THE HIGH COURT

In the matter of Al Maktoum Foundation CLG and in the matter of Section 173 of the Companies Act 2014

Record No: H.COS 2025/169

BETWEEN

AL MAKTOUM FOUNDATION CLG

First Named Applicant

-and-

ABDEL BASSET ELSAYED

Second Named Applicant

-and-

THE COMPANIES REGISTRATION OFFICE

Respondent

-and-

AHMAD TAHLAK

HESHAM ABUDULLA AL QUASSIM

KHALIFA ALDABOOS

MOHAMED MUSABEH DHAHI

ZAHID JAMIL

Notice Parties

WRITTEN SUBMISSION ON BEHALF OF THE FIRST NAMED APPLICANT

I. INTRODUCTION

1. As at January 2024, the Board of Directors of the First Named Applicant (hereinafter referred to as "the Company") comprised of two directors, namely the Second Named Applicant, Dr. El-Sayed, and Mr. Alsayegh. It is significant to note that Mr. Alsayegh

simultaneously held a directorship position with the Mohamed Bin Rashid Al Maktoum Humanitarian and Charity Establishment (hereinafter referred to as "the Dubai-based Corporate Entity"), an association that bears relevance to the matters at issue in these proceedings.

2. A corporate crime has commenced when the Dubai-based Corporate Entity issued a written instruction to Mr. Alsayegh, directing him to appoint Mr. Al Quassim and Mr. Aldaboos as directors of the Company. A copy of this instruction letter, together with its English translation, is exhibited at paragraph 6 of Dr. El-Sayed's Affidavit, filed on 1 July 2025. Subsequently, in May 2024, the Dubai-based Corporate Entity also gave a verbal instruction to Mr. Alsayegh to appoint Mr. Tahlak, Mr. Dhahi, and Mr. Jamil as directors of the Company. This is detailed at Paragraphs 42–43 of Mr. Jamil's Affidavit, filed on 1 July 2025.

3. The Notice Parties have confirmed that Mr. Tahlak, Mr. Dhahi, and Mr. Jamil were registered as directors at the Companies Registration Office (CRO) in the absence of any resolution of the Board or the members of the Company authorising their appointment. This is set out at Paragraph 20 of Mr. Alsayegh's Affidavit, filed on 26 June 2025, and at Paragraph 43 of Mr. Jamil's Affidavit, filed on 1 July 2025, respectively.

4. At Paragraph 18 of his Affidavit, filed on 26 June 2025, Mr. Alsayegh produced a document purporting to record the minutes of a Board meeting which, in reality, never took place, or at the very least, was not properly convened. The document contains statements that are demonstrably false, including assertions that a Board meeting was held and that Dr. El-Sayed attended via Zoom teleconference. It is therefore submitted that this document should be properly be characterised as a forged document.

5. Thus, it is apparent that the appointment of the said five directors was unlawful.

6. On 28th October 2024, the unlawfully appointed directors convened a meeting and undertook actions that were both irresponsible and detrimental to the Company, measures which were unprecedented in the Company's 28-year history and ultimately resulted in the complete closure of the Company's premises.

7. Dr. El-Sayed decided to take legal action. On 12 May 2025, he applied to the Charities Regulator to initiate legal proceedings in the High Court. On the 15 May 2025, the Charities Regulator confirmed that there is no impediment for him to initiate proceedings. News of the impending legal action quickly circulated within the community. Subsequently, on 20 May 2025, Mr. Alsayegh signed a document purporting to remove Dr. El-Sayed from the Board, an action intended to obstruct the judicial process.

II. INVALIDITY OF REMOVAL

8. During the oral hearings before the Court, the Notice Parties repeatedly argued that Dr. El-Sayed was removed from the Board pursuant to article 5.4.2(K) of the Company's articles of association, which provides: "The office of director shall be vacated if the director is requested in writing by *all his co-Directors* to resign" (Emphasis added). They have argued that Mr. Alsayegh had the authority to remove Dr. El-Sayed on the

basis that he constituted "all co-Directors" within the meaning of that article. It is submitted, however, that this argument is unsustainable and ought to be rejected for the following reasons:

(a) **Equity Will Not Permit Use of Law as an Instrument of Fraud**

Even if, which is expressly denied and will be demonstrated below, Mr. Alsayegh's interpretation of the article 5.4.2(K) were correct, he would nonetheless be precluded from relying on it. Equity does not permit the law to be used as an instrument of fraud. Lord Westbury articulated this principle in *McCormick v. Grogan*, as cited in *Conroy v. Fitzpatrick* (High Court, unreported, Lavan J., 18 December 2003):

> "The Court of Equity has, from a very early period, decided that even an Act of Parliament shall not be used as an instrument of fraud; and if in the machinery of perpetrating a fraud an Act of Parliament intervenes, the Court of Equity, it is true, does not set aside the Act of Parliament, but it fastens on the individual who gets a title under that Act, and imposes upon him a personal obligation, because he applies the Act as an instrument for accomplishing a fraud."

The court's equitable jurisdiction in respect of this issue finds root in the legislative framework under section 227 of the Companies Act 2014 (as amended), which states:

> "(4) The relevant duties (other than those set out in section 228*(1)(b) and (h)*) are based on certain common law rules and equitable principles as they apply in relation to the directors of companies and shall have effect in place of those rules and principles as regards the duties owed to a company by a director.
>
> (5) The relevant duties (other than those set out in 228*(1)(b) and (h)*) shall be interpreted, and the provisions concerned of section 228 shall be applied, in the same way as common law rules or equitable principles; regard shall be had to the corresponding common law rules and equitable principles in interpreting those duties and applying those provisions." (Emphasis added)

It is respectfully submitted that Mr. Alsayegh's utilisation of the procedure provided under article 5.4.2(K) ought to have no force or effect, as his purpose in invoking this article was to facilitate fraud and corporate wrongdoing. By reference to Paragraph 21 of Dr. El-Sayed's Affidavit filed on the 1st July 2025, the corporate crime in this case is real. This conclusion is further substantiated by the fact that Mr. Alsayegh tendered his resignation approximately 12 minutes after requesting Dr. El-Sayed's resignation

(b) Statutory Illegality: Contravention of Section 128 of the Companies Act 2014

It is both unlawful and constitutes an offence to permit a company to operate without a duly appointed director. In this instance, Mr. Alsayegh sought to remove Dr. El-Sayed from his position as director and then proceeded to submit his own resignation approximately 12 minutes later. Section 128 of the Companies Act 2014 (as amended) provides as follows:

"(1) A company shall have at least one director.

(2) If default is made by a company in complying with *subsection (1)* for 28 consecutive days, the company and any officer of it who is in default shall be guilty of a category 3 offence."

The simultaneous removal of both Dr. El-Sayed and Mr. Alsayegh would leave the company without any lawful director, which is expressly prohibited by section 128 of the Companies Act 2014. In these circumstances, the removal of Dr. El-Sayed cannot be considered valid, as to hold otherwise is to permit the company to operate without a lawful director in place, which is repugnant to company law and corporate governance. Accordingly, it is submitted that the removal of Dr. El-Sayed cannot be lawful on this ground alone.

(c) **Breach of Fiduciary Duties**

While statute may confer discretion on company directors, such discretion is subject to directors' fiduciary duties, which include acting in good faith and in the company's best interests (see *Keating v. Shannon Foynes Port Company* [2022] IEHC 505). According to Barron J of the Supreme Court in *McGilligan*, the exercise of such discretion must not be wrongful.

The factual circumstances clearly demonstrate that Mr. Alsayegh acted on the instructions of the Dubai-based Corporate Entity, to the detriment and at the expense of the company. The fact that he proceeded with the unlawful appointments without obtaining Dr. El-Sayed's consent demonstrates a lack of good faith on his part. The scale and unprecedented nature of the resulting harm from these unlawful appointments further indicate that Mr. Alsayegh's actions were not in the best interests of the company.

It is submitted that the evidence demonstrates Mr. Alsayegh's central involvement in the transfer of the company's assets to the Dubai-based Corporate Entity. In furtherance of this improper scheme, Mr. Alsayegh executed an instrument purporting to remove Dr. El-Sayed from the board of directors. While the power under article 5.4.2(K) of the company's constitution may, in appropriate circumstances, be available to directors, it is submitted that such power cannot be validly exercised where it is used in breach of fiduciary duties.

(d) **Interference with Access to Justice**

It is submitted that, between the 12th and 15th May 2025, Dr. El-Sayed communicated with the Charities Regulator and expressly stated his intention to initiate proceedings against the unlawfully appointed directors. Notably, only five days after the Charities Regulator's letter, Mr. Alsayegh executed the instrument in question purporting to remove Dr. El-Sayed from the Board. It is submitted that, on the balance of probabilities, it can reasonably be inferred that Mr. Alsayegh's actions were intended to prevent Dr. El-Sayed from commencing such proceedings. It is submitted that the purported removal of Dr. El-Sayed by Mr. Alsayegh is

unlawful, as it constitutes an improper interference with the judicial process and with the access to justice.

(e) **Proper Construction of Article 5.4.2(K): Plurality Requirement**

Mr. Alsayegh cannot be regarded as constituting a plurality when he is, in fact, a single individual. The plain language of article 5.4.2(K) makes it clear that the provision is intended to apply only in situations where there are three or more directors. Any alternative construction would undermine the straightforward and natural interpretation of the article.

Article 1.2.1of the articles of association of the company provides "Words importing the singular number only shall include the plural number and vice versa". This general rule is called "singular-plural interchangeability rule" and it is identical to rule set out in section 18(a) of the Interpretation Act 2005. Section 4 of that Act provides that the rule does not apply where a contrary intention is evident from the Act or the context. It is submitted that same applies to the interpretation of the company's constitution. The article states "The office of director shall be vacated if the director is requested in writing by *all his co-Directors* to resign". This clearly suggests the following:

1. That the office of a single "director" shall be vacated if this single "director" is requested by plural "all his co-directors" to resign. This draws clear distinction between singular and plural in the same article. This constitutes an evidence of a contrary intention, therefore, the "singular-plural interchangeability rule" does not apply.

2. The article aims to establish a requirement for collective decision-making by multiple directors. This is a clear intent. Interpreting "all other co-directors" as referring to just one other director undermines the collective nature of the decision-making process intended by the article. It would also lead to an absurd, impractical and inconsistent meaning that is repugnant to the aim of the general rule.

3. The word "all" in "all other co-directors" implies totality or completeness of a group, which inherently suggests plurality. In other words, the article did not state "the other co-directors" but rather stated "all other co-directors", and the difference between the two is significant. Interpreting this phrase to mean a single director contradicts the natural meaning of "all" as encompassing multiple entities. The inclusion of "all" reinforces that the article contemplates multiple directors in its very nature.

4. The phrase "all other directors" is logically used in context where at least two directors is being distinguished from the "others". It would be otherwise be no use of the words "all" and "other" in the article. If the interpretation of Mr. Alsayegh is correct, it would mean there is no difference between "all other co-directors" and simply saying "co-directors" without including "all other".

The Supreme Court in *Minister for Justice v. Gotszlik* [2009] IESC 13 recognised that the rule might not apply "in particular circumstances" or "in an unusual context". In *System Launceston Property Finance DAC v. The Property Registration Authority* [2019] IEHC 157, the court decided the rule does not apply when its application would contradict the clear intent from it, or where ordinary, basic, and natural meaning of the words is plain and self-evident in a way that contradicts the rule, or where purposive interpretation requires different reading, or where literal application would lead to an absurd result.

(f) ***Contra Proferentem* Rule**

In the event that there is ambiguity in the meaning of article 5.4.2(K), which is denied for the foregoing reasons, then it is proper to remove such an ambiguity by resorting to the *Contra Proferentem* Rule. In these proceedings, Mr. Alsayegh, the Notice Parties, and Mason Hayes & Curran Solicitors LLP stand together in one side of the proceedings. Mr. Alsayegh and Mason Hayes & Curran Solicitors LLP were the persons responsible for drafting the company's constitution. They now seek to rely on article 5.4.2(K) to defend Mr. Alsayegh's removal of Dr. El-Sayed. In those circumstances, Dr. El-Sayed is entitled to invoke the *contra proferentem* rule, which provides that "where there is any doubt as to the construction of any stipulation in a contract, one ought to construe it strictly against the party in whose favour it has been made." (*Burton v. English* (1883) 12 QBD 218 at 220). Furthermore, in *ICDL GCC Foundation FZ-LLC v. European Computer Driving Licence Foundation Ltd [2012] 3 IR 327 at 377,* the Supreme Court held that the *contra proferentem* rule applied against the party which had drafted the agreement.

O'Donnell J, as he was then, stated that:

> "I also agree that the principle of interpretation, *contra proferentem*, may usefully be applied not just to exemption clauses but to a contract in general but normally only as a last resort in the case of ambiguity and not as a general approach. As has been observed, the purpose of the principle is to resolve ambiguity, not to create it."

See also *Hayes v. Kelleher & Ors* [2015] IEHC 509 at [70].

It is submitted that the rule in question applies to contractual interpretation, and that company constitutions have contractual effect, as is expressly provided for in section 31 of the Companies Act 2014 (as amended) . Should article 5.4.2(K) be found to be ambiguous, it is submitted that the *contra proferentem* rule should be applied, such that any ambiguity is construed against the Notice Parties. Accordingly, article 5.4.2(K) should be interpreted as applying only in circumstances where the company has three or more directors.

(g) **Invalidity Due to Unreasonableness**

In a company where two directors hold equal authority, the removal of one director by the other requires the provision of clear and adequate justification for such an action. It is submitted that it is not permissible to remove a director solely by issuing

a notice and without providing reasons. In *Re Murph's Restaurants Ltd* [1979] IEHC 1 , the High Court stated:

> "As to the matter of his removal from directorship I am satisfied from the evidence that the reasons advanced are neither good or sufficient and are wholly inadequate to justify that action"

And

> "Reverting now to the facts: there is only one answer to the question was Brian lawfully removed from the office of director of this company? Was this not a business in which all three engaged on the basis that all should participate in its direction and management? Was it an abuse of wrongfully or mistakenly arrogated power and a breach of the good faith which these three partners owed to each other to exclude him from all participation in the business of the company? To these questions there can be only an affirmative answer."

(h) **Legitimate Expectation in Quasi-Partnerships**

In a company with two directors of equal powers, as is the case here, the company effectively operates as a quasi-partnership private company, with decision-making authority shared equally between both directors. It is submitted that, in the absence of any preponderant factor, it is not possible for one director to unilaterally remove his equal in a two-director company. Allowing this would infringe upon natural justice, and in particular, the principle of legitimate expectation. As noted by Keane J in *McGilligan v. O'Grady* [1998] IESC 38, where it is evident that a member of a quasi-partnership has acted inconsistently with a fundamental expectation arising from the nature of the members' relationship, the court is inclined to protect such expectations by making an appropriate order.

9. On any or all of the foregoing grounds, it is submitted that the removal of Dr. El-Sayed was unlawful and without effect. Furthermore, immediately following the resignation of Mr. Alsayegh, Dr. El-Sayed became the sole lawful director of the company. Section 11 of the Companies Act 2014 (as amended) provides:

> "(1) References in this Act to the directors of a company shall, where the company has a sole director, be read as references to the director of the company.
>
> (2) References in this Act to the board of directors of a company shall, where the company has a sole director, be read as references to the director of the company"

It is submitted that, as of 26 May 2025, Dr. El-Sayed had the legal standing to institute proceedings on behalf of, and in the name of, the company.

III. LEGAL REPRESENTATION

10. In view of the grave breaches of fiduciary duty on the part of Mr. Alsayegh, the harm caused to the company as a result of that breach, as detailed at Paragraph 19 of Dr. El-

Sayed's Affidavit filed on the 1st July 2025, and upon becoming certain of the existence of a corporate crime, Dr. El-Sayed considered it necessary and in the best interests of the company to take two actions: first, the appointment of an In-House Counsel to represent the company; and second, the adoption of Board Resolution 1/2025, which approved the appointment of the In-House Counsel.

11. The Notice Parties argue that Dr. El-Sayed did not have the authority to undertake these actions unilaterally at the material time. It is submitted that this argument is unsustainable for the following reasons:

    (a) The objection raised by the Notice Parties relates solely to Dr. El-Sayed's capacity to authorise proceedings in the name of the company. The present proceedings were initiated by an application for leave to the court on 23rd May 2025 to be represented by the company's In-House Counsel, at which time Dr. El-Sayed was the sole director and acting on behalf of the company. It is therefore submitted that the objection lacks merit and should be dismissed.

    (b) In the alternative, it is important to emphasise that Dr. El-Sayed was placed in a most unenviable position. As a director, his fiduciary duty was owed solely to the company. He discovered that the company had been effectively taken over by external parties from a foreign jurisdiction, an infiltration which occurred as a direct consequence of his co-director's breach of fiduciary duty. In such highly exceptional circumstances, it is acknowledged that convening a Board meeting was not feasible. Dr. El-Sayed therefore acted pursuant to the exceptional powers conferred upon him by the Companies Act , which arise only where a director acts in utmost good faith and in the best interests of the company. It is respectfully submitted that Section 40(1) of the Companies Act 2014 (as amended) addresses the question of whether a transaction binds a company, or fails to do so, due to an alleged lack of authority on the part of the person who exercised the company's powers. This section establishes a general rule that the Board of a company, or any registered person, shall be deemed to have authority to exercise any power of the company and to authorise others to do so. However, Section 40(4)(a) provides a significant qualification to this general rule, specifically that the general rule "does not effect" transactions made by directors to bind the company when such transactions were undertaken in fulfilment of their fiduciary duties and/or to avoid liability arising from real or comprehended breach of fiduciary duties on their part in respect of the company. While Section 40(4)(a) is frequently invoked in other contexts, it is submitted that the text of the Act in that section permits the interpretation advanced herein. In this case, the actions taken by Dr. El-Sayed as a director were both entirely necessary and fully justified in the circumstances.

    (c) Board Resolution 1/2025 was subsequently ratified by two further resolutions - one by the Board and one by the members. If it is argued that Board Resolution 1/2025 is a nullity and cannot be ratified by a Board resolution, it is submitted that the members nonetheless have ratified both Board Resolution 1/2025 and Dr. El-Sayed's transaction on behalf of the company for the employment of In-House Counsel. Members have the power to ratify Board resolutions and directors' actions retrospectively, provided such ratification falls within the company's authority. Accordingly, it is submitted that the effect of ratification by the members is to validate Dr. El-Sayed's actions, even if those actions were otherwise outside his

powers as a director. In *Re Burke, Clancy and Co. Ltd* (High Court, unreported, Kenny J, 23 May 1974) , Kenny J referred in unqualified terms to the right of a company in general meeting to ratify acts that are *intra vires* the company but outside the powers of the directors.

IV. NO RIGHT OF OBJECTION

12. It is of critical importance to bring to the attention of the Court that the Notice Parties were unlawfully appointed. This is a matter of both fact and law. As a result, they lack any standing within the company and have no legal status or existence in relation to the company; in law, they are regarded as complete outsiders. It is respectfully submitted that, as this has been unequivocally established, the Notice Parties are not entitled to contest, challenge, or raise objections concerning the internal management of the company, including matters such as Board resolutions or the employment of an In-House Counsel. It is further submitted that the Notice Parties should be restrained from raising such arguments unless and until they can establish that their appointments were lawful, which is, in fact, the very reason for their inclusion in these proceedings as Notice Parties.

13. As regards Notice Parties' objection to Board Resolution 1/2025, the same reasoning applies, however, this time with statutory footing. It is submitted that, even if the Notice Parties were directors of the company, by virtue of section 160(5) of the Companies Act 2014 , they do not have the standing to challenge the validity of Board Resolution 1/2025. Section 160(5) provides:

> "Nothing in *subsection (4)* or any other provision of this Act enables a person, other than *a director of the company concerned*, to object to the notice given for any meeting of the directors" (Emphasis added)

V. ILLEGALITY OF APPOINTMENTS

14. It is submitted that directors may only be appointed in one of two ways: either by a resolution of the Board or by a resolution of the members. These are the methods expressly provided for in the Companies Act and the company's constitution. By their own admission, Mr. Tahlak, Mr. Dhahi, and Mr. Jamil have no resolution whatsoever for their appointment. This was set out at Paragraph 20 of Mr. Alsayegh's Affidavit, filed on 26 June 2025, and at Paragraph 43 of Mr. Jamil's Affidavit, filed on 1 July 2025, respectively.

15. With respect to Mr. Al Quassim and Mr. Aldaboos, Mr. Alsayegh produced a forged document purporting to be a Board resolution authorising their appointment. As set out in Dr. El-Sayed's sworn averments at Paragraphs 9, 10, and 15 of the First Grounding Affidavit filed on 26 May 2025, the Board meeting which the purported resolution claims to record did not, in fact, take place, and the information contained therein, including the assertion that Dr. El-Sayed was present, is false. Furthermore, the Notice Parties have failed to adduce any further evidence to substantiate that the alleged Board meeting took place or was lawfully convened. In particular, they have not produced a copy of any notice of the meeting, an agenda, or any form of communication with Dr. El-Sayed, such as evidence of the transmission of a Zoom link. Dr. El-Sayed has relied on a letter, which he was required to sign by Mason Hayes and Curran Solicitors LLP

to maintain the company's Bank account open, as evidence that no such Board meeting was in existence as of 1 July 2025, otherwise there were no need to induce him to sign that letter. The company has also brought a motion seeking an order to summon the CEO to give evidence before the Court regarding the authenticity of the document produced by Mr. Alsayegh. Taken together, this conflicting evidence demonstrates, at least on the balance of probabilities, that the purported Board meeting did not occur, and consequently, any resolution purportedly arising from that meeting is invalid.

16. The company submits that the document is a forgery, and in view of *Morris v. Kanssen* [1946] AC 459 an appointment of a director on foot of a forgery is no appointment at all. Accordingly, it is submitted that the appointments of Mr. Al Quassim and Mr. Aldaboos as directors of the company should be declared invalid.

17. In the alternative, every director is entitled to participate in the management of the company and cannot be arbitrarily excluded from the decision-making process. Article 160(4) of the Companies Act and article 7.1.4 of the company's articles of association state "All directors shall be entitled to reasonable notice of any meeting of the directors". In *Colthurst & Tenips v. Colthurst* [2000] IEHC 14 and *O'Sullivan v. Conroy Gold and Natural Resources Plc* [2017] IEHC 543, the court held that any board or members' meeting convened without adequate notice to all directors or members entitled to such notice is invalid. In *Re Aston Colour Print Limited* [2005] 3 IR 609, the court held that where a director or member does not have an effective opportunity to participate in a meeting and the decision-making process, such a meeting will be deemed to have been conducted improperly and, consequently, is invalid. Accordingly, it is submitted that the purported Board meeting on the 20th January 2024 is invalid.

18. Based on the foregoing, the appointment of the five Notice Parties was unlawful.

19. The Notice Parties seek to invoke the doctrine of acquiescence to justify the lawfulness of their appointments. It is respectfully submitted, firstly, that acquiescence is not a recognised method for the appointment of directors. Secondly, there was no acquiescence in this instance, as Dr. El-Sayed was deceived and remained unaware of the deception throughout the relevant period. It should be emphasised that the manner in which this corporate wrongdoing was perpetrated was highly sophisticated and only came to light at the last possible moment; however, it was not too late for Dr. El-Sayed to take action to prevent its completion.

VI. NOTICE PARTIES' MEETINGS

20. The purported Board meeting held by the Notice Parties on 28th October 2024 is invalid, as Dr. El-Sayed was effectively prevented from participating. He was provided with an incorrect time for the meeting and, upon joining one hour late, was arbitrarily removed from the CEO's office, thereby precluding his effective involvement. Reliance is placed on *Re Aston Colour Print Limited* in support of this submission.

21. With respect to the purported Board meeting of the 20th May 2025, it is submitted that this meeting is invalid due to the unreasonably short notice given (i.e., 20 hours' notice). Reference is made in this regard to the authorities in *Colthurst* and *O'Sullivan*.

22. The Notice Parties claim that two separate Board meetings were held on the 20th May 2025, with only about a one-minute interval between them. It appears that this assertion is made in an attempt to preserve the validity of the second meeting. It is submitted that this is an artificial distinction that cannot be accepted. In substance, both meetings were intended to constitute a single meeting, as they were convened under the same notice and addressed the same agenda or the same objective. It is submitted that the purported the meeting was invalid in its entirety. Consequently, the invalidity of the said meeting renders the purported appointment of Mr. Ahmed Shaheen by the Notice Parties and Mr. Alsayegh as a director equally invalid.

23. It is also noteworthy that the meeting in question was convened only after Dr. El-Sayed had sought and obtained the consent of the Charities Regulator to initiate proceedings. It is submitted that the primary purpose of the meeting was to obstruct and interfere with the judicial process, which provides a further ground for its invalidity.

VII. INJUNCTION APPLICATION

24. The present proceedings were commenced by way of an Originating Notice of Motion pursuant to Order 75 of the Rules of the Superior Courts 1986 (as amended) . This procedure is designed to facilitate the expeditious determination of matters. Pursuant to Order 75, this procedure is specifically prescribed for proceedings seeking relief under the Companies Act 2014 (as amended) that do not relate to winding up. The principal reliefs sought by the company are: (i) the removal of unlawfully appointed members from the register of the Companies Registration Office (CRO) pursuant to section 173 of the Companies Act 2014; (ii) the removal of unlawfully appointed directors from the CRO register; and (iii) an injunction restraining those individuals from holding themselves out as members or directors of the company in the future. While the remedy of removal of members is expressly provided for in section 173 of the Act , there is no equivalent statutory provision for the removal of directors. Such relief must therefore be sought under the Court's inherent original jurisdiction. It is for this reason that the second and third reliefs have been included in the same motion, as they arise from the same facts and are inherently linked. Although the Companies Act 2014 does not expressly provide for the removal of unlawfully appointed directors, the substantive issues must nonetheless be determined by reference to the Act. It is submitted that, the close nature of the reliefs being sought and their suitability for summary disposal, the Court has power to entertain the motion in its present form under both the Companies Act 2014 (as amended) and its full original jurisdiction. It is in this context that the interlocutory reliefs can be entertained because the equitable jurisdiction would in that case arise from the court's full original powers under the Constitution.

25. Subsequently, the Applicant filed a Notice of Motion seeking an interlocutory injunction to secure the reopening of the company's premises, to permit the CEO to resume his duties, and to restrain all directors from interfering with the assets of the company. The Notice Parties argue that the Injunction Application is impermissible in company law proceedings, unless provided under the Act. However, the High Court's "full original jurisdiction" derives from the Constitution, and the Act cannot displace or limit that jurisdiction. The Companies Act 2014 complements the High Court's power which extends to the granting of interlocutory injunctions as long as the court has jurisdiction over the substantive matter. Although statutory procedures should ordinarily be pursued first, the High Court's supervisory jurisdiction remains available

at all times. Keane J, delivering the judgment of the Supreme Court in *McGilligan v. O'Grady* [1998] IESC 38, stated as follows:

> "*I am bound to say, with all respect, that I do not understand why it should be thought that, because the relief sought in the interlocutory proceedings is not the same as the relief which will ultimately be sought in the s.205 proceedings, an interlocutory injunction should not be granted on that ground alone*. If it is desirable, in accordance with the principles laid down in the *American Cynamid Company* and *Campus Oil* cases, to preserve the plaintiff's rights pending the hearing of the s.205 proceedings and the balance of convenience does not point to a different conclusion, I see no reason why interlocutory relief sho whiuld not be granted. To cite but one example, the relief granted in many Mareva cases is very often not the relief which is sought in the substantive proceedings. I am satisfied that, to the extent that *Bentley-Stevens .v. Jones* and *Feighery .v. Feighery & Ors* suggest a different view of the law, they should not be followed." [Emphasis added]

26. In the same judgment, Barron J concurred with the judgment delivered by Keane J and further stated:

> "The essence of the instant case is that no absolute reliance can be placed upon a statutory right given to the general meeting of a company when the exercise of that right is alleged to be wrongful; in this case a breach of the provisions of s. 205 of the Companies Act, 1963. In all such cases, determination of the issue as to the granting of interlocutory relief must be dependent upon the general rules applicable. Here they favour the granting of the relief allowed." [Emphasis added]

27. Order 50, Rule 6 of the Rules of Superior Courts 1986 (as amended) provide that the court at all times retains the jurisdiction to grant an interlocutory injunction "in all cases in which it appears to the Court to be just or convenient so to do".

28. However, the Court of Appeal in *Sheehan v. Breccia* [2019] IECA 234 seems to take a different view, and in doing so, it interpreted the Supreme Court's decision in *McGilligan v. O'Grady* as follows:

> "35. Returning to *McGilligan* for a moment. *I would not agree that McGilligan is authority for what is considered by the trial judge to be the very broad discretion in any case to do what is 'just or convenient'.* The first thing to note about *McGilligan* is that it was a case brought by an oppressed minority shareholder under s. 205 of the Companies Act, 1963. That is an important distinction from the present case given the nature of the discretion conferred upon the courts by the Oireachtas in applications under that section …
>
> 36. It stands to reason that given the breadth of the discretion conferred by that section that the court might grant an interlocutory injunction to maintain the *status quo* in relation to the affairs of the company until such time as it has heard the substantive case, since the court's jurisdiction under the section includes making such order as it thinks fit 'with a view to bringing to an end the matters complained of'. *Without such an interlocutory injunction being put in*

place, the court would potentially be restricted by the time the substantive hearing took place in what order it could make in order to bring the dispute within the company to an end. That is a special jurisdiction created by statute, and cannot assist the respondent's argument made in reliance upon the judgement in McGilligan. The same reasoning applies in relation to the court's jurisdiction in Mareva - type applications. In these types of applications, it will not always be the case that following the substantive and injunction in the same or similar terms to the interlocutory injunction aimed at the preservation of the status quo will be granted even where the plaintiff is successful in the substantive claim" [Emphasis added]

29. While *Sheehan* departs from the plain meaning of the principle established in *McGilligan* , it is submitted that it remains the case that *McGilligan* is a higher authority and appears more consistent with the constitutional order. Accordingly, it is submitted that the High Court does have the power to grant interlocutory orders in company law proceedings.

30. Furthermore, it is respectfully submitted that the subject matter of the injunction application does not pertain to a Board resolution, an executive decision, or a corporate governance issue of the type typically arising in company law proceedings. Rather, the application concerns the vindication of the company's fundamental rights, including the right to keep its premises open, to allow its employees to carry out their duties, and to safeguard its assets. Accordingly, the application properly falls within the Court's equitable jurisdiction.

31. To put the matter clearly, the closure of the company's premises -which serves a public benefit - was effected without any legal basis, as there is no evidence of a decision by the CEO or the Board authorising such closure. Instead, the closure was implemented solely on the basis of verbal instructions issued by Mr. Jamil. At paragraph 89 of his Affidavit sworn on 1 July 2025, Mr. Jamil refers to a decision having been made, but fails to specify who made the decision or to provide any documentary evidence of it. It is apparent that neither Mr. Jamil nor the other Notice Parties are prepared to accept responsibility for the closure, yet they continue to oppose the reopening of the premises.

32. In these circumstances, the existence of a hidden decision-maker is evident, and the situation clearly requires the intervention of the Court under its full general jurisdiction.

VIII. *LOCUS STANDI*

33. While it is generally accepted that the issue of standing is addressed prior to the substantive issue, it is submitted that, in the present case, the question of standing is deeply intertwined with the main issue before the Court. The two matters are enmeshed with each other that it would be inappropriate to determine standing in isolation from the main issue, namely, the lawfulness of the current directors' appointments. It is submitted that the source of standing must take precedence over the question of standing itself. To determine standing solely by reference to the names recorded on the Companies Registration Office, when the very purpose of these proceedings is to challenge the lawfulness of those entries, would amount to circular reasoning, which is both irrational and unreasonable.

34. In *Ryanair DAC v. an Taoiseach* [2020] IEHC 461 at [6] the court deferred the issue of standing to the determination of main issue when the preliminary objections such as standing were deeply intertwined with the substantive issue. The court was of the view that:

> "… the preliminary objections are so enmeshed with the substantive merits that it would be artificial to attempt to separate them out. Put otherwise, the case could not have been disposed of by reference to the preliminary objections alone, and thus a discussion of the underlying merits is required in any event." [Emphasis added]

35. In the alternative, if the court was of the view that this is not a case which requires the main issue to be prioritised, then in view of the authorities in *Lancefort Ltd v. an Bord Pleanala, Ireland and Attorney General (No. 2)* [1998] IESC 14 and *Hosford v. Ireland* [2021] IEHC 133 it is submitted that the question of standing should be addressed together with the main issue, as it would not be appropriate to decide the question of standing in isolation from the main issue. In *Lancefort,* it was held:

> "Two questions arise, however, in determining whether a person has a 'sufficient interest in the matter to which the application relates' which were the subject of discussion in this case. The first is as to whether the issue of locus standi should be determined as a threshold issue on the application for leave to issue the judicial review proceedings or whether, assuming leave to be granted, it should be determined on the hearing of the substantive application for relief. *The second is as to the extent to which the court, in determining the issue of standing, should consider the merits of the case the applicant seeks to make*.
>
> In *Inland Revenue Commissioners v. National Federation of Self Employed and Small Businesses Limited* [1981] 2 All ER 93 the House of Lords took the view that, save in simple cases, the question of *locus standi* should not be determined until the substantive application is heard, since the question should not be considered in the abstract, but rather in a particular legal and factual context." [Emphasis added]

36. In *Hosford,* the court held:

> "51. As counsel for the respondents correctly submits, the question of whether an individual has locus standi or a sufficient interest to pursue a legal challenge cannot be determined in the abstract. This would be the antitheses of the approach set out in the established case law since Cahill v. Sutton [1980] I.R. 269, and most recently affirmed by the Supreme Court in Friends of the Irish Environment v. Government of Ireland [2020] IESC 49; [2020] 2 I.L.R.M. 233." [Emphasis added]

37. It is respectfully submitted that, in the present case, it is necessary to first identify the lawfully constituted Board before addressing the issue of standing. A company may only be represented by a Board whose authority derives from a valid appointment. Only a lawfully appointed Board has the power to authorise the initiation of proceedings on behalf of the company. The authority for legal representation flows from the lawful Board, and the Board's authority, in turn, is derived from a valid appointment in

accordance with the Companies Act 2014 (as amended) . The authority of a Board cannot be established solely by reference to the Companies Registration Office, as such registration is merely presumptive and not conclusive of lawful appointment. It is on this basis that it is submitted the question of the lawfulness of appointment ought to be determined as a preliminary issue.

IX. CONCLUSION

38. As demonstrated above, the Notice Parties seek to question Dr. El-Sayed's standing and the legality of his actions as a director, despite the fact that they themselves have no standing as they were unlawfully appointed as directors to the company and the purpose of these proceedings is to remove their names from the register of the Companies Registration Office.

39. It has been submitted that a corporate crime is ongoing, and the Notice Parties are aliens to the company, as they have no legal existence or status within the company. It has also been shown that Dr. El-Sayed was not lawfully removed from his position and following the resignation of Mr. Alsayegh on 20th May 2025 he became the sole director of the company. Accordingly, the Notice Parties are not entitled to object to or question Dr. El-Sayed's status as a lawful director of the company, or his standing to bring proceedings on the company's behalf against them, unless and until they can establish that they are, in fact, lawfully appointed directors and thus entitled to remain on the register of directors maintained by the Companies Registration Office. Entertaining their objections would serve only to waste the Court's time and distract from the central issue and the very purpose for which they were joined as Notice Parties - namely, to afford them the opportunity to rebut the claim that their appointments were unlawful. In their defence, the Notice Parties have conceded that three of their number were not lawfully appointed, as there is no company resolution authorising their appointment, while the remaining two rely on a forged Board resolution. This summarises the entirety of their defence.

40. It is respectfully submitted that the principal issue in these proceedings is the lawfulness of the appointment of the Notice Parties. Should the Court exercise its discretion to address this issue as a matter of priority, it will serve to clarify all other matters and facilitate the resolution of both the question of standing and the Injunction Application. Accordingly, it is submitted that the Court now has ample grounds to grant the reliefs sought by the company.

Joseph Sallabi, BL
11 July 2025