



Neutral Citation Number: [2014] EWHC 2315 (Ch)

Case No: HC14D02543

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

**14th July 2014**

Royal Courts of Justice  
Strand, London, WC2A 2LL

**Before :**

**CATHERINE NEWMAN QC**

**Between :**

PEAK HOTELS AND RESORTS LIMITED

**Claimant/  
Applicant**

**- and -**

(1) TAREK INVESTMENTS LIMITED

**Defendants/  
Respondents**

(2) PEAK HOTELS AND RESORTS GROUP  
LIMITED

(3) SHERWAY GROUP LIMITED

**John Brisby QC and Alexander Cook** (instructed by **Candey LLP**) for the  
**Claimant/Applicant**

**Kenneth MacLean QC and David Caplan** (instructed by **Sidley Austin LLP**) for the **First  
Defendant/Respondent**

**Philippa Charles** (instructed by **Stewarts Law LLP**) for the **Second Defendant/Respondent**

**Michael Brindle QC and Stephen Brown** (instructed by **Maynard McLaren, Sherway Group  
Limited**) for the **Third Defendant/Respondent**

Hearing dates: 1<sup>st</sup> July 2014

**Approved Judgment**

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

.....  
MISS CATHERINE NEWMAN QC

**CATHERINE NEWMAN QC:**

1. On Tuesday 1<sup>st</sup> July 2014 the Applicant ('Peak') made an application for an injunction without notice in the terms of its Application Notice dated 25<sup>th</sup> June 2014. The Respondents were represented at the application hearing and the First Respondent ('Tarek') managed to prepare a skeleton argument in time for the morning of the hearing. All parties attended and were heard, albeit on the very clear understanding that this was not the effective hearing of a properly constituted inter partes application. The hearing was estimated to take half a day and took slightly longer. The full inter partes hearing is likely to take 2 days, I am told, and it is hoped that it can be heard in September 2014.
2. The evening before the hearing, the morning before the hearing and the short adjournment were well used by all parties to narrow issues and prepare developing drafts of what was to become a very largely agreed order to hold the ring until the effective inter partes hearing can take place.
3. Agreement was not reached on three orders sought by Mr Brisby in terms that the Second Defendant/Respondent ('the JVC'), (whether by itself or by any officer servant or agent of the JVC or otherwise howsoever) be restrained from:-
  - i) Taking any steps to remove and/or exclude Mr Adriaan Zecha ('Mr Zecha') from his position as CEO of the JVC until 31<sup>st</sup> July 2014 (or such time as he is replaced by the Board of Directors if later); and also (ii) the position of CEO of Aman Resorts Management BV ('AMBV') including interfering with his functions as such and excluding Mr Zecha from his residence in Singapore namely 13-14 Adam Park Road, Singapore 289932, and
  - ii) Making any internal and/or public announcements to the effect that Mr Zecha has resigned and/or been removed from his position as CEO of the JVC (or alternatively as Chairman of the Resorts Business or CEO of AMBV) and/or to the effect that Mr Vladislav Doronin ('Mr Doronin') has been appointed as CEO of the JVC, and
  - iii) Holding out Mr Doronin as the CEO of the JVC.
4. Mr Zecha is the founder of the Aman Resorts business and responsible for the creation of its well-known concept some 27 years ago. Peak and Tarek are the sole shareholders in the JVC. By the afternoon of the hearing Tarek had offered, and Peak had agreed to accept, an undertaking from Tarek that the JVC would not be caused to seek to exclude Mr Zecha, who is 81 years old, from his residence in Singapore (at the address stated above) and that part of the disputed business of the day then fell away. The order sought referred to at paragraph 3iii above was added to Mr Brisby's list in

the afternoon following a discussion led by me of the potential practical problems which could arise were two men to be held out as the CEO of the JVC.

## **Facts**

5. I shall now give a brief account of the facts to which my attention was drawn by my prescribed pre-reading, the skeletons and the oral submissions together with my later reading of all of the exhibits and further correspondence from the parties following the hearing and which struck me as being particularly relevant to the decision which I have to make.
6. Mr Zecha is the founder of the well-known super-luxury hotel concept the Aman hotels. He is a leading visionary in the luxury hotel industry. Aman Resorts is a collection of 26 such hotels in different countries of the world. On 31<sup>st</sup> January 2014 Peak and Tarek entered into a Shareholders' Agreement (the 'SHA') in writing to which a new company, the JVC, was also a party. All three companies are registered in the BVI but by Clause 42 the SHA was made subject to English law and the exclusive jurisdiction of the English courts. The underlying rationale for entry into the SHA was the acquisition of the collection of hotels and resorts and their business by the JVC. The members of the JVC were companies in which investors interested in acquiring the collection of hotels and resorts were concerned. Peak is the vehicle of Mr Omar Sharif Amanat, an entrepreneur and venture capitalist. Tarek is the vehicle of Mr Doronin, a Russian businessman whose primary business interest is said to be real estate. Neither Mr Brisby nor Mr McLean claimed that their investor clients had any personal experience in the hotel industry. It appears to be common ground that Mr Zecha does have that experience.
7. Peak owns 35.21% of the issued share capital of the JVC and Tarek owns 64.78%. The shareholdings are divided into A & B shares with each group of shareholders having its own representation on the Board. Peak is the A shareholder and Tarek the B shareholder. By Clause 3.3 (a)(iii) of the SHA, Mr Amanat and his business associate Mr Nader Tavakoli were to be the A directors following completion and Mr Doronin and his business associate Mr Alan Djanogly were to be the B directors. Mr Amanat was to be Chairman of the Board. There was a subsequent agreement to introduce the Third Defendant/Respondent ('Sherway') as an indirect investor. On 9<sup>th</sup> April 2014 Mr Amanat and Mr Tavakoli were consensually replaced as A directors by Carpentaria Management Services Limited and Mr Johan Eliasch, the Chairman of Head NV, a well-known manufacturer of sports equipment, and the investor who owned and controlled Sherway, but, not least because nobody submitted that this had any effect on the rights and obligations of the SHA, I do not consider it necessary to recite the details of the Sherway arrangements.
8. As might be expected, the SHA included agreement about the frequency and conduct of meetings of the JVC Board and the giving of notice of matters to be included on the agenda for Board meetings. Clause 6.2(e) provided that matters not on the agenda could not be raised at Board meetings unless an A Director and a B Director agreed in writing.
9. Mr Zecha does not appear to have been appointed to the JVC Board as far as I am aware. However by Clause 6.6 of the SHA, Peak and Tarek agreed that '*for the purpose of better furthering the Business and without limiting the provisions of this*

*Clause 6.6, the day to day activities, policies and operations of the JVC shall be carried out by a Chief Executive Officer ('CEO'). The appointment and removal of the CEO will be made by the Board and is a Board Reserved Matter under Schedule 2 Part 1(b). Notwithstanding the foregoing, the initial CEO of the [JVC] for the first six months following the Completion Date will be Adriaan Zecha and thereafter Adriaan Zecha will be the Chairman of the Resorts Business or CEO of AMBV, as determined by the Board following discussions with Adriaan Zecha'.*

- i) The 'Resorts Business' is defined as *'hotel and resort ownership, operation and management including (without limitation) the ownership and leasing of the Aman brand (including licensing in connection with the properties developed by the Development Business), but expressly excludes the Development Business'*.
  - ii) According to Schedule 1 of the SHA and at the date of that agreement, AMBV is a company registered in the Kingdom of the Netherlands. Its Directors are Mr Gregory Sirois, Palitha de Alwis and Trust International (T.I.M.) Management BV. The same details are found in the Shareholders' Agreement relating to PHRL Holdings Limited dated 2<sup>nd</sup> April 2014.
10. Schedule 2 of the SHA provides that *'entering into agreements or arrangements with Adriaan Zecha'* is a Board reserved matter under Part 1 (a) paragraph 8 and *'Subject to Clause 7, appointing or removing or changing the terms of employment of any...chief executive officer....of the JVC'* is a Board reserved matter under Part 1(a) paragraph 12. Part 1 (b) sets out further Board reserved matters which include the appointment or removal of Mr Zecha (see paragraph 1(b) 4 and Clause 14 of the SHA disapplying the Deadlock resolution mechanism to the removal of Mr Zecha).
  11. Clause 7.1 (a) of the SHA provides for a particular circumstance in which Mr Zecha can be removed. At the hearing of the application it was not suggested that this provision had been triggered. I need say no more about it.
  12. Clause 9.1 of the draft Memorandum and Articles of Association of the JVC, being the form which the prospective members agreed they would take and which are attached to the SHA as Appendix 1, provides inter alia that the directors shall manage the business and affairs of the company in accordance with the SHA.
  13. By late April relations between Mr Amanat and Mr Doronin were less good than previously. On 20<sup>th</sup> April 2014 Mr Robert Ivanhoe, a lawyer in the firm of Greenberg Traurig of New York City, purporting to act for the JVC as its interim general counsel (I say 'purporting' because the appointment and the propriety of accepting it are both in contest), circulated what he described as a 'Revised Agenda' for a Board meeting of the JVC due to be held on 22<sup>nd</sup> April. This agenda included an item *'CEO discussion and search'*. At a dinner on 21<sup>st</sup> April, the evidence showed, Mr Zecha stated that if the two sides could not settle their differences he might resign. At the oral hearing the parties did not elaborate on the nature or those differences, and I assume that they do not matter for the purposes of what I have to decide. En route to a Board meeting of the JVC the next day, 22<sup>nd</sup> April, he added that he would expect a compensation package for himself and his own long term staff if he did resign. It is common ground that no attempt was made to remove Mr Zecha as CEO of the JVC at that meeting, which took over 10 hours. Indeed, his removal was not on the agenda

for the meeting, as it would have had to have been had any such attempt been desired to be made. Mr Zecha is not shown on the first draft of the minutes as having been present at the board meeting (as an observer). Instead, it was suggested by those draft minutes that it was reported to the meeting by an unidentified person that Mr Zecha had announced his resignation as CEO of the JVC and '*all other posts currently held by him*'. Mr Doronin was then said to be appointed as '*interim CEO*' subject to the confirmatory vote of Mr Eliasch. The appointment of Mr Doronin as CEO, interim or otherwise, would likewise have had to be on the agenda for the Board meeting, and was not.

14. A subsequent version of this document, entitled 'Resolutions of a meeting of the board of directors of' the JVC states that Mr Zecha was present at the meeting and also that Mr Eliasch had confirmed his vote in favour of the resolution to appoint Mr Doronin as interim CEO. Neither version states what period, or the occurrence of which event, is referred to by the use of the word 'interim'. What is clear is that the appointment cannot have been intended to be provisional until the confirmatory vote of Mr Eliasch was obtained and then without more become permanent since the expression 'interim CEO' is used in correspondence sent by Tarek after Mr Eliasch is supposed to have confirmed his approval of the interim appointment. I was not told of any attempt having yet been made to call a Board meeting to appoint Mr Doronin in accordance with the SHA.
15. Mr Doronin announced Mr Zecha's resignation by an internal notice circulated on 28<sup>th</sup> April. I do not know precisely to whom it was circulated and it probably does not matter that I do not.
16. On 28<sup>th</sup> April, Mr Zecha wrote to Mr Doronin and Mr Eliasch saying that although he had proposed to resign that was conditional upon the agreement of a package for himself and certain long standing staff, and the discussion of his future role with the JVC and the Aman brand. When Mr Doronin circulated a draft internal announcement about the resignation, Mr Zecha objected, reminding Mr Doronin that his resignation had only been conditional. Mr Doronin went ahead with this announcement and, on 2<sup>nd</sup> May, with a more public announcement, apparently without Peak's consent. Mr Zecha was then excluded from his office and his role as CEO of the JVC. There then followed correspondence between the parties and their respective legal advisers.
17. It seems that the Board meeting of 22<sup>nd</sup> April was recorded. On 9<sup>th</sup> May Peak asked for a copy of the recording and repeated that request by letter dated 22<sup>nd</sup> May. Peak's letter to Tarek of that date is in effect a formal letter before action. It gave Tarek 10 Business Days to put matters right. By letter dated 27<sup>th</sup> May 2014, Tarek described Mr Doronin as 'CEO' not 'interim CEO' (though in later correspondence it reverted to the expression 'interim CEO') and claimed that he had been validly appointed at the 22<sup>nd</sup> April meeting. That was wrong.
18. A further request for the recording of the 22<sup>nd</sup> April meeting was made by letter from Peak to the JVC dated 3<sup>rd</sup> June. Under cover of a long letter dated 5<sup>th</sup> June, Tarek sent what it described as 'the transcript of the board meeting relating to Mr Zecha's resignation' and asserted that his resignation had been unequivocal.
19. The attached transcript covers about 18 minutes of the meeting timed at around 6 pm. I was told that the meeting had begun at 9.30 am and ended at 8pm. Mr Brisby

pointed out that the transcript can hardly be considered to be a picture of all the events which took place at the meeting. This proposition was not challenged by Mr MacLean. As far as I am aware, Tarek has yet to produce the recording to Peak, which is odd. The transcript does not purport to be a perfect record even of that short period of time. Many words or phrases are marked by the transcriber as having been unintelligible. Nevertheless it does record Mr Zecha saying that he wanted the Board to agree to ask Mr Doronin to be the CEO moving forward, and that it was time for him to *'make an exit'*.

20. The letter of 5<sup>th</sup> June asserts that *'a number of matters have since come to light to suggest that there were actually ample grounds for dismissal of Mr Zecha for cause'*. The letter does not elaborate in any way what those grounds might be. Instead it says that the issues should be discussed at a Board meeting of Silverlink *'in the near future'*. Nearly a month later I was not told that such a board meeting had even been convened. In this regard, I note that the part transcript provided under cover of the letter records Mr Tavakoli as saying that he was a director (more accurately, at this stage, he was a representative of Carpentaria Management Services Limited), Mr Zecha's departure as CEO would be a *'great loss'* to the company and his resignation would only be accepted on terms that he continued to act as *'an adviser to the company.'* Mr Doronin also asked him to stay *'as an adviser.'* Mr Amanat said that he would wish to think about this, and he had not realised that Mr Zecha had made a *'final decision'*. Later in the same meeting he said that Mr Zecha's decision might have an impact on his own continuing desire to stay in the JVC.
21. On 9<sup>th</sup> May 2014 Mr Djangoly claimed in a letter to Mr Zecha that Mr Zecha had resigned from the position of CEO of the JVC, Chairman and managing director of Silverlink Resorts Limited and all employments and directorships which he held within the Group. There is no evidence in the transcript extract to support this very broad assertion, and it runs entirely counter to the transcript material showing that Mr Tavakoli and Mr Doronin expected Mr Zecha to have a continuing role of some sort once he did retire as CEO of the JVC, and to the provision of the SHA which contemplated the same thing. The assertions made in this letter were promptly challenged by Mr Zecha's Singapore lawyers.
22. Be that as it may, it appears to be common ground that at the meeting Mr Zecha was invited to sign a resignation letter and refused to do so. On 16<sup>th</sup> May his Singapore lawyers Edmond Pereira wrote to Allen & Gledhill the Singapore lawyers for Silverlink Resorts Limited, who also appear to act for the JVC, unequivocally claiming that Mr Zecha had not resigned at the Board meeting, but had indicated his intention to resign (i.e. in the future, probably the near future) and had intended and been led to believe (it does not say by whom) that the resignation would only be *'realised'* after the matters he had discussed with Mr Doronin and Mr Eliasch were finalised as stated in his letter of 28<sup>th</sup> April.
23. Proceedings were begun on 25<sup>th</sup> June 2014. An application was made for injunctions (in the form before me at the outset of the hearing) and a request was made for undertakings to be given until an effective date could be obtained for the hearing of the injunction applications. Greenberg Traurig Maher's London office responded that they were not acting for any of the Defendants. On 27<sup>th</sup> June Sidley Austin LLP introduced themselves as acting for Tarek and said that they were considering what undertakings might be given by their client. Limited undertakings were proposed by

them on 30<sup>th</sup> June. By letter of that date Sidley Austin LLP said this: '*the JVC and Silverlink have numerous outstanding complaints against Mr Zecha in relation to his role as CEO including complaints as to misuse of group funds*'. No particulars were given of these complaints, or of when they were first made.

## **Evidence**

24. In support of its application Peak relied upon the statements of three witnesses:
  - i) Mr Andrew Dunn, a solicitor and partner in Candey LLP, Peak's solicitors dated 20<sup>th</sup> June 2014;
  - ii) Mr Zecha dated 25<sup>th</sup> June 2014;
  - iii) Mr Amanat dated 27<sup>th</sup> June 2014.
25. Much of Mr Dunn's evidence goes to matters which I do not have to decide in view of undertakings given and accepted by the Court which will last until the effective inter partes hearing is concluded. I will not lengthen this judgment by citing material which I do not consider to be relevant to what I have to decide. One matter of additional background referred to by Mr Dunn which I will mention is that Peak says that at the time of setting up the JVC, Peak believed that Mr Eliasch was independent of Mr Doronin and Peak now believes that such was never the case, rather Mr Eliasch and Mr Doronin are in fact old friends working together to effect a hostile takeover of the JVC.
26. There is evidence that Mr Zecha's absence from the Aman management is capable of being very unsettling for the reputation of the hotels. Mr Dunn cites one travel journalist blogging that '*most Amanjunkies, as devotees are known, will be shuddering at the thought of Zecha no longer being in command*'. Another wrote '*I worry that the philosophy will be lost*'.
27. As to the suggestion that there are allegations of misconduct in relation to the operation of the JVC against Mr Zecha, Mr Dunn has deposed that Peak does not know what these allegations are, and that they have not been committed to writing.
28. Mr Zecha says that at the dinner in Miami on 21<sup>st</sup> April 2014 he told Mr Doronin and Mr Eliasch that if the differences between Tarek and Peak could not be reconciled he would resign because disputes were not good for the business. He thought Mr Eliasch was representing the interests of Peak. He says that he repeated this as he travelled to the Board meeting with them the next morning. The conversation about resignation at the Board meeting took place because Mr Eliasch asked him to share with those present what had been discussed the night before. There was a discussion about appointing Mr Doronin as a '*pro tem*' CEO until someone was found, but his resignation was conditional; Tarek say that it was immediate and binding. Mr Zecha's evidence about the letter of resignation which he was asked to sign was that he was asked to sign it at his convenience, and that those present at the meeting urged him to remain involved in some capacity. He did not sign the letter because he had not yet resigned. He did not approve the proposed internal announcement of his resignation because he had not yet resigned.

29. He protested the claim that he did resign and has protested it consistently since, including in a witness statement dated 3<sup>rd</sup> July 2014 which I have read.
30. At the date of the hearing there was no evidence before me, particularly evidence of statements made in correspondence prior to the 22<sup>nd</sup> April Board meeting, particularising any complaints about the conduct of Mr Zecha in his role as CEO of the JVC. On 2<sup>nd</sup> July 2014 Sidley Austin sent the Court a letter seeking to place before me the following matters:
- i) Evidence that Mr Zecha is not the CEO nor a director of AMBV. This consisted of an extract from the records at the Netherlands Chamber of Commerce showing that Mr Zecha was not a director of AMBV, which adds nothing to what is stated in Schedule 1 of the SHA. It does not go to the question of whether or not he is the CEO. As to that, the letter says that Sidley's instructions from its client, Tarek, are that Mr Zecha is not the CEO of AMBV and never has been. On 3<sup>rd</sup> July 2014 Sidley Austin circulated a further letter, attaching a signed note from Mr Sirois, one of the directors of AMBV, stating that Mr Zecha *'is not a director, officer, employee or hold [sic] any other representative capacity for'* AMBV. Mr Brisby's client responded with a letter dated 3<sup>rd</sup> July 2014 to which was attached the second witness statement of Mr Dunn dated 3<sup>rd</sup> July 2014. In that witness statement Mr Dunn explains that the operating company in the joint venture company is Silverlink Holdings Limited ('Silverlink'), all other group entities sit below Silverlink, and Mr Zecha who is the CEO of Silverlink, has had *'CEO responsibility'* for AMBV in that capacity. Mr Zecha's Executive Employment Agreement (the 'EEA') with Silverlink, dated 23<sup>rd</sup> August 2008, a copy of which Mr Dunn exhibits to the witness statement, acknowledges, says Mr Dunn, a *'CEO role'*. Clause 4 of that agreement does indeed refer to Mr Zecha having important executive roles within Silverlink and its subsidiaries, though the agreement does not use the expression 'CEO'.
  - ii) On the question of unparticularised claims against Mr Zecha, it is asserted, as it was asserted by Mr MacLean at the oral hearing, that no claims had been issued against Mr Zecha because of without prejudice negotiations being held between the parties, which had recently come to an end. The problem about that assertion is that there is no evidence at all before me of what those complaints are. I would have expected to see complaints made in correspondence, or referred to in Mr Dunn or Mr Zecha's evidence, or both, and then to be told that the resolution of those complaints was being dealt with in without prejudice negotiations. Instead I have no evidence at all about complaints only completely unparticularised suggestions that there are such complaints made after, not before, the 22<sup>nd</sup> April Board meeting. Given that Sidley Austin were instructed on 27<sup>th</sup> June, it is surprising that there is nothing at all to show or tell me, in any form.
  - iii) I will specifically refer to two of the nine letters sent to the court by Sidley Austin after the oral hearing in an attempt to plug that gap:
    - a) A letter dated 14<sup>th</sup> March 2014 sent by Mr Ivanhoe, on behalf of the JVC, alerting Mr Zecha to potential conflicts of interest with a competing hospitality company;

- b) A letter of demand sent by Allen & Gledhill, Singapore lawyers for Silverlink, to Mr Zecha's Singapore lawyers Edmond Pereira, seeking repayment of substantial sums said to have been run up by Mr Zecha at various Aman hotels for accommodation, services, food and drink. The correspondence shows that Edmond Pereira had pointed out that, being deprived of access to his office, Mr Zecha was not able to clarify which, if any, of these sums were in respect of the business, and which, if any, were personal, and asking for further information, which was not provided. This letter of demand is dated 20<sup>th</sup> May 2014, after the Board meeting and after the exclusion of Mr Zecha from his role;
  - c) Two witness statements, one from Mr Ivanhoe and one from Mr Eliasch, stating that they regarded the transcript extract as a true record of what was said.
31. On behalf of the JVC, Ms Charles pointed out that her firm had very recently been instructed. She noted that Mr Brisby's skeleton argument contended that since this was essentially a dispute between the two joint venture shareholders, Peak and Tarek, the company itself should be neutral. She (properly, in my judgment), accepted that was the correct position to adopt that day. On 3<sup>rd</sup> July she too wrote to the court, stating that the JVC company now objected to the orders sought by Mr Brisby, setting out the grounds relied on, which were not new to me. There has since been more rapid fire between both camps on whether or not Ms Charles was receiving proper instructions when she wrote that letter. I propose to treat the JVC company as being neutral, and I agree with Mr Brisby that this is the appropriate position for it to adopt at this stage.
32. I received a written request from Sidley Austin on 8<sup>th</sup> July asking me to delay my judgment so that the JVC company can be represented in relation to some further order which may be, but has not yet been, sought. I will not accede to that request.

## **Discussion**

33. Mr Zecha was the choice of CEO of both parties to the JVC and his exclusion prior to 31<sup>st</sup> July 2014 in the absence of clear evidence of misconduct capable of permitting the JVC, acting at the behest of Tarek, with Mr Eliasch's assistance, but without the consent of Peak, appears to me to be a clear breach of contract. When the inter partes injunction application is fully heard, the position may appear different to the Judge who hears that application.
34. Moreover the SHA contemplates that when Mr Zecha does go, on 31<sup>st</sup> July 2014, he should have another role, probably a figurehead role.
35. Unlike the cases cited by Mr MacLean, Mr Zecha is not just a hired gun; his personal identity and vision is relevant to the performance of his function and the reputation enjoyed by the brand. Aficionados of the Aman brand of luxury connect him and his presence at the helm closely with the brand and their loyalty to it. It is clear, and this was not challenged by Mr McLean, that the SHA does indeed require the appointment and removal of a CEO to be carried out in accordance with a procedure which was not followed. It has not been suggested that Mr Zecha was removed, merely that there

was or could have been cause to do so. Instead there is a dispute about whether he resigned.

36. The transcript extract is plainly not complete in any sense, not even of the part of the meeting which discussed the subject matter of his resignation. Even what may be seen from the transcript is not without potential for ambiguity; for example, when Mr Zecha talks of resigning, does he mean today, right now, or shortly? This is not clear from the transcript extract. As matters stand it is not necessarily completely inconsistent with his witness statement in which he says he did not resign with immediate effect.
37. Mr Zecha has indeed been absent from the office, but not of his own free will. According to Peak, his absence from the office was effected as a result of being physically excluded by a man called Jim Mace who is a lawyer from Greenberg Traurig. Mr Zecha says that he has been the subject of intimidating conduct. He has not consented to such exclusion and nor has Peak. The role of Mr Eliasch in this remains to be seen. Mr Amanat's evidence is that he had specifically asked Mr Eliasch not to support the effective removal of Mr Zecha from the board and the appointment of Mr Doronin as CEO in his place and yet Mr Eliasch sided with Mr Doronin. Clearly Mr Eliasch is not now acting in harmony with Mr Amanat and Mr Tavakoli.
38. The question of whether Mr Zecha has resigned as CEO or is being wrongfully excluded from his proper role as CEO cannot be decided by me in this judgment. The evidence of alleged misconduct before me is wholly insufficient to lead me to the view that he should not be allowed to serve out his agreed term because of misconduct. It provides no basis for thinking that the court should not require the parties to abide by the terms of the SHA until the court has a proper opportunity to hear the matter fully and come to a better informed decision.
39. Mr Zecha has not been acting as CEO of the JVC for over two months. Be that as it may the terms of the SHA are perfectly clear and mean that unless both Peak and Tarek agree (which is extremely unlikely) that he should continue as CEO beyond 31<sup>st</sup> July, now only three weeks away, he must then step down from that role and assume a different role. The parties could agree any role for him, but absent agreement Peak are entitled to require that, provided he be willing, he should become 'Chairman of the Resorts Business' or CEO of AMBV.
40. The former role is difficult to define with the clarity needed for injunctive relief. In the absence of agreement Mr Zecha will become CEO of AMBV. It is irrelevant whether he was or was not CEO of AMBV before. The parties have agreed that he should have that role in default of an alternative agreed role, and they are therefore impliedly already bound to work out for themselves how to put it into effect. I am assuming that such will present little difficulty.
41. The position of Mr Doronin is much more straightforward. It was not even suggested that he was validly appointed as CEO, merely that he has been acting as CEO for two months. Plainly he was not validly appointed and the JVC will have to address, in proper fashion, who should be the next CEO after Mr Zecha steps down at the end of July.

## Resolution and Decision

42. It was, unsurprisingly, common ground that the principles for the grant of interim injunctions under CPR 25.1(1) (a) and Section 37 of the Senior Courts Act 1981 are as explained in **American Cyanamid Co v Ethicon Limited [1975] AC 396**. I must consider whether there is a serious question to be tried, and if the answer be yes, whether damages are an adequate remedy for a party injured by the Court's grant of, or refusal to grant, relief, and if not, where does the balance of convenience lie.
43. It is abundantly clear that there is a serious question to be tried concerning the circumstances of Mr Zecha's departure from the role of CEO, the role it was agreed he should have, how matters after 31<sup>st</sup> July 2014 should be dealt with and Mr Doronin's assumption and proclamation of himself as holder of the role of CEO. Peak clearly invested in the JVC on the footing that Mr Zecha would have the role set out for him in the SHA and that on his retirement on 31<sup>st</sup> July 2014 there would be a further role for Mr Zecha, albeit there was some understandable lack of clarity about precisely what that role would be.
44. Peak has an arguable case that Mr Zecha did not resign with immediate effect at the Board meeting on 22<sup>nd</sup> April or at any other time. It has a clear prima facie case that Mr Zecha is the duly appointed CEO of the JVC until 31<sup>st</sup> July 2014.
45. It is absolutely clear at this stage, on the material before me, that the same Board meeting did not have the power to appoint a new CEO as this was not on the agenda for the meeting. All Mr Zecha said at the meeting was that he was prepared to propose Mr Doronin as his successor. Mr Zecha did not have the power, and did not purport to exercise any power, to ride roughshod over the provisions of the SHA. The meeting had no power to appoint Mr Doronin as CEO or even as interim CEO.
46. It is also clear to me that there is a very real risk that damages will not be an adequate remedy. Not only has there been a clear breach of contract which has had a serious impact on the relationships between the two groups of shareholders, who are not litigating against each other rather than working together, but there is also evidence before me that the absence of Mr Zecha from a visible, even if non-executive role within the Aman resort group of companies could be damaging for the goodwill and reputation which attaches to the business and the brand, and that is notoriously difficult to quantify. In my judgment therefore there is a real risk that damages would not be an adequate remedy if Mr Zecha is completely excluded from any role.
47. Where then does the balance of convenience lie? Would it be more unjust to Tarek to require it to re-admit Mr Zecha for the time being or more unjust to Peak to leave Mr Zecha excluded and leave the running to them to stop Mr Doronin from wrongfully asserting that he is the CEO interim or otherwise? Mr McLean submitted that Mr Zecha has not been CEO since late April and should not be let back in. Mr Brisby said that Mr Doronin and Mr Eliasch should not be allowed to benefit from clear breaches of the SHA. Mr MacLean cited cases showing that an employer does not have to allow an employee to insist on the continuation of an employment contract once the relationship of trust and confidence had broken down. Absent any evidence of such a breakdown, and at the moment there is none, Mr McLean's secondary position is that an employer should not have to put up with an employee it no longer wishes to have. The cases which he cited were directed to that proposition. But as I have intimated

above, this case is not quite like the case of an employer who does not need or want the services of certain staff. That is why I have not dealt with each of those cases in this judgment. First, Tarek is not Mr Zecha's employer. Second, Mr Zecha is not an easily replaceable employee. Third, Mr Amanat invested, via Peak, on the footing that Mr Zecha would be CEO for the first six months and then have a continuing role. Mr Brisby said this case was much more akin to a shareholders' dispute which in the context of Section 994 of the Companies Act 2006 would probably result in an excluded founder member's board nominee being allowed back into the role pending a trial. Without deciding what would happen in that similar but not identical context, in my judgment the lower risk of injustice lies in holding the parties to their contract, a contract which they only entered into some 6 months ago. This is a course which leaves it open to them to make other consensual arrangements if they can and does not appear to give Tarek the benefit of what may turn out to be strong arm tactics to control the JVC.

48. In addition there is the problem that Mr Doronin has plainly not been properly appointed as CEO or acting or interim CEO under the SHA. Tarek did not suggest that he had been properly appointed under the SHA. Mr Doronin has no proper basis for calling himself CEO as matters stand. If Mr Doronin does the right thing and steps back until he or some other successor is properly appointed (if that occurs) there would be no CEO. The JVC will have to take steps to appoint one in the agreed manner, if one is necessary for the proper running of the JVC.
49. The lawful status quo is that Mr Zecha is CEO until 31<sup>st</sup> July 2014 and that the terms and date of his resignation should be under discussion, as should his next role, which will either one agreed upon by the parties or CEO of AMBV as provided for by the SHA. Peak may well wish to change one of its negotiating representatives if it no longer has confidence in Mr Eliasch but that is entirely a matter for Peak.
50. There was some suggestion that Peak was in effect asking for a form of mandatory injunction requiring the JVC to allow Mr Zecha to return to the role of CEO. In **Zockoll Group Limited v Mercury Communications Limited [1998] FSR 354 CA**, Phillips LJ, quoting the judgment of Chadwick J in **Nottingham Building Society v Eurodynamics Systems [1993] FSR 468 at 474** said this:

*'In my view the principles to be applied are these. First, this being an interlocutory matter, the overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be "wrong" in the sense described by Hoffmann J.*

*Secondly, in considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.*

*Thirdly, it is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish his right at a trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted.*

*But, finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which*

*it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted.'*

The case went to the Court of Appeal which held that Chadwick J had applied the correct test: [1995] FSR 468. I do not consider that the relief sought by Mr Brisby amounts to an interim mandatory injunction, but in case I am wrong about that, I do feel a high degree of assurance that the provisions of the SHA will be found to govern the business to be conducted at Board meetings and the appointment of the CEO.

51. I therefore propose to make the following orders: The Second Defendant/Respondent ('the JVC'), (whether by itself or by any officer servant or agent of the JVC or otherwise howsoever) shall be restrained from:-
- i) Taking any steps to remove and/or exclude Mr Adriaan Zecha ('Mr Zecha') from his position as CEO of the JVC until 31<sup>st</sup> July 2014 (or such time as he is replaced by the Board of Directors if later); including interfering with his functions as such;
  - ii) Making any further internal and/or public announcements to the effect that Mr Zecha has resigned and/or been removed from his position as CEO of the JVC (or any other post which Mr Zecha holds within the Silverlink Holdings Limited group of companies) and/or to the effect that Mr Vladislav Doronin ('Mr Doronin') has been appointed as CEO of the JVC, and
  - iii) Holding out Mr Doronin as the CEO of the JVC.

These orders are to last until the conclusion of the inter partes hearing of Mr Brisby's client's application for injunctive relief, or further order in the meantime. The parties are to have the usual liberty to apply.

52. A brief post script: during oral submissions, I got the impression, possibly wrongly, that Mr MacLean was suggesting that I might be swayed in my decision by sympathy for Mr Zecha. If I did understand him correctly, it seems right to confirm what I made clear then that this is not the case. I did make clear at the hearing that in my judgment no 81 year old, however rich or successful, should be required to vacate his home of 15 years' at such short notice at the outset of a dispute. It is right to acknowledge that I thought this to be needlessly and inappropriately aggressive conduct based on the information available to me. I wanted the parties to try to reach an accommodation on that aspect of the case. Fortunately it has not been necessary to rule on that aspect of the case because of developments during the course of the day. Whilst I acknowledge that this encouragement to the parties was driven by simple considerations of humanity on my part, expressed before I had heard the arguments, such considerations have played no part in the remainder of my decision making process.