No: 5325 of 2003

Neutral Citation Number: [2004] EWHC 1319 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
The Strand
London WC2A

Tuesday, 25 May 2004

B e f o r e:

MR JUSTICE BLACKBURNE

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ARROW TRADING AND INVESTMENTS & ANR
PETITIONERS

– v –

EDWARDIAN GROUP LIMITED & ORS
RESPONDENTS

– – – – – –

Tape Transcription of Smith Bernal WordWave Limited,
190 Fleet Street London EC4A 2AG,
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

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MR DANIEL LIGHTMAN (Instructed by Messrs Bird & Bird) appeared on behalf of the Petitioners/Applicants

MR MATTHEW COLLINGS (Instructed by Messrs Howard Kennedy) appeared on behalf of the First Respondent

MISS ROSALIND NICHOLSON (Instructed by Messrs Baker & McKenzie) appeared on behalf of the Second to Eleventh Respondents

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J U D G M E N T
(As Approved by the Court)

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Tuesday, 25 May 2004

J U D G M E N T

MR JUSTICE BLACKBURNE:

1. These applications, principally for full disclosure and further information, arise in the course of a section 459 petition which relates to a private company called Edwardian Group Limited ("the Company"), the first respondent. It carries on the business of owning and running hotels. Although a private company, it is a substantial concern. According to its accounts for the year ended 31 December 2002, it had a turnover in excess of £70 million, an operating profit of £13 million or so and a net profit of around £4 million. The Company has two classes of shares, ordinary shares of 50p each and deferred shares also of 50p each. Its paid up capital is a little short of £5 million. Between them the petitioners hold about 10 per cent of the ordinary shares and a little over 20 per cent of the deferred shares, amounting in all to £590,000 or so. The remainder of the shares are held by the second to eleventh respondents, who are either members of the Singh family or else close associates of that family, or in some cases trustees for members of the Singh family or their associates.

2. The driving force behind the company appears to be the third respondent, Jasminder Singh, who holds shares with a paid up value of £423,000 odd. He is also a joint holder with the fourth respondent of further paid up shares of £154,000 odd. Jasminder Singh has been chairman of the company since July 1977.

3. The petitioners' interests in the company have been represented by Mr Gulhati. He is a director and shareholder of the second petitioner and a beneficiary under a discretionary trust of the first petitioner's shareholdings in the company. Prior to July 2002, the directors of the company included Mr Gulhati, Mr Jasminder Singh, other members of the Singh family and two persons who are not shareholders, a Mr Morley and a Mr Hart. Mr Morley became a director of the company in 1999 having previously been with HSBC. Mr Hart became a director of the company in June 2001, having previously been a partner in the firm of Baker & McKenzie who acted as solicitors for the company and also I think Mr Jasminder Singh. Baker & McKenzie act in these proceedings for the shareholder respondents.

4. Although with the exception of a period in the early 1990s the company appears to have been highly prosperous, it has seldom paid a dividend. As I understand matters, it did so in 1998 and 1999 in connection with a capital rearrangement, and did so again in 1998 and 1999 in connection with a similar exercise. Otherwise no dividends have been paid. The company has, however, paid very substantial remuneration to its directions, particularly to Mr Jasminder Singh.

5. In 2001, inclusive of pension contributions, Mr Jasminder Singh received £1,065,000. In 2002, the corresponding figure was just over £1 million. In 1998 he appears to have received £1.85 million. The petitioners say that the remuneration paid has been well in excess of the market value of the services provided by the recipients to the company and that, to the extent of the excess, the payments have been an indirect means of distributing the company's profits.

6. Until July 2002, Mr Gulhati was likewise in receipt of very substantial remuneration so he could not complain and did not complain about the level of remuneration that was being paid out. In July 2002, however, the company, either by its directors or by recommendation of its directors endorsed in general meeting, reduced Mr Gulhati's remuneration and also, it appears, the remuneration of one or more of the Singh directors. In August 2002 Mr Gulhati was removed from his directorship since when he has received no remuneration. On the other hand, the remuneration of Mr Jasminder Singh and of other Singh directors has continued, it would seem, at much the same rate as previously.

7. It was this course of action, the reduction in Mr Gulhati's remuneration and his subsequent removal as a director coupled with the continued payment to some of the Singh directors, and in particular to Mr Jasminder Singh, of high levels of remuneration containing, it is alleged, a substantial element of disguised distribution, that has led to this petition which was presented to the court on 19 August 2003.

8. The central complaint concerns the continued payment by the company of high levels of remuneration containing this element of disguised profits distribution. As it is put in Mr Lightman's skeleton argument on behalf of the petition, the petitioners did not consider the policy followed by the company of paying remuneration to Singh family directors at a level significantly higher than a market rate for their services to be prejudicial to their (the petitioners') interests to the extent that the company also operated this policy fairly between shareholders, and in particular matched the element of distribution to the Singh family directors with a correspondingly high level of remuneration to Mr Gulhati, the director connected with the petitioners. However, a large reduction in the level of remuneration awarded to Mr Gulhati, decided upon by the board as from 1 July 2002 and his subsequent removal as a director in August 2002, changed the balance between the majority shareholders and the petitioner minority shareholders. Its effect has been that the minority shareholders are no longer receiving any kind of effective distribution referable to their shareholding through the remuneration paid to a person connected with them. By contrast, the Singh family directors, and therefore, in effect, the majority shareholders, continued to receive very large effective distribution through the remuneration paid to Jasminder Singh and the other Singh family directors. Accordingly, it has been and is prejudicial to the interests of the petitioners, for the substantial levels of effective dividend built into the remuneration of Jasminder Singh and the Singh family directors to continue, following the large reduction in Mr

Gulhati's remuneration and its termination altogether by his removal as a director of the company. That, as I say, is the central allegation.

9. It appears that at a directions hearing before the Registrar on 12 September Mr Collings, appearing then as now for the company, sought the Registrar's permission to file points of defence. The Registrar refused to permit the company to do so but said that if it wished to it could apply at a further directions hearing the following month but would need to support any such application with evidence and a draft of proposed points of defence.

10. The matter was then taken up in correspondence between Bird & Bird representing the petitioners and Howard Kennedy for the company. The petitioners' stance was that the company should adopt a neutral position, as is customary in petitions of this kind. The company's stance through Howard Kennedy was that it had a position on the issue of remuneration which it wished to place before the court, led by its independent directors, namely Mr Hart and Mr Morley, for the purpose of justifying its remuneration policy. Relevant to this has been the establishment of a remuneration committee consisting of, or at any rate including, Mr Hart and Mr Morley, which recommends what the remuneration should be, although the actual decisions on remuneration are taken by the board of directors and subsequently by the company in general meeting.

11. Fearing that the company was spending or planning to spend its resources in furtherance of its wish to participate in the petition on the central issue of remuneration, and believing that such participation and therefore such expenditure would be wrongful, the petitioners applied on 6 October last for an order restraining the company from doing so. The matter eventually came before Sir Francis Ferris on 3 November 2003. The company opposed the petitioners' application.

12. Following a contested hearing, Sir Francis granted the petitioners a permanent injunction restraining the company from expending its moneys and actively participating in the petition in the manner in which it had indicated its wish to do. He expressed the view that what the so−called independent directors, namely Mr Hart and Morley, wished to do was to defend the company's remuneration position and thus, in substance if not in intention, support the position of the shareholder respondent.

13. Sir Francis went on to express the view that although Messrs Hart and Morley might have a view on the issue of levels of remuneration, the company did not have a separate and independent position and that it was inexpedient that the company should be allowed to take an active part in the proceedings simply for the purpose of putting before the court the evidence of Mr Hart and Mr Morley in the manner in which they preferred, that is to say without appearing to align themselves with either the petitioners or the shareholder respondent . He therefore granted an injunction to restrain the company from spending its funds on participating in the litigation for those purposes.

14. This unsuccessful attempt on the part of the company to participate in the dispute has since given rise to an amended series of pleas in the petition appearing in paragraphs 20 to 40 of the petition. In paragraph 22, having set out certain principles in regard to the involvement by a company in section 459 proceedings relating to that company and certain other principles, it is pleaded:

> 22. In breach of [those] principles, the directors of the Company have caused it to seek to participate actively in these proceedings and to expend its monies on what is a dispute between its shareholders (i) in circumstances where such participation and expenditure have, and are, neither necessary nor expedient in the interests of the Company as a whole, and (ii) (quite inappropriately) in order to defend the majority shareholders in respect of what has been the principal matter at issue between them and the minority shareholders.
>
> 23. Further, as a result of the Company's said actions:
>
> 23.1 it is liable to pay its own legal costs (of in excess of £26,000) associated with its attempt actively to participate in these proceedings, and it is potentially liable to pay substantial sums (of approximately £60,000) by way of costs to the Petitioners."

I pause to say that that is a reference to the fact that Sir Francis, at the conclusion of his judgment, reserved the incidence of the costs of the application which had come before him to the judge who would try the petition. Then continuing with paragraph 23:

> 23.2 it has caused the Petitioners further to lose confidence in the ability of the Company's directors for the future to comply with their fiduciary duty to act in the interests of the Company as a whole and not in the interests of some only of the shareholders in the Company.
>
> 24. Such improper use of the Company's resources on the instant dispute between its shareholders (i) constitutes misfeasance on the part of the Company's directors, and (ii) in and of itself constitutes conduct unfairly prejudicial to the interests of the Petitioners herein."

15. The relief claimed (in paragraph 42 of the petition) I should say is primarily a buy−out order at a fair and proper valuation calculated on three particular assumptions. The first is that Jasminder Singh and the other Singh family directors have not received excessive remuneration from the company since 1 July 2002. (The relevance of 1 July 2002 as I understand it is that before that

date the petitioners through Mr Gulhati were themselves in receipt of what might be described as excessive remuneration.) The second assumption is that no minority discount should be applied to the value otherwise attributable to the petitioners' shares in the company. The third is that the Company did not incur the liability it has incurred to pay its own legal costs of in excess of £26,000 associated with its attempt actively to participate in these proceedings, or its potential liability to pay substantial sums of approximately £60,000 by way of costs to the petitioners. That is a reference to the costs reserved by Sir Francis.

16. The attitude of the shareholder respondents to the various allegations is set out in paragraphs 41 and 42 of the amended defence. As regards remuneration, what is pleaded is this.

> 41.1 If, contrary to [what was earlier set out in the defence which broadly speaking is a denial that there has been any excessive remuneration] there has been any overpayment of any Singh Family Director during 2002 and 2003, such overpayment has not been significant having regard to the size and profits of the Company and the amounts paid to the directors as a whole, and has not caused any prejudice to the Petitioners' interest as shareholders, whether unfair or otherwise.
>
> 41.2 The Respondents refer to and rely on the fact that no breach of duty or improper conduct is alleged against Mr Hart or Mr Morley, upon whose recommendations the other directors and shareholders have relied in approving the remuneration of the directors for 2002 and 2003."

There is then a reference to certain other matters amounting to unfair prejudice. The pleader then comes to the position of the Company's role of the petition and says this:

> 41.4 It is denied (if it be alleged) that any of the Respondents participated in or were responsible for any of the matters complained of in paragraphs 21−40 of the Petition."

Those are the paragraphs dealing with the company's attempt to participate in the proceedings:

> 41.5 In the premises, it is further and in any event denied (if it be alleged) that by reason of any of the said matters it would be just or appropriate to grant any relief against any of the Respondents.
>
> 41.6 In relation to the conduct of Mr Hart and Mr Morley, it is averred that they each acted responsibly in seeking independent legal advice from solicitors and Counsel in order

to ensure that the Company acted appropriately in relation to the Petition."

That is a reference back to paragraph 27 of the amended defence, where it is alleged that:

> 27.1 Following service of the Petition on 28 August 2003 the directors of the Company who had not been named as Respondents to the Petition (namely Mr Hart, Mr Morley and Mr Shashi Shah) resolved that the Company ought to take external advice from solicitors and counsel in order that the Company should act appropriately after being named as a respondent to the Petition. Mr Hart was authorised to act on behalf of the Company in this regard. None of the Respondents [that is to say the shareholder respondents] attended such board meeting.
>
> 27.2 Mr Hart subsequently instructed independent solicitors and counsel (Howard Kennedy and Mr Matthew Collings) to advise and act for the Company in relation to the Petition. All the decisions as to the role that the Company ought to take in relation to these proceedings have been taken by Mr Hart and Mr Morley independently of the other directors and (it is to be inferred from the correspondence, from the evidence filed and submissions made on behalf of the Company as referred to below) in accordance with the advice received from such independent solicitors and counsel."

17. Paragraph 41 then continues:

> 41.7 It is further denied (if it be alleged) that Mr Hart or Mr Morley ever intended to use the Company's funds to finance the defence to the Petition by the Respondents.
>
> 41.8 It is to be inferred, from the correspondence referred to above, and from the evidence filed and submissions made on behalf of the Company that Mr Hart and Mr Morley acted at all times in accordance with the legal advice which they received as to the appropriate course of action to be adopted on behalf of the Company, and in accordance with what they genuinely believed to be the bests interests of the Company.
>
> 41.9 In the circumstances it is denied that the conduct of Mr Hart or Mr Morley amounted to a breach of their fiduciary duty to the Company. Further or in the alternative, it is averred that Mr Hart and Mr Morley would be entitled to contend that they acted honestly and reasonably such that in all the

circumstances they ought fairly to be excused from any breach of duty to the Company.

41.10 Accordingly, it is denied that the conduct of Mr Hart and Mr Morley on behalf of the Company was unfairly prejudicial to the interests of the Petitioners. Alternatively, even if it was prejudicial, it is denied that it was unfair.

41.11 It is further averred that if and in so far as the Petitioners seek to rely upon any liability that the Company has incurred in respect of its own costs, or any costs that the Petitioners incurred in relation to the application for an injunction, all such matters relating to costs have been reserved to the trial judge and the Petitioners are entitled at trial to seek such order in respect of those costs as they see fit, and thereby to avoid any unfairness to them."

18. By paragraph 42.1 the respondents deny that the petitioners are entitled to the relief sought or any relief, but then say in 42.2:

> If, which is denied, it is found that there has been any element of excessive remuneration paid to any of the Respondents, that amount can and should be ordered to be repaid to the Company, thereby fairly and completely remedying the unfair prejudice claimed. Moreover, the procedures now in place for review and consideration of remuneration [a reference to the Remuneration Committee] are fair and reasonable. Accordingly, an order for purchase of the Petitioners' shares would be a disproportionate and unfairly burdensome remedy to impose upon the Respondents in respect of any past overpayment of remuneration."

It then goes on to say in paragraph 42.4:

> In relation to the matters set out in paragraphs 21−40 of the Petition:−
>
> 42.4.1 As none of the Respondents are alleged to have been, or were, involved in or party to any such matters, it would not be fair or appropriate for any order for purchase of shares be made in respect of such matters against any of the Respondents.
>
> 42.4.2 Such matters would not in any event justify any order for purchase of the Petitioners' shares by the Company and/or in the light of the ability of the Court to make any order that it sees fit in relation to the costs of the injunction application, an order for purchase of the Petitioners' shares would be a disproportionate and

unfairly burdensome remedy to impose upon the Company in respect of such matters."

19. By its reply, the petitioners allege that even if the shareholder respondents were not involved in or party to the matters set out in paragraphs 21 to 40 of the amended petition, the conduct of the supposedly independent directors in seeking to further the interests of the company's majority shareholders, in the manner referred to in those paragraphs, is evidence of the extent to which the operation of the company in the interests of the respondents, as opposed to the interests of the company's shareholders as a whole, has become institutionalised.

20. So much by way of background to the applications now before me. As against the company, the petitioners ask for disclosure under two heads. The first relates to the company's actions concerning participation in the proceedings resulting in the amendments to the petition to which I have referred. The second relates to the disclosure of certain financial information. Dealing with the first of these two heads, what the petitioners seek is:

> × disclosure from the Company of ×
>
> 51.1 all documents, including (but not limited to) all minutes of meetings, memoranda and reports, arising out of or in connection with the Company's consideration whether to actively participate in these proceedings and to expend monies in relation thereto;
>
> 51.2 all documents relating to or arising out of the Company (i) deciding to and then seeking actively to participate in these proceedings and (ii) deciding to defend the injunction application made by [the petitioners], including (but not limited to) all correspondence, instructions, opinions and advices created or received by the Company and its legal advisors and all documents evidencing the seeking or obtaining of legal advice by the Company in relation thereto; and
>
> 51.3 all bills or invoices rendered by the Company's lawyers in relation to the work done by the Company's solicitors and counsel in relation to the Company (i) deciding to and then seeking actively to participate in these proceedings and (ii) deciding to defend the injunction application made by [the petitioners]."

21. I take that recitation of the relief from Mr Lightman's skeleton submission. The relief sought is somewhat narrower than the heads of relief sought by the application.

22. Mr Lightman points, in support of that application, to the allegation in the amended petition concerning the company's attempts to participate in the proceedings and to the shareholder respondents' defence to those matters, in particular paragraphs 41.4 to 41.9 to which I have already referred.

23. He submits that it is the shareholder respondents' positive case (1) that the directors of the company have at all times acted appropriately and in accordance with the legal advice which they have been provided; (2) that the conduct of Mr Hart and Mr Morley did not amount to a breach of their fiduciary to the company; (3) that Mr Hart and Morley would be entitled to contend that they acted honestly and reasonably, such that in all the circumstances they ought fairly to be excused from any breach of duty to the company; and (4) that none of the shareholder respondents participated in or were responsible for what the company did as regards its involvement in these proceedings. He says why rely on inferences that Mr Hart and Mr Morley acted purely in accordance with the advice which they received from solicitors and counsel as pleaded in paragraphs 27 and 41.8 of the defence, and not at the instigation of the shareholder respondents, and in particular Mr Jasminder Singh, when the instructions to and advice provided by solicitors and counsel so far as set out in any documents and the consideration of that advice are available and can be evaluated according to their actual terms. *A fortiori* is this so, he says, when in answer to a request for further information as to all and any communications with or consultations with the shareholder respondents by Mr Hart or Mr Morley in relation to the company's attempt at participation in the proceedings, the shareholder respondents have stated that the petitioners are not entitled to this information: see request 83.

24. The company, through Mr Collings, opposes the application and does so on two grounds: first relevance and second privilege. I can dispose immediately of the privilege point. It is well established by authority that a shareholder in the company is entitled to disclosure of all documents obtained by the company in the course of the company's administration, including advice by solicitors to the company about its affairs, but not where the advice relates to hostile proceedings between the company and its shareholders: see Re Hydrosan Ltd [1991] BCLC 418 and CAS (Nominees) Ltd & others v. Nottingham Forest Plc & others [2001] 1 All ER 954. The essential distinction is between advice to the company in connection with the administration of its affairs on behalf of all of its shareholders, and advice to the company in defence of an action, actual, threatened or in contemplation, by a shareholder against the company.

25. Here, as Sir Francis Ferris pointed out, the company is a nominal although essential defendant. It has no independent position in relation to the issue of remuneration which lies between the petitioners on the one hand and the shareholder respondents on the other alone. The fact that the so−called independent directors have a view on the matter is neither here nor there. The advice sought and obtained was in connection with what, if any, action the company should take in response to the petition in the interests of all of its shareholders.

26. I see no basis on which the company can assert any entitlement to privilege in connection with these matters. In my judgment, the shareholders' ordinary right to disclosure applies. In any event, I question whether it is for the company, acting in effect by Messrs Hart and Morley (assuming that they have the right to determine the company's mind on these matters) to assert privilege when the petitioning shareholders asked to see the documents in question and none of the other shareholders, appearing before me by Miss Nicholson, raise any objections, even if they do not positively consent.

27. Mr Collings had a further submission which was that issues concerning the company's participation in the proceedings are still live between the parties, in that Sir Francis Ferris reserved the costs of the application before him to the judge who will be trying the petition. There was what, to my mind, was a somewhat inconclusive debate between counsel as to the precise reasons for Sir Francis' reasons for so directing in relation to costs. The probability is that he left for subsequent argument whether the burden of those costs should be borne either by the company, and if so on what terms as regards its consequences regarding a buy−out order, or by Messrs Hart and Morley. But be that as it may, the fact that the costs were reserved is, in my view, irrelevant to any question of privilege as regards the advice sought and received by the company in response to its joinder as a nominal respondent to the petition and what, if any, role it should take in the proceedings in the interests of its shareholders as a whole.

28. That leaves the question of relevance. I was initially attracted by Mr Collings' submission that the question is whether, in acting as they did, Mr Hart and Mr Morley acted quite independently of and in no sense at the instigation or with the encouragement of the shareholder respondents. It is the latter's case, as set out in their amended defence, that that was indeed the position. That is also the position of Messrs Hart and Morley. That being so, it must, submitted Mr Collings, be irrelevant as against the shareholder respondents and any relief which might be appropriate if the petitioners should succeed in showing that the conduct of those shareholders resulted in the company's affairs being conducted in a manner which was unfairly prejudicial to the petitioners' interests, that separately and independently of that conduct Messrs Hart and Morley have caused the company to conduct its affairs in a manner which can be characterised as unfairly prejudicial to the petitioners' interests.

29. As to whether in fact Mr Hart and Mr Morley acted independently of and in no sense at the instigation or with the encouragement of the shareholder respondents, the company, it says, has made disclosure of all documents going to that issue. There are none.

30. As I say, I was initially attracted by the submissions. I have come to the conclusion, however, that the question of the company's independence when acting by Messrs Hart and Morley goes beyond whether, when seeking to participate in these proceedings, they were to any degree being encouraged to do so by the shareholder respondents. As I have pointed out, one of the defences raised by the those respondents is concerned with the fact that the

company has established a Remuneration Committee comprising Mr Hart and Mr Morley (and possibly others) which reviews and considers the level of directors' remuneration. It is said that even if there has been any element of excessive remuneration paid to the shareholder respondents in the past, that past excess can be repaid to the company and that the position in the future as regards fairness and reasonableness of remuneration is now safeguarded, given the existence of the Remuneration Committee. Accordingly, it is said that any buy−out order of the petitioners' shares will be a disproportionate and unfairly burdensome remedy. See paragraph 42.2 of the defence.

31. The petitioners in their reply (see paragraph 50.2) challenge that averment. It is a matter which will fall for investigation at the forthcoming trial towards the end of this year. The petitioners are entitled, in myview, to disclosure of documents relevant to the independence, in this sense, of Messrs Hart and Morley. The terms, so far as recorded in any document on which on behalf of the company Messrs Hart and Morley instructed and sought advice from solicitors and counsel about how the company should respond to the petition, the advice that they received and any documents recording what, if any, deliberations there were antecedent and subsequent to obtaining that advice which bear upon those matters, seem to me to be proper matters for disclosure in this regard.

32. In my judgment, therefore, this part of the application succeeds. I once again note that, although not a party to this application, the shareholder respondents do not oppose it.

33. That brings me to the second head of disclosure sought against the company, namely certain classes of financial document. Since the application was first launched, the scope of what the petitioners seek has been somewhat narrowed. What they now seek is set out in paragraph 48 of Mr Lightman's skeleton. They are the following classes of document: (1) any valuations of the company or any of its assets carried out since 1998 (that has since been modified in the sense that assets is now confined to freehold or leasehold assets); (2) monthly management accounts for the company from January 2003 to date; (3) filed or draft accounts for the year 2003 (I pause to say that it is thought that there are none, but if there are, then Mr Lightman would confine his request to management accounts, for periods subsequent to the end of 2003); and (4) any documents constituting or evidencing (i) the company's budget for 2004 and (ii) the company's proposed budget for 2005 or any future years.

34. Mr Lightman submits that such documents go to two matters: (1) whether the remuneration received by the Singh family directors, since Mr Gulhati's removal as a director, has been excessive, a matter, he says, which can only properly be evaluated having regard to the company's turnover and profitability; and (2) enabling the petitioners to consider and formulate, as I am told they contemplate doing, a Part 36 offer in settlement of their claim and separately to be in a position to engage in a meaningful mediation of this dispute.

35. Although the possibility of the petitioners making a Part 36 offer has only very recently been raised, I understand that there has been some discussion between the parties about a possible mediation. Mr Collings accepts that the application is well founded to the extent that it relates to any information upon which the Remuneration Committee has made recommendations to the company as regards the appropriate level of remuneration. It appears that the Remuneration Committee has made recommendations which have resulted in the approval or the fixing by the company in general meeting on 10 November 2002 of directors' remuneration for 2001 and 2002 and, at an extraordinary general meeting on 14 October 2003, of directors' remuneration for 2003.

36. Mr Collings has offered, without prejudice, an undertaking that the Company will conduct a further search for any documents concerned with material used for the remuneration review and any recommendations on remuneration made to the general meetings of the company in 2003. However, he was opposed to any order requiring disclosure of any valuations of the company or of its freehold or leasehold assets carried out since 1998, which go beyond standard disclosure as being potentially very burdensome. Nor did he see why there should be disclosure of budgets for 2005 or any future years, assuming that there are any.

37. Rather than take up time on this now, I propose to order the disclosure of (a) all monthly management accounts for the company from January 2003 onwards, (this assumes that there are no filed or draft accounts for the year 2003 because if there are, then I would limit the disclosure of management accounts to the period subsequent to the year end for the latest filed or draft accounts); (b) any document evidencing the company's budget for 2004; and (c) any valuation of the company or any freehold or leasehold assets carried out since 1998. In the case of this last category, the asset valuations are tobe confined to valuations of the whole of the company's interest in any such freehold or leasehold asset. This is intended to exclude any valuations for, for example, a rent review of a sublet part of any such freehold or leasehold asset. It is intended to keep the matter simple. I add further that the company is not obliged to do other than make a reasonable search for any such valuations.

38. In so ordering, I am persuaded that the documents in question are relevant to an assessment of the reasonableness of the level of remuneration being paid to the Singh family directors since Mr Gulhati's removal as a director, and, to a lesser extent, to enable the petitioners to make a realistic Part 36 offer or engage in meaningful mediation: see Gnitrow Ltd v. Cape Plc [2000] 1 WLR 2327 at 2331.

39. Although an undertaking has been offered by Mr Collings, I do not propose to require the company formally to give the undertaking to which he referred in the course of argument yesterday and again this morning. I will simply leave it to the company to ensure in compliance with its continuing duty of disclosure, that any further financial information relevant to the basis upon

which from time to time the Remuneration Committee is making its recommendations is disclosed as the matter proceeds.

40. That brings me to the petitioners' applications against the shareholder respondents. The first relates to the adequacy of the disclosure statement contained in the list of documents served by the shareholder respondents. The list which has been signed by Jasminder Singh is in the standard form in that it says:

> I state that I have carried out a reasonable and proportionate search to locate all the documents which I am required to disclose under the order made by the Court on 9 December 2003."

That is a reference to a directions order which provided for disclosure.

> I did not search for documents −
>
> 1. predating 03/06/1991
>
> 2. located elsewhere than within the second to eleventh respondents' control
>
> 3. in categories other than those required by standard disclosure
>
> I certify that I understand the duty of disclosure and to the best of my knowledge I have carried out that duty. I further certify that the list of documents set out in or attached to this form, is a complete list of all the documents which are or have been in my control and which I am obliged under the order to disclose.
>
> I understand that I must inform the court and the other parties immediately if any further document required to be disclosed by Rule 31.6 comes into my control at any time before the conclusion of the case.
>
> Signed"

It is signed by Jasminder Singh with his name underneath. Then in the reference to "position or office held, if signing on behalf of a firm or company stating why you are the appropriate person to make the disclosure statement", the following appears:

> I am the second respondent [he is in fact the third respondent in these proceedings] and have coordinated the search for documents from the second to eleventh respondents in conjunction with the second to eleventh respondents' solicitors, Baker & McKenzie."

41. There was some supplemental disclosure and a form was duly filled out and signed, again by Jasminder Singh, with the same addendum reciting, wrongly, that he is the second respondent and that he had coordinated the search for documents with the second to eleventh respondents in conjunction with Messrs Baker & McKenzie.

42. In my judgment, a disclosure statement in this form does not comply with the requirements of the rule. The relevant rule is 31.10. It requires that:

> (2) Each party must make and serve on every other party a list of documents in the relevant practice form.
>
> (3) The list must identify the documents in a convenient order and manner and as concisely as possible.
>
> (4) The list must indicate −
>
> (a) those documents in respect of which the party claims a right or duty to withhold inspection; and
>
> (b) (i) those documents which are no longer in the party's control; and
>
> (ii) what has happened to those documents."
>
> (5) The list must include a disclosure statement.
>
> (6) A disclosure statement is a statement made by the party disclosing the documents −
>
> (a) setting out the extent of the search that has been made to locate documents which he is required to disclose;
>
> (b) certifying that he understands the duty to disclose documents; and
>
> (c) certifying that to the best of his knowledge he has carried out that duty."

In (7) there is a reference to where the party making the disclosure statement is a company, firm, association or other organisation (this only applies to the second and seventh respondents which are limited companies). In such case the statement must identify the person making the statement and explain why he is considered an appropriate person to make the statement.

> (8) The parties may agree in writing −

(a) to disclose documents without making a list; and

(b) to disclose documents without the disclosing party making a disclosure statement."

There is no such agreement in writing in this case.

(9) A disclosure statement may be made by a person who is not a party where this is permitted by a relevant practice direction."

There is no relevant practice direction in this case.

43. The two lists and disclosure statements to which I have referred fall short of what is required for each of the four reasons set out in Mr Lightman's skeleton submissions at paragraph 30, namely, (1) none of the parties giving disclosure (other than Jasminder Singh) has deposed that he or she is aware of and understands the duty of disclosure; (2) none of them (other than Jasminder Singh) appears personally to have carried out that duty; (3) it is not clear what, if any, search any of the shareholder respondents has made to locate documents which are to be disclosed; and (4) it is not clear which documents have been (and have not been) disclosed by each of the shareholder respondents.

44. There has been a lengthy correspondence between Bird & Bird on behalf of the petitioners and Baker & McKenzie on behalf of the shareholder respondents about the matter. The relevant letters are carefully referred to in Miss Nicholson's skeleton argument. She submits that in the light of that correspondence and the confirmations and explanations provided by Baker & McKenzie in the course of their letters, the petitioners are raising a pure technicality and insisting that each of the shareholder respondents make a separate disclosure statement. She also refers to the fact that, for their part, the petitioners have themselves fallen short of what, on the face of it, the rule would require, in that a disclosure statement has been provided by Mr Gulhati alone claiming to be the sole director of the second petitioner, but stating he is no more than a beneficiary of a discretionary trust that owns the first petitioner.

45. I do not agree with Miss Nicholson that the non−compliance is a mere technicality in this case. Nor is it relevant that the petitioners may themselves be in breach of this agreement. The purpose of the rule is to bring home to each party his or her individual responsibility for giving standard disclosure. Except to the extent permitted by the rules, it requires the party himself to make the disclosure statement. This clearly has not happened. The petitioners are entitled to complain that it is not. It is not a mere technicality. It follows, therefore, that this part of the petitioners' application succeeds.

46. That leaves only the question of further information. It is accepted, following debate between myself and Miss Nicholson, that the answers to the requests

for further information should have attached to them a statement of truth by each of the shareholder respondents to the extent that they are able to depose to the truth of what is stated, or in the alternative by their solicitors on their behalf. There has been a debate about the adequacy of information in relation to benefits in kind. Suffice it to say that the amended petition is not altogether clear in its references to remuneration that it is intended to refer to benefits in kind, assuming that any of the shareholder respondents have received benefits in kind. The appropriate way of dealing with the matter is for the amended petition to be further amended to make it absolutely explicit that the references to remuneration are intended to include any benefits in kind. That having been done, and it is pointed out by Mr Lightman that the position is made clear in the reply, there can be no question but that what, if any, benefits in kind have been received by the shareholder respondents ought to be disclosed.

47. There was a debate as to the sufficiency of information given in relation to an allegation of quasi−partnership. I have expressed the view that it is not for the respondents to provide further information in regard to their denial of the existence either now or at any material time in the past of a quasi−partnership. Rather, it is for the petitioners if they assert the existence of a quasi−partnership, to alleged it and adduce evidence in support of their plea. The relevance of a quasi−partnership, if such it was, is, as I understand it, as to whether there should be a discount in the computation of the share value of the petitioners' shares, assuming that unfair prejudice is established and a buy−out order is made.

48. There was then an issue as to who came up initially with the proposed remuneration for the various directors prior to the establishment of the Remuneration Committee. I agree with Miss Nicholson that that is not a matter which is appropriate to be dealt with by way of a request for further information.

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