or "get back" (as the Defendants say the Claimants are seeking to do).
8. Whether Claimant or Defendant, those who are members of the Management Committee, or who say they are members or that they should be members, need to recognise at all times that to be a member of the Management Committee of this charity is to be in a position of service and obligation. The interests that matter are the not the personal interests of the (first four) Claimants or the Defendants. Instead the interests that matter are the interests of the Company, and therefore the interests of the Centre. In turn those interests are those found in the objects of the Company, and are therefore the interests of the community and, in one sense, the public interest.
9. The Company, and therefore the Centre, faces difficulties at present, some occasioned by this litigation and all made more acute by it. These include:
  - (1) Uncertainty over who are entitled to be members of the Company (as distinct from members of the Management Committee)
  - (2) Uncertainty over who are entitled to be members of its Management Committee.
  - (3) Mistrust between those who are, or who say they are or that they should be, members of the Management Committee.
  - (4) An apparent deterioration in the trust and confidence between the Chairman (as at the commencement of the June 2006 AGM) and the employed Director of the Centre, (Mr Manuhir Au, the Chairman at the commencement of the June 2006 AGM, is the first-named Claimant in these proceedings; Sheikh Aliur Rahman, the Director of the Centre, is the second-named Defendant.)
  - (5) As a result of all the above, understandable anxiety on the part of important funders (notably the local authority); the Company's bankers, and builders contracted by the Company to undertake substantial works at the Centre. I understand, from what I have been told by Counsel that the works are nearly finished (although a recent Governance for London audit, not available to the Court, had criticised their non-completion), and that borrowed funds to pay for them are available subject to arrangements (including as to security) that are impeded by these proceedings.
  - (6) Further, the Company is hindered in ensuring that its statutory obligations concerning accounts and returns are complied with, and there are key deadlines expired or approaching in this connection.

10. All of this is causing the Company, and the Centre, harm, The harm accumulates as each day goes past without a resolution. The seriousness of the position was graphically illustrated by the presence in Court throughout the hearing of the application of representatives from the builders. They remain unpaid, not (as I understand it) because the Company does not have the required funds available to it, but because of the allegation and counter allegation over who is responsible for the governing the Company and managing its affairs, and who is entitled to choose those who will have that responsibility.

#### **The Articles of Association**

11. The Articles of Association in the form currently registered at Companies House date from 1984. They define the Company as "the Centre". They provide that the number of members of the Company is 40, although this number may be increased (Article 2.01). Those eligible for membership are described as follows (Article 3.04):  
*"(a) persons appointed in accordance with the provisions of these Articles as representatives of any of the User Groups;*  
*(b) such other persons as the committee shall from time to time resolve upon."*
12. "User Groups" are defined as "the groups represented by the subscribers [to the Articles] until such time as the members shall agree and record another definition". In the course of argument Counsel for all parties proceeded on the basis that a "User Group" was a group that was a tenant of the Centre. This may prove ultimately to be an over-restrictive approach; the Article do not use language confining "users" to those who have tenancy agreements.
13. In addition to those who were subscribers to the Company's Memorandum of Association, other persons may be admitted to membership in accordance with a procedure set out in the Articles (Article 3.01). The procedure requires an application to be delivered to the Secretary (Article 3.02). This application is then referred to a meeting of the Management Committee where there is a vote on the application (Article 3.03). A two-thirds majority is required to admit a member (Article 3.04). These procedures apply to organisations wishing to become "User Members" (Article 3.06).
14. User Groups might be unincorporated bodies or companies. If the User Group is a company, the Articles contemplate that the directors of that User Group may authorise by resolution a person to act as its representative at any meeting of the Company (Article 26~01). However that authorisation is not to be effective "unless and until a copy of the resolution [appointing the representative] shall have been served on the Secretary" of the Company (Article 26.01)
15. If the User Group is an unincorporated body, the Articles contemplate that the User Groups should be entitled to appoint up to two representatives (Article 3.04). These appointments are to be in accordance with the provisions of Article 26 (Article 3.04). That Article contemplates a resolution by the unincorporated body "appointing a representative or representatives to be eligible as a member of the [Company]" (Article 26.02). The resolution is not to be effective "unless and until a copy of [it] signed by two members of the governing body of the [unincorporated body] shall have been served on the Secretary [to the Company]" (Article 26.02).
16. The Articles further require that User Groups be confirmed as members at each annual general meeting of the Company (Article 3.05). If any User Group does not take up occupation of premises in the Centre or ceases its occupation, their withdrawal from membership is to be agreed and recorded at the next annual general meeting (Article 3.05).
17. Thus far I have attempted to summarise some of the provisions in the Articles dealing with membership of the Company, rather than membership of its Management Committee. However the Articles go on to provide that "the Committee shall be composed of representatives of User Groups plus individual members of the [Company]" (Article 27.03). It is easy to see why this should have led at least some to have held the view that a member of the Company was in practice the same as a member of the Management Committee. In fact this does not necessarily follow because there is provision in the Articles allowing the Company to fix a maximum number of members of the Management Committee (Article 27.01). And Article 27.03 goes on to provide that an outgoing Management Committee should propose to an AGM "the number or proportion of places for representatives of User Groups and for individual members, and this shall be discussed and agreed before the election of Committee members for the next year."
18. Membership of the Management Committee is not indefinite. Article 37.01 refers to the retirement from office of all the members of the Management Committee at each annual general meeting, although (Article 38.01) each is said to be eligible for "reelection". The officers of the Company are elected at the annual general meeting (Article 45.01) and, strikingly, "shall be representatives of User Groups" (Article 45.01).
19. It is the Claimants' case that a decision was made at an Extraordinary General Meeting of the Company on 29 August 2003 to amend the constitution of the Centre the Articles of Association of the Company. In particular the amendments were designed, according to the Claimants, to "prohibit[] Centre membership by its tenants". The Defendants dispute that such a decision was made, or that it was carried into effect, or that it was effective.
20. It appears to be a matter of record that any amendments have not been registered with the Companies Registrar. It also appears that the Articles in the form registered at Companies House have been supplied by the Company to third parties since 29 August 2003. Further, trustees reports for 2004 and 2005 refer to the Articles

being "in the process of being reviewed, prior to amendment". The 2004 report is signed by the second-named Claimant and the 2005 report by the first-named Claimant.

#### The June 2006 AGM

21. Three years after the Extraordinary General Meeting in 2003 the Company held the June 2006 AGM. The Claimants' description of what happened at that AGM includes the following (taken from the witness statement of the second-named Claimant):

*"... the Director [of the Centre, the second-named Defendant] together with Committee member Mizanur Choudhury [the fourth-named Defendant] effectively staged a 'coup' against the Committee [The] Director claimed that the tenants had become members of the Centre as a result of the Chairman [the first-named Claimant] signing their tenancy agreements. ... [T]he Chair requested non members to leave so that the ... elections ... could be dealt with without interruptions. Some of the participants, consisted of prospective tenants of the Centre, insisted that they had the right to take part in the election process ... The Chair explained that about three years ago the organisation went through changes in its constitution which abolished the clause in the previous constitution giving tenants the right to representation on the [Committee], due to a clear conflict of interest ... [The Defendants] were very active communicating, advising and giving directions to other tenants not to leave. ... Having realised that the meeting was going out of control, the Chair decided to adjourn the meeting until further notice. ... A number of individuals ... became verbally aggressive ... Had we not left the premises, violence might have followed ..."*

22. The Defendants prefer a description set out in a document that is put forward by the Defendants as the minutes of the meeting (and which is disputed by the Claimants). This document states, among other things:

*"... [The Chairman] particularly wanted to thank the Centre Director ... for all his efforts. ... [The fourth-named Defendant] ... pointed out as the board has stepped down for the election of the new management committee, his understanding was that the previous board (which he was a part of) was elected on an interim basis as there were no tenants due to the construction work. He wanted clarification from [the Chairman] on whether the newly signed up tenants will be able to take over as stated within the constitution. There was a lot of discussion from across the floor and [the Chairman and the second-named Claimant] disagreed with [the fourth-named Defendant] and said that they have changed the constitution. ... At this stage of the AGM it was agreed that a break would be taken 10 minutes before the election of the Management Committee. After the break [the Chairman] outlined that he did not feel that the tenants had a voting right. Representatives of the new tenants ... pointed out that they were invited to the AGM on the basis that they will be part of the newly formed board [A] number of people left the meeting, including [the first three Claimants] ... [The fourth-named Defendant] highlighted that as an outgoing board member he was happy to conduct the AGM. ... The following individual were nominated and elected [there followed a list of 14 individuals from 7 organisations]. ... [A]n outgoing board member highlighted that it was important that other independent member were co-opted on to the board so that there is no conflict of interest among tenants. It was agreed that gaps in skills will be established before any co-options were made."*

23. The Claimants say that the Chairman had jurisdiction to adjourn the meeting. Even assuming that he did (and that assumption would need to rest on the jurisdiction being implied, because Article 15.01 contemplates his having power to adjourn "with the consent of the meeting" or on the direction of the meeting) there is a dispute of fact as to whether he did in fact adjourn the meeting. The Claimants' argument that tenants had not complied with the requirements for admission to membership, similarly depends in part on the facts, and these are far from clear on the materials presently before the Court.
24. The allegations made include allegations that documents have been improperly altered, or are not accurate records, or were assented to only as a result of some subterfuge. To material degree both Claimants and Defendants found themselves on documents the authenticity or reliability of which is challenged by the other. Some of the documents I have been referred to are unsigned.
25. I asked in the course of the hearing for the original minute book to be brought over to the Court from the Centre. I was informed later in the hearing, by Counsel for the Defendants on instructions from the Director of the Centre, that this had not proved possible because the building works had meant that the Centre was generally locked and paperwork including minutes was in boxes. It is not satisfactory that the minute book of a Company should not be readily available.

#### The application

26. As I have said, the application seeks interim declarations that the Claimants view of the constitution of the Company is correct and that the Defendants have acted wrongly. Interim injunctions requiring the Defendants to vacate offices, deliver up property, change back mandates, and "to set aside any transactions that the Defendants ... have entered into purportedly on behalf of the [Company]" are also sought.
27. This interim relief was first sought by an application notice issued on 26 July 2006, that is one month after the June 2006 AGM, and 5 months ago. It came before Anthony Mann J on 3 August, but the Charity Commissioners had not been approached. It was stayed with liberty to restore. For various reasons, not all of which have been fully explained, neither party has restored it until now. There even appears to have been some initial confusion about the basis on which it was restored, Counsel for the Claimants having anticipated (in error, it transpired) that this was by agreement to be a final hearing "on written submissions" rather than an interim hearing.
28. I cannot and should not attempt to decide who is right and who is wrong on the underlying issues in the dispute. Almost all involve questions of fact. No issue of law or construction would be decisive. Decisions on who is right

and who is wrong, especially about what has happened, are matters for trial, if these proceedings must end up at trial.

29. At one point (by letter dated 16 August 2006) the solicitors for the Claimants wrote as follows:
- "... The Claimants are still trustees, directors and Committee members of the Centre, As you are well aware, they have fiduciary duties in relation to the expenditure of funds by or on behalf of the Davenant Centre. The Charity Commissioners support this view. ~."*
30. The reference to the Charity Commissioners "supporting a view" would obviously be right if confined to the proposition those who are members of the Management Committee owe fiduciary duties to the Company. But on the material I have seen it is not the case that the Charity Commissioners have expressed any view either way on the question whether the Claimants (or the Defendants) are members of the Management Committee, or any other view on the merits of the allegations and counter allegations made in this case.
31. Having seen correspondence written on behalf of the Commissioners it is quite clear to me that their position is simply, and rightly, that this matter has to be resolved, in the interests of the Company. It is to that end alone that they have granted, on a request made by the Claimants after these proceedings had commenced and following a point raised by Anthony Mann J at the hearing in early August, permission for their continuance,
32. Realistically, this is not a case in which an interim or holding position guided by considerations of "balance of convenience" or "status quo" could be satisfactory. In a sense there has been a holding position for the last 6 months, since the June 2006 AGM, and its working life has run out, or almost run out, including from the position of third parties.
33. And in present circumstances I have to ask what would be the quality of a status quo of the type urged by the Claimants. They say that those who began the June 2006 AGM as members should return now as members for the time being. But if that view of the "status quo" was imposed by the Court (rather than chosen by the parties) I cannot see it could work where the Director of the Centre (the second-named Defendant, and against who the Claimants make a number of allegations) retains an executive function. Yet if it is to be suggested that he should not retain an executive function, the version of the "status quo" suggested is shown to be a partial one at best.
34. Further, the objects for which the Company exists require that as quickly as possible all concerned look forward rather than backwards. Here too a trial, with its focus on the rights and wrongs about what has happened in the past, is far from what is really useful. If there needs to be a trial in this matter there will be. But if regard is had to what I have said earlier — that the interests that matter are the not the personal interests of the Claimants or the Defendants, but the interests of the Company, and therefore the interests of the Centre, the community and the public — then all concerned will strive to spare this Company a trial.
35. Having regard to these considerations, I raised with the parties in the course of argument on the application three matters, among others. First, the desirability of my ordering a meeting of the Company under section 371 of the Companies Act 1985. Second, the question of mediation. Third, the timing of a trial, if there has to be a trial.
36. On the question of my ordering a meeting I found a degree of receptiveness expressed by all parties, through Counsel. Views differed, inevitably, on the remit of the meeting, but there was common ground that it might at least enable some of the day-today business, including with third parties such as the builders, that has to be transacted very soon to be transacted or at least advanced. Encouragingly, all parties were able to agree who the chair could be if a meeting was ordered; and the person on which they were agreed was the first-named Claimant.
37. The question of mediation had been raised before by the Defendants. The solicitors for the Claimants responded by letter dated 16 August 2006 in these terms:
- "We are prepared to attend mediation in relation to this matter but only on the basis that the status quo ante prior to 9th June 2006 is restored. ... Mediation can only take place against a background whereby the Defendants immediately physically vacate the Davenant Centre and permit the Claimants to carry out their (respective) functions as their positions dictate. ..."*
38. This is an unfortunate response, because it sets as a precondition to mediation one of the very points that a mediation could resolve. The person who stands to benefit from mediation between the parties in this case is the Company. And it is the Company's interests that matter.
39. On the question of the timing of a trial, in the normal course and having regard to the pressure of ordinary business on the Court's resources a trial date of sufficient length would not be available until November 2007. It is no overstatement to say that this may be too long for the Company to survive the adverse and damaging effects of the current differences of opinion. I am informed by Counsel that their joint estimate, having consulted with the solicitors instructed them and their clients, is that the trial would not exceed 5 days in length; and that the parties could be ready for trial within one month.

#### **Outcome of the hearing of the application**

40. I have come to the conclusion that the proper course for me to take is the course I shall now outline. I will wish to discuss with Counsel the detailed workings of it, with a view to a detailed order being drawn up to include all necessary case management directions.

- (1) To decline to grant the interim declarations and injunctions sought by the Claimant. I make clear I do so without deciding their suitability as final orders after any trial, but simply on the basis that I am not prepared to grant them as interim orders.
  - (2) To require a report from the parties, by their solicitors, within the next 14 days stating whether (and if so what) arrangements have been made for an urgent mediation of this dispute, and if no arrangements have been made explaining why. I do not expect any party to set preconditions to a mediation.
  - (3) To direct a meeting of the Company to take place within the next 28 days, using my powers under section 371 of the Companies Act 1985. I make clear that this is a meeting of the Company, not of the Management Committee. This will be a meeting convened by the Court, and that fact is to be made clear at the commencement of the meeting. The meeting is to be open to all those who claim to be members of the Company, and a suitable notice to that effect is to be displayed at the Centre. It is to be chaired by the first-named Claimant. It is to be attended, at the Court's request, by one solicitor for the Claimants and one solicitor for the Defendants. It is also to be attended by an independent solicitor, whom I shall appoint having heard the proposals of the parties as to his or her identity, and who will be charged with preparing a report to the Court of the meeting. The costs of the independent solicitor will be borne equally by the parties, subject to any later order reallocating that cost between the parties. The business of the meeting will be confined to an agenda that the Court has approved. All those who claim to be members may vote on any item of business, but no item of business is to be treated as transacted unless the vote on it is unanimous.
  - (4) To make case management directions today to enable the matter to be ready for a "speedy" trial early in 2007. In order to avoid disruption to the Court's existing business, and having consulted with the Court's listing office, I will hear the trial, It has been confirmed to me by Counsel for the parties that there is no objection, by reason of my having heard this application, to my hearing the trial.
  - (5) To record, in the presence of the parties, that the costs of these proceedings remain wholly in my discretion. I will not hesitate to ensure that the ultimate liability for costs rests where it is fair that it should rest. All parties, and those who support one or more of the parties, must treat themselves as personally at risk as to costs. In no circumstances should there be any assumption, at all, that costs will be met by the Company.
41. By a letter dated 2 August 2006 the Charity Commissioners asked the solicitors to the Claimants whether they had alerted the Attorney General to these proceedings, saying he was entitled to be joined to them if he wishes to be. I am informed that the Attorney General has not been informed of the proceedings. I direct the Claimants' solicitors to inform his office forthwith, with a copy of their letter to be sent to the Charity Commissioners and to the solicitors to the Defendants.

#### **Final observations**

42. I wish to end with emphasis of the essential point with which I began. The Company is a charity. Its purpose is education, training, social welfare, and *"the provision of free legal advice and assistance to poor persons"*. Its ambition is that the Centre become a "Youth Centre of Excellence". The Company does not "belong" to either the Claimants or the Defendants, in the sense that it is theirs to "take over" (as the Claimants say the Defendants have done) or "get back" (as the Defendants say the Claimants are seeking to do). A member of the Management Committee is there to serve. Personal interests have no place: the interests that matter are the interests of the Company, and therefore the interests of the community and, in one sense, the public interest.
43. It is not too late for all parties, with the help of those advising them, to decide to resolve this matter rather than to continue to put the charity into a fight. More important than answers to questions about what the constitutional arrangements of the Company were or should have been, is the question of what the constitutional arrangements of the Company should be for the future. Especially as it prepares to open a new chapter in its life once the building works are completed.
44. If the core concern was the possibility of conflict of interest should tenants be members of the Company or of its Management Committee, that is the type of concern that can be addressed in a number of ways. An obvious example is by achieving a balance of membership, and governance, that includes independent membership, and membership of other stakeholders, alongside membership of tenants. And by appropriate rules and arrangements to ensure transparency and avoid, for example, a tenant with a financial interest in a particular decision of the Company having a say in that decision.

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