IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
CHANCERY DIVISION
[2022] EWHC 2257 (Ch)

No. CH-2021-000109

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 22 June 2022

Before:

MR JUSTICE LEECH

B E T W E E N:

LEANNE MANNERING — Appellant

- and -

(1) HIGHSCORE SCAFFOLDING LIMITED
(2) NICHOLAS GARY COOK — Respondents

THE APPELLANT appeared in Person.

MR N OSTROWSKI (instructed by Gullands Solicitors) appeared on behalf of the Respondents.

J U D G M E N T

MR JUSTICE LEECH:

Background

1 On 8 December 2018, Ms Recorder McGrath handed down a reserved judgment in which she dismissed the claim of Ms Mannering, the Appellant, against Highscore Scaffolding Ltd ("**Highscore**") and Mr Nicholas Gary Cook for a declaration that a transfer of her single share in the company was procured by forgery and should be set aside and for an order for rectification of the register to strike out Mr Cook's name as the holder of one share in the company and restoring her name as the registered holder of that share.

2 At the trial of the action Ms Mannering appeared in person although until shortly before the trial she had been represented by solicitors and counsel. The Respondents were represented by Mr Nicholas Ostrowski who also appears on their behalf today.

3 For the purposes of trial, there was no dispute that Ms Mannering signed a stock transfer form on or about 31 August 2007. The dispute was whether she agreed to the details in that stock transfer form and that they had been inserted with her authority. In any event, the final version of the stock transfer form recorded that on 31 August 2007 Ms Mannering transferred her single share in Highscore to Mr Cook for nil consideration. She accepted at trial and the judge recorded that she executed the stock transfer form but it was her evidence to the judge, which the judge did not accept, that she was sure that Highscore's name was not on the form and that she did not believe any of the entries on the document. She also gave evidence about the circumstances in which she signed it. She said that she would not have signed it in blank and that she would only have done so if Mr Cook had told her that it was concerned with another company called Fluke Agency Ltd ("**Fluke**").

4 The other critical document for the purposes of the trial was a memorandum of agreement which purported to have been signed on 20 September 2007 and to record that Ms Mannering had agreed to transfer her single share in Highscore to Mr Cook. The memorandum of agreement is a very short document and I will read its substantive terms:

> "It is agreed that Leanne Mannering shall transfer her holding of one ordinary share in Highscore Scaffolding Limited to Nicholas Gary Cook by way of an outright gift in consideration of which Nicholas Gary Cook shall not take up any of the issued shares nor have any beneficial interest whatsoever in Fluke Footwear Agency Limited."

5 The document purports to be signed by Ms Mannering and to be witnessed by her mother. Mr Peter Rippingale, an accountant and tax adviser, gave evidence that he prepared the transfer of the memorandum of agreement in triplicate and that the signed stock transfer form and two original signed versions of the memorandum of agreement were returned to him and that he inserted the word "nil" in the stock transfer form because he had previously forgotten to do so.

6 Expert evidence was given by a single joint handwriting expert: Ms Fiona Marsh, MSc. It was her evidence there was a very strong reason to suggest that Ms Mannering signed both memoranda of agreement. She also considered that there was moderate evidence that Ms Mannering signed her mother's name on both forms. The judge dismissed Ms Mannering's claim that she was induced to sign the transfer by fraud. She found that Ms Mannering's poor credit rating was the motivation for the transfer and that Ms Mannering and Mr Cook had agreed to separate their interests. She rejected the suggestion that Mr Rippingale sought

to defraud Ms Mannering. She also had no doubt at all that Ms Mannering had signed a memorandum of agreement and she dismissed Ms Mannering's claim for unpaid dividends.

7 On 21 November 2019, twenty-three months after handing down the original judgment, the judge dismissed an application by Ms Mannering to set aside her original judgment and refused permission to appeal. She made an order to that effect and dismissed a number of other allegations. It is most unfortunate that it took two years before the final order was made in this case.

8 I turn next to Mr Mannering's application for permission to appeal. On 6 May 2021 Ms Mannering filed an Appellant's Notice in which she sought permission to appeal out of time. On 8 September 2021 Fancourt J granted a second extension of time for the filing of the appeal bundle and on 24 January 2022 Ms Mannering's renewed application for permission to appeal came before me on a normal renewal hearing. I granted permission to appeal on a limited basis and an extension of time for permission to appeal.

9 As I articulated in argument today, I had two principal concerns in granting permission out of time. First, I was concerned about the two-year delay between the handing down of judgment and the making of the final order. It seemed to me then and it seems to me now that it would have given the appearance of real unfairness if the court had shut out Ms Mannering's appeal in those circumstances. Moreover, I was concerned that the judge might well have been more susceptible to Ms Mannering's application to set aside judgment if there had not been that delay. I can see no reason from the documents filed on the CE-File to explain this long delay and when I asked about it this morning, Mr Ostrowski told me that it was just simply a matter of court listing. It is regrettable. Ms Mannering suggested that it might have been a question of counsel's availability but I level no criticism at Mr Ostrowski. However, it was undoubtedly a feature of my decision to give permission to appeal out of time.

10 Secondly, I was also concerned that the judge herself did not address section 14(4) of the Stamp Act 1891 which made the share transfer inadmissible. It seemed to me arguable that if the share transfer had been inadmissible, Ms Mannering might have been entitled to rectification of the register because Mr Cook was unable to prove the transfer of the share without relying on the share transfer form. Ms Mannering still retained the share certificate and it seemed to be uncontested that she was never asked to hand it back. The share certificate is prima facie evidence of title and if she had taken the point the judge might have found that Mr Cook had been unable to rebut that evidence by producing a share transfer to show that the share was transferred to him. On this basis I granted permission to appeal.

11 On hearing the oral application for permission to appeal, Ms Mannering also took me to two authorities which I will go on to consider later which suggest that the court has a considerable discretion in deciding whether to accept an undertaking by a litigant who seeks to rely on an unstamped document to have that document stamped.

12 The point about the inadmissibility of the share transfer, was taken by Ms Mannering in paragraph 1 of her Grounds of Appeal dated 14 November 2019 and was before the court at the hearing on 21 November 2019. I was also taken to paragraphs 23 and 24 of her Grounds of Appeal dated 10 February 2021. I was therefore satisfied that the issue was before the court even at a very late stage and I gave Ms Mannering permission to appeal limited to that single issue. I did not give her permission to challenge any of the findings of fact made by the judge. I have heard Ms Mannering's substantive appeal today. Again, I made it clear that I only wish to hear submissions from her in relation to section 14(4).

13 On 4 February 2022 the Respondents filed a Respondent's Notice seeking to uphold the judgment on the ground that the judge would either have received the transfer in evidence if the point had been taken or that she would have acceded to an application for specific performance of the agreement recorded in the memorandum of agreement and I return to the Respondent's Notice later.

The Law

14 I turn next to consider the law. Regulation 2 of the The Stamp Duty (Exempt Instruments) Regulations 1987 which was in force in 2007 providing as follows:

> "(1) An instrument which— (a) is executed on or after 1st May 1987, (b) is of a kind specified in the Schedule hereto for the purposes of this regulation, and (c)is certified by a certificate which fulfils the conditions of regulation 3 to be an instrument of that kind, shall be exempt from duty under the provisions specified in paragraph (2) of this regulation."

15 Mr Ostrowski took me to the form of certificate which either formed part of (or was annexed to) the stock transfer form which Ms Mannering signed and it is clear that it is an issue which fell within the kind specified in the schedule because the schedule was incorporated into the certificate itself. The transfer dated 31 August 2007 would therefore have fallen within Regulation 2 if this certificate had been completed under Regulation 3 because it was a voluntary disposition for no consideration in money or money's worth. However, Mr Rippingale did not ask Ms Mannering to complete a certificate and if her evidence is to be accepted, then she might not have done so. Ms Mannering relied on the fact that at trial Mr Rippingale said in evidence that he did not consider that it was necessary to stamp the document.

16 In any event, because no certificate was completed section 14(4) of the Stamp Act 1891 applied. The heading to section 14 states that it is concerned with the "Terms upon which instruments not duly stamped may be received in evidence" and it provides as follows:

> "(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and [the instrument may], on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and [any interest or penalty] payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.
>
> (2) The officer, or arbitrator, or referee receiving [the duty and any interest or penalty] shall give a receipt for the same, and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioners the name or title of the proceeding in which, and of the party from whom, he received [the duty and any interest or penalty], and the date and description of the instrument, and shall pay over to such person as the Commissioners may appoint the money received by him for [the duty and any interest or penalty].
>
> (3) On production to the Commissioners of any instrument in respect of which [any duty, interest or penalty] has been paid, together with the

> receipt, the payment of [the duty, interest and penalty] shall be denoted on the instrument.
>
> (4) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was [executed].
>
> (5) Where an instrument is denoted with any duty by a method required or permitted by the law in force at the time when it is stamped, the method is to be treated for the purposes of subsection (4) as being in accordance with the law in force at the time when the instrument was executed."

17 Mr Ostrowski conceded that the stock transfer form was inadmissible and that it should not have been admissible to prove that the single share in Highscore was transferred by Ms Mannering to Mr Cook but he submitted that the effects of section 14(4) was not, as Ms Mannering suggested, to render the document void or invalid but only to make it inadmissible. He submitted that the inadmissibility of documents did not prevent a party from proving their case by other means and without relying on the individual documents which have not been stamped provided that they was able to call admissible evidence to do so.

18 He cited two authorities to me in relation to that issue. It is sufficient for me to cite *Parinv (Hatfield) Ltd v IRC* [1996] STC 933. The facts are not relevant to the issue which I have to consider but it is a decision relating to tax appeal where the declaration of trust and a transfer of property in the United Kingdom were executed out of the jurisdiction and the question is whether the transaction itself would have been admissible. At 309f Millett LJ (as he then was) said this:

> "The legislation contains no provision which enables the Revenue to sue for stamp duty. This is because no legal obligation is imposed on the taxpayer to pay the duty or even to submit to instruments for adjudication or stamping. As Donovan LJ observed in *Henry and Constable (Brewers) Ltd v IRC* [1961] 1 WLR 1504 at 1511: 'There was, however, no legal obligation on the taxpayers to stamp the transfers. There was simply the prospect of future disabilities if they did not'."

19 The principal disability was set out in section 14(4) of the 1891 Act and Millett LJ then quoted from it. He continued at 309j:

> "The contract for sale, Declaration of Trust and Transfer were all instruments "relating to property situated … in the United Kingdom" and accordingly could not be given in evidence or be made available for any purpose unless duly stamped. In the meantime, however, the instruments were not nullities. A person may accept an unstamped instrument if he wishes (*Marx v Estates and General Investments Ltd* [1976] 1 WLR 388), but he cannot be compelled to do so (*Maynard v Consolidated Kent Collieries Corporation* Ltd [1903] 2 KB 121). The Revenue are in the same position. A private individual would normally be most unwise to accept an unstamped document, since he could not adduce it in evidence later without first stamping it. The Revenue have no such inhibition. They can proceed on

> the basis of inadmissible evidence, and leave it to the taxpayer to challenge their assessment by appeal, when he will be unable to rely on inadmissible evidence. This is because the court is in a different position. It must proceed on evidence. It may not receive an unstamped document in evidence. Where the instrument is unstamped, secondary evidence of it (whether by way of photocopy or otherwise) may not be given. But this does not preclude the court from resolving disputes of fact which can be resolved without reference to the inadmissible evidence or from acting where it is called upon to decide a question of law on the undisputed facts stated in a case stated. The circumstance that the facts also appear in an unstamped instrument which it is unnecessary to put in evidence does not prevent the court from acting on the facts appearing in the case stated."

20 Mr Ostrowski submits that this passage is relevant to the present case because there was admissible evidence in the form of the memorandum of agreement, the company's register and the entries in it to prove the transfer of the shares without Mr Cook having to rely on the stock transfer itself. He also draws attention to the case summary of the list of issues in which counsel and solicitors had agreed that the transfer of shares have been made.

21 I turn therefore to the three grounds on which Mr Ostrowski submitted that it would have made no difference to the judge's decision if she had taken the point that the stock transfer was inadmissible. These three grounds were set out in the Respondent's Notice which the Respondents served after I had given permission to appeal and Mr Ostrowski advanced three arguments in support of the Respondents' case that she would still have dismissed Ms Mannering's claim.

22 First, he relied on Regulation 23 of Table A of the Companies (Tables A to F) (Amendment) Regulations 1985 which were incorporated into Highscore's Articles of Association. Regulation 23 provides as follows:

> "The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee."

23 Mr Ostrowski submitted that the memorandum of agreement was the usual form of transfer or that the transfer itself was signed by her and approved by the director. I have little hesitation in rejecting that submission. The usual form of transfer which was adopted in this case was the stock transfer form and not the memorandum of agreement which served a different purpose and the Respondents were not entitled to adduce it in evidence under section 14(4). It follows that they were unable to prove that Regulation 23 had been complied with. In fairness to Mr Ostrowski, he did not press for that first ground in oral argument.

24 The second ground in the Respondents' Notice upon which Mr Ostrowski relied was specific performance. He pointed out that Ms Mannering herself relied on the transfer of putting it in evidence. It was attached by her to the Particulars of Claim, it was referred to in the List of Issues and Ms Mannering referred to it in her witness statement which was served at a time when she was legally represented. Mr Ostrowski submitted that if Ms Mannering had taken the point about the inadmissibility of the transfer under section 14(4) at any time before or even at trial, the Respondents would have applied for specific performance of the agreement contained in the memorandum of agreement so that Ms Mannering was ordered either to sign a new version of the stock transfer form or to

complete the agreement. He submitted that the court would have been asked to determine that issue either as a preliminary issue (if it had been pleaded at an earlier stage) or even at trial if Ms Mannering had taken the point then.

25 Ms Mannering's case was that she did not sign the memorandum of agreement, that she was not aware of its contents and that Mr Rippingale, the accountant, was guilty of misconduct. She made a number of points and had I have permitted her to raise these on appeal, then they might have been good ones. But the judge decided all of these issues against her and I refused her permission to appeal on the facts. Although I have sympathy with Ms Mannering's position, there was no basis which I could see that she could properly challenge the judge's findings of fact.

26 Ms Mannering also submitted that the memorandum of agreement was not specifically enforceable because it was not given for consideration. She relied on the fact that the memorandum of agreement described the transfer of shares as by way of an outright gift. She also relied on the fact that although she became a shareholder in Fluke, she was not made a director and that Mr Cook himself remained both director and his mother the company secretary.

27 I am satisfied that there was good consideration for the agreement for the transfer of shares. In particular, I am satisfied that on the judge's findings of fact, there was consideration for the agreement even though it was not expressed to have been the money or in money's worth. The judge set out in some detail the reason for the exchange of shares in [95] to [97] of her judgment:

> "95. Pivotal to the issue in this case are the events between about June and October 2007. There is no evidence to suggest that Ms Mannering and Mr Cook were not on reasonable or even good terms at the time. The decision had been made that with the assistance of Mr Cook, Ms Mannering would start a new business and in July 2007 Agency was incorporated. Stock for the new venture was bought with the benefit of £20,000 from Highscore authorised by Mr Cook in two tranches of £10,000. The evidence at the hearing was that both Mr Cook and Ms Mannering were optimistic about the future of Agency. It was a good idea and they both believed that the company would be successful. Loaning or giving £20,000 to Ms Mannering is not, in my view, the action of a person intent on committing a fraud in a few weeks.
>
> 96. By the summer of 2007, Ms Mannering was aware that she had been removed as a director and secretary for Highscore. I find that she did not know until after the event and that on discovery, she was not happy. But as she said at the hearing, had she been asked she would have agreed. She knew her credit rating was poor and I am satisfied that this affected Mr Cook's ability to secure the loans from the company.
>
> 97. I am satisfied that the state of Ms Mannering's credit rating was the motivation for the transfer of her share in Highscore. With that motivation, I find that Mr Cook and Ms Mannering reached an agreement to separate their interest in their respective companies. As indicated, there was a great deal of optimism about the future of Agency. It seems that Highscore was also growing. Mr Cook was in a position where he wanted to invest in the company and I believe that he regarded its future as good."

28 Finally in relation to this point, the judge stated as follows at [100]:

> "There is also evidence that payments were made to Ms Mannering for several years after 2007. Furthermore, Ms Mannering's car was provided and paid for by Highscore. All of this is inconsistent with an attempt to defraud in summer 2007. Thirdly, it is a very serious matter to allege fraud."

29 I accept therefore that the memorandum of agreement gave rise to a binding contract for the transfer of the single share by Ms Mannering to Mr Cook. There can be a little doubt that an agreement to swap shares can amount to a binding agreement with consideration on both sides and in the same way, I am satisfied that an agreement by one party not to take up shares either by allotment or the issue of new shares is equally capable of being an agreement supported by good consideration. It is clear from the judge's judgment that there was ample consideration given by Mr Cook for the transfer of shares if (as the judge found) Ms Mannering signed the agreement.

30 Finally, Mr Ostrowski also relied on section 14(1) which I have already set out. He submitted that the judge would have acceded to an application by Mr Cook to permit the stock transfer form to be received in evidence upon his solicitors' payment of the unpaid duty of £5, the late stamping penalty of £1 and a further £1. There was some debate in oral argument about what the ultimate payment required would have been. Mr Ostrowski identified the penalty for payment to stamp the instrument as £1. Ms Mannering raised the question whether there should be an additional penalty for late stamping of up to £300. Mr Ostrowski read out to me section 15B of the Stamp Act 1891 and submitted that in the present case the penalty for failure to stamp the transfer was either £300 or the original stamp duty fee whichever was the lower (despite its date). I accept that submission. It follows therefore that the penalty for late stamping was £5 and that the total amount which Mr Cook would have been required to pay to stamp the transfer would have been £12.

31 Mr Ostrowski cited *Re Coolgardie Goldfields Ltd* [1900] 1 Ch 475 as authority for the proposition that the court will accept an undertaking to stamp the instrument to enable it to be given in evidence and he cited that the passage in the judgment of Cozens-Hardy J at 477 where he said this:

> "Notwithstanding the express language in s.14 of the Stamp Act, it is the settled practice to allow an unstamped document to be used upon the personal undertaking, not of the parties to the action, but of solicitors who are officers of the court to stamp it and to produce it so stamped before the order is drawn up."

32 I also note that in the same passage, Cozens-Hardy J made the point that the inadmissibility of the unstamped instrument is a matter for the judge to take as, indeed, the language of section 14(1) suggests. Nevertheless, there are two authorities to which I referred earlier in which the court has refused to accept an undertaking to stamp a document. The first of those is the decision of the Court of Appeal in *McGuane v Welch* [2008] EWCA Civ 785. In that case Mummery LJ refused to accept an undertaking given by Mr Welch, who appears to have been acting in person, and he said this at [27]:

> "In my judgment, the position is that the declaration of trust required to be stamped as an instrument by which an interest in property was, on being sold, vested in the purchaser or in another person on behalf of or at the direction of the purchaser: Finance Act 1999 Schedule 13 (Transfer on Sale)

> paragraphs 1(2) and 4. Ad valorem duty of 1% was payable, plus interest and penalties for late stamping. As Mr Welch had not paid the stamp duty on the declaration of trust or the deed of transfer and there was no undertaking to the court by a solicitor, as an officer of the court, to pay it (see *Re Coolgardie Goldfields Ltd* [1900] 1 Ch 475 on the established practice of the court) neither of the documents, though valid, could be "given in evidence, or be available for any purpose whatever..": section 14(4) Stamp Act 1891. These wide words have been construed as precluding secondary evidence of unstamped documents, whether in the form of copies or by reference to their recitals or by oral evidence of their contents: *Re Brown & Root McDermott Fabricators Ltd* [1996] STC 483; *Parinv (Hatfield) Ltd v IRC* [1996] STC 933. The undertaking given by Mr Welch to the court did not make inadmissible evidence admissible in the proceedings. It follows that, as neither document was stamped, Mr Welch was unable to establish a beneficial interest in the Lease by means of them or of secondary evidence of them."

33 It is unclear from the passage in Mummery LJ's judgment whether it was simply because the defendant was acting in person and unable to offer a solicitor's undertaking that he was not prepared to accept an undertaking. However, it is clear from the judgment of Arden LJ later in the report that it was more a matter of principle. She stated this at [49]:

> "Mr Welch caused Mr McGuane to execute two documents, the declaration of trust and the transfer. The former document was required to be stamped and could therefore not be admitted in evidence until that had happened. I need not consider whether it would have been open to the judge to accept an undertaking from a litigant in person for this purpose because it was always open to Mr Welch to apply for an adjournment to enable him to get the declaration of trust stamped if he wished to adduce it in evidence. But the document has never been stamped, and, as Mummery LJ has demonstrated, the court must in those circumstances pay no regard to its contents and must not admit any secondary evidence to prove its contents."

34 The second authority is the decision of Lord Drummond Young in the Outer House in *Semple v Semple* [2006] CSOH 180. This decision makes clear why it is that the court may refuse an undertaking perhaps more clearly than in *McGuane v Welch*. The case involved a shareholder dispute between a father and his two sons but it also involved the admissibility of two stock transfer forms. At [37] to [41] Lord Drummond Young set out the basic argument and I can pick it up at [41] and [42] where he said this:

> "41. In view of the terms of s.14, I am of opinion that the two stock transfer forms, Nos 7/16 and 7/17 of process, are not admissible in evidence if the pursuer's account of the meetings of 25 or 26 June 2001 is correct. The result of this is that the pursuer is unable to establish that the 98 non-subscriber shares in Manorgate were ever transferred to the first and second defenders. Consequently, even if the pursuer's version of what was agreed at the meeting on 25 or 26 June 2001 is correct, he cannot demonstrate that he has fulfilled his part of the bargain agreed at that meeting, and he is accordingly unable to enforce the defenders' part of the bargain. That result follows, in my view, from the plain meaning of section 14 as applied to the two stock transfer forms. It is not disputed that the forms required to be stamped. If the transfer was for substantial consideration, it is clear that

> conveyance on sale duty would be payable, related to the amount of the consideration. In that event, when the forms were stamped, the consideration stated in the instrument should have been a proper estimate of the value of the benefits provided by the first and second defenders to the pursuer. That could not have been the sum of £49 that is stated on each of the stock transfer forms. In these circumstances, it seems plain that, if the pursuer's account of the transaction is correct, the two instruments were inadequately stamped. Section 14 makes it clear that, if a document has not been properly stamped, the court must note the insufficiency in the stamp and the document may not be given in evidence. The result is that the pursuer cannot found on the two stock transfer forms, nos 7/16 and 7/17 of process.
>
> 42. The two stock transfer forms are in my opinion essential to establish any transfer of the 98 non-subscriber shares by the pursuer to the defenders. Counsel for the pursuer relied on certain admissions in the defences. The relevant admissions, however, are very limited in their terms; they are as follows..."

35 Lord Drummond Young then set out the relevant admissions. The alternative argument advanced by the pursuer in *Semple* was to rely on section 14(1) and Lord Drummond Young dealt with this issue at [43]:

> "Counsel for the pursuer stated that, if I were against the pursuer on this matter, the pursuer would undertake to pay the relevant duty. In my opinion, an offer of that sort is not appropriate. Section 14 is subject to an exception where the party founding on the document undertakes to pay the duty in question, and that provision has been applied in the cases referred to in paragraph [40] above. In those cases, however, the undertaking was an unequivocal undertaking to pay the duty. No such undertaking has been given in the present case. The undertaking given is conditional upon the court's finding against the pursuer. For that to happen, however, the court must come to a view on the evidence led at the proof, and in reaching that view, if the instrument in question has not been duly stamped, it must ignore that instrument. Consequently, I am obliged to reach a view on the issues arising at the proof without reference to the two stock transfer forms. In that event there can be no room for a subsequent undertaking to pay the duty; if an undertaking is to be effective it must be given at the time when the instrument is relied on in evidence or not at all."

36 Mr Ostrowski submitted that both *McGuane v Welch* and *Semple v Semple* are distinguishable in the present case because the judge found that Ms Mannering had entered into and signed the memorandum of agreement. Moreover, there was also other admissible evidence to show that Mr Cook was properly registered in the registry of members. In particular, Mr Ostrowski relied on the register of members itself.

37 Ms Mannering submitted that if the issue had been raised, she would have drawn attention to the inadequacy of the consideration and taken issue with the amount of stamp duty that would have been charged. In particular, she challenged the value attributable to her shares as having nil value and, indeed, would have raised the question of equalisation in relation to the share swap between Fluke and Highscore. She pointed out that one was a mature company, which had been trading and had goodwill, and the other was a start-up company

in which there had been no investment at all. She relied both on the permission to appeal application and before me that upon the passage in *Semple v Semple* (above).

38 It seems to me that if there had been a genuine dispute about the consideration being for the transfer of shares, that might have prevented the judge accepting an undertaking under section 14(1) for the reasons given by Lord Drummond Young in *Semple*. Nevertheless, I accept Mr Ostrowski's submission on this issue. The judge was entitled to find that there was an agreement the transfer of the share contained in the memorandum of agreement and having made that finding, it seems to me that the judge would have had no qualms in accepting an undertaking from Mr Ostrowski's instructing solicitor to accept the £12 and to get the transfer stamped in accordance with the court's settled practice.

39 Ms Mannering's raised a concern about her removal as a director but the judge dealt with that in [95] and the only other points which she made related to the value of the consideration which the judge dealt with in at [95] to [97] (above). It seems to me that the exchange of shares and the other benefits which Mr Cook agreed to give here were justification enough for Mr Rippingale inserting "nil" in the stock transfer form as the actual money or money's worth of the initial shares since they were being swapped for shares in Fluke.

40 For these reasons, therefore, and having heard full argument on issues (2) and (3) in the Respondent's Notice, I am satisfied that the judge would have dismissed the action even if the section 14(4) point had been taken. Although I had concerns about the treatment of Ms Mannering and that the s.14(4) point should have been taken by the judge herself, Mr Ostrowski has convinced me at this hearing that she would have reached the same conclusion even if the point had been taken and despite the long delay in between the handing down of the first judgment and the making of the final order.

41 I therefore dismiss Ms Mannering's appeal and I will hear from the parties in relation to any consequential orders.

L A T E R

42 The normal rule is costs follow the event. It seems to me that this is the appropriate order in the present case although I myself had concerns about the point being taken by the Court itself. Ms Mannering says that it could have been taken and dealt with at trial. It seems to me that I gave the permission to appeal and she has argued the appeal unsuccessfully. Having been unsuccessful, it seems to me that costs follow the event and I will summarily assess them.

43 So far as the figure is concerned, I am going to knock off a small amount to take into account the time spent on documents and also fee earner seniority. Although it is unquestionably true that he is the right man to deal with this litigation having been familiar with it for years, it does not automatically follow that one's opponent should necessarily pay for the additional costs of having the right person deal with the case if his seniority is not justified. It seems to me that a party to litigation is entitled to insist on the levels of hourly rate of fee earners being respected and also for the cheapest possible fee earner to deal with a certain amount of work.

44 So taking a very rough and ready calculation, I knock off £1,500 from the £20,477 figure and I will order the £19,000 plus VAT. The normal order would be fourteen days but given that Ms Mannering is a litigant in person and in financial difficulties, I would suggest twenty-eight days in this case but----

MR OSTROWSKI: No objections to that.

CERTIFICATE

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