Neutral Citation Number: [2020] EWHC 1363 (Ch)

Petition No: CR-2016-002904

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

Rolls Building, Fetter Lane
London EC4A 1NL

Date: 1 June 2020

Before :

ADAM JOHNSON QC (SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between :

Paul Andrew Dinglis	**Petitioner**
- and -	
(1) Andreas Dinglis	**Respondents**
(2) Master Holdings Group Limited	
(3) Dinglis Properties Limited	

- -
- -

David Peters (instructed by Ingram Winter Green LLP) for the **Petitioner**
Daniel Lightman QC and Gregor Hogan (instructed by BDP Pitmans LLP) for the **Respondents**

Hearing date: 22 May 2020

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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.

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ADAM JOHNSON QC

Adam Johnson QC

Background

1. The present application arises in the context of ongoing unfair prejudice proceedings in which Paul Dinglis is the Petitioner and Andreas Dinglis, Paul's father, is the principal Respondent.

2. Paul is a minority shareholder in a company called Dinglis Properties Ltd ("*DPL*"). Andreas controls the majority shareholding in DPL, which is a property holding and development business.

3. By a case management order dated 29 January 2018, the Court ordered a split trial, with a first hearing to determine the question whether any order should be made for the acquisition of Paul's shares, and further issues going to valuation to be for a separate, and later, hearing.

4. Following the trial of what were referred to as the "*First Issues*" in March 2019, I determined that Paul *was* entitled to an order that the Respondents acquire his minority shareholding, in light of Andreas' unfairly prejudicial conduct: see my Judgment of June 2019 at [2019] EWHC 1664 (Ch).

5. One issue ventilated during the March 2019 trial was whether the scope of the trial included determination of the appropriate date for the valuation of Paul's shareholding, in the event that an Order in Paul's favour was made.

6. The Respondents said that I should fix a valuation date during the course of the trial of the First Issues, and pressed for it to be an early date, to coincide with the date of Paul's exclusion from DPL's business in July 2012. The logic of their argument was that the value of DPL had increased since then, largely as the result of Andreas' hard work, and that it would be unfair for Paul to have the benefit of such increase since he had done nothing personally to contribute to it.

7. Paul at that stage resisted the idea that the Court should fix the valuation date as one of the First Issues, and I agreed with him, for the reasons given in my June 2019 Judgment at [342].

8. The point therefore remained a live one. This presented some logistical issues for the further conduct of the proceedings, and in particular presented the unattractive prospect of expert valuers having to be instructed to conduct valuations at a series of different possible valuation dates, with the actual valuation date only being resolved at the second trial.

9. That being so, and very sensibly in my view, the parties invited me at a further hearing to resolve the valuation date question, together with other issues affecting valuation, including potential adjustments to the value of Paul's shareholding arising out of the parties' conduct on both sides. Again, the Respondents argued at this further hearing for an early valuation date, so as to exclude increases in value after Paul's exclusion, and Paul argued for a later valuation date, to include such later increases in value.

10. In a further reserved judgment dated 5 December 2019 (see [2019] EWHC 3327 (Ch)), I dealt with the various adjustments argued for on both sides, and also held at paragraph [92] that the valuation date should be 25 July 2019, i.e. the date of the order requiring Andreas (or his vehicle MHGL) to purchase Paul's shareholding. In reaching that conclusion, I said I was unimpressed by the argument that the value of DPL had increased over time as a result of Andreas's efforts. Even assuming it had, he was a director of DPL and part of his function was to promote its success. I said, "*… 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.*" I was also influenced by the fact by the fact that Andreas had made no offer to purchase Paul's shareholding, so that before my order arising out of the first trial, Paul had had no practical means of exiting DPL as a shareholder.

11. Unfortunately, the matter still remained somewhat controversial. As Mr Lightman QC very properly reminded me, when the December Judgment came to be handed down, a draft of it having been circulated beforehand in the usual way, Paul's counsel, Mr Peters, drew attention to what he called a tension between paragraph [90] of the Judgment and paragraph [92]. At paragraph [92] I had identified 25 July 2019 as the relevant valuation date (see above), but at paragraph [90] had referred more generally to "*present value*." This formed the basis of a submission by Mr Peters, based on certain *dicta* in *Profinance* v. *Gladstone* [2001] EWCA Civ. 1031, [2002] 1 WLR 1024, that if by "*present value*" what I really meant was the date of sale, then I should follow that logic through and say that the proper date of valuation should coincide with the valuation trial, and not the date of my earlier order.

12. The Respondents resisted that argument. They pressed for the valuation date to remain as 25 July 2019, and said that my December Judgment was clear. In making his submissions on behalf of Andreas, Mr Lightman QC emphasised the breadth of the discretion available to me under the Companies Act 2006, section 996, and said – entirely accurately in my view – that 25 July 2019 was a deliberate and calculated choice by me of what I considered to be fair in all the circumstances, bearing in mind all the factors identified both in my June Judgment and the December Judgment.

13. That was the legal argument, but of course it was consistent with the consideration, which had featured in Respondents' calculations all along, that the value of DPL seemed to be increasing, and that they did not wish Paul to share in the financial benefits flowing from that increase.

14. In any event, I was unpersuaded that I had meant anything other than 25 July 2019 as the appropriate valuation date, or that any modification or amendment to my original determination was required. I gave a short ruling to that effect.

15. Consequently, the Order arising from the hearing on 5 December 2019 provided that in determining the issues at the intended "*Valuation Trial*":

> "*3.1 the Shares [i.e., Paul's shareholding] shall be valued as at 25 July 2019 (the 'Valuation Date'); [and]*
>
> *3.2 the value of the Shares shall be subject to the adjustments identified in the Schedule to this Order …*".

16. In what follows, I shall adopt the definitions "*Valuation Date*" and "*Valuation Trial*" as above, and shall refer to the order as the "*December Order*."

The Coronavirus Application

17. Now comes the issue. I am invited to give further directions in connection with the intended valuation trial, and among them the Respondents seek a direction arising out of what the parties have referred to as the *Coronavirus Application*.

18. That application was made by Application Notice dated 15 May 2020, and seeks relief in the following form:

> *"An order that the share purchase order of Adam Johnson QC (sitting as a Deputy High Court judge) dated 5 December 2019 … be varied so as to permit the… Respondents… (as a matter of law) to advance the case at the Valuation Trial … that for the purposes of the valuation of the Petitioner's shares… the value DPL should be adjusted downwards to reflect such a reduction in the value of the properties held by DPL and/or or any other damage caused to DPL as may result from the effects of the Coronavirus (Covid-19) pandemic between 25 July 2019 ('the Valuation Date' …) and the date of commencement of the Valuation Trial … ".*

19. In practical terms, what this means is that the Respondents seek an addition to the Schedule of "*Permitted Adjustments*" annexed to the Order of 5 December 2019, to read as follows (proposed language underlined):

> "*At the Valuation Trial, it shall be open to the Respondents (as a matter of law) to advance a case for the purposes of the valuation of the Shares:*
>
> *…*
>
> *<u>The value of [DPL] be adjusted downwards to reflect such reduction in the value of the properties held by DPL and/or any other damage caused to DPL as may result from the effects of the coronavirus (COVID-19) pandemic between the valuation date and the date of the commencement of the Valuation Trial."</u>*

20. That proposed variation is strongly resisted by Paul.

The Rival Contentions

21. The grounds relied on by the Respondents in their Application Notice point to the restrictions on movement, business and general commerce across the United Kingdom arising out of the Coronavirus pandemic. The Application Notice says:

> *"These restrictions are very likely, indeed almost certain, to have a substantial and prolonged effect on the housing/property market generally and on DPL's business and assets."*

22. Some detail is then given relating specifically to DPL. I need not set it all out but it includes the following:

> *"DPL is a company whose sole activity is property holding and development and whose principal assets are approximately 80 properties. As a result of the Coronavirus pandemic, it is facing and is likely to continue to suffer a significant impact as a result of (sic.) this wholly unprecedented and unavoidable event. For example, over the last quarter, 60% of DPL's commercial rental income and 16% of its residential rental income have not been paid because of the lockdown with around half of DPL's commercial tenants asking for rent free periods, and others asking for a reduction in rent. Of DPL's commercial tenants, around 95.5% are retail based, the balance being restaurants …*
>
> *Around 20 flats were in the process of being redeveloped by DPL prior to lockdown and those building works have ceased completely. In consequence, DPL is incurring further costs (including borrowing and insurance costs) while the development work remains incomplete and those flats have no real prospect of generating any income for some time to come."*

23. Elsewhere, references are made to newspaper reports suggesting that property values could fall between 5% and 20% and that rental income is also likely to be depressed for some time to come.

24. I should say I have no reason at all to doubt the accuracy of the evidence given in the Application Notice about the impact of the pandemic on DPL's business.

25. In advancing his argument on behalf of Andreas, Mr Lightman QC has adopted broadly two lines of attack.

26. *First*, he relies on the very broad discretion afforded to the Court by section 996 of the 2006 Act. He has referred to a number of authorities in which the flexible and ambulatory nature of the Court's discretion when granting relief has been emphasised. These include *Grace* v *Biagioli* [2005] EWCA Civ 1222; [2006] 2 BCLC 70, in which Patten J (giving the judgment of the Court of Appeal) said at [73]-[74] (emphasis added):

> *"73 Once unfair prejudice is established, the court is given a wide discretion as to the relief which should be granted. Although* [the statutory predecessor of s.996(1)] *speaks in terms of relief being granted "in respect of the matters complained of", the court has to look at all the relevant circumstances in deciding what kind of order it is fair to make. It is not limited merely to reversing or putting right the immediate conduct which has justified the making of the order. In Re Bird Precision Bellows Ltd [1986] Ch. 658 at p.669, Oliver L.J. described the appropriate remedy as one which would "put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company". The*

> *prospective nature of the jurisdiction is reflected in the fact that the court must assess the appropriateness of any particular remedy as at the date of the hearing and not at the date of presentation of the petition; and may even take into account conduct which has occurred between those two dates. The court is entitled to look at the reality and practicalities of the overall situation, past, present and future.*
>
> *74 It was, therefore, incumbent on the judge to consider the whole range of possible remedies and to choose the one which on his assessment of the existing state of relations between the parties was most likely both to remedy the unfair prejudice already suffered and to deal fairly with the situation which had occurred. The principal criticism of his judgment on this issue, is that it concentrated on the precise nature of the prejudice already suffered (i.e. the non-payment of the dividend), but failed to look at matters in the round. In particular, no adequate regard was paid to the fact that the respondents had in effect helped themselves to the dividend to which Mr Grace was undoubtedly entitled, nor to what is said to be the overwhelming likelihood that similar acts of prejudice will be suffered in the future."*

27. Relying on the broad nature of the Court's power, Mr Lightman said that the Respondents were in substance doing no more than simply inviting the Court to make a further order pursuant to its general discretion, to achieve a result on the Petition which is fair, just and equitable on the facts present at the date of the Valuation Trial. That does not really involve the Court revisiting the December Order, or varying the presently ordered Valuation Date, but instead making a new, ancillary order to reflect the changed circumstances. Without that further order, the Court's hands would be tied at the Valuation Trial in a manner which may well be unfair to Andreas. The Court should not be in a position at the Valuation Trial where it considers itself inhibited, by the December Order or otherwise, from allowing the Respondents to argue as a matter of law and principle that an adjustment should be made. Mr Lightman went as far as to say in his Skeleton Argument that:

> *" … if the Respondents are not permitted to argue for an adjustment based on the Coronavirus pandemic, the whole impact of an entirely unforeseen, unprecedented act of God will be visited upon the respondents. It is submitted that such a result would be profoundly inequitable."*

28. Mr Lightman's second and alternative point relied on the general power in CPR rule 3.1(7), which provides that:

> *"A power of the court under these Rules to make an Order includes a power to vary or revoke the order."*

29. Mr Lightman's reliance on CPR 3.1(7) was qualified having regard to the Notes in the White Book at paragraph 3.1.17.4, which indicate (referring to *DEG-Deutsche Investitions-und Entwicklungsgesellschaft mbH* v. *Koshy* [2004] EWHC 2896 (Ch), [2005] 1 WLR 2434) that the power in Rule 3.1(7) exists only in relation to an order made by the court in exercise of "*a power of the court under these Rules.*" Mr Lightman raised the possible argument, although it was undeveloped, that an order

made under the jurisdiction afforded by section 996 of the 2006 Act may not qualify, but instead might be properly characterised as made under a stand-alone, statutory jurisdiction. He accepted, however, that even if that were so, it would nonetheless be useful to consider the authorities on CPR 3.1(7) by way of analogy. I agree.

30. In any event, Mr Lightman drew attention to *Tibbles* v *SIG Plc* [2012] EWCA Civ 518; [2012] 1 WLR 2591 in which CPR r. 3.1(7) and the associated authorities were reviewed by Rix LJ. He said, at [39(ii)], that whilst it was not possible to provide an exhaustive definition, "*the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision were (innocently or otherwise) misstated*". Rix LJ went on to make clear that this guidance was not be treated "*as though it were a statute*" and that it "*ought normally to take <u>something out of the ordinary</u> to lead to variation… of an order*". He also said that the discretion under r. 3.1(7) is to be exercised with an eye on the "*undesirability of allowing litigants to have two bites at the cherry*".

31. Mr Lightman said that in the present case, the extent of the Government's response to the pandemic shows that recent events are "*something out of the ordinary*." He argued that there had been a material change of circumstances which justified the Court revisiting the December Order. He also said that the Respondents were not seeking to have a second bite of the cherry because the pandemic and lockdown were without any parallel and therefore did not (and could not) have featured in argument (even by analogy) at either the hearing in October 2019 (when the Valuation Date issue was argued), or that in December 2019 (when Judgment was handed down).

32. For his part, Paul's counsel, Mr Peters, said that the position was a great deal more straightforward. He argued that there was a fundamental flaw in Andreas' application. The flaw was that he was not seeking any amendment to the Valuation Date itself (25 July 2019), only an adjustment (or possible adjustment) to the value of Paul's shares. But such an adjustment makes no logical sense, because it is said to arise (or potentially arise) only out of events occurring well after the Valuation Date has come and gone. Without any adjustment to the Valuation Date, which was not clearly being asked for and which in any event was unjustified given that the December Order was a final order, the proposed adjustment made no logical sense.

Discussion and Conclusions

33. I agree with Mr Peters that the correct starting point is the December Order. If there is no prospect of varying that Order, that creates logical difficulties for Mr Lightman in saying that an adjustment to reflect matters occurring *after* the Valuation Date is justified or even arguable.

34. In his oral submissions, Mr Lightman initially put his case on the basis that he was not asking for any variation to the Valuation Date, but as matters developed, I understood him to be saying that he did, at least to the extent necessary for the purposes of making good his argument on the proposed adjustment. That reflects the formulation in his Skeleton for the hearing at paragraph 47.

35. It is convenient to begin with the guidance in the authorities on CPR 3.1(7), whether directly applicable or by analogy.

36. For the purposes of CPR 3.1(7), the White Book at paragraphs 3.1.17.1 and 3.1.17.2 draws a distinction between "*interim orders*" and "*final orders*". Paragraph 3.1.17.1 indicates that interim orders:

> *" ... do not finally decide anything as of right between the parties: they include case management decisions which govern the procedure by which those rights will be determined ... and also all orders providing parties with some interim remedies or protections pending that the determination... ."*

37. Paragraph 3.1.17.2 describes "*final orders*" as follows:

> *"The term 'final order' is used in this paragraph to describe an order which determines between the parties the issues which are the subject matter of the litigation and which give rise to a cause of action estoppel between them."*

38. Coming back to CPR rule 3.1(7), this has been described as an "*omnibus provision*", and the authorities support the view that it is applicable both to interim and final orders. That said, the authorities also indicate that the jurisdiction is to be exercised much more sparingly in the case of final orders. An example is *Roult* v. *Northwest Strategic Health Authority* [2009] EWCA Civ 444, [2010] 1WLR 487, in which the Court of Appeal affirmed the decision of Christopher Clarke J, who declined to vary the terms of a settlement approved on the first day of trial in a clinical negligence claim. A variation had been sought on the basis of a proposed change in the claimant's long-term care arrangements. See also *Kojima* v. *HSBC Bank Plc* [2011] EWHC 611 (Ch), [2011] 3 All ER 359, in which Briggs J held that a judgment on admissions in respect of part of a debt claim was a final judgment, and refused to revoke or vary it despite the debtor claiming to have been advised of a defence which he was not previously aware of.

39. In *Roult*, Hughes LJ said the following about CPR 3.1(7) at [15] (emphasis added):

> *"I agree that in its terms the rule is not expressly confined to procedural orders but ... I am however in no doubt that CPR 3.1 (7) cannot bear the weight which Mr Grimes' argument seeks to place upon it. If it could, it would come close to permitting any party to ask any judge to review his own decision and, in effect, to hear an appeal from himself, on the basis of some subsequent event. It would certainly permit any party to ask the Judge to review his own decision when it is not suggested that he made any error. It may well be that, in the context of essentially case management decisions, grounds for invoking the rule will generally fall into one or other of two categories of (i) erroneous information at the time of the original order, or (ii) subsequent events destroying the basis on which it was made. The exigencies of case management may well call for a variation in planning from time to time in the*

> *light of developments. There may possibly be examples of non-procedural but continuing orders which may call for revocation or variation as they continue – an interlocutory injunction may be one. But it does not follow that wherever one or other of the two assertions mentioned (erroneous information and subsequent) can be made, then any party can return to the trial judge and ask him to reopen any decision. In particular, it does not follow, I have no doubt, where the judge's order is a final one disposing of the case, whether in whole or in part. And it especially does not apply where the order is founded upon a settlement agreed between the parties after the most detailed and highly skilled advice. The interest of justice, and of litigants generally, require that a final order remains unless such proper grounds for appeal exist."*

40. Likewise, in *Kojima*, Briggs J at [30] thought that where the court has "*finally determined a case, or part of a case*" (my emphasis), the primary consideration (even accepting that in principle the jurisdiction in CPR 3.1(7) can be invoked) should be the " … *much larger, if not indeed overriding, public interest in finality, subject of course to the dissatisfied party's right of appeal*."

41. I did not read these earlier authorities as being inconsistent with the guidance given by Rix LJ in *Tibbles* v. *SIG plc*, because in a passage at [39(i)], immediately before the passage quoted by Mr Lightman and referred to above, Rix LJ said (emphasis added):

> *"[CPR 3.1(7)] … is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. Whether that curtailment goes even further in the case of a final order does not arise in this appeal*."

42. In my judgment, the December Order, so far as it concerns determination of the Valuation Date, was a final order. I reject Mr Lightman's submission to the contrary. The Order was intended to, and substantively did, determine finally between the parties a principal and significant issue of contention between them, namely the appropriate date for the valuation of Paul's minority shareholding. That was, in my judgment, a determination of a part of the case (cf the quotations from *Roult* and *Kojima* above). Moreover, it was a determination which the Respondents wanted.

43. When eventually made, the determination came after the lengthy trial of the First Issues at which factual evidence concerning the history of the parties' relationship had been examined at length and with some care. The hearing in October 2019 was held because by then both parties saw the good sense of the valuation date question being finally resolved before the Petition proceeded further. For Paul that involved a change of heart but for Andreas it had been his consistent wish. That is consequently what happened, following a further detailed hearing, and as Mr Lightman I think accepts, the determination was made balancing a number of factors in order to produce a final result which was designed to be fair and equitable in all the circumstances. There was no appeal from it, nor indeed was there any application for

permission to appeal on either side. The Respondents were evidently happy with it, even to the extent of actively opposing Paul's submission (see [12] above) that the logic of my Judgment required the Valuation Date to be pushed back to coincide with the Valuation Trial.

44. In those circumstances, it seems to me that the interest in the finality of litigation is a, if not the, primary concern. True it is that the world has moved on since December 2019, and I accept it is fair to describe the impact of the Coronavirus pandemic as something out of the ordinary. But I do not think that in the circumstances of this case it justifies any variation to the terms of the final order made relating to the Valuation Date.

45. Quite aside from other matters, Andreas is an experienced and successful businessman. He has been involved in the world of property development and management for many years. He must be well familiar – and indeed it is clear that he is given his experiences during the 2008 financial crisis – with the idea that property valuations can go down as well as up, and sometimes very materially so. He must have been well aware of that risk both during the trial in February 2019 and at the subsequent hearing in October 2019, when the Respondents asked me to determine the question of the valuation date, and to fix it at an early point. The logic of that position has always involved the Respondents assuming the risk that, subsequent to the chosen valuation date, the fortunes of DPL, and consequently perhaps Andreas' own personal fortunes, might fluctuate, including downwards. It seems that was a risk they were willing to take, and indeed wanted to assume, confident as they were of Andreas' abilities to manage the business of DPL successfully. I do not think it lies in their mouths now to say that circumstances have changed and that it would be unfair to expose them to the practical effects of that having happened.

46. Consequently, and while accepting the broad nature of the discretion afforded by CPR 3.1(7), I do not consider that any factors come into play in this case which are sufficiently strong to displace the consideration of finality in litigation.

47. I do not think the analysis changes even if I assume that the Order was not a final order, but instead an interim one, and that the approach is different. Looking at the Judgment of Rix LJ in *Tibbles*, point (b) of the guidance he gave at [39(ii)] obviously does not apply (" … *the facts on which the original decision were (innocently or otherwise) misstated*"), and so the case would have to fall within (a) *" … material change of circumstances since the order was made."* Finality is still a relevant and important factor: the disappointed litigant should not be given "*two bites at the cherry*." Here, although it is true there has been a significant change in general social and economic conditions since the Order was made, in truth the real gist of the Respondents' complaint is that there has been a change in the property market. For the reasons already given above, I think that was a risk they were willing to assume. Thus, I do not think there has been a change in circumstances *of a type* which produces unfairness or gives rise to inequity in the circumstances of this case. What has happened is that a risk which was inherent in the nature of the order made, and which the Respondents pressed for, has materialised (or at least, begun to materialise). That does not in my view affect the underlying logic of the order or the basis on which it was made. Accordingly, I do think it would be giving the Respondents "*two bites at the cherry*" now to be able to argue for their proposed adjustments.

48. I am also unpersuaded that the analysis changes if I assume that CPR 3.1(7) is inapplicable, because the December Order was not made by the court in exercise of "*a power of the court under these Rules*" (i.e., under the CPR). Even if the power exercised was that under section 996 of the 2006 Act, it seems to me that just the same considerations would apply, namely (i) the importance attached to finality in litigation, and (ii) the fact that the change represents the realisation of a risk which was inherent in the nature of the order made and which, since the Respondents pressed for it, they willingly assumed.

49. I therefore conclude that there is no basis for varying, whether directly or indirectly, the Valuation Date, an issue which has already been the subject of extensive and hard-fought litigation between these same parties.

50. I then come on to the broad discretion afforded to me by section 996 of the 2006 Act.

51. Here, it seems to me that Mr Peters must be correct. If there is no change to the Valuation Date, then Mr Lightman faces an insuperable logical difficulty in seeking to argue that the valuation of Paul's shares as at the Valuation Date should be adjusted to take account of matters occurring after it. I do not consider that point to be properly arguable as a matter of law.

52. I fully take on board Mr Lightman's point that the jurisdiction under section 996 is a broad one, and of course I accept that in fashioning a remedy the Court must look at the "*reality and practicalities of the overall situation, past, present and future*" (to use the words of Patten J in *Grace* v. *Biagioli*, cited above). But in my view that is just what has already happened in relation to the Valuation Date. That being so, and the Valuation Date issue not having been appealed, and not being susceptible (as I have now held) to variation, I do not see how even the wide discretion afforded by section 996 can result in adjustments being required to reflect possible changes in value occurring *after* the Valuation Date has come and gone.

53. To put it another way, whatever may happen to the value of DPL in periods after 25 July 2019 does not in my view alter in any way the fairness or equity of the order already made. Granted that there is still work to do, and indeed a further trial to be undertaken, and that in approaching the issues at that trial the Court will need to operate within the section 996(1) jurisdiction, and seek to achieve a result which is fair an equitable in all the circumstances. But I do not see anything unfair or inequitable in the idea that, under the structure arrived at, Andreas may be required following a trial in 2021 to pay a price for Paul's shares calculated at a Valuation Date in July 2019, even if in the meantime the value of DPL has diminished because of the Coronavirus pandemic. That may be an unfortunate outcome, and an undesirable one, from Respondents' point of view, but in all the circumstances described above, I do not think they can properly argue it is an unfair or inequitable one. After all, fairness is a two-way street, and from Paul's point of view it would be profoundly unfair for the value of his shares now to be affected by matters occurring after the Valuation Date which the Respondents pressed to have determined, and which Paul resisted.

54. In consequence, and even while accepting that the jurisdiction under s.996(1) is a very broad one, which in principle is to be exercised at all points (even after trial) until the Court's Order is carried into full effect (see *Caldero Trading Ltd* v. *Beppler & Jacobson Ltd* (unrep, 14 December 2012)), I am not persuaded that in this case it

requires Andreas to be able to argue, even as a matter of law and principle, that adjustments on account of the Coronavirus pandemic should be taken into account.

Conclusion

55. In all the circumstances, I am afraid I am unpersuaded by Mr Lightman's submissions, able and effective though they were, and consequently I dismiss the Respondents' application.