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Case No: CR-2017-009765

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

In The Matter Of SOLENT GARAGE SERVICES LIMITED
And In The Matter Of THE COMPANIES ACT 2006

Business Skype Remote Hearings

Date: 28/07/2020

Before :

I.C.C. JUDGE JONES

Between :

CLAIRE LEWIS

Petitioner

- and -

(1) PHILIP CLARKE

(2) SOLENT GARAGE SERVICES LIMITED

Respondents

Mr Wilkins (instructed by **Warner Goodman LLP**) for the **Petitioner**
Mr Darton Q.C. (instructed by **Churchers Solicitors**) for the **First Respondent**

Hearing dates: 10 July 2020

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.

.....CHJ 28/7/20.....

I.C.C. JUDGE JONES

I.C.C. Judge Jones :

A) Introduction

1. Solent Garage Service Ltd (“the Company”) was established in early 2012 to carry on the business of motor vehicle repairs and servicing. It provided an income for the parties whilst living together with their three children. They were both directors and equal shareholders. The extent of Ms Lewis’s involvement with responsibilities for administration and finance is to some extent in issue but there is no dispute that Mr Clarke carried out the Company’s vehicle repair work and MOT testing. Sadly, the relationship broke down in or about October 2016. The company continued trading until its business was transferred by Mr Clarke without the agreement of Ms Lewis to Solent Garage Services, Stubbington, Limited (“Newco”) following its incorporation on 23 May 2017. Mr Clarke was the sole shareholder in Newco and this *section 994 Companies Act 2006* petition resulted.
2. The petition has been addressed by the court to date on the basis that proportionality between costs and value requires as summary an approach as can be reasonably achieved. The importance of the value of the shares to both parties is not to be understated but the reality is that it is small compared with the potential costs of such petitions and the difference between the values they have each argued for is even smaller. Indeed, the reality is that this is a matter which should have been bound up with the division of assets within a divorce had that route been available to them.
3. The need for such broad-brush approach was accepted by the parties at a hearing on 27 June 2018 when Mr Clarke decided not to oppose the existence of unfair prejudice. The court accepted jurisdiction under *section 996* in reliance upon the facts and matters alleged in the unopposed Petition without having to make specific findings. The transfer of the business without consideration was evidence enough. Mr Clarke was ordered to purchase Ms Lewis’s 50% shareholding in the Company because of unfair prejudice.
4. That approach was equally appropriate for the resulting valuation process for which the court should adopt active case management to try to reduce the time and cost of determining a “fair value” (see *Re A Company No.004837 of 1998* [1997] B.C.C. 746 at 770 per Morritt LJ (obiter)). The first matter which needed to be addressed in that context was how to deal with the transfer of the Company’s business and its goodwill to Newco. There were various options. For example, this misappropriation of assets could result in an assessment of damages with the resulting compensation being paid (actually or notionally for the purposes of valuation) to the Company (see, for example, the assessment of damages approach in a partnership context in *Gorne v Scales* [2006] EWCA Civ 311). The share valuation of the Company would take account of that compensation. Alternatively, the date of valuation for the shares to be purchased might be backdated to an earlier, appropriate time. The best approach for valuation was debated at a case management hearing on 27 June 2018.
5. The word “debate” is used intentionally because the process was for the court to try to achieve a solution which the parties would accept as cost effective. The parties and the court reached the conclusion that the two companies could be treated as one for the purposes of valuing the Company’s shares. There followed debate as to whether a single expert should be appointed with instructions to provide a fair value for the

shares of the Company and Newco, as one, at a date as near to the valuation date as practicable. Wording was proposed to that effect with counsel to draft a minute of order. The 27 June 2018 Order was made accordingly but the parties also kept open the option within the wording that they could “*raise issue with the valuation and ... ask the court to determine the value*”. Further directions were made on 28 September 2018 concerning the valuation but it was certainly anticipated that the parties would not have to return to the High Court and there was no need to consider transfer to the County Court.

6. The independent expert’s report issued on 16 April 2019 valued the business at between £25-30,000. If accepted by the parties, the purchase price would have been between £12,500 and £15,000. However, it threw into play a number of “curve balls” including the previously unappreciated case of Mr Clarke that the lease for Newco’s business premises might not be renewed when its term expired at the end of October 2020 and the fact that he had not provided financial information for the business up to the date of valuation.
7. Unfortunately, more hearings were required. Whilst in value terms this was nowhere near the High Court threshold, the matters resulting from that expert report raised sufficient complexity to justify the retention of the petition. Indeed, ironically the need to restrict costs furthered the need for a specialist judge to case manage and, if necessary, determine the disputes. The recovery of future costs was severely restricted by subsequent orders to try to achieve some semblance of proportionality.
8. Whilst it is unnecessary to trace back every point raised, it is necessary to refer to the witness statement from Ms Lewis dated 13 May 2019. It raises the following matters concerning the exhibited report which led her to contend it did not “*achieve the objective of the Order of 5 July 2018*” and that there are “*a number of fundamental problems with the assumptions made in the valuation*”. For the following reasons she asked the court to value the shares:
 - (i) The valuation was made without financial information being made available to him beyond 31 May 2018, although he was provided with VAT returns for the quarters ended 30 November 2018 which identify an increased turnover.
 - (ii) Despite referring to comparables with far higher valuations and opining that goodwill is not necessarily linked to the owner, the valuation does not apply a multiple to maintainable earnings.
 - (iii) The valuation assumes the lease for Newco’s garage premises will not be renewed at the end of October 2020 despite the premises being used as a garage for “*many, many years (well before the business acquired the lease)*” and without there being any suggestion of redevelopment.
 - (iv) No steps have been taken to resolve caveats in the report concerning updated financial information, personal expenditure and the directors’ loan accounts. There is no reference to under-declarations of MOT test numbers or of the significant drop in cash and cheque deposits.
 - (v) A market not a fair valuation has been adopted.

Ms Lewis also raised issues concerning the potential striking off of the Company for its failure to file statutory accounts and also HMRC's claim that the Company has unpaid corporation tax for the financial year ended 29 October 2016.

9. An order made on 17 June 2019 records Mr Clarke's open offer to accept the valuation of the business as £35,000 subject to Ms Lewis accepting liability for a director's loan in the sum of £23,000. That hearing resulted from an issue as to whether the order made on 5 July 2018 obviated the need for a trial. The issue was adjourned and the petition returned to me at a hearing on 17 March 2020.
10. Taking the broad-brush approach and bearing in mind the problem for valuation resulting from the renewal of lease issue, it was suggested by Mr Wilkins for Ms Lewis that a pragmatic approach for valuation might be to return to the 2016 dividend of £26,000 and apply a multiplier of 4 to represent four years of dividend. He did so, Mr Clarke having accepted (whether at this or an earlier hearing, it matters not) that the business had continued to perform at a similar level after its transfer to Newco.
11. There was obvious attraction in that quick resolution of the dispute assuming, of course, that such payment of similar dividends could have been made by Newco. However, the resulting value would have been considerably higher than the value from the report, £52,000 as against £12,500 - £15,000. There was no agreement at the hearing (and did not have to be, subject to its relevance to costs) with the result that directions were made for (in summary): the exchange of lists of issues (agreed if possible); Mr Clarke to have the opportunity to obtain permission to rely upon any further evidence in addition to his witness statement dated 14 June 2019; the ability to call oral evidence; and the limited recovery of costs.
12. Commercial reality should still have resulted in settlement with both sides recognising they had to "give". Nevertheless, this is easier written than achieved and it is important the court recognises that justice should be accessible when relatively small sums are nevertheless of great importance to the lifestyles of those involved.
13. Before me are differing lists of issues dated 3 and 7 April prepared on behalf of Mr Clarke and Ms Lewis respectively. There are the witness statement from Ms Lewis dated 13 May 2019 and its exhibited expert report and a witness statement from Mr Clarke dated 14 June 2019. He chose not to seek to adduce further evidence. There is also various correspondence including an email sent on 6 December 2019 by the expert to address further information provided by Ms Lewis. I heard extremely helpful oral submissions from both counsel but reserved judgment. Whilst the procedure and cost limitations have adopted a broad-brush approach, the judgment does not have that luxury and there is much to address.

B) Summary of The Key Submissions

14. Although my decision has been reached after consideration of all the written and oral submissions, it is convenient to set out the following summaries of the key submissions within counsels' skeleton arguments. Mr Wilkins on behalf of Ms Lewis submits the shares should be valued by adopting a 4-year multiplier of the 2016 dividend (£26,000) for the following reasons:

“(1) It compensates P for the benefit she would have received from the Company but for her exclusion and the transfer of the Company’s business to the new company in which she has no interest.

(2) In contrast basing a valuation on the expert’s report or an asset based valuation deprives her of that compensation and is unfairly favourable to R1 who would retain the benefit of the business transfer (i.e. the unfair prejudice).

(3) Although R1 in his list of issues questions (apparently) the legitimacy of the 2016 dividend there is no evidence to cast any doubt on the payment which was signed off as a dividend in the 2016 accounts.

(4) R1 also suggests in his list of issues that if a dividend is to be used it should be assessed by reference to the financial position of the Company/the new company since October 2016. However, there is no evidence to suggest that the new company has performed any worse than the Company and indeed R1 confirmed in open court that it was trading as before.”

15. Mr Darton Q.C. has submitted on behalf of Mr Clarke that:

*“The Court should not go behind Mr Jay’s opinion as to the value of the Company for the reasons set out in *Coopers Payen Ltd v Southampton Container Terminal*. Mr Jay has advised not only on the market price for Company (without discount) but also:*

(i) That businesses such as the Company are marketed (not sold) for between £50,000 and £100,000;

(ii) The Company does not fall within this price range owing to the uncertainties over its lease;

(iii) A dividend based valuation was not appropriate for the Company because previous dividends do not represent a “true commercial return on investment”

(iv) A multiplier of maintainable earnings would also be an inappropriate method of valuation because the Company is a “lifestyle business, in which the owner has extracted cash in lieu of a salary”

These opinions all fall within Mr Jay’s expertise as to how the market would view (value) the company and are not gainsaid by any other evidence.

In the case of the direction sought at paragraph 2 of the Application, the Court cannot direct that the Company be valued “on the assumption that the lease of the business premises will be renewed” because there is no evidence that it will be and because Mr Jay’s evidence is that the Market would not make such an assumption.”

C) The Expert Evidence

16. The order made on 27 June 2018 permitted a party to apply “to raise issue with the valuation and to ask the court to determine the value” instead of paying the value opined by the expert within 28 days of the valuation. This is not a case where the parties are bound by the opinion of the independent valuer.

17. Mr Darton Q.C. submits that the court should nevertheless only depart from the evidence of valuation of a single joint expert in exceptional circumstances and refers to the decision of *Coopers Payen Ltd v Southampton Container Terminal* [2003] EWCA Civ 1223 at [67] per Lightman J with whom Schiemann LJ agreed. Mr Justice Lightman observed that “when a single expert gives evidence on an issue of fact on

which no direct evidence is called, for example as to valuation, then subject to the need to evaluate his evidence in the light of his answers in cross-examination his evidence is likely to prove compelling”.

18. I will adopt that guidance but observe that Mr Justice Lightman was concerned with evidence of fact not opinion. He limited his guidance to circumstances in which there was no direct evidence. His reference to the need to evaluate the evidence was obviously not intended to be limited to addressing the results of cross-examination.
19. Furthermore, for the purpose of share valuation the court should consider the expertise and consequential opinion of the expert valuer, whilst remembering that valuation is an art not a science. This means the court “*retains a wide freedom to disregard the views of experts and apply the court’s view of what is fair and sensible in all the circumstances*” (see *Re Planet Organic Ltd* [2000] B.C.C. 610) and the court should ask whether the expert’s provisional valuation “*makes commercial or business sense, viewed in the round*” (per Briggs LJ *Chilukuri v RP Explorer Master Fund* [2013] EWCA Civ 1307 at [52]). It is also to be remembered that the essential question for the court is what is fair and equitable in all the circumstances (see *Re Bird Precision Bellows* [1986] Ch. 658 and also the invaluable commentary upon valuation in **Chapter 8 of Mr Hollington Q.C.’s book “Shareholders’ Rights” 8th edition**).
20. I now turn to the valuation report bearing in mind the issues raised by Ms Lewis in her witness statement. My observations are as follows:
 - i) Bearing in mind that the date of valuation is 15 April 2019, it is of concern (without any criticism of the valuer) that he was not provided with financial statements beyond the draft accounts for Newco to 31 May 2018. Management accounts should have been available and have been provided by Mr Clarke for Newco which would have identified profit for the period covered by the VAT returns for the two quarters ended 30 November 2018 and for the period beyond. Current levels of profitability were hidden.
 - ii) It was correct to opine that the intentions of Mr Clarke to wind down the business were irrelevant to value on the basis that the business could be sold as a going concern without dependence on him being a part of it. It is to be noted that this is also the correct approach when the valuation is to be a fair one for shares Mr Clarke is to purchase following unfair prejudice
 - iii) The valuer was heavily influenced by the prospect of the lease of the garage not being renewed. He also took into consideration a covenant to reinstate and make good. It is this feature which took him away from comparables suggesting prices between £50-100,000. He made no reference to the *Landlord and Tenant Act 1954*. Despite not knowing the intentions of the landlord, he ruled out a premium on the basis there may be no more than 18 months to trade in contrast to a lease with 4 or more years unexpired.
 - iv) The valuer noted the Company’s dividend of £13,000 each for the year end 31 October 2016. He identified a dispute as to whether Ms Lewis owed the Company £23,420. The possibility of incorrect allocation of business expenditure as personal expenditure was noted.

- v) The valuer did not carry out an audit or other detailed investigations, which cost prevented, but found “*apparent anomalies which require explanation*” which might mean an understatement of income in the draft accounts. He did not identify any “missing” fixed assets.
 - vi) The valuer discarded a dividend-based methodology because it would not represent a true commercial return on investment, in particular in the absence of a dividend policy.
 - vii) The valuer rejected a multiple of maintainable earnings approach as inappropriate because: (i) it was a “*lifestyle business ... or in a start up phase*” and the maintainable earnings calculation produced a low or negative history; (ii) the absence of up to date accounts meant there was a lack of evidence of potential future profit levels; and (iii) the effect of the potential expiry of the lease.
 - viii) The valuer also appeared to find problems with a balance sheet, net asset valuation but nevertheless suggested a value of between £30-35,000 as at 31 May 2018 on the basis of a combined balance sheet for the two companies assuming the balance sheet for the Company had not changed since 31 August 2017.
 - ix) The valuer concluded that a definitive value could not be given without: (i) up to date financial records and resolution of fixed asset sale values; (ii) complete income figures including the correct personal expenditure distinction; and (iii) clarification of the directors’ loan accounts.
 - x) In those circumstances his estimated value was between £25-35,000 as at 31 May 2018 but he recommended “*that the financial records of both companies are brought up to date in order to ... provide for a more accurate and current valuation*”.
21. Although the parties construe the expert’s email sent 6 December 2019 to address further information provided by Ms Lewis differently, I am satisfied its meaning is clear. It refers to the VAT returns for Newco for the quarters ending 31 August 2018 to 31 May 2019 with total sales of just under £260,000 and a net figure for VAT after deductions and inputs of £56,000 odd. Those returns cannot be turned into profit but the expert concluded that “*there does not appear to have been material change in the size or profitability of the business in the year ended 31 May 2019 compared to previous periods*”. He decided to stand by his net assets methodology and valuation being unable to alter it in the context of no other financial data beyond 31 May 2018.

D) Share Valuation Principles

22. Applying share valuation principles (for which see **Chapter 8 of Mr Hollington Q.C.’s book “Shareholders’ Rights” 8th edition**) the starting point is to value the company as a whole, assuming a hypothetical willing seller or buyer and then to attribute the appropriate percentage of that value to be fairly attributed to Ms Lewis’s shareholding. The latter is obvious because she and Mr Clarke are equal shareholders.

As to the former, a question is whether the valuation should be dividend/earnings/income based (whether profits or future cash-flow) or assets based or a combination of the two. The normal approach for an unquoted company is an earnings/income valuation to reflect the value of the company continuing to carry on business as a going concern. That being so, the court will be concerned primarily with the company's maintainable level of profits and the yield expected by the hypothetical purchaser. Individual asset valuation will normally only be addressed to the extent it could be realised without affecting profits.

23. However, in this case there are difficulties which raise the possibility of an assets based, break-up basis. In particular: (i) the absence of up to date financial information; (ii) the potential for Mr Clarke having decided to ensure a decline in the level of profit identified within the accounts; (iii) the company having traded at a relatively low profit; and/or (iv) the references to the expiry of the lease and the resulting closure of the business. There is also the recent difficulty of the coronavirus and the lockdown.
24. Those difficulties also raise the potential for a back-dated valuation. The date will establish when Mr Clarke, as purchaser, assumes the benefits and risks of subsequent performance. It also draws the line between facts and matters which represent potential benefits and risks to be taken into consideration by a purchaser when deciding how much to pay and those facts and matters which constitute hindsight and should not be applied to the valuation.
25. The date is for the court to decide applying its discretion to the facts of the case and applying the overriding requirement of fairness. However, the starting point is normally to be the date as near as possible to the actual sale (see *Profinance Trust v Gladstone* [2002] 1 W.L.R. 1024, CA, in particular at [60-62]). The 27 June 2018 Order providing for the date to be that of the valuation (or as near as could be achieved) was derived from case management, debated agreement. It should be kept to if possible but not if it would be unfair and inequitable. That is particularly because the difficulty concerning the lease was not disclosed/known. However, I make clear that the approach should and will not be to choose a date to achieve the most advantageous exit.
26. Underlying those principles is fairness. As Court of Appeal stated in *Re Bird Precision Bellows* (above at p. 669):

"The whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the cases, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which the price is to be assessed" (my underlining).

E) Accounts

27. Appended to the expert report is his analysis of the profit and loss accounts, which I will use for the purposes of this judgment, for the business for the financial years ending 31 October 2013 to 2016, for the 10 months ending 31 August 2017 and 9

months ending 31 May 2018. The financial year ending 2016 was the most successful of the Company's financial years with a turnover of £222,212, a gross profit percentage (subtracting cost of sales from total revenues and dividing the difference by total revenues) of 56% and a profit after tax of £34,773.

28. A similar profit, £32,000 odd, was made in 2014 but with a smaller turnover, just under £200,000 and a 42% gross profit percentage. The other two financial years produced a nominal profit and a small loss from smaller turnovers (£153,000 odd in 2013 and £170,000 odd in 2015). The figures for 2013 could be explained by it being the start-up year. The fall in turnover in 2015 might be associated with the increased turnover in 2016, for example the timing of completed work and its invoicing.
29. The figures for the 2017 period show a downturn in turnover compared with 2016 but still above 2015, although below 2014. The gross profit percentage remained at 56% but there was a net loss of just over (-£3,000). 2017 is the year the business was transferred to Newco and, presumably, some chaos resulted from the 2016 relationship breakdown.
30. The turnover figures for the 2018 period suggest a return to the success of 2016. If the turnover level continued for the next 3 months, the financial year end would produce a net profit as high as £232,000. The gross profit percentage was about the same (54%) and the net profit would have been slightly higher than for 2016 (@£33,000). Overall, from the perspective of the accounts it is not unreasonable to view this as a business with prospects of annual net profits in the £30,000+ region.
31. The administration expenses increased significantly in 2015 but remained reasonably consistent after that. The increase was primarily attributable (using 2015 figures) to wages and salaries (+£9,000 odd, although directors' salaries remained at a consistent level of around £12,000 a year), rent (+£3,000 odd), hire of equipment (+£3,000 odd), equipment repairs (+£6,000 odd) training (+£4,000 odd) advertising (+£2,000 odd) and bank charges (+£2,500 odd). I have not sort to carry out an analysis having proportioned the figures for the two subsequent periods but in round terms it can be observed that they are in line with the 2015 figures allowing for annual increases.
32. On the face of it, those accounts are at odds with the valuer's opinion that a maintainable earnings approach was inappropriate because it was a "*lifestyle business ... or in a start up phase*" (see paragraph 20(vii) above). However, the explanation can be found in the fact that the report addresses the financial position from the viewpoint of an arm's length purchaser by producing adjusted maintainable profits within Appendix C. The key features are his decisions to add: (i) a mechanics salary to the administrative expenses which he has assessed at £35,000 plus national insurance and pension contributions but set off against the salary received by Mr Clarke; and (ii) to assume a cost of £12,000 per annum for the employment of a director who would supersede Mr Clarke following a sale. The extrapolated maintainable earnings produce a different story for the years ending 2015-2017 and for the period ending 31 May 2018: (-£36,414); (£6,227); (-£31,464); and (£8,704).
33. The balance sheet for the 31 May 2018 financial statement records shareholder funds totalling just under £30,000. The fixed assets consisting of plant, machinery, motor vehicles and equipment are valued at just under £13,000, there are nominal stocks. The main assts are cash of just under £58,000 and debtors of just over £22,000 with

creditors falling due within the year of just over £64,000. Mr Clarke was advanced or credited with £16,544. Some £40,000 represents “other creditors”. These accounts being prepared under the small companies’ regime there is the all too frequent but permissible lack of detail. There has been no analysis of the retained earnings figures and, of course, the quantum of dividends received by Mr Clarke from Newco to date is unknown.

F) Overview

34. As found at paragraph [30] above, Mr Clarke is buying shares which will make him the sole owner of a company with prospects of annual net profits in the £30,000+ region. It is a company which has always operated with relatively low salaries for directors. Mr Clarke’s salary remained low even after its increase in the absence of Ms Lewis. There was no dispute before me that this reflected a decision, typical of small companies, to adopt a tax efficient approach by relying upon dividends being declared when profits permitted. I do not accept the expert’s opinion that there was no policy to pay dividends and, therefore, do not agree that a valuation based on dividends is necessarily inappropriate.
35. The Company was not able to pay a dividend for the 10 month period ending 31 August 2017 for lack of profits. Mr Clarke has chosen not to provide accounting information to the expert for the years ending 31 May 2019 and 2020. The VAT returns cannot identify profit but the expert opined that there did not appear to be a material change in profitability. On that basis and the fact that the nine months to 31 May 2019 produced a profit of £24,817, it is right and fair to conclude on the balance of probability that a net profit of £33,000+ would have been achieved for the financial year ending 31 August 2019.
36. Based upon the evidence that salaries would be supplemented by dividends, this raises the possibility that a valuation as at 31 August 2019 (the date of the expert’s report was 15 April 2019) should require Ms Lewis to be credited with dividends totalling in the region of £30,000 for the two years of Newco’s profits for which a dividend should have been declared had its business been the Company’s (i.e. excluding the 2017 financial period). In addition, there is the potential for the valuation to be also based upon the anticipated receipt of future dividends in the context of Mr Clarke legitimately receiving the share Ms Lewis would previously have received.
37. As a matter of principle, a £30,000+ annual net profit level would also give rise to an earnings/income based valuation. Although the expert report does not explain the valuer’s comparables suggesting prices between £50-100,000, that range suggests the potential for a multiplier for this type of business within the same area generating similar turnover and historic profit of between 2 and 3 depending upon the particular circumstances including the security of the rights of possession. This would value the Company at between £60-90,000. The expert evidence is insufficient to enable the court to reach a conclusion based upon that approach. However, this evidence at least provides a testing ground if a dividend or other fair approach is to be taken instead of a net asset valuation.

38. As previously mentioned, the expert opines that such an approach is inappropriate. The reasoning includes the assumption that a purchaser would treat the profits as reduced for the purpose of valuation because there should be added to the administrative expenses: (i) a mechanic's salary assessed at £35,000 plus national insurance and pension contributions less the salary received by Mr Clarke; and (ii) £12,000 per annum for the employment of a director who would supersede Mr Clarke following a sale. In other words, the extrapolated maintainable earnings produce a different story for the years ending 2015-2017 and for the period ending 31 May 2018: (-£36,414); (£6,227); (-£31,464); and (£8,704).
39. However, it will be Mr Clarke purchasing the shares at a fair price. The accounts for the periods ending 31 August 2017 and 31 May 2018 show that he has not required a mechanic to achieve the net profits identified. In addition, he has already increased his salary in the absence of Ms Lewis and it is reasonable to identify this as reasonable remuneration in the context of the policy of paying dividends from profits. This is a company for which Mr Clarke already receives the salary to which he is entitled. What he is purchasing is receipt of the anticipated, future dividends to be allocated to the shares bought from Ms Lewis. On this basis the shares being sold offer a maintainable dividend in the region of @£15,000 a year, although that obviously does not mean this will necessarily be the final multiplicand. That will depend, for example, upon the position concerning the lease.
40. The termination of the lease at the end of October 2020 was a major reason for the expert's opinion that a net asset valuation should be applied. At best, there would be one further year of dividend to 31 August 2020 to be considered even if it is right to assume that profits would not decline and that any payments under the good condition covenant would be covered by the profits in September and October.
41. Mr Clarke's approach to this topic is unattractive. He "*indicated [to the valuer] that there is some doubt as to the likelihood that the lease would be renewed due to change to the Landlord's circumstances*" but has provided no further information than this vague assertion. This has caused the valuer to take the approach that a buyer knowing of termination and little more will not pay a premium. In his witness statement Mr Clarke states that he has spoken to the landlord's financial director and been told that "*options were being reviewed with regard [to] the land*". His evidence is extremely short of detail whether with regard to what he asked, what he discussed or what he was told.
42. Ms Lewis has been prepared to avoid this issue by requesting four years of unpaid dividends. However, it will not be four years. As explained the period to 31 August 2017 would not have produced a dividend and, therefore the relevant period (ignoring the date of valuation) would be from 1 September 2017 to the end of October 2020 subject to the matters raised in paragraph 40 above. The decision will need to grapple with this.

F) Decision

43. This decision must be based upon the evidence before me for the purposes of this hearing. I am not concerned with "fault" except to the extent that unfair prejudice is

established as a fact and the evidence before me addresses issues of fault within a context relevant to the valuation. This hearing has not investigated issues concerning directors' loans. I am not addressing the question whether Ms Lewis has an outstanding director's loan. Nor will I decide any allegations of unauthorised withdrawals or any other acts of misfeasance. There are references to this but no such decisions can be made on the evidence before me and I am not asked to do so.

44. If it had not been for the issue concerning the termination of the lease in October 2020 and the absence of expert evidence concerning a multiplier, I would have applied an earnings/income based valuation taking into consideration the profits to be received for the year ending 31 May 2019 and the opinion of the valuer that there did not appear to be a material change in profitability.
45. The termination of the lease means there is the potential for the business to lose its current premises. There is no suggestion of alternative premises or plans. However, it would be unfair to conclude that this is more than a possibility or chance. If Mr Clarke decides not to investigate or not to provide adequate detail of his investigations, he cannot expect the court to approach the valuation on the basis that the business of Newco will end.
46. That does not lead me towards the net asset valuation opined by the expert. It does not reflect the salary/dividend policy referred to above, that is not in fact in dispute. It does not acknowledge that a refusal to renew the lease is only a possibility or chance. In addition, I do not accept that the maintainable earnings approach because the extrapolation does not address a fair price to be paid by Mr Clarke to put right and cure for the future the unfair prejudice
47. In those circumstances and taking into consideration the absence of adequate multiplier evidence for an earnings/income based valuation, I turn first and partly accept the approach submitted by Mr Wilkins. Only in part first because, for the reasons given, four years dividends cannot be treated as owing. Instead, dividends should be credited for Ms Lewis for the period 1 September 2017 to 1 September 2019.
48. As to quantum, Mr Wilkins proposes the dividend figure for the year ended 31 October 2016 and I consider that fair for this part of the valuation. There is an argument it is slightly low but this is an art not a science. There is the feature that this extends the valuation date from the date of the valuation report to 1 September 2019 but it also means the value is not at or about the actual date of purchase. That too is fair as a compromise between those two potential dates in particular when Mr Clarke has failed to provide management accounts revealing profit and loss accounts beyond 31 May 2018.
49. However, that valuation will not cover the anticipated, profits for future years which will be allocated to the shares bought from Ms Lewis subject to the issue of the lease.
50. To the figure of £26,000 needs to be added a value to take account of Mr Clarke purchasing shares which will make him a 100% owner of a company with potential for future annual profits in the region of £33,000+ and a continuing future annual dividend of @£26,000 + but with the risk that the business will have to end at 16 October 2020 with potential liabilities under the identified covenant. To be fair, this is

a figure which needs to acknowledge all the valuation difficulties that have been identified within this judgment and right to use the comparables referred to by the expert as a testing bed.

51. I appreciate (to adopt the wording of the Court of Appeal in *Re Sunrise Radio* [2013] EWCACiv 667, [2014] 1 BCLC 427) “*that this has an element of the ‘do it yourself’ about it ... [but it is] an appropriately proportionate response to the problem with which [I am] faced*” and the inappropriateness of incurring further costs by adjourning the petition for further valuation evidence. Nobody wishes that.
52. In my judgment it right and fair to return to the figure for anticipate dividends of £26,000 and to add a multiplier of @1.5 to produce an additional £19,500. The resulting valuation of £45,500 can be tested against the comparables as follows: Assuming profits of £33,000 and a multiplier of 2, the additional sum would be £33,000 and a reduction of just over a third would represent the issue with the lease. In my judgment that that test sustains the judgment that £19,500 plus £26,000 is a fair sum.
53. It is a sum which does not take into consideration the problems of lockdown due to the coronavirus. Neither side considered that relevant because of the date of valuation and that has not changed. However, I did consider it within the context of fairness when deciding the date of valuation bearing in mind the real date of purchase. I was informed without evidence on behalf of Mr Lewis that lockdown did not prevent trading but in any event, and even assuming it would otherwise have been correct to take it into account, I have no financial evidence with which to work. I therefore reached the decision that the date should be 1 September 2019 for the reasons given in paragraph 49 above.
54. However, this returns to the practical reason why this matter needed to be settled. Ms Lewis can only receive what Mr Clarke is able to pay. This is not a case where the shares will be sold to a third party for the same sum should Mr Clarke be unable to pay and instead be forced into bankruptcy. Bearing that in mind and the costs, it may be noted that in reality this is part of the process of splitting assets to establish a future for the parties and (most importantly) their children. It remains important, therefore, that the parties communicate to try to resolve how this valuation can best be paid.

Order Accordingly