Neutral Citation Number: [2019] EWHC 3327 (Ch)

Case No: CR-2016-002904

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST
IN THE MATTER OF DINGLIS PROPERTIES LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Building, Fetter Lane
London EC4A 1NL

Date: 5 December 2019

Before :

ADAM JOHNSON QC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

Paul Dinglis	**Petitioner**
- and -	
(1) Andreas Dinglis	**Respondents**
(2) Master Holdings Group Limited (A company incorporated under the laws of the British Virgin Islands)	
(3) Dinglis Properties Limited	

David Peters (instructed by **Ingram Winter Green LLP**) for the **Petitioner**
Daniel Lightman QC and Eleni Dinenis (instructed by **BDB Pitmans LLP**) for the **Respondents**

Hearing date: 11 October 2019

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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.

Adam Johnson QC

Introduction

1. This is my further Judgment in these unfair prejudice proceedings, following my Judgment dated 28 June 2019 [2019] EWHC 1664 (Ch) ("*the June Judgment*"), in which I determined that the Petitioner's unfair prejudice claim was made out. In light of that Judgment I made an Order requiring the First and/or Second Respondents to acquire the Petitioner's minority (12%) shareholding in the Third Respondent, at a price to be determined and subject to a minority discount.

2. I also gave directions for an exchange of further statements of case between the parties, in order to try and provide greater definition to the issues going to valuation which separate them, and to prepare the way for a later valuation trial. The parties have now exchanged Schedules of Issues, and have produced a helpful composite Table of Issues. I am now asked to deal with a number of questions disclosed by the parties' Schedules and by the Table, which broadly are as follows:

    i) What should be the date for valuation of the Petitioner's shares? This point was expressly excluded from the earlier phases of this litigation, which resulted in the June Judgment. The parties have very sensibly agreed that it should now be determined, so that the valuation exercise to be conducted can be carried out with a fixed date in mind, and not a range of possible dates.

    ii) Insofar as the parties argue that the value of the Petitioner's shareholding should be adjusted (and various adjustments are suggested both by the Petitioner and by the First and Second Respondents), which of the proposed adjustments should be allowed to proceed to a valuation trial?

    iii) What is the correct approach to the calculation of the intended minority discount? A number of points are raised under this heading, including the question of the continued relevance in terms of valuing the Petitioner's shareholding of the circumstances in which he originally came to acquire it.

3. In the remainder of this Judgment I will adopt the definitions used in the June Judgment, and so will refer to the Petitioner as Paul, to the First Respondent as Andreas, and to the Third Respondent (a corporate vehicle controlled by Andreas) as MHGL. The Third Respondent, in which Paul is a 12% shareholder, is DPL.

Background

4. The present Judgment should be read in conjunction with the June Judgment. For convenience, however, I will attempt to summarise those aspects of the overall story which are particularly relevant to the present issues.

Paul's Shareholding

5. DPL was established in the late 1980s, as a vehicle for Andreas to extend his existing business operations more extensively into the area of property ownership. It is one of a number of companies through which the Dinglis family businesses were run and assets (mainly property assets) were held.

6. Paul became involved in about September 1989, in order to support the business and to learn the ropes. To begin with, Andreas retained 99 of DPL's 100 issued shares, with the remaining share held by his wife, Iris. But later, in 1991, and consistent with Andreas' general desire to provide for his family, he transferred from his holding of 99 shares a further 11 shares to Iris, 12 to Paul, and 12 to Cheryl, Paul's sister. There have been various changes in the configuration of the shareholdings since then, but not in Paul's case: he has always held, in his own name, a 12% minority stake.

7. When cross examined at trial, Andreas confirmed the evidence given in his Witness Statement that the gifts he made of shares in DPL were intended to provide the relevant family members with "*financial security*", and that by that he meant "*security to the equivalent of 12% of the company's value*".

Dividends

8. As stated at [61] of the June Judgment, it was common ground between the parties that there was a high degree of flexibility in the way in which the affairs of DPL, and the other Dinglis family companies, were managed. This included flexibility in relation to the payment of salaries and dividends. At [63] of the June Judgment, I summarised Paul's evidence as to the treatment of dividends. This was to the effect that the dividend amounts received by the various family members never tallied with their percentage entitlements based on their shareholdings. Instead:

> "*... what happened in practice is that at the end of each financial year, the family companies would each declare a total dividend equivalent to the total monies paid out that year to all family members. For tax return purposes, the family members would then each declare as income their percentage entitlement of the overall dividend declared by each company. If, in the case of a particular family member, there was a difference between that amount and the sums he or she had actually received, that would be accounted for either as a gift received by that family member from the others (if the family member received more than his or her strict entitlement), or conversely as a gift from that family member to one or more of the others (if the family member received less than his or her strict entitlement).*"

9. I then went on at [64] to say that this was close to the position as described by Andreas, whose evidence was that there was considerable flexibility in the way in which individuals received remuneration, either in the form of salary or dividends. Andreas in his evidence described his "*policy*", which:

> "*... was and is that to the maximum extent possible the profits of the businesses would be reinvested for the long term benefit of the family and that drawings should be limited to what I considered to be necessary for a reasonably comfortable lifestyle*".

Mortgages & Guarantees

10. During the course of the life of DPL, Paul took a number of steps which he now says are relevant to the valuation of his shareholding. Specifically:

i) At some point in about 1991 (see June Judgment at [43]), he personally acquired two properties to be used in DPL's business and in order to do so took out a mortgage or mortgages in his own name. The properties were rented out by DPL, and Paul's mortgage payments were met each month from rental income provided by DPL. Eventually, in 1997, DPL refinanced the mortgages and the properties were transferred from Paul to DPL at cost. The overall effect was that DPL (rather than Paul) benefited both from the profit generated from the rental income on the properties (it retained sums in excess of the amounts required to meet the monthly mortgage payments), and from the increase in the capital value of the properties between 1991 and 1997. In the meantime, however, Paul was personally liable under the relevant mortgages.

ii) In 1998, the year in which he became a director of DPL, Paul gave an unlimited personal guarantee in respect of DPL's indebtedness to its bankers, Bank of Cyprus (June Judgment at [54]). Paul's evidence was that there might have been earlier guarantees, but in any event, it was common ground that from 1998 onwards Paul gave a number of personal guarantees to secure DPL's indebtedness, and certain of those remained in place until June 2016, when they were finally released.

The Maremonte Companies

11. Andreas relocated to Cyprus in 2002, and over time engaged in new property ventures there, principally through three companies known as the Maremonte Companies (June Judgement at [72]). He also established a further Cypriot company, Gatemark, which from about 2006 came to acquire a number of valuable property assets in England (*ibid*.).

12. The Maremonte Companies used borrowings from NBG (i.e., National Bank of Greece) to fund property ventures in Cyprus, but these ventures ran into serious financial problems in the wake of the 2008 financial crisis (June Judgment at [267]). This became a serious problem for Andreas too, since he had personally guaranteed the indebtedness to NBG. From 2010 onwards, Paul was also a shareholder in the Maremonte Companies. He held 24%, and Cheryl another 24%. In his Witness Statement for trial, Andreas gave his explanation of the background, as follows:

> *"I remained the sole shareholder of the Maremonte Companies until around 2010. At that point, because I was worried about my personal liabilities to National Bank of Greece, I told Paul and Cheryl that I would transfer each of them 24% of the shares while I kept 52%. I asked them to give me powers of attorney and I used these to complete the share transfer paperwork. They did not pay anything for the shares and I told them that if I was successful in my battle with NBG, which I eventually was, I would expect them to give me back these shares for free. By doing this I hoped to protect assets for the benefit of my family. I am currently the holder of 76% of the shares in each of the Maremonte Companies because Cheryl transferred her shares back to me following the settlement I reached with her last year by way of a gift."*

DML

13. Meanwhile as regards DPL, from 2000 onwards, the properties which it owned came to be leased out to tenants by another one of the family companies, DML. DML was established as a "*buffer*", to insulate DPL and other asset-owning entities among the family businesses from claims by third parties. This meant that rental income on properties owned by DPL was collected by DML. The shareholders in DML from 2000 onwards were Paul and Cheryl; Cheryl was made a director on incorporation and Paul was a director from 2006. This put Paul and Cheryl in charge of cash rental income flowing into DML.

Paul's Exclusion from DPL

14. Paul was excluded from the management of DPL in June 2012. One of my principal findings in the June Judgment was that despite the informality in the way in which it was run, DPL was not a quasi-partnership, and that Andreas' entitlement as majority shareholder to exclude Paul from management was not inhibited by any equitable constraints. However, I also dealt with Andreas' alternative case, to the effect that, even if DPL *was* a quasi-partnership, Paul had deserved his exclusion. There I said that, *even assuming* the existence of the equitable constraints Paul relied on, he had acted in a manner inconsistent with them by helping himself to cash distributions from DML in periods prior to June 2012, in a way which lacked transparency (June Judgment at [233-234]).

Increase in Value of DPL

15. It is common ground between the parties that the value of DPL has increased since Paul was excluded from management in June 2012. There has been a reduction in overall levels of debt, and an increase over the same period in DPL's net asset position. Paul accepts (as he must) that he has not been responsible for conducting any of DPL's business during this period. This increase in the value of DPL over time is an important feature of Andreas' argument that an early valuation date for Paul's shares would be fair, rather than a later date which would enable Paul to benefit from that increase.

21 Makepeace Avenue

16. One of the flashpoints which in fact led to Paul's exclusion from DPL in 2012 was a disagreement with Andreas about where Paul and his family should live. In June 2012, they were living in a flat owned by DPL, in a block at 20 Crescent Road, London N10. They wished to move somewhere larger. A property was identified at 21 Makepeace Avenue, London N6, but this proved a source of serious contention between Andreas and Paul. Although the Makepeace Avenue property was in fact purchased by DPL in 2012, and although Paul and his wife and son moved in during 2013 (and remain there), the matter remains highly controversial.

The Falling Out

17. Following Paul's exclusion, there developed what I described in the June Judgment as a catastrophic falling out between the Dinglis family members, i.e., between Andreas on the one hand, and Iris, Cheryl and Paul on the other. Matters were complicated by the fact that, at the time, Andreas also had a partner in Cyprus, by whom he had a young son. Andreas was also under pressure because of the financial difficulties

faced by the Maremonte Companies and because of NBG's threat to make him bankrupt.

18. This combination of circumstances resulted in the Matrimonial Proceedings (i.e., divorce proceedings initiated by Iris), which ran between July 2013 and June 2015; and then in the Chancery Action (initiated by DPL and Gatemark against Paul, DML and others), which ran between 2015 and early 2019, and culminated in a decision of the Court of Appeal dated 8 February 2019 ([2019] EWCA Civ. 127). Both sets of proceedings are now said by the parties to be relevant in one way or another to the present valuation questions.

The Matrimonial Freezing Order

19. As for the Matrimonial Proceedings, Andreas relies on my finding in the June Judgment at [139] that the Matrimonial Proceedings must have been the product of discussions with Paul and Cheryl, who supported the proceedings as a way of protecting the interests of the English family members, and who therefore precipitated a breakup of the existing English family businesses.

20. Andreas relies in particular on the fact that in August 2013, Iris applied for and obtained a freezing order against Andreas (referred to in its various iterations in the June Judgment as the Matrimonial Freezing Order). That Order was originally granted by Hayden J. on 22 August 2013, and continued by Moor J. on 13 September 2013. Paragraph 19 of the 22 August 2013 Order provided in relevant part as follows:

> "*19. Until the return date or further Order of the Court, the Respondent [i.e., Andreas] must not –*
>
> *(a) cause of procure any payments of rent which as at 12 August, 2013 were due to be paid to the company known as Dinglis Management Limited ('Dinglis Management'), or were as a matter of fact previously paid to that company pursuant to a tenancy agreement, to be paid to any other company, person or entity;*
>
> *(b) alter or seek to alter the terms of employment of any person who as at 12 August, 2013 was employed by Dinglis Management*".

21. In his Order of 13 September 2013, Moor J. also included the following provision:

> "*This Order is made upon the basis that the current monthly payments by Dinglis Management Limited to Dinglis Estates Limited (in the sum of £20,000) and Dinglis Properties Limited (in the sum of £110,000) do continue to be made for so long as the Order of The Honourable Mr Justice Hayden (made on 22 August, 2013) remains in force*".

22. On 10 February 2014, the Orders made by Hayden J. and Moor J. were discharged but immediately replaced by a new Order, made by Moor J., which to a large extent replicated but also amended the terms of the earlier Orders. Paragraph 15 of the February 2014 Order was headed "*Basis of Order*", and replicated the provision regarding monthly payments. Paragraph 16 at sub-paragraphs (a)-(b) then replicated

the terms of paragraph 19 of Hayden J's original Order (above), but also incorporated new language at (c), as follows:

> "*16. Until the return date or further Order of the Court, the Respondent must not* –
>
> …
>
> *(c) interfere in any management or administrative decisions taken by Management, including as to whether properties which are managed by Management are to be allowed to fall vacant or be re-let and if so on what terms (for the avoidance of doubt the Respondent must not cancel, vary or otherwise interfere with arrangements existing as at 12 August, 2013 as between Management and Estates or Properties).*"

23. Collectively, these provisions had the effect of imposing wide restrictions on Andreas' ability to make any changes to the arrangements under which DPL properties were rented out by DML, and rental income was collected by DML. This preserved the flow of rental income into DML (which was so important to Paul), albeit on terms which required £110,000 per month to be paid to DPL.

24. In fact, as recorded in the June Judgment, from February 2014 onwards, DML stopped paying the required monthly sum of £110,000 to DPL (see the June Judgment at [147]). Andreas says that continued until December 2014, when the Matrimonial Proceedings were in their final stages and the Order of Moor J was discharged. Over that period, DML ought to have made payments totalling £1,136,666, but instead made payments totalling only £355,000, leaving a shortfall of £781,666. Perhaps surprisingly, nothing was done about this at the time (June Judgment at [147]). Moreover, even after December 2014, Andreas says that DML failed to return DPL's properties to DPL's control and continued to collect and retain rental income paid by tenants up until about February 2015.

25. The Matrimonial Proceedings formally concluded in June 2015, on terms which involved Iris transferring her shares in DPL to Andreas, and Andreas agreeing to transfer certain other shareholdings to her and also make a lump sum payment of approximately £1.6m.

The Makepeace Possession Proceedings

26. In the midst of all this, in April 2014, possession proceedings ("*the Possession Proceedings*") were commenced by DPL against Paul in respect of the Makepeace Avenue property. Paul has defended those proceedings on the basis of a claimed entitlement to remain in the property with his family for as long as he wishes, rent free. A trial of the issues in the Possession Proceedings was later stayed, pending the outcome of the present unfair prejudice claim.

The Chancery Action

27. No sooner had the Matrimonial Proceedings ended than DPL and Gatemark commenced the Chancery Action. The Defendants were Paul, Cheryl, DML and Cheryl's corporate vehicle, Eagle.

28. The Particulars of Claim included claims in respect of "*Failure to Pay Minimum Payments*" (POC at 23-24), and "*Post Termination Retentions*" (POC at 28-30). Mr

Peters, Paul's counsel, explained that these claims correspond to the points described above at [24]), i.e., DML's failure to make monthly payments as reflected in the Matrimonial Freezing Order, and its failure to return DPL's properties in the period immediately after December 2014. That seems to me to be correct, and I did not understand Mr Lightman QC, Andreas' Counsel, to express any different view on this topic.

29. Mr Peters also drew attention to the fact that the above claims by DPL in the Chancery Action all eventually failed. That is because they were advanced on the footing that DML was DPL's agent; but in its Judgment dated 8 February 2019 at [2019] EWCA Civ. 127, the Court of Appeal rejected DPL's agency theory, on the basis that the idea of DML being an agent was inconsistent with the intention that it act as a liability "*buffer*". That intention would be undermined by a characterisation which enabled DML to pass on liabilities rather than insulate against them. This has the consequence that whenever DML rented out a DPL property, it did so on its own account. The rents collected therefore belonged to DML, and DML (and Paul) were therefore not liable to account to DPL in respect of such rents. As Mr Peters also pointed out, although the position of DML, Cheryl and Paul was consistently (since the date of their Defence in the Chancery Action in September 2015) that there was no agency relationship, DPL never articulated any alternative case. It nailed its colours to the mast of the agency argument, and that argument did not prevail.

The Present Proceedings

30. The present unfair prejudice proceedings overlapped in time with the Chancery Action. The allegation that DPL was a quasi-partnership and that Andreas' legal rights were subject to equitable constraints first emerged in a letter from Paul and Cheryl's solicitors, Stephenson Harwood, dated 26 January 2016, some three-and-a-half years after Paul's exclusion from DPL. The Petition was then issued on 26 May 2016. By that stage, Paul had come to learn that Andreas had used monies from DPL to fund the Payments to Iris (see the June Judgment at [239]), i.e., the payment of approximately £1.6m to Iris which was required to be made to her under the terms on which the Matrimonial Proceedings came to an end. Andreas sought to justify the Payments to Iris on the footing that (1) some £240,000 was due to him from DPL in respect of Consultancy Fees due to him under a Consultancy Agreement with DPL (June Judgment at [239]), and (2) he had borrowed some £1.37m from DPL by means of the Personal Loan, which was repayable with interest at 3.5% (*ibid*.).

31. Later, in the course of the Chancery Proceedings, Paul also came to learn of the Maremonte Loans (see again the June Judgment at [239]), i.e., a series of advances totalling about £5.8m which Andreas procured DPL to make between March and September 2015. The funds were paid first to Gatemark but then paid on by Gatemark to the Maremonte Companies (June Judgment at [239]), and used to discharge their indebtedness to NBG. This had the knock-on effect of saving Andreas from potential bankruptcy, since he had given a personal guarantee in respect of that same indebtedness. Andreas says it also had the effect, since Paul was a 24% shareholder in each of the Maremonte Companies, of preserving and indeed enhancing the value of those shareholdings.

32. Once the existence of the Maremonte Loans became known to Paul, the Petition was amended to refer to them as giving rise to a free-standing allegation of unfair

prejudice. During the trial of the Petition, it also became clear that Andreas had procured the payment of yet other sums by DPL to Gatemark totalling about £2.3m, in the period November 2014 to August 2017. These became known as the Schedule 1 Payments (June Judgment at [273]), and were used to fund developments by Gatemark. Andreas said when cross-examined about the Schedule 1 Payments:

> "*My main consideration was to build up more assets for Gatemark, as I said before, in order to pay the loans, but I was reluctant to develop properties and sell in DPL because it was not completely my company.*"

33. Part of Andreas' case at the trial of the Petition was that the Personal Loan and the Maremonte Loans had been repaid, together with agreed interest at 3.5%. That was based on the fact that between October 2016 and July 2017, Andreas directed the sale of the properties in Gatemark's property portfolio, and the proceeds of sale were paid into DPL's bank account at Bank of Cyprus (June Judgment at [294]). During the trial, however, it became clear that Bank of Cyprus had permitted the payment of the proceeds of sale into DPL's bank account on the mistaken assumption that a guarantee given by DPL for Gatemark's liabilities in 2008 (the Gatemark Guarantee: see June Judgment at [99]) was still in place. Based on the same assumption, in August 2018, Bank of Cyprus transferred approximately £3.14m out of DPL's account and used it to settle certain of Gatemark's indebtedness. As matters have turned out, however, the assumption made in relation to the Gatemark Guarantee was wrong: it was in fact released in June 2012. Notwithstanding that, it seems that no steps have been taken to recover the relevant funds on DPL's behalf from Bank of Cyprus: at trial, Andreas said he did not wish to do so because it might have a negative impact on the relationship with Bank of Cyprus, which is important to his businesses.

34. Against this background, I said the following at [314] of the June Judgment as regards the Maremonte Loans and the Schedule 1 Payments (and the same broad logic was applied at [319] in my analysis of the Personal Loan):

> *"[Andreas'] own evidence shows a pattern of activity, throughout 2014 and 2015, by which he was using DPL's resources both (1) to stabilise the Maremonte Companies and stave off the threat of his own personal bankruptcy, and (2) to put Gatemark in a position where it (rather than DPL) could make profits from development projects."*

35. I therefore held that:

    i) Andreas was in breach of his duty under Companies Act 2006, section 172, both as regards the Personal Loan and the Maremonte Loans, essentially because in authorising those loans by DPL at his claimed interest rate of 3.5%, he had failed to have proper regard to DPL's interests. Instead, he was motivated by a desire to deploy DPL's financial resources in a manner which would be of benefit to him personally, rather than DPL's other shareholders, including Paul (June Judgment at [314] and 319]). (I did not express the same fully developed conclusion in relation to the Schedule 1 Payments because Paul's allegations there had not been pleaded, but Andreas' conduct was obviously part of the same pattern of behaviour).

ii) Andreas' breaches of his section 172 duty in relation to the Personal Loan and the Maremonte Loans constituted unfairly prejudicial conduct (June Judgment at [334]).

36. Having reached those conclusions, I went on to consider whether Paul should be given a remedy, and if so in which form. As to that, one of the arguments advanced against Paul being granted any relief was that he had delayed in bringing on his Petition. I rejected that argument. The alleged delay related only to the time between Paul's exclusion from management in June 2012 and the date of the Petition in May 2016. But I had rejected Paul's claim that he was unfairly prejudiced by his exclusion. I had found in his favour on those parts of the Petition relying on breaches of fiduciary duty in relation to the Personal Loan and the Maremonte Loans, but there had been no delay in pursuing those allegations (June Judgment at [339]-[340].)

37. As to the form of relief, I held that Paul's shares should be acquired by either Andreas and/or MHGL, but subject to a minority discount. In that regard, Mr Peters had argued that a minority discount would be unfair, because of the circumstances in which Paul came to acquire his shares and Andreas' intention that they should provide him with "*security*". In dealing with this point I said at [368]:

> *"I have in mind particularly the break-up of the family businesses, including DPL, primarily as a consequence of the Matrimonial Proceedings. Andreas' gift, if there was a gift of the rateable value of 12% of DPL's business, must surely have been conditioned on the family and the family businesses staying together. Starting in 2013, they were dismantled as a result of the Matrimonial Proceedings, a result which (even if the final details were not foreseen) must have been appreciated at the time they were started.*
>
> *...*
>
> *In light of those factors, I come back to Mr Peters' question: is it appropriate, in light of the history, and even bearing in mind his characterisation of Andreas' initial gift, now to subject the sale of Paul's minority interest to a commercial market discount? In my view, it is fair, because to my mind on any view, since at the latest the end of 2014, Paul had been no more than a minority investor in a business managed by Andreas ... ."*

Issues

38. Against that background, Paul's counsel, Mr Peters, argues broadly as follows.

39. Valuation Date: He says that Paul's shares should be valued at their current value as at the date of valuation, which in practical terms is likely to mean their value as at the date of the close of expert evidence in the future valuation trial. Paul says that in law that is the usual or default position, and that there is no good reason to depart from it in this case. The relief ordered is to require Andreas or MHGL to purchase Paul's shares, and sale of an interest in a going concern should reflect the current value of what is being sold.

40. Adjustments: Mr Peters says that the findings of unfair prejudice in the June Judgment all relate to Andreas' conduct in making use of DPL's resources for his own

purposes, and in a manner designed positively to damage Paul's interests as minority shareholder. Adjustments are necessary to reflect the value Paul's shareholding would have had if Andreas had not so acted. These include adjustments to reflect the matters referenced in the June Judgment, but also (possibly) additional adjustments to reflect matters of a similar nature which have been identified since then. The proposed adjustments thus relate to:

i) the Personal Loan;

ii) the Maremonte Loans:

iii) the Schedule 1 Payments;

iv) the sums taken by Bank of Cyprus from DPL's account on the mistaken assumption that the Gatemark Guarantee was still in existence;

v) certain further payments which Paul now says were made to or for the benefit of Andreas in the period July 2015 to February 2019 (set out in Annex 1 to his Schedule of Issues); and

vi) certain property sales effected by DPL in the years 2015, 2016 and 2017, in respect of which a comparison of sale prices taken from Land Registry entries on the one hand, and figures taken from DPL's accounts on the other, is said to show material discrepancies (summarised in Paul's Schedule of Issues, Annex 2).

41. In his Schedule of Issues, Paul's position in relation to (i) to (v) above is that any outstanding sums should be paid with interest at 3.5% compounded annually, and moreover that a further adjustment should then be made to reflect the fact that, had DPL itself had use of the relevant funds, it would have made a return in excess of 3.5%. Paul's position in respect of (vi) is that the value of DPL should notionally be increased by the amount of the overall discrepancy, and by a further sum to reflect the returns which DPL would have made had that amount remained in its hands.

42. Minority Discount: Mr Peters submits that when it comes to calculating the level of minority discount to be applied to his shareholding, certain further matters need to be taken into account in order to achieve a fair result overall. These are as follows:

i) Based on guidance taken from the Association of Chartered and Certified Accountants, Paul says that the "*absolute ceiling*" for any discount ought to be 33%.

ii) An allowance should be made for the circumstances in which he acquired his shareholding (i.e., as a gift from Andreas intended to provide him with "*security*" in the form of a 12% *pro rata* shareholding in DPL's business).

iii) An allowance should be made for the fact that at various times he took on financial risks and liabilities in order to benefit DPL – specifically the mortgage liabilities he took on in order to acquire properties in his own name which were later transferred to DPL, and the various guarantees he gave in respect of DPL's liabilities.

iv) Paul says that the valuation of his shareholding should take account of the special value it has to Andreas, arising from the fact that he will obtain 100% control over the shares in DPL once Paul's shares are acquired.

43. In response to the above, Mr Lightman QC argues broadly as follows.

44. Valuation date: Many of Mr Lightman's submissions were focused on this topic. He said it would be unfair to look to the current value of Paul's shares, since they are now at or near the peak of their value, and that is nothing to do with Paul and everything to do with Andreas. Having deservedly been excluded from management, since then Paul has taken steps positively to damage DPL, principally by means of the Matrimonial Freezing Order, which meant that until late 2014 or early 2015, rental income from DPL's properties kept flowing into DML and not DPL itself.

45. Moreover, this is all tied in with an apparently tactical decision by Paul to delay prosecuting his Petition pending the outcome of the Matrimonial Proceedings. That is to say, Paul's primary case in his Petition was based on his exclusion from what he claimed to be a quasi-partnership. That took place in June 2012, but was not raised in correspondence until January 2016 and the Petition was not presented until May 2016. Andreas infers from this timescale that Paul decided to await the outcome of the Matrimonial Proceedings before raising his complaint, in the hope and/or expectation that those proceedings might result in Iris (not Andreas) taking overall control of DPL. Quite apart from other matters, it would be unfair to allow Paul to benefit from the increase in value of DPL during that period of tactical delay.

46. Mr Lightman therefore proposes the following as possible valuation dates: 25 June 2012 (the date on which Paul was removed as a director and excluded from DPL); 7 November 2014 (the date on which it was ordered in the Matrimonial Proceedings that Iris' 12% shareholding in DPL be transferred to Andreas); 26 May 2016 (the date on which the Petition was presented); or alternatively, such other date as the Court considers just.

47. Adjustments: As to the adjustments proposed by Paul, Andreas' case is as follows.

i) As to those at [40(i)-(ii)] above (the Personal Loan and the Maremonte Loans), he says the relevant amounts have already been repaid, together with interest at 3.5% per annum, and nothing further is justified beyond that, either by way of compound interest or other amount to reflect alleged lost earnings in excess of 3.5% due to DPL. If he is wrong about that, however, he says that in assessing any adjustment required in respect of the Maremonte Loans, allowance needs to be made for the fact that Paul himself benefited from those loans being paid off, in the sense that the value of his shareholdings in the Maremonte Companies was thereby enhanced.

ii) As to Paul's adjustments at [40(iii) and (iv)] above (relating to the Schedule 1 Payments and the Gatemark Guarantee), Andreas accepts that Gatemark is liable to repay any outstanding amounts with simple interest at 3.5%, and will do so (but not compound interest). He also says, however, that if Gatemark has in fact made a return in excess of 3.5% on such funds, then he will agree to the value of DPL being adjusted to reflect the amount of that return, but only if

credit is given for his reasonable consultancy fees in relation to the relevant projects.

iii) As to Paul's adjustments at [40(v)] (the Annex 1 Payments), Andreas says that the majority of these are inter-company loans which have been repaid (or will be repaid) with interest at 3.5%. The remainder of the payments are in respect of back-office and administrative services, or in respect of consultancy services. As to Paul's adjustments at [40(vi)] (the Annex 2 discrepancies), he says that the alleged discrepancies arise for perfectly good reasons (e.g., deduction of solicitors' fees and other costs), and that on proper analysis there are no real discrepancies at all. As regards both [40(v) and (vi)], he says that Paul has failed to engage with the explanations put forward in his own Schedule of Issues, and that he should now do so.

48. Andreas also proposes various adjustments of his own (depending on the valuation date given: it is common ground that adjustments cannot be relevant in respect of periods after the chosen valuation date). These are:

i) an adjustment to reflect overpayment of dividends to Paul in the years 2010, 2011 and 2012;

ii) an adjustment to reflect Paul's occupancy of 21 Makepeace Avenue since August 2013 without paying rent;

iii) if necessary (see [47(i)] above) an adjustment to reflect the enhancement in the value of Paul's shares in the Maremonte Companies arising by means of the indebtedness to NBG being paid off;

iv) an adjustment to reflect a commitment made by DPL, and agreed to by Paul, to provide a property for Marina Joyce (one of Cheryl's children); and finally

v) if a later valuation date is chosen which post-dates the Matrimonial Proceedings, an adjustment to reflect the losses which accrued to DPL as a result of the Matrimonial Freezing Order and the related matters mentioned above at [24].

49. Minority Discount: As to the proper approach to calculation of the minority discount, Andreas says the following:

i) the level of discount is a matter for the valuation trial and the Court should not proceed on the basis that there is an "*absolute ceiling*" of 33%;

ii) as a matter of principle, the amount of the minority discount should not be adjusted to reflect the circumstances in which Paul received his shareholding and the basis on which it was originally held;

iii) likewise, the discount should not be adjusted to reflect the alleged financial liabilities and risks which Paul exposed himself to, either because those liabilities and risks were not material, or in any event because on the facts they do not justify a departure from the application of a full commercial discount; and

iv) Paul's shares represent an uninfluential minority holding with no special value to Andreas, and so in the valuation exercise he should not be treated as in any way a "*special purchaser*".

Overview

50. Looked at in overview terms, there is no real dispute as to the exercise the Court is required to conduct. At the heart of it is the statutory framework. Section 994(1) of the Companies Act 2006 is headed "*Petition by company member*", and provides as follows:

> "*(1) A member of a company may apply to the court by petition for an order under this Part on the ground –*
>
> *(a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
>
> *(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial".*

51. Section 996(1), headed "*Power of the Court under this Part*", then provides as follows:

> "*(1) If the Court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of".*

And among the non-exhaustive list of matters then set out in subsection 996(2) it is stipulated at (e) that the court may:

> " *... provide for the purchase of the shares of any members of the company by other members.*"

52. It is well settled that the discretion under Section 996 is a very wide one. That is recognised both by the parties in this case and indeed in many of the authorities I have been referred to. The Court must strive to achieve a result which is fair and equitable in light of all of the circumstances. Although I have been referred to a large number of authorities, it seems to me that none of these are prescriptive in saying that a particular form of order has to be made in a given situation. Rather, they are all examples of the Court responding flexibly to the particular factors in play in individual cases, and of the Court applying different techniques to produce a response which is fair and equitable on the particular facts.

53. I bear that general approach very much in mind, in turning to consider the individual matters identified in the parties' composite Table of Issues. Although I consider each of them in turn, none of them exists in isolation, and they all have to be looked at together as part of the overall exercise of determining what order is fair.

Valuation Date

The Starting Point

54. Prior to *Profinance Trust SA* v. *Gladstone* [2001] EWCA Civ. 1031, [2002] 1 BCLC 141, and as noted in that case itself, the authorities showed two main (and unfortunately competing) considerations to be borne in mind in deciding what valuation date was fair. One was that:

> "*… the shares should be valued at a date as close as possible to the actual sale so as to reflect the value of what the shareholder is selling*." (See per Robert Walker LJ in *Profinance* at [33]).

55. This approach obviously supports the conclusion that shares should be ordered to be purchased at their current value, which in practice will usually mean the date of the relevant buy-out order.

56. The rival consideration was in favour of the date of the petition. In *Re a Company (No. 002612 of 1984)* (1986) BCC 99, 453 (subsequently reported on appeal as *Re Cumana Limited* [1986] BCLC 430), Vinelott J. justified the date of the petition as:

> " *... the date on which the petitioner elects to treat the unfair conduct of the majority as in effect destroying the basis on which he agreed to continue to be a shareholder, and to look to his shares for his proper reward for participation in a joint undertaking*".

57. In *Profinance*, Robert Walker LJ in delivering the judgment of the Court preferred the former (current value) approach as the "*starting point*" (see at [60]-[61]), a conclusion which it was thought reflected "*the general trend of authority over the last 15 years*" (see at [61]).

58. Also at [61], however, the Court went on to recognise that there will be "*many cases in which fairness (to one side or the other) requires the court to take another date."* Mr Lightman says that the present is such a case. I will now consider the points he relies on as supporting that conclusion.

Increase in Value over Time

59. One of Mr Lightman's main points is that the value of DPL has increased steadily over the time Andreas has been in charge of it, and it would be unfair to Andreas to require him to purchase Paul's shares at their increased "*peak*" value.

60. It seems to me, however, that an increase in value over time, even one attributable to the efforts of the majority shareholder, is insufficient reason in itself to depart from the usual starting point of a purchase at current value.

61. I say that because it is an entirely routine matter that the value of a company's shares will fluctuate, both up and down. A majority shareholder who, like Andreas, is also a director of the relevant business, owes a duty to promote its success. I do not think he can complain if it is successful, and say that a minority shareholder who in the meantime had no practical means of exiting the business should be deprived of the present value of his shareholding. In this case, Paul had no practical means of exiting DPL as a shareholder in the absence of a finding of unfair prejudice. That finding

was made only in the June Judgment. I will deal below with the issue of delay by Paul, but I note at this stage that the question of delay is in some senses a two-way street. Andreas could also have helped himself, and sought to protect against the consequences of the value of DPL increasing over time, by making an open offer to purchase Paul's shares at an early stage. No such open offer was made. In choosing not to make one, Andreas must be taken to have assumed the risk that a buy-out order would eventually be made, and that the value of DPL might increase in the meantime.

62. In arguing to the contrary, Mr Lightman relied on *Re Elgindata Limited* [1991] BCLC 959. In that case, Warner J. took the date of his buy-out order in 1990 as the appropriate date for valuation, even though the fortunes of the company had declined considerably since 1987, when they were at their peak, and indeed since 1989 when the petition was presented. The facts were that, although the petitioner had established unfairly prejudicial conduct on the part of the respondent, that was only in respect of certain improper "*perks*" which had not had any material impact on profitability, and so the decline in value since 1987 was not attributable to the respondent's conduct. Warner J. thought that in those circumstances, "*to fix a date for the value of the shares at or near the time when the company's fortunes were at their peak would be grossly unfair to [the respondent]*."

63. Relying on *Elgindata*, Mr Lightman said that just as in that case it was unfair to require the respondent to pay peak value, in circumstances where he had *not* been responsible for their decline in value, likewise in the present case it would be unfair to require Andreas to acquire Paul's shares at their peak value, when he *has* been responsible for the increase.

64. With respect, I do not think the logic applied in *Elgindata* can be stretched that far. To the contrary, it is an example of the Court using the usual (current value) starting point, and saying to the successful petitioner: well, you must bear the consequences of having been a shareholder until you obtained a means of exit; and that means you are fixed with the consequences of the value of the shares having fluctuated (in the circumstances, downwards) in the meantime. That seems entirely fair. A shareholder must normally take the rough with the smooth, as far as fluctuations in the value of the business are concerned.

65. But the same logic applies in the other direction, i.e., if the value of the shares has increased. In fact, that was the situation in *Profinance Trust* itself. There, the Court of Appeal overturned the decision of the Deputy Judge, who had settled on valuation as at the date of the Petition (when the agreed value of the company was £80,000), in favour of a valuation as at the date of the first instance trial (when the agreed value had risen to £215,000).

66. In reaching that conclusion, Robert Walker LJ at [61(iv)] endorsed the view of the Deputy Judge that a petitioner is not entitled to a one-way bet, meaning that a minority shareholder whose shareholding has been subjected over time to fluctuations in value in the ordinary course of the company's business cannot pick and choose an exit date which is most advantageous to him (see *Elgindata*). But in my view, *Profinance Trust* itself demonstrates that the logic of that proposition cuts both ways, and that absent circumstances justifying a different approach, neither can a majority shareholder against whom a buy-out order has been made seek to pick and choose an early valuation date which may be more advantageous to him, on the basis of an

upward fluctuation in value in the meantime (unless, perhaps, he has made an offer to buy at an early stage).

67. As to what those such circumstances might be, in *Profinance* at [56] Robert Walker LJ referred to cases in which there had been a "*sea change*" in the company's business (a phrase used by the Deputy Judge), but he sounded a note of caution about what that meant:

> *"This phrase from a song in The Tempest is a vivid but imprecise expression. It has been used in the authorities, as we understand them, to denote not simply an alteration (however dramatic) in a company's profits, but a rearrangement of its structure and business (typically by an increase in issued capital and the injection of a new business) which means that the company (in the eyes of a businessman or investor) is no longer what it was before. It would also no doubt cover the virtual destruction of a company by diversion of its business elsewhere, as in Meyer."*

68. The examples given by Robert Walker LJ in his summary at [61(i)-(ii)] were as follows:

> *"(i) Where a company has been deprived of its business, an early valuation date (and compensating adjustments) may be required in fairness to the claimant (Mayer).*
>
> *(ii) Where a company has been reconstructed or its business has changed significantly, so that it has a new economic identity, an early valuation date may be required in fairness to one or both parties (OC Transport, and to a lesser degree London School of Electronics). But an improper alteration in the issued share capital, unaccompanied by any change in the business, will not necessarily have that outcome (DR Chemicals)."*

69. *Scottish Cooperative Wholesale Society Limited* v. *Mayer* [1959] AC 324 was an early case under section 210 Companies Act 1948, in which the company was established in order to service the business of the respondent Society in manufacturing rayon, but where the Society, following a disagreement with the minority shareholders, then began diverting its business to a new department within its own organisation. The valuation date chosen was the date of the petition, rather than any later date, adjusted to compensate for oppressive conduct occurring before that date. In *Re OC (Transport) Services Limited* [1981] BCLC 251, the conduct complained of was that the respondent had caused the company's share capital to be increased and had allotted a large number of the new shares to a company with which he was associated. Mervyn Davies J., on a petition under s. 75 Companies Act 1980, ordered valuation at the date of the resolution to increase the share capital, rather than at the date of the petition or some later date. This was considered fair because at that time the value of the petitioner's shares would not have been affected by the company's altered status brought about by the allotment of the newly authorised shares to the related company.

70. I do not see the present case as comparable to these decisions. There has been no "*sea change*" in the nature of DPL. None of the submissions made by Andreas lead me to think it has a new economic identity. It is still a property owning and letting business.

It has perhaps been managed more efficiently by Andreas and with different priorities in mind; no doubt it has been affected (for better or worse) by changed and changing market conditions; certainly its fortunes seem to have improved; and certainly it is true that Paul has played no part in its management and operations for many years. But it seems to me it is still fundamentally the same business it was in 2012; and in the absence of any open offer to buy him out, Paul has effectively been locked in as a shareholder in that business since then.

Delay

71. I turn to the contention that Paul delayed in bringing his Petition. Mr Lightman referred me to a number of cases on this topic.

72. *Clegg* v. *Edmondson* (1857) 8 De. G.M. & G. 787, was an early decision in which the plaintiffs asserted a constructive trust over the lease of a mine. The plaintiffs had been in partnership with the defendants; the defendants sought to dissolve the partnership and then took on in their own names the mining lease in question, which turned out to be profitable. The plaintiffs asserted their claim in correspondence, but took no action for nine years, and only then instituted proceedings. Their claim failed on the ground of laches. At p. 814, Knight Bruce LJ said as follows:

> *"A mine in which a man works is in the nature of a trade carried on by him. It requires his time, care, attention and skill to be bestowed upon it, besides the possible expenditure and risk of capital, nor can any degree of science, foresight and examination afford a sure guarantee against sudden losses, disappointments and reverses. In such cases a man having an adverse claim in equity on the ground of constructive trust should pursue it promptly, and not by empty words merely. He should shew himself in good time willing to participate in possible loss as well as profit, not play a game in which he alone risks nothing."*

73. The logic was later relied on in an Australian shareholder oppression case as supporting the proposition that "*equity leans against permitting a dilatory claimant to gain benefits in an expanding business*" (*Rankine* v. *Rankine* (1995) 14 ACLC 116, 122, per Thomas J.)

74. In *Re Marchday Group plc* [1998] BCC 800, Neuberger J. refused to strike out an unfair prejudice petition despite a finding of inordinate and inexcusable delay, but remarked that ultimately the petitioner's delay would be relevant to the question of what form of relief (if any) to grant him; and in a more recent case, *Re Edwardian Group Limited* [2018] EWHC 1715 (Ch), [2019] 1 BCLC 171, Fancourt J. expressly calibrated the valuation date to take account of the petitioner's delay in bringing his proceedings. The petitioners knew about some matters constituting unfair prejudice in 2008, and came to learn of others during the first part of 2012 (see, e.g., at [592] and [634]). But the petition was not presented until November 2015 (see at [566]). Fancourt J. held that the reason for the delay in presenting the petition was a tactical decision by the main petitioner to await the outcome of related proceedings brought by his father. Those proceedings were started in February 2011 (see at [588]), and terminated only in late 2014 (see at [590]). On those facts, Fancourt J. held that the petition could and should have been brought earlier, and determined that an adjustment of four years was justified, resulting in a valuation date of June 2014, rather than July 2018 (the date of his Judgment). June 2014 was thus an assessment

of the likely date of judgment had the petitioners issued their petition in a timely manner.

75. Based on these authorities, I quite accept that delay is a relevant consideration, and that in some cases it will be an appropriate response to flex the valuation date to take account of delay.

76. The short answer on the present facts, however, is that there has been no relevant delay. I say that because in my judgment, the alleged delay must be measured as against the pursuit of the allegations of unfair prejudice which have succeeded, not those which have failed. On examination, it is clear that that is the approach taken by Fancourt J. in *Edwardian*: see his comments at [568] and [572]. That is entirely logical. The exercise is one of identifying a fair valuation date. It makes sense to say that if a petitioner has delayed in pursuing allegations of unfair prejudice which in the event have given him an exit route from the company, because an order has been made on the basis of those allegations, then the valuation date should be flexed to coincide with the date when he could, without delay, have obtained that same relief. But it makes no real sense to say that a petitioner who has delayed in bringing allegations which have *not* succeeded should have the relevant valuation date pushed backwards on account of that delay.

77. That is this case. It is clear that the delay Mr Lightman points to is delay by Paul in pursuing a petition based on his exclusion from the management of DPL in 2012, pending (he says) conclusion of the Matrimonial Proceedings. Even assuming such delay, however, the fact is that the claim for relief from unfair prejudice put on that basis failed. The claims which succeeded were those in relation to Andreas' conduct in later periods, from 2015 onwards, when he began to make use of DPL's funds without proper regard to his duties as a director. There was no delay in relation to those claims, which were brought straightaway: in the original Petition in May 2016 in the case of the Payments to Iris, made in January 2016; and in the Amended Petition, in relation to the Maremonte Loans, which came to light only later, in the course of the Chancery Proceedings.

78. That analysis cannot be affected simply because the successful allegations were brought in the same proceedings as the allegations which failed. That would be to elevate form over substance. In substance, the position is no different than if Paul had in fact initiated proceedings shortly after June 2012, based on his exclusion, which then failed but were followed in 2016 by new, separate proceedings based on the Payments to Iris and the Maremonte Loans. In that event, an argument based on delay would not have been available to Andreas; and neither should it be here.

Conduct

79. Mr Lightman QC impressed upon me the fact that, in determining the form of relief to award, the Court should take into account not only the conduct of the respondent but also that of the petitioner. He drew my attention to the following statement of Morgan J in *Interactive Technology Corporation Limited* v *Ferster* [2016] EWHC 2896 (Ch) at [318], which was later applied by HH Judge Stephen Davies (sitting as a Judge of the High Court) in *Corran* v *Butters* [2017] EWHC 2294 (Ch)) at [118]:

> *"It is established that wrongdoing on the part of a petitioner seeking relief under section 994 can be relevant in two ways. The first way is that the petitioner's wrongdoing may make the prejudicial conduct of the respondent not unfair. The second way is that the petitioner's wrongdoing may justify the court in refusing to grant relief to the petitioner or may influence the choice of any relief which is granted. These propositions are established by Re London School of Electronics Ltd [1986] Ch 211 at 222 B-C, Richardson v Blackmore [2006] BCC 276 and Grace v Biagioli [2006] BCC 85."*

80. I note that in the same case, however, HH Judge Stephen Davies also quoted with approval the following passage from *Hollington* (8th Edn, 2017) at §7-200:

> *"It is clear that in determining the issue of unfair prejudice, and indeed the appropriate remedy, the court will take into account not only the conduct of the majority but also that of the minority. But the court does not 'sit under a palm tree', denying relief to a petitioner just because it may disapprove of his conduct: the unfair prejudice remedy does not usher in a regime where judges make up corporate standards 'on the hoof': 'Justice is not administered on the basis of tit for tat': per Arden LJ in Re Tobian Properties [2013] Bus. L.R. 753 at [41] ...".*

81. As I understand it, Mr Lightman's points here focus principally on (1) the idea that Paul's removal as a director was found to be justified on the basis of his secretly removing cash from the family businesses, and (2) Paul's later conduct in continuing to control rental income attributable to DPL's properties via DML, principally by means of operation of the Matrimonial Freezing Order.

82. Again, I accept the relevance of assessing both parties' conduct in determining what is fair; but it seems to me that the particular points relied on by Mr Lightman are, on examination, of limited weight in supporting the case for an early valuation date.

83. Dealing first with the question of Paul's removal as a director, I do not think it entirely accurate to say that his removal was found to be justified by reason of his practices in relation to cash rental income. The primary finding in the June Judgment was that Andreas had an unfettered right to remove Paul from the management of DPL, because DPL was *not* a quasi-partnership and his rights as majority shareholder were unrestricted by any equitable constraints (June Judgment at [219]). The conclusion that Paul's exclusion was justified was expressed only on the alternative assumption that DPL *was* a quasi-partnership; that there *were* the equitable constraints Paul contended for; and that Paul was guilty of misconduct in relation to them, by reason of his treatment of cash rental income within DML: see the June Judgment at [220] and [229]. But that was not my primary conclusion; and Andreas has always denied the existence of any equitable constraints. In such circumstances, I think that using Paul's exclusion in 2012 as an anchor point in working out a valuation date places too great an emphasis on the alternative analysis, and too little weight on the primary analysis, and in any event points towards a valuation date which is too remote in time from the instances of unfairly prejudicial conduct I found were actually made out.

84. As to the idea that Paul damaged DPL by continuing to siphon off rental income from its properties via DML, this seems to me to run into a number of problems, principally the finding by the Court of Appeal that that is something DML was entitled to do:

i) As to the Matrimonial Freezing Order, the basic complaint is that DML did not make the monthly payments of £110,000 to DPL expressed as the "*Basis of Order*." As noted in the June Judgment at [147], however, no complaint was made about this at the time, as one might have expected, and no explanation for the failure has been given. The Freezing Order has long since been discharged.

ii) Instead, a claim for the unpaid sums was included as one head of claim ("*Failure to pay Minimum Payments*") in the Chancery Action, together with a separate claim arising out of the late return of DPL's properties ("*Post Termination Retentions*"). These claims were all put forward on the basis that DML was DPL's agent. But that argument was rejected, and the claims failed, leaving a situation in which the rental monies collected by DML were, and are, to be treated in law as its property. Andreas has not sought to explain how, in a manner consistent with this finding, he says that DML's use of rental income has caused DPL loss.

Valuation Date: Conclusion

85. In *Re Abbington Hotel Ltd* [2011] EWHC 635 (Ch), [2012] 1 BCLC 410, David Richards J. at [123] referred to the date of judgment as the starting point for valuation, but said that the court is nonetheless "*free to choose such date as is most appropriate and just in the circumstances of the case*." He went on, "*[i]n particular, the date should be that which best remedies the unfair prejudice held to be established*."

86. In the present case, the unfair prejudice held to be established consists of Andreas' use of DPL's funds, from 2015 onwards, in a manner designed to be of benefit to him personally, rather than DPL's shareholders generally, including Paul.

87. By then, whatever the nature of his shareholding may have been previously, Paul was no more than a minority investor in a business managed and controlled by Andreas (June Judgment at [368]).

88. The relevant matters of complaint were pursued by Paul as soon as he became aware of them.

89. It is true that the value of DPL's business has improved over time, and that Paul has played no part in managing it; but there is nothing unusual or inherently unfair in the idea that a minority investor in a business who has had no part in its management should benefit from an increase in its value. Moreover, until recently Paul has had no obviously straightforward means of exiting DPL, and now that he has one his shareholding is to be valued with a minority discount.

90. Taking all these matters together, it seems to me entirely logical and fair to say that Paul's shareholding should be valued at its present value, but subject to the minority discount I have already ordered (which I will mention further below), and subject also (as in substance the parties are agreed) to adjustments designed to address losses flowing from the unfairly prejudicial conduct shown to have been established.

91. In reaching that conclusion, I bear in mind all the findings made in the June Judgment, including those in which I was critical of Paul's conduct. Not all such

matters are capable of precise quantification, and consequently there is always a sense in cases such as this in which the overall position reached is somewhat rough around the edges. In my overall judgment, however, the structure I propose is a fair one which properly balances the interests of all relevant parties and the findings I have made.

92. I would therefore propose that, subject to the further points made below in relation to adjustments and minority discount, Paul's shareholding be valued as at the date of the Order requiring Andreas and/or MHGL to purchase his shares, i.e., as at 25 July 2019.

Adjustments

Paul's proposed Adjustments

93. Subject to the points mentioned below, as I understood it there was no issue in principle between the parties as to whether Paul should be entitled to argue for the adjustments described above at [40]. That seems to me correct. They all relate to the same basic point, namely that in various ways Andreas was responsible (or possibly responsible) for misusing company funds in periods after 2014. There were only two matters of real contention for present purposes, which I address below.

Annex 1 and Annex 2: Paul's failure to engage

94. Andreas complained that Paul had failed to engage with the explanations given in his Schedule of Issues for both the payments listed in Paul's Annex 1, and the shortfalls listed in Paul's Annex 2. Paul's position was that relevant documents were all in the possession of DPL, and that he could not be expected to engage further at present.

95. I therefore suggested that the parties look for ways of narrowing the issues between them in relation to such matters, and of allowing Paul to test Andreas' explanations. If issues remain, I will deal with them at the time the present Judgment is handed down.

Adjustment beyond 3.5% interest/Compound Interest

96. In giving evidence about the Maremonte Loans at the trial of the Petition, and as recorded in the June Judgment at [278], Andreas accepted that had DPL kept the relevant funds for its own purposes, it could have earned returns greater than 3.5% - he estimated something between 4.5% and 6% for rental returns (less any borrowing and other costs), and a "*much, much higher return*" on developments, at least in those cases where he was personally involved in managing the development work. The basic complaint made against him by Paul, and upheld in the June Judgment, was thus that in choosing to advance the Maremonte Loans at an interest rate of 3.5%, Andreas had failed properly to consider whether the funds could more profitably have been used by DPL in other ways.

97. The same basic point applies to the Personal Loan (again in light of Andreas' own evidence: see June Judgment at [279]), and to the Schedule 1 Payments (June Judgment at [275]). In each case Andreas sought to justify his selection of a 3.5% interest rate on the basis that it would not leave DPL out of pocket vis-à-vis its own borrowing costs; but the criticism upheld against him was that this deprived DPL of returns in excess of 3.5% which it had the potential to earn.

98. In those circumstances, it seems to me that in principle, Paul is entitled to seek an adjustment at the valuation trial to reflect the lost opportunity to DPL, arising from Andreas' decision to advance the Maremonte Loans, the Personal Loan and the Schedule 1 Payments at an interest rate of only 3.5%. Logically, the same approach applies to the sums taken by Bank of Cyprus on the assumption that the Gatemark Guarantee continued in existence. That is because the effect of Bank of Cyprus' actions has been to prolong the period for which the amounts taken are not at the disposal of DPL.

99. Therefore, I am afraid I cannot agree with Mr Lightman's criticism that Paul has not explained on what basis he says DPL could have made a return above 3.5% per annum. That contention is supported by Andreas' own evidence.

100. Several related points arise.

101. *Returns Accruing to Gatemark*: First there is Andreas' point that, as regards the Schedule 1 Payments and the payments in connection with the Gatemark Guarantee, he *will* agree to credit DPL with any return in excess of 3.5% made by Gatemark in respect of such funds, but that nothing should be payable beyond that. The danger with this logic, it seems to me, is that it may miss the point, which is that the adjustment should be designed to reflect value of the *loss to DPL* of the opportunity to make use of its own funds. That may or may not be the same as the amount of Gatemark's gain, but I do not think I should preclude Mr Peters at this stage from seeking to pursue the allegation that it might be more. It seems to me that the fair way to deal with this point is to take Andreas' pleading as an assertion that the value of the lost opportunity to DPL is the same as the value accruing to Gatemark from its use of the sums in question. Whether that is so or not will be a matter for evidence at the valuation trial.

102. *Consultancy Fees*: Second, and relatedly, there is Andreas' assertion that in calculating the value of DPL's lost opportunity, account should be taken of his prospective consultancy fees. This is in light of my finding at [301] of the June Judgment that Andreas had an arrangement with DPL under which he would charge for his services (i.e., the Consultancy Agreement). As to this, it seems to me correct to say that in calculating what DPL lost by means of its funds being used as they were, one should look not only at what would otherwise have been done with them but also at what costs would have been incurred in so doing. If those costs would have included consultancy fees payable to Andreas, then they should feature in the calculation. Again, these are matters for evidence and evaluation at the trial.

103. *Compound Interest*: Third, there is the question of compound interest. Andreas' position is that Paul has not articulated any justification for his position that compound interest should be paid. In making that submission Mr Lightman relied on the approach of Teare J. in *JSC BTA Bank* v. *Ablyazov & Ors* [2013] EWHC 867 (Comm), citing *Sempra Metals* v. *IRC* [2008] 1 AC 561.

104. In his submissions, Mr Peters explained his position further. It is that the claim to compound interest should be regarded as part and parcel of the claim in respect of the lost opportunity to DPL to use the relevant funds in other ways in its own business. Looked at in this way, it seems to me that the claim is a permissible one, at least in principle, because in *Sempra Metals* Lord Nicholls said at [95]:

> *"In the nature of things the proof required to establish a claimed interest loss will depend upon the nature of the loss and the circumstances of the case. The loss may be the cost of borrowing money. That cost may include an element of compound interest. Or the loss may be loss of an opportunity to invest the promised money. Here again, where the circumstances require, the investment loss may need to include a compound element if it is to be a fair measure of what the plaintiff lost by the late payment. Or the loss flowing from the late payment may take some other form."* (Emphasis added).

105. As I understood Mr Peters' submission, it was that the claim to compound interest at paragraph 7 of his Schedule of Issues should be looked at as one way in which the claim in respect of lost opportunity is put. The compounding element is put forward as a proxy for the return (or part of the return) that DPL would have made had the relevant funds been available for use in its business. Analysed in that way, I think the point is sufficiently well pleaded and sufficiently well understood.

106. *Paul's Shares in the Maremonte Companies*: Finally, there is Andreas' point that account needs to be taken of the increase in the value of Paul's shares in the Maremonte Companies, given the use of the Maremonte Loans to pay off NBG. I will deal with this point below in analysing Andreas' proposed adjustments.

Andreas' proposed Adjustments

Overpaid Dividends

107. Andreas says that, looking at Paul's strict legal rights as shareholder in DPL, he was entitled only to a 12% dividend in each of the years to March 2010, 2011 and 2012 (which would have totalled £67,800), but in fact received a lot more (Andreas puts the figure at between £475,000 and £565,000). In the same time period, MHGL (through which Andreas held his shareholding) received no dividends. Andreas therefore seeks an adjustment to the value of Paul's shares to reflect the alleged overpayments.

108. Mr Peters says that this is an old issue, which was pleaded in the Re-Amended Defence in response to the Petition, and reflected in Andreas' Witness Statement for trial, but then never developed in the sense that it was never put to Paul that he had acted improperly in relation to the disbursement of dividends and the point was not addressed at all in MHGL's opening or closing submissions. He says that it would now be an abuse of process to allow the point to be revived, and to require Paul to be cross-examined again on evidence which was not previously challenged.

109. I see force in Mr Peters' points, but perhaps more fundamentally I think that the basis of Andreas' proposed adjustment is insufficiently clear. At the trial of the Petition, Andreas' evidence was somewhat contradictory on the topic of dividends. One the one hand, he said in his Witness Statement at paragraph 194 that Paul was never entitled to receive more than a 12% dividend from DPL, but on the other hand, and as noted above, he acknowledged the existence of a flexible "*policy*" in relation to drawings. To my mind (and as I said in the June Judgement at [64]), Andreas' "*policy*" was consistent with the account in Paul's evidence that there was considerable informality as regards the treatment of dividends within the family companies. Overall I held that there was a high degree of flexibility in relation to the payment of both dividends and salaries (June Judgment at [61]).

110. Andreas now says, however, that the fact that Paul took more than his strict 12% entitlement is *ipso facto* wrongful. I am unclear how that proposition is to be squared either with Andreas' own evidence as to his "*policy*" or indeed my findings. For example, on the face of it, saying that Paul was necessarily entitled to no more than a 12% dividend involves ignoring Andreas' "*policy*" completely. If, on the other hand, Andreas' case is that his "*policy*" is to be recognised, I am unclear why its application nonetheless produces exactly the same result as ignoring it.

111. In these circumstances, my conclusion is that this proposed adjustment is insufficiently clear and coherent to be allowed to proceed further.

21 Makepeace Avenue

112. Andreas' proposed adjustment here is that an amount be deducted from the value of Paul's shares to reflect the rent which he should have paid on Makepeace Avenue since August 2013, or alternatively that DPL's value should reflect a reduction in the market value of Makepeace Avenue on its books in light of Paul's right to live there rent free.

113. The problem with this approach is that, one way or another, it demands a resolution of the question which is presently pending in the stayed Possession Proceedings, namely whether Paul is entitled to occupancy of the Makepeace Avenue property rent free or not. That question is not pending in these proceedings, and in the absence of an application to lift the stay in the Possession Proceedings and order some form of consolidation, it seems to me it is not a matter I can properly address.

114. That being so, it seems to me the appropriate course (and indeed the only available course) is the one suggested by Mr Peters, namely that the valuation experts be required to proceed on the basis that there is an unresolved dispute in relation to the Makepeace Avenue property. It cannot be unusual that a company is required to be valued in circumstances where there is a dispute about one or other of its assets, and I assume there are valuation techniques which allow that to happen. Such a course does not result in the vice which concerns Mr Lightman, of allowing Paul at one and the same time to say that he is entitled to rent free occupation but that no corresponding deduction should be made in calculating the value of Makepeace Avenue in DPL's books. I did not understand Mr Peters to be saying that anyway, but even if he is, the proposal addresses the point by steering what seems to me to be the only practicable middle-course, unless the stay in the Possession Proceedings is lifted and the relevant issues finally resolved.

Paul's Shares in the Maremonte Companies

115. Next there is Andreas' point that, if in principle Paul *is* entitled to an adjustment in relation to the Maremonte Loans to reflect possible lost returns to DPL in excess of interest at 3.5%, then in calculating that adjustment one must take account of the fact that the Maremonte Loans were in fact used to pay off NBG, and that had the effect of benefiting Paul because he was a 24% shareholder in the Maremonte Companies.

116. Mr Peters invited me to conclude now that this point is misconceived as a matter of law and should not be allowed to proceed. This was on the basis that there must be a limit to the matters which can be brought into account in determining the outcome of a section 994 petition, and any increase in the value of Paul's shareholdings in the Maremonte Companies is beyond that limit. He pointed specifically to the concluding words of Section 996(1) ("*in respect of the matters complained of*"), which he said must be taken to refer back to section 994 and therefore be limited to the interests of the petitioning shareholder *qua* shareholder in the company the subject of the petition (here, DPL) and not some other company.

117. In argument Mr Lightman QC referred me to *Wootliff* v. *Rushton-Turner and Others* [2016] EWHC 2802 (Ch), [2018] 1 B.C.L.C. 48, a decision of Mr Registrar Briggs, as supporting the proposition that sections 994 and 996 need to be approached more expansively than was suggested by Mr Peters. In that case Mr Registrar Briggs declined to strike out a wrongful dismissal claim which was included within the petition. In doing so he referred to the language of section 996, which he thought so wide that "*it cannot be said, in my judgment, it shuts out relief for compensation for breach of a service agreement*" (see at [34]), and said the question was one for trial, when it would be necessary to assess whether the service contract was "*a reflection of the overall relationship and interests of members*" (see at [35]).

118. I do not think that Andreas' approach is wrong as a matter of law. Looking at section 996(1), I agree with Mr Peters that I have to make an Order which gives relief "*in respect of the matters complained of*". But the matters complained of are the payments made to Gatemark known as the Maremonte Loans. The Order Mr Peters says should be made is one which reflects the value which would have accrued to DPL had those payments *not* been made, and had the relevant funds instead been used by DPL for other purposes. But in that counterfactual, NBG would not have been paid off, and (or so I shall assume for now) Paul's Maremonte shares would have been worthless.

119. In those circumstances, I think that in working out what an appropriate adjustment looks like, fairness does require the Court to look at both sides of the same coin, and to make some allowance for the manner in which the relevant funds *were* actually used. Assuming they were used in a manner did benefit Paul (as shareholder in the Maremonte Companies), it seems to me it would be unjust to allow him both to retain that benefit, and at the same time obtain credit for the further, notional benefit he would have received (as shareholder in DPL) had the same funds been used in a different way. The actual benefit and the alternative, notional benefit both arise out of the same payments, which in context are *the matter complained of,* and in my view both need to be taken into account in determining the appropriate form of relief.

120. I therefore conclude that Andreas' point works as a matter of law. It is a separate question, however, whether the payments made to NBG *really did* have the effect of benefitting Paul, and if so to what extent. As I understood Mr Peters' submissions, they were to the effect that in reality, given the manner in which the Maremonte shareholdings came to be transferred to Paul and Cheryl, they were never really assets of any value to either of them, and so they did not really benefit from NBG being paid off. In fact, Mr Peters said that Paul was not aware of the transfers at the time they happened and did not consent to them. These, however, are factual matters which I cannot determine now. They must be assessed at the valuation trial.

Property for Marina Joyce

121. Andreas says that an adjustment is required to reflect a commitment by DPL to make a property available for Marina Joyce, Cheryl's daughter, by way of transfer of one of the existing flats it owns at 20 Crescent Road. Andreas says that Paul has agreed to this commitment in his capacity as shareholder, and points to an email sent by Paul dated 17 April 2018 in which he said he had no objection to what was proposed but trusted that "*DPL will adopt the same approach in relation to my family*." In a later exchange in October 2018, however, in relation to a similar proposal then made

concerning Marina's brother, Anthony, Paul said he had difficulty reconciling Andreas' claimed desire to provide accommodation for his children and grandchildren with the fact that DPL was seeking to remove his family from the Makepeace Avenue property by means of the Possession Proceedings.

122. As Mr Peters has pointed out, a number of issues arise in relation to the alleged commitment to Marina, which are relevant to its impact on the value of DPL. These include (1) what the limits are of Andreas' desire to provide for his family, and precisely how it translates into obligations which are binding in law or in equity; and (2) leaving aside communications between Andreas and Paul, what commitment has actually been made to Marina herself, and are the formal requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 satisfied in respect of that commitment or not.

123. I see force in these points. In my view Andreas' case on this proposed adjustment is rather embryonic. Nonetheless, given the email exchanges I have been referred to, I do not feel able to dismiss it. I think there is an arguable issue between the parties which goes to the overall question of DPL's value. I think the appropriate course is to say that the adjustment is sufficiently arguable, but will need to be further explored. If necessary, the valuation of DPL can no doubt provide alternative figures, both with and without the commitment reflected, and the Court can reach a final view at the valuation trial if it has not done so before then.

Matrimonial Freezing Order

124. This proposed adjustment is said to arise out of Paul's actions in (1) assisting in obtaining the Matrimonial Freezing Order, with the practical consequences that had, (2) thereafter, failing to ensure that DML made the required minimum payments of £110,000 per month; and (3) failing to ensure the timely return of DPL's properties to DPL's control when the Matrimonial Freezing Order was discharged.

125. In Mr Lightman's Skeleton, the adjustment under this head is described as being the difference between (1) the sums which DML received from tenants of the DPL properties, and (2) the (significantly lower) market price which DPL would have paid to a property manager with respect to the DPL properties in an arms' length commercial context.

126. In my view, this is not a permissible adjustment, essentially because it is an attempt to re-litigate matters which either should have been resolved in earlier proceedings or indeed have already been resolved against DPL.

127. As already mentioned above at [24], no explanation has been given for the failure at the time to pursue a complaint about the minimum payments in the context of the Matrimonial Proceedings themselves, and the relevant Freezing Order has long since been discharged. Subsequently, when relevant claims (in respect of "*Failure to pay Minimum Payments*" and "*Post Termination Retentions*") were brought in the Chancery Action, they were put on the basis of DML being DPL's agent, and failed. Part of the (failed) agency case was that although DML was obliged to account to DPL in respect of rents received, it was entitled to retain a commercial rate of commission (see the Court of Appeal Judgment [2019] EWCA Civ. 127 at [18]). It seems to me that the proposed adjustment is in substance an attempt to re-run that

failed argument. I see no good reason why that should be permitted. The present valuation exercise is not a vehicle for Andreas to seek to address perceived shortcomings in his overall position arising from the outcomes in other, related pieces of litigation.

Calculation of Minority Discount

128. In the June Judgment, and as required by the Order defining the First Issues (see the June Judgment at [8]), I determined that in fixing the price payable for Paul's shares, the Court should apply a discount reflecting the fact that the shares are a minority holding.

129. In *Re Edwardian* at [639], Fancourt J. pointed out that a "*discounted*" basis of valuation is generally taken to refer to the market value of a minority shareholding, valued separately, which is generally less than a *pro rata* share of total shareholder value. But at [648] he also emphasised that ultimately the role of the Court is to arrive at a price which is fair, in circumstances where a share purchase is necessary to relieve the minority shareholder of the unfairly prejudicial conduct he has suffered. He went on:

> *"That question is not, in my judgment, a simple choice between a pro rata share of the Company's overall value and the market value of the shares. Those are, as it were, the two extremes of price that could be ordered to be paid, but between them there are various possibilities for specifying a basis of valuation that results in a fair price as between these minority shareholders and the respondents against whom relief is granted."*

130. The positioning of a particular case between these two extremes has been referred to by Mr Peters as identifying where one stands on the "*sliding scale*". As I explained to the parties at the hearing before me on 25 July 2019, and as I understand them now to accept, in the present case that question is still an open one, which was not addressed in my findings at [368] of the June Judgment. That is because the Order defining the First Issues required me only to determine whether a minority discount should be applied or not (essentially a binary question), but not *the extent* of that discount.

131. Paul now says that various matters fall to be taken into account in determining where on the "*sliding scale*" he stands. I consider these in turn below. Before doing so, I note that in the event Paul did not invite a determination at this stage (as Andreas thought he might) of the question whether the "*absolute ceiling*" for any discount should be 33%. The parties accept that the precise level of the discount is a matter for the valuation trial.

<u>Basis on which Shares Held Historically</u>

132. This point arises because of Paul's argument that, in determining the amount of the minority discount applicable to his shares, regard should be had to the basis on which they were originally given to him: i.e. (as he says) as "*security*", representing a 12% *pro rata* holding in the assets of DPL.

133. In support of this, Mr Peters relies on what Nourse J. said in *Re Bird Precision Bellows Ltd* [1984] 1 Ch 419. Nourse J. thought that in the case of a small private company, a minority shareholder coming into the business at some point after its foundation, and acquiring shares by means of a transfer or devolution, would often acquire such shares at a price which was discounted to reflect their minority status (see at p. 429G-430A). He went on (at p. 431C-E) to say that in such a case, if the minority shareholder was later subjected to unfairly prejudicial conduct by the

majority, it might then be relevant to have regard to the basis on which he had bought into the company (i.e., at a discount) in determining what form of relief to grant him. Although there is "*no rule of universal application*", fairness on such facts might dictate that the petitioner's shares be acquired subject to a minority discount, rather than at their *pro rata* value.

134. On proper analysis, however, it seems to me that Nourse J was saying no more and no less than that in some cases, the overall assessment of what is fair might require consideration of the historic basis on which the relevant shares were acquired. But he was expressing no general rule, and everything depends on the circumstances. Other cases demonstrate that fairness sometimes requires past history to be disregarded.

135. Thus in *In Re a Company (No. 005134 of 1986), ex parte Harries* [1989] BCLC 383 (also reported as *Re DR Chemicals Ltd* (1989) 5 B.C.C. 39), Peter Gibson J. took the date of his order as the appropriate date for valuation, rather than the date of the petition or any earlier date. This was in circumstances where the petitioner, Mr Harries, had ceased to play any active part in the relevant business in 1982 and so had lost his status as a quasi-partner; but where subsequently the respondent, Mr Rees, had increased the share capital and allotted himself a large number of new shares, thus diluting Mr Harries' percentage shareholding holding from 40% to 4%. On those facts, Mr Harries was to have his shares purchased as if they were a 40% holding, but with a minority discount and at current value. Despite the seriousness of the unfairly prejudicial conduct, and although Mr Harries had historically been a quasi-partner, he had lost his status as a quasi-partner and had elected to "*sit it out*" as an ordinary shareholder. Consequently only his current (not his historic) status was relevant to valuation.

136. A similar result was reached by Michael Furness QC (sitting as a Deputy High Court Judge) in *Re McCarthy Surfacing Ltd* [2008] EWHC 464, [2009] B.C.C. 464, although in that case the facts were more extreme, because the successful petitioners had themselves brought the original quasi-partnership to an end by initiating earlier proceedings which had had a catastrophic effect on the company's business. Again, the Judge held that the petitioner's historic status as quasi-partners was irrelevant to the valuation question, which was to be assessed by reference to their present status only. He commented at [99]:

> *"Where members of a quasi-partnership lose their position as quasi-partners due to their own wrongful acts it does not seem to me to be an appropriate exercise of my discretion to direct that their shares should continue to be valued as if the quasi-partnership existed. This is a fortiori the case in view of the fact that the value of the company has increased so substantially during the period when they have played no part in its management (having had much of its original value destroyed by the petitioner's own actions)."*

137. In the present case, my view is that the basis on which Paul's shares might have been held historically should be disregarded. I think the correct overall approach is to require a valuation of Paul's shares at their current value, and that should mean what it says – a valuation of the shares bearing the characteristics they presently have; not those they might have had at some point in the past. That is all the more so given Paul's role in connection with the Matrimonial Proceedings. As held in the June Judgment, whatever the basis on which Paul initially acquired his shares and held

them, he participated in (and in other ways benefited from) the process which led to the various Dinglis family businesses being dismantled; with the consequence that he must now be regarded as a minority investor in a business managed and run by Andreas. Having participated in that process and brought about the very status with which he is presently fixed, it seems to me entirely fair that his shares should be valued in a manner which reflects it, and not in a manner which reflects (even to a limited extent) some historic status he might once have had. That would be unfair to Andreas.

Paul's Assumption of Financial Risks

138. Paul says that the financial risks he undertook in acquiring properties in his own name, and in giving guarantees for DPL's liabilities (see above at [10]) although difficult to quantify in terms of the benefits they generated for DPL and therefore not easily translatable into an adjustment, were nonetheless real risks and so should be reflected in the level of minority discount to be applied.

139. In evaluating this submission, I bear in mind what HHJ Hodge QC said in *Re Lloyds Autobody Ringway Limited* [2018] EWHC 2336 (Ch) at 113(5), namely that one must be aware of the dangers of "*palm tree*" justice in adopting some middle course between an undiscounted and a fully discounted valuation. I think it entirely correct to say that the benefits to DPL of the risks Paul undertook are simply too intangible to give rise to an adjustment, and for the same reason I think there is no justification for trying instead to reflect them in some amended minority discount. I do not see how one can do so in a principled way. In any event, I think that Paul's continued exposure under his guarantees until 2016 is adequately reflected in my decision to adopt a later, not an earlier, valuation date (see above).

Andreas as Special Purchaser

140. In *Re Edwardian*, Fancourt J. thought that a sale of the minority petitioners' shares at market value (i.e., at the value they could be expected to fetch on an arms-length sale to a third party) would not fairly address the impact of the unfair prejudice suffered by them. That was because their market value had been suppressed by the majority shareholder's unfairly prejudicial conduct, and moreover the actual sale ordered was not a sale to a third party, but instead a sale to the majority shareholder to whom the shares had an enhanced value (since they would take the combined shareholdings within his control or influence to more than 75%). Fancourt J. therefore ordered a sale (i) subject to notional adjustments to the assets of the company, designed to take away (as far as possible) the financial impact on the minority holdings of the unfairly prejudicial conduct found (see at [654]-[655]); and (ii) at a price which took account of the "*marriage value*" of the combined holdings – i.e., which fairly reflected the particular or special value of the combined holdings to the majority shareholder (see at [651]-[652]).

141. Paul says something similar to point (ii) here. He says that the valuation should reflect the fact that the intended sale is not a sale to a third party, but instead a sale to Andreas and/or MHGL, and that the acquisition by them of the remaining shares in DPL has some particular value to them because it will give them 100% control of DPL.

142. Whether the acquisition of the remaining 12% interest in DPL should *in fact* have some special value to Andreas and/or MHGL, I cannot say. It strikes me that that is something that can only be addressed with the benefit of expert valuation evidence. What I do think, however, in line with the approach of Fancourt J. in *Re Edwardian*, is that the shares should be valued on the basis of a notional sale between *these parties*, and not on the basis of a sale to an independent third party (see *Re Edwardian* at [650]). That may, on the evidence, make no practical difference; but if there is any special value attaching to the shares, that approach will enable it to be identified and dealt with fairly and appropriately.

Conclusion

143. Overall, my view is that Paul's shareholding should be valued as at 25 July 2019, but subject to a minority discount (to reflect the findings above at [132]-[142]), and subject also to the various adjustments identified in this Judgment (see above at [93]-[127]). I hope counsel will be able to agree a form of order which reflects these conclusions.