

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18 July 2011

**Before :**

**THE HON MR JUSTICE ARNOLD**

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**IN THE MATTER OF THE NATURAL DUVET & PILLOW COMPANY LIMITED**  
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

**Between :**

<b>IVAN NG</b>	<b><u>Petitioner</u></b>
<b>- and -</b>	
<b>(1) STEVEN CRABTREE</b>	<b><u>Respondents</u></b>
<b>(2) THE NATURAL DUVET &amp; PILLOW COMPANY LIMITED</b>	
<b>- and -</b>	
<b>(3) ZHEJIANG LIUQIAO FEATHER COMPANY LIMITED</b>	<b><u>Third Party</u></b>

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**Christopher Boardman** (instructed by **Berry & Berry**) for the **Petitioner**  
**Paul Marshall** (instructed by **Blacks Solicitors LLP**) for the **First Respondent**

Hearing dates: 17, 20-21, 23 June 2011  
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**Judgment**

**MR JUSTICE ARNOLD :**

**Introduction**

1. This is my judgment following the trial of an unfair prejudice petition under section 994 of the Companies Act 2006 presented by the Petitioner Ivan Ng against the Respondents Steven Crabtree and The Natural Duvet and Pillow Company Limited (“NDP”) on 10 October 2007. The petition has had an unfortunate and protracted procedural history. I do not propose to review that history here, but it is necessary to note at the outset four orders which are central to the current position.
2. First, an order of Peter Smith J dated 25 November 2009 records an agreement between the parties that, as at 10 March 2005, the debt due and payable by the NDP to its principal supplier, the Third Party Zhejiang Liquiao Feather Company Ltd

("ZLF"), was US\$3,606,177.98 ("the ZLF Debt"). By the same order, Peter Smith J granted judgment by consent in favour of ZLF against NDP for the principal sum of US\$4,824,920.41 plus interest at the rate of 5% from 1 June 2009 to the date of the order.

3. Secondly, on 6 May 2010 Peter Smith J made an order by consent that Mr Crabtree would buy and Mr Ng would sell Mr Ng's shares in NDP at their fair value as at 10 March 2005 ("the Valuation Date"), such value, if any, to be determined by the court if not agreed.
4. Thirdly, on 4 May 2011 Lewison J ordered that:

"No witnesses of fact shall be heard at the trial of the Petition. The parties shall be restricted to calling the experts whose reports have already been filed and served. The evidence of the experts shall be limited to that which their expertise properly enables them to give. Any evidence of disputed fact within the experts' reports shall not be admitted."
5. Fourthly, on 9 June 2011 the Court of Appeal dismissed Mr Crabtree's appeal against (*inter alia*) the order dated 4 May 2011.
6. Accordingly, the sole issue between the parties is the amount, if any, which Mr Crabtree is to be ordered to pay for Mr Ng's shareholding. Furthermore, that issue is to be determined solely on the basis of the expert evidence adduced by the parties. Still further, the expert evidence is only admissible in so far as it is predicated upon facts which are not in dispute. At this point it should be made clear that there is no statement of agreed facts. It is therefore not entirely easy to determine what facts are agreed and what facts are in dispute. I have proceeded on the basis that this is to be determined in the first place by reference to the parties' statements of case and in the second place by reference to the contents of the experts' reports.

### Background

7. NDP was incorporated on 10 October 2001 with an authorised share capital of £1,000, of which just two shares of £1 were issued, one to Mr Ng and one to Mr Crabtree. The principal objects for which NDP was established were to carry on the business of a general commercial company. On or about 10 October 2001, Mr Ng and Mr Crabtree were appointed as directors.
8. NDP was a joint venture between Mr Ng and Mr Crabtree for the purpose of selling natural (i.e. non-synthetic) bedding to the UK retail market. It was a quasi-partnership based on a combination of different skills and contacts of Mr Ng and Mr Crabtree. Mr Ng's function was to source and purchase feather-down bedding using his sources and contacts in China, whilst Mr Crabtree was to administer the company as well as marketing and selling the goods in the UK.
9. An initial business plan was prepared in October 2001 stating that both shareholder-directors were very experienced and known in the trade. It was agreed that they would receive equal remuneration and an equal share of profits.

10. ZLF is a large Chinese manufacturer. Mr Ng had always maintained a good personal relationship with ZLF, and consequently ZLF was prepared to offer NDP a substantial credit facility. Further to an agreement between NDP and ZLF dated 20 April 2002, NDP became ZLF's sole distributor and agent in the UK. Subsequently, large sums became owing from NDP to ZLF. ZLF did not seek to enforce payment of the debt, however, nor did it charge NDP any interest on it.
11. Duvet and Pillow Company Limited ("D&P") is a separate company, the sole shareholder and director of which is Mr Crabtree. D&P supplies synthetic (i.e. non-natural) bedding to the UK market.
12. On 10 March 2005 NDP entered into a lease of new premises at Asia Mill, Carter Street, Bolton ("the Premises").
13. Between 2005 and 2006:
  - i) Mr Crabtree personally acquired the Premises from the landlord with the benefit of finance from NatWest.
  - ii) Mr Crabtree permitted D&P to use the NDP's premises, staff and facilities and caused NDP to cross-guarantee D&P's debts.
  - iii) Mr Crabtree dismissed NDP's Operations Manager, Ray Watts.
14. For these, and perhaps other, reasons, the trust and confidence between Mr Ng and Mr Crabtree broke down. Mr Ng received no remuneration or profits from NDP after August 2006.
15. NDP was placed in administration on 26 November 2009, and its assets were acquired by D&P. It went into liquidation on 8 December 2010.

Applicable legal principles

16. The order dated 6 May 2010 requires me to determine the fair value for Mr Ng's shareholding. I did not understand counsel for Mr Crabtree in the end to dispute that the fair value in the circumstances of a case such as the present is the value of the shareholding to the co-owner of the company, and not an open market value: see *Parkinson v Eurofinance Group Ltd* [2001] 1 BCLC 720 at [94], [98]. Furthermore, he accepted that there should be no discount for the fact that the shareholding was only a 50% one: see *CVC/Opportunity Equity Partners Ltd v Demarco Almeida* [2002] UKPC 16, [2002] 2 BCLC 108 at [38]-[40].
17. The order also requires me to determine fair value as at 10 March 2005. It is well established that the basic rule when valuing shares as at a particular date is to exclude evidence of events which occurred after that date: see *Re Holt* [1953] 2 All ER 1499 and *Joiner v George* [2002] EWCA Civ 160, [2003] BCC 298 at [68]. Counsel for Mr Crabtree relied upon the statement of Staughton J in *Buckingham v Francis* [1986] BCLC 353 at 355 that "The company must be valued in the light of facts that existed at 24 March 1981 ... But regard may be had to later events for the purpose only of deciding what forecasts for the future could reasonably have been made on 24 March 1981". As counsel for Mr Ng pointed out, however, the consequence of that approach

was that Staughton J left out of account the company's figures for the year ended 31 December 1981. As he said at 358, "I resolutely exclude after events, save for the purpose of checking what was a proper estimate at that date." Moreover, in *Joiner v George* at [73] the Court of Appeal rejected the proposition that, for the purpose of valuing shares in a company at a fixed date, its trading results after the valuation date should be preferred to its trading results actually known at the valuation date, even if the later results turned out to accord with a forecast made prior to the valuation date.

NDP's accounts

18. The primary financial source material in this case consists of NDP's statutory accounts. Its first filed accounts were for a 17 month period ending on 28 February 2003, which were independently audited and approved by the board on 4 November 2003. The accounts for the year ending 28 February 2004 were independently audited and approved by the board on 19 January 2005. The accounts for the year ending 28 February 2005 were not audited, but were approved by the board on 26 January 2006. I shall refer to these as the 2003, 2004 and 2005 accounts respectively. Although the 2005 accounts would not have been available in approved form on 10 March 2005, the experts have sensibly proceeded on the basis that the figures contained in them would have been available as at that date. This makes particular sense because the Valuation Date is shortly after the end of that financial year.
19. As counsel for Mr Ng pointed out when opening the case, the figure for cost of sales contained in the 2005 accounts was adjusted slightly in the accounts for the year ending 26 February 2006, which I shall call the 2006 accounts. These were not audited, but were approved by the board on 20 December 2006. Subject to that minor adjustment to the 2005 accounts, which the experts again sensibly took into account, none of the accounts have ever been revised pursuant to section 245 of the Companies Act 2005.
20. The profit and loss accounts in the 2003, 2004 and 2005 accounts may be summarised as follows:

	<b>2003 £</b>	<b>2004 £</b>	<b>2005 £</b>
<b>Turnover</b>	1,431,493	2,660,442	2,910,583
<b>Cost of sales</b>	(1,158,212)	(1,923,018)	(1,892,912)
<b>Gross profit</b>	273,281	737,424	1,017,671
<b>Operating profit/(loss)</b>	(39,183)	114,714	(29,628)

<b>Profit/(loss) before tax</b>	(46,115)	105,657	(40,003)
<b>Profit/(loss)</b>	(46,115)	91,265	(36,395)

21. The balance sheets in the 2003, 2004 and 2005 accounts show net (liabilities)/assets of £(46,113), £45,152 and £8,757 respectively. The 2005 balance sheet shows trade creditors of £2,917,266.

The parties' positions in outline

22. Mr Ng contends that: (i) NDP should be valued on the basis of its maintainable earnings as at the Valuation Date; (ii) the maintainable earnings should be calculated on the basis of the figures in NDP's 2004 and 2005 accounts adjusted for (a) exceptional items and (b) re-allocation of costs attributable to D&P; and (iii) the maintainable earnings should be multiplied by a P/E multiple of 7. This produces a valuation of £1,666,000, and Mr Ng says that his 50% share should therefore be valued at £883,000.
23. Mr Crabtree contends that NDP had no maintainable earnings as at the Valuation Date, nor did it have any net assets, and therefore the value of the shares in NDP was nil.

The expert witnesses

24. Mr Ng called two experts. His primary expert was Kelvin King of Valuation Consulting Ltd. Mr King has had a long and distinguished career in the field of valuation. Counsel for Mr Crabtree submitted that Mr King had been lacking in objectivity. The principal basis for this submission was that in his first report, which was prepared prior to the agreement on the Valuation Date, Mr King excluded NDP's figures for the year ended 28 February 2006 on the basis that it was a "rogue year". I do not accept that this demonstrates a lack of objectivity on his part, since it is common ground that the figures for that year appear anomalous. I found Mr King to be an impressive witness. As he made clear, however, he was not an accountant.
25. Since Mr King disclaimed expertise in matters of accountancy, he was supported by Stuart Leaman of Leaman Partnership LLP. Mr Leaman is a chartered accountant with considerable experience in share valuation and forensic accountancy as well as other matters. He was clear and careful in his evidence. Counsel for Mr Crabtree nevertheless submitted that Mr Leaman had been overly dogmatic in his insistence that it was appropriate to allocate a percentage of NDP's costs to D&P on the basis of an average figure for the years 2004-2007 despite the agreed Valuation Date. I think there is some force in this criticism, but I do not consider that it detracts from the remainder of his evidence.
26. Mr Crabtree called Linda Cheung of Mall & Co. Mrs Cheung is an experienced forensic accountant, but she made it clear that she is not a valuer. As counsel for Mr Ng pointed out, this inevitably placed her at a disadvantage compared to Mr King. Counsel for Mr Ng also submitted that Mrs Cheung's first report had included a number of inappropriately partisan comments. I agree with this. For example, in

paragraph 44 she said that “Mr Ng should have registered with ... HMRC for income tax and national insurance purposes” and in paragraph 45 she said that “there is a total lack of documentation in this respect and the situation is very unsatisfactory, and potentially worse than this, but I am not in a position to comment on Mr Ng’s taxation arrangements”. Mr Ng’s tax affairs are of no relevance to the task at hand, and I was unimpressed by Mrs Cheung’s denial that this comment was intended to undermine Mr Ng’s credibility. More generally, I consider that there is force in the submission made by counsel for Mr Ng that Mrs Cheung’s approach in her reports was one of trying to minimise the value of NDP rather than seeking to arrive at an impartial and objective valuation. That said, I found her explanations of the accountancy issues helpful.

27. It is important to note that the experts prepared their reports as long ago as September and October 2008, that is to say, before any of the orders referred to above. The experts helpfully prepared two joint statements setting out points of agreement and disagreement. The first was prepared following a telephone conference on 15 October 2008. The second was prepared following a meeting on 24 May 2010. The purpose of the second meeting was to consider the impact on the experts’ respective opinions of the agreement as to the amount of the ZLF Debt.

Points of agreement between the experts

28. The following matters were agreed by the experts:
- i) The valuation date is 10 March 2005.
  - ii) The interest to be valued is 50%.
  - iii) The discounted cash flow method of valuation is not appropriate.
  - iv) The relevant financial information includes the NDP Business Plan, NDP’s accounts for 2002 to 2005 and D&P’s accounts for 2002 to 2005.
  - v) An apportionment of NDP’s costs fairly between NDP and D&P is appropriate to determine maintainable earnings.
  - vi) A commonplace valuation practice is to adjust figures in financial statement by, for example, discounting exceptional items and normalising directors’ remuneration.
  - vii) A weighted average approach to maintainable earnings is in general fair and reasonable.
  - viii) A reasonable basis to determine value would be to consider NDP’s accounts in isolation with an adjustment for a proportion of operating costs incurred by NDP on D&P’s behalf.
  - ix) For a company generating earnings, or a small profitable trading company, the earnings basis is an appropriate valuation basis.
  - x) An indicative consolidation carried out by Mr King is mathematically correct.

- xi) To arrive at the value of a 100% interest, it is appropriate to apply a P/E ratio to post-tax earnings.
- xii) The source of the P/E used by Mr King is reasonable.
- xiii) The nature of the adjustments to the P/E ratio used by Mr King.
- xiv) Consideration should be given to the terms of any loan, debt or other facility and maintainable earnings adjusted as necessary, if considered fair.
- xv) The sterling equivalent of the agreed ZLF Debt at the Valuation Date is £1,875,200.
- xvi) If there is a requirement to service the ZLF Debt, a reasonable interest rate is 6.75% representing 2% above base rate at the valuation date equivalent to £126,576 at the valuation date.
- xvii) NDP was a going concern at the Valuation Date on the assumption that ZLF was not actively seeking payment of the outstanding debt.

Points of disagreement between the experts

29. The following matters were not agreed:
- i) Use of NDP's 2006 accounts.
  - ii) That the value of NDP should be apportioned on a pro rata basis.
  - iii) That the valuation of NDP should be on the basis of owner value.
  - iv) The adjustments made to derive Mr King's maintainable earnings figure.
  - v) The adjustments made by Mr King to the source of the P/E ratio.
  - vi) Cross-referencing of the NDP balance sheets and profit and loss accounts.
  - vii) The basis of valuation.
  - viii) The allocation of expenses from NDP to D&P.
30. Mrs Cheung did not agree point (ii) on the basis that this is a matter for the Court. As indicated above, it is common ground between counsel that the value of NDP, if any, should be apportioned 50/50 between Mr Ng's shareholding and that of Mr Crabtree. Mrs Cheung did not agree (iii) on the basis that she did not "fully understand this issue". As counsel for Mr Ng observed, this appears to be attributable to her lack of expertise in the field of valuation. In any event, as discussed above, the point was not in the end the subject of dispute between counsel.

Basis of valuation

31. As noted above, the experts were agreed that NDP was a going concern at the valuation date on the assumption that ZLF was not actively seeking repayment of the ZLF debt. This assumption appears to be correct. Indeed, as I shall discuss below, Mrs

Cheung's reports support it. Accordingly, counsel for Mr Crabtree did not dispute that, in principle, it was appropriate to value NDP on the basis that it was a going concern. He nevertheless submitted that it was not appropriate to value it on an earnings basis because it had no maintainable earnings.

#### Use of the 2006 accounts

32. An important aspect of Mrs Cheung's approach was the use she made of NDP's 2006 accounts. For reasons that it is not necessary to go into, she concluded from the 2006 accounts and other information that it was necessary to re-state NDP's accounts for the preceding periods. Counsel for Mr Ng submitted, and I accept, that this exercise is impermissible for three reasons. First, it depends on the use of financial information which post-dates the Valuation Date. Secondly, it depends on disputed factual evidence which is excluded by the order dated 4 May 2011. Thirdly, it is inconsistent with the fact that the accounts for two of the preceding periods were independently audited, all of them were approved by Mr Crabtree and (apart from the minor adjustment noted above) none of them have ever been re-stated. I also agree with counsel for Mr Ng that the exercise appears suspect for other reasons. I note that counsel for Mr Crabtree did not try to defend it in his closing submissions.

#### Reliability of NDP's accounts

33. The preceding issue is connected with a more general issue as to the reliability of NDP's accounts, and in particular certain items in the balance sheets. Mrs Cheung relied upon investigations into NDP's financial records carried out on behalf of NDP by Ian Johnson of Cowgill Holloway LLP and Mark Sullivan of Summ-It Accounting Solutions LLP in 2006 as casting doubt on the balance sheets in the statutory accounts, and hence upon the profit and loss accounts. As I shall discuss below, she also relied on material provided by Mr Sullivan for her own analyses.
34. Counsel for Mr Crabtree contended that it was common ground that the accounts were unreliable. In support of this contention, he relied on paragraph 3.3(v) of Mr Leaman's report, in which Mr Leaman stated that it was "common ground between the parties" that "the accounts of NDP are unreliable in several respects" and referred to certain paragraphs of witness statements made by Mr Johnson and Mr Sullivan, as well as of a witness statement of David Marlow of Agincourt Practice Ltd, NDP's accountants. In my view this statement has to be read in context. First, it was made on 29 September 2008, well before the orders referred to above. Secondly, the statement is just one of a number of reasons given by Mr Leaman for the approach he adopted to the re-allocation of expenses from NDP to D&P, which as I shall discuss below was a broad brush one. Thirdly, as Mr Leaman confirmed in his oral evidence, he was not intending to agree that the accounts were erroneous in any particular respect, since he was not in a position to.
35. In any event, the position so far as my determination is concerned is that the witness statements of Messrs Johnson, Marlow and Sullivan are excluded by the order dated 4 May 2011. Furthermore, it is clear that some of the conclusions reached by them with regard to NDP's accounts have been the subject of dispute between the parties. In these circumstances, it seems to me that I have to take the figures in NDP's accounts as the starting point for the valuation. On the other hand, it is fair to say that the figure which has been agreed in respect of the ZLF Debt as at the Valuation Date



(£1,875,200) is substantially different to the figure for trade creditors in the 2005 accounts (£2,917,266), yet it is common ground that NDP did not have any other substantial trade creditor at that time. There is no agreement as to the parties as the reason for this discrepancy. It follows, I think, that the figures have to be regarded with a degree of caution, even though this is a difference which apparently favours a purchaser and even though there is no admissible evidence to substantiate any other specific inaccuracy in them. As Mr Leaman said, however, the turnover figures should be reliable even if there is concern over the accuracy of items such as cost of sales, stock and trade creditors.

### Maintainable earnings

36. During the course of the trial, it became clear that the principal issue between the parties is as to the level of NDP's maintainable earnings, if any. This in turns largely on the issues as to the re-allocation of expenses from NDP to D&P and as to whether NDP should be treated as having to pay interest on the ZLF Debt. Before turning to those issues, I should briefly deal with three other issues.

### *Figures for 2003*

37. Mr King just took into account the figures for 2004 and 2005, and not the figures for 2003, when calculating NDP's maintainable earnings. His explanation for this was that the 2003 accounts were for a start-up period. While I can see that it will often be rational to exclude figures for a start-up period when calculating maintainable earnings, in the present case NDP was still a very young company at the Valuation Date. Not only did it not have an established track record, but also it had not reached a stable trading position. Given these factors, and given that the accounts must be viewed with a degree of caution for the reason I have just given, it seems to me that the prudent approach in this case is to calculate the maintainable earnings on the basis of all three sets of figures. Since the figures in the 2003 accounts are for 17 months, it is necessary to annualise these by taking 12/17ths.

### *Normalising adjustments*

38. Mr King's approach to calculating NDP's maintainable earnings, as indicated above, was to make two kinds of adjustments to the figures in the accounts. One was to re-allocate expenses from NDP to D&P, which is considered below. The other was to make a series of adjustments to the costs incurred by NDP so as to exclude exceptional items and "normalise" them. For example, he adjusted the directors' salaries, because it had been agreed between Mr Ng and Mr Crabtree that they would receive equal salaries, but whereas Mr Crabtree's salary of £40,000 per annum was shown in the accounts, no salary was shown for Mr Ng. Mr King therefore adjusted to allow for a salary of £40,000 for Mr Ng, giving total directors' salaries of £80,000, which compared well to the total given in the accounts of one of NDP's competitors. As Mr King pointed out, this particular adjustment worked to Mr Crabtree's advantage. Mrs Cheung accepted the principle of normalising the figures in this way in cross-examination, and counsel for Mr Crabtree did not pursue any objection to the specific adjustments made by Mr King.

*Order of adjustments*

39. Mr King's approach was to make the "normalising" adjustments first, and then allocate a percentage of the normalised costs to D&P. It was suggested by Mrs Cheung that the adjustments should have been made in the opposite order, but Mr King explained that it made no difference which order was adopted. Again, this point was not pursued by counsel for Mr Crabtree.

*Re-allocation of NDP's expenses to D&P*

40. It is common ground that some of the expenses recorded in NDP's accounts were incurred for the benefit of D&P, and accordingly need to be re-allocated. There is sharp controversy, however, as to the correct approach to this re-allocation exercise.
41. It is convenient to begin by considering Mrs Cheung's approach. In summary, this was to consider six categories of expense year by year and to attempt to ascertain as accurately possible what sums in those categories should be re-allocated to D&P. In the case of two categories, namely (i) travel and subsistence, motor expenses and entertaining and (ii) telephone and fax, stationery and printing, she considered that a realistic allocation of the expenditure was by reference to the respective turnover levels of the two companies. In the case of three categories, namely (iii) subcontractor costs and direct labour, (iv) carriage and (v) advertising and PR, she relied upon estimates made by Mr Crabtree or analyses prepared by Mr Sullivan. In the case of the final category, (vi) insurance, she re-allocated this on the basis of the average stock held by each company during the year.
42. It follows that, in respect of three out of six categories, Mrs Cheung relied on factual evidence which is excluded by the order dated 4 May 2011. Furthermore, I was not persuaded that her approach to re-allocating the insurance costs was a particularly rational one given that the insurance costs included employee liability insurance as well as stock insurance. (It also involved treating the stock figures in NDP's accounts as accurate, contrary to her approach elsewhere in her report.)
43. Counsel for Mr Crabtree sought to support Mrs Cheung's approach by pointing out that Mr Leaman had stated in paragraph 3.3(v) of his report that "It is ... in my view necessary to look carefully at each expense item and where necessary make adjustments", but he had not done this because it was outside the scope of his remit. As Mr Leaman explained, however, what he had in mind when he said this was that, in order to arrive at a precise answer, a detailed investigation of all the expense items recorded in NDP's accounts, but properly attributable to D&P, would be required. As he made clear, not only was such an investigation outside his remit, but also it would be disproportionate. Furthermore, the exercise carried out by Mrs Cheung did not involve a detailed investigation of that kind.
44. For these reasons I do not accept Mrs Cheung's approach to the allocation of expenses.
45. Turning to Mr Leaman's approach, as I have said, this was a broad brush one. For various reasons, including but not limited to the concerns which had been raised about the reliability of NDP's accounts, he concluded that the most reasonable basis was to allocate a fixed percentage of NDP's operating costs to D&P, namely 30%.

46. While I think that Mr Leaman's approach is a reasonable one in principle, I also consider that there are a number of problems with it.
47. The first is that, in arriving at the figure of 30%, Mr Leaman relied in part on matters stated in two witness statements. Those are excluded by the order dated 4 May 2011. As he explained in cross-examination, on the other hand, he primarily relied on the proportion that D&P's turnover bore to NDP's turnover, which he calculated as 30%. In my view that is a reasonable basis upon which to proceed, but subject to the following points.
48. Secondly, in calculating the figure of 30%, Mr Leaman excluded the turnover figures for 2003. He explained that this was because it was a start-up period for NDP, but I am not convinced by that rationale in this context, since the object of the exercise is re-allocate costs misattributed to NDP.
49. Thirdly, Mr Leaman included the turnover figures for 2006 and 2007. Those figures are inadmissible given that they post-date the Valuation Date, however.
50. Fourthly, Mr Leaman took an average across all the years under consideration. Mr Leaman sought to justify this, as well as his reliance upon the post-2005 figures, by saying that he was trying to establish the trend as at the Valuation Date. Again, I am not convinced by this, particularly given that Mr King's calculation of maintainable earnings involves adjusting each year's figures and then taking a weighted average. In my view, a better approach would be to take the relevant percentage for each of the years 2003, 2004 and 2005 separately and use that percentage for re-allocating NDP's costs in that year.
51. It should be explained at this point that D&P's accounting reference date was 31 July and that the first set of its accounts in evidence are for the period 16 July 2001 to 31 July 2002. It is common ground, however, that, if one takes NDP's accounting reference date and time apports D&P's turnover, then D&P's turnover as a percentage of NDP's turnover in the relevant years was 17.9% (2003), 15.4% (2004) and 26.2% (2005).
52. Fifthly, Mr Leaman expressed his approach in his report in a manner which did not accurately reflect its underlying logic. The logic of his approach is that D&P's costs should bear the same proportion to NDP's costs as D&P's turnover does to NDP's turnover. Thus if D&P's turnover is 30% of NDP's turnover, then D&P's costs should be 30% of NDP's costs. In my view that is a reasonable basis upon which to approach the allocation of costs. In paragraph 3.6(i) of his report, however, Mr Leaman said that the expenses in NDP's accounts should be apportioned "70% to NDP and 30% to D&P". That is not the same thing, as I shall explain below.
53. During the course of his opening, counsel for Mr Ng said that Mr King had made a small arithmetical error at one point in his first report which had been corrected in his calculations included in the second joint statement, but without explanation. He therefore handed up a schedule showing the revised calculations in more detail and showing the correction of the error. Counsel for Mr Crabtree submitted in his closing submissions that it had become clear from this schedule that Mr King had not allocated NDP's costs in the manner suggested by Mr Leaman, but in fact had re-

allocated NDP's costs to D&P in such a manner that the proportion borne by D&P was 42.86%.

54. The first point to note about this is that, as counsel for Mr Ng observed, the figures that are relied on as demonstrating the supposed error are to be found in the tables in paragraphs 7.17 and 7.19 of Mr King's first report dated 30 September 2008. Furthermore, as counsel for Mr Crabtree himself pointed out, Mrs Cheung suggested in paragraph D8 of the first joint statement that there was an inconsistency in this respect between the approach suggested by Mr Leaman and the calculations actually performed by Mr King. Thus it is not correct to suggest that this is something that arose out of the schedule handed up on the first day of trial.
55. The second point to note is that, as counsel for Mr Ng also observed, although the schedule was handed up during the morning of Friday 17 June 2011 and Mr King did not give evidence until the afternoon of Monday 20 June 2011, this point was not put to Mr King in cross-examination. In my view it should have been even if it had emerged for the first time from the schedule.
56. Nevertheless, I do not consider that either of these points is a fatal objection. There is no dispute as to the arithmetic. The position can be demonstrated by considering the example relied upon by counsel for Mr Crabtree. After making "normalising" adjustments, Mr King's figure for "adjusted employee costs" for 2004 was £393,593. Of this, Mr King allocated £275,515 to NDP. It follows that £118,078 was allocated to D&P. £275,515 is 70% of £393,593 and £118,078 is 30% of £393,593, while £118,078 is 42.86% of £275,515. Thus Mr King has taken 30% of the total expenditure figure and allocated it to D&P, but the result of the exercise is that the amount allocated to D&P is 42.86% of the amount allocated to NDP.
57. Based on these figures, counsel for Mr Crabtree submitted that Mr King had failed correctly to implement the approach suggested by Mr Leaman, while counsel for Mr Ng submitted the opposite. In my judgment Mr King accurately applied the approach suggested by the language used by Mr Leaman in his report, but not the approach dictated by the underlying logic. Mr King did exactly what Mr Leaman said in the passage I have quoted from Mr Leaman's report: Mr King apportioned the costs in NDP's accounts 70% to NDP and 30% to D&P. But as I have explained, the underlying logic is that the costs should be re-allocated in such a manner that D&P's costs are 30% of NDP's costs. To achieve that result, 23.1% of NDP's costs should have been re-allocated.
58. A separate but related point is that counsel for Mr Crabtree submitted that the costs already allocated to D&P in D&P's accounts should be factored into the calculation as well. As a matter of logic, this is correct. As Mr Leaman said in paragraph 3.5 of his report, however, one could only do this if one was sure that the costs figures in D&P's accounts were accurate. As he explained, he considered that this might not be the case and he therefore disregarded these costs. This approach was not challenged in cross-examination. Furthermore, given that there is no agreement as to these costs, I do not consider that they can be taken into account. It appears to me that this factor would not make a significant difference to the end result of the calculation anyway.
59. For these reasons I conclude that the following percentages of NDP's costs should be re-allocated to D&P: 15.2% (2003), 13.3% (2004) and 20.8% (2005).

*Interest on the ZLF Debt*

60. Mr King originally proceeded on the basis that he ignored the debt to ZLF in his valuation. For the purposes of the second joint statement, he prepared valuations both on the assumption that there was no obligation on NDP to service the ZLF Debt and on the basis that an interest charge of 6.75% equating to £126,576 per annum was payable.
61. Mrs Cheung's opinion was that NDP's maintainable earnings should be reduced to reflect the commercial cost of financing the ZLF Debt. As counsel for Mr Ng pointed out, however, there is simply no evidence that NDP was obliged to pay interest on amounts due to ZLF. On the contrary, it is common ground that the opposite was true. Thus Mrs Cheung herself proceeded in her reports on the basis that, as she put it paragraph 130 of her first report:

“The very favourable and continually extended credit terms given by ZLF, at no cost to NDP, allowed the company to survive and expand despite its overtrading and undercapitalisation.”
62. During cross-examination Mrs Cheung suggested for the first time that the commercial cost of financing the ZLF Debt should be included as a “normalising” adjustment to NDP's earnings. I do not accept this suggestion. As Mrs Cheung herself recognised in the passage I have just quoted, and elsewhere in her reports, the free credit provided by ZLF was an established and fundamental feature of NDP's business as at the Valuation Date. It was not a mere exceptional item of the kind adjusted for by Mr King.
63. Counsel for Mr Crabtree argued strongly that a prudent purchaser of Mr Ng's 50% share in NDP would be bound to take the ZLF Debt into account for two reasons in particular. First, because Mr Ng would be leaving the company, and it was he who had the personal relationship with ZLF. Secondly, because ZLF might seek to enforce the debt at any time. Accordingly, counsel submitted, these contingencies should be reflected by allowing for the payment of a commercial rate of interest on the ZLF Debt. This is an argument with which I have considerable sympathy, but I am unable to accept it. So far as the first point is concerned, I am not sure that this kind of factor is ever material for the reasons explained by Pumfrey J in *Parkinson* at [93]-[98]. But in the circumstances of the present case ZLF had an established commercial relationship with NDP by the Valuation Date, and there would be no reason to think that Mr Ng's departure would necessarily change that. Certainly there is no admissible evidence before me to show that it would do so. As to the second point, the fact of the matter is that as at the Valuation Date ZLF was supporting NDP and had a commercial interest in continuing to do so.
64. Accordingly, the most I feel able to conclude is that these points reinforce the conclusion I have already reached about the need for a degree of caution over NDP's figures. In my view the correct way to reflect this is by rounding down my final award.

*Conclusion as to maintainable earnings*

65. For the reasons given above, I conclude that NDP's maintainable earnings should be calculated following Mr King's methodology with the following alterations: (i) including an annualised figure for 2003 and (ii) substituting the percentage figures for allocating costs to D&P set out in paragraph 59 above for the 30% figure used by Mr King. Mr King has prepared revised calculations on this basis at my request, which are annexed to this judgment. The result is a maintainable earnings figure of £143,600.

P/E multiple

66. Mr King's evidence was that an appropriate P/E multiple was 7. He arrived at this figure by searching for quoted companies that might be considered comparable to NDP as at the Valuation Date. He identified six such companies, which had an average historic P/E ratio of 13.5. He also considered the available financial data for five non-quoted companies identified as competitors in NDP's Business Plan. He then took into account factors that suggested adjustments upwards and downwards, and arrived at a figure of 7. In the first joint statement, Mrs Cheung criticised Mr King's starting ratio of 13.5, but Mr King pointed out that BDO Private Company Price Index gave a P/E of 12.6 and a comparable quoted sector P/E of 13.6. In cross-examination Mr King's defence both of his starting P/E and of the adjustments he had made was persuasive, and I have no hesitation in accepting his evidence.

67. By contrast, Mrs Cheung suggested a discounted P/E of 4 in the first joint statement, but she was unable to defend this choice in cross-examination. She had done no research of the kind undertaken by Mr King, and her choice appeared to be arbitrary. Nor did counsel for Mr Crabtree rely on it in his closing submissions.

68. I therefore conclude that the appropriate P/E multiple is 7.

Conclusion

69. Multiplying the maintainable earnings figure set out above by a P/E multiple of 7 gives £1,005,200. For the reasons given above, I consider that this should be rounded down to £1 million. The fair value of Mr Ng's half share is therefore £500,000.

Annex

In £	Annualised (12/17ths)		
	Unadjusted yr to 28/02/2003	Year to 29/02/2004	Year to 28/02/2005
Sales	1,010,466	2,660,442	2,910,583
Cost of Sales	817,661	1,923,018	1,892,912
Adjusted employee costs	135,242	393,593	484,575
Adjust for D&P attribution	15.2%	13.3%	20.8%
Revised Employee costs to NDP	114,686	341,245	383,783
Premises costs	50,278	90,749	216,859
Adjusted General Admin Expenses	34,522	81,550	143,658
Adjust for D&P attribution	15.2%	13.3%	20.8%
Revised General Admin Expenses	29,275	70,704	113,777
Adjusted legal & professional fees	23,940	53,560	61,890
Adjust for D&P attribution	15.2%	13.3%	20.8%
Revised adjusted legal & professional fees	20,301	46,437	49,017
Admin Cost excl attribution to D&P	214,540	549,135	763,436
Operating profit (loss)	-21,635	188,289	254,235
Adjust interest	4,893	9,057	10,375
Adjusted Net Profit (pre tax)	-26,529	179,232	243,860
NOTIONAL Weighting	1	2	3
	-26,529	358,465	731,579
<b>Weighted average maintainable earnings</b>		<b>177,253</b>	
Less tax		19.0%	
<b>Weighted average post tax earnings</b>		<b>143,575</b>	
			Sustainable earnings rounded
<b>Weighted Average 2005 sustainable earnings</b>		143,575	<b>143,600</b>