

JERSEY / JUDGMENT

P-S v C [2010] JCA 207 (18 November 2010)

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COURT OF APPEAL 18 November 2010 Before : The Hon. Michael Beloff Q. C., President; Dame Heather Steel, and; Nigel Pleming, Q. C.. Between C Petitioner And P-S Respondent Cross Appeal Between P-S Petitioner And C Respondent Advocate A. Clarke for the Appellant. Advocate A. D. Robinson for the Respondent.

JUDGMENT

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INTRODUCTION

1. This is the judgment of the Court. 2. This appeal (and cross appeal) arises from protracted matrimonial proceedings between the Appellant (referred to in this judgment as 'the husband') and the Respondent (referred to as 'the wife') to determine a fair division of family assets and the appropriate ancillary relief. 3. The appeal challenges the decision and judgment of the Royal Court (Family Division) dated 16 th June 2009 ("the 2009 Decision"), in which it was ordered that the sum of £3,000,000 be transferred to the order of the wife. By her Respondent's Notice of Appeal the wife requests this Court to affirm the decision of the Royal Court and vary its decision and order so as to add interest on the award of £3,000,000 from 9 th July 2003. 4. It is to be noted that this decision followed from 2 earlier decisions in the same matter, in 2003 and 2006. The main litigation history can be taken from the opening paragraphs of the 2009 Decision:- "A number of judgments and rulings have been given during the course of this long running and tortuous saga, and the reader of this latest (and hopefully last) judgment is invited to refer to them for the detailed history of this ancillary dispute. We do not propose to repeat much of that history. Suffice it to say that on 9th July 2003 the Court delivered its first substantive judgment ([2003] JRC 116) ("the 2003 judgment"). We there referred to the petitioner as 'the wife' and to the respondent as 'the husband' and we will continue for convenience to use those designations. The 2003 judgment assessed the total net assets of the parties at £8,875,655, and awarded approximately 55% (£4,855,921) to the wife. That included a lump sum cash adjustment of £2,200,000. The husband was ordered to pay this sum within five years, and in the meantime to pay interest on it at the rate of 6% per annum. Neither party appealed the judgment. Subsequently it was ascertained that there had been a material non-disclosure on the part of the husband in that the true value of the assets in Switzerland

had been obscured. After another hearing the Court delivered its second substantive judgment on 9th October 2006 (

[2006] JRC 139A) ('the 2006 judgment') setting aside in part the award contained in the 2003 judgment. The Court declared at paragraph 38: 'For all these reasons we set aside that part of the award ordering a lump sum payment of £2.2 million in favour of the wife. We will hear argument, in default of agreement between the parties, as to the figure which should be substituted.'" THE FACTUAL

BACKGROUND

5. In paragraph 7 of its 2009 Decision the Royal Court stated it was determined to disturb as little as possible the findings made in the 2003 judgment, which had not been the subject of any appeal. We cannot see any basis for disagreeing with that approach (to which we will return) and, accordingly, much of the factual background can be taken from the summary in that earlier judgment. 6. It is unnecessary to dwell on the matrimonial and family history, save to note that the marriage was in December 1973, and there are four children, now all adults. In November 2001 the wife commenced divorce proceedings. On 16 th January 2002 a decree nisi of divorce was issued, and on 17 th February 2004 the decree nisi was made absolute. 7. In 2003 the two main topics in dispute were first, the value of the former matrimonial home, and second, the value of the husband's 63% interest in a substantial group of financial services companies, the Caversham Crichton Bell Group (referred to in all the proceedings as 'the CCB Group'). The CCB Group included Swiss subsidiaries. The value of the matrimonial home (and other assets) was determined in 2003 and is no longer relevant. 8. When determining the value of the husband's interest in the CCB Group in 2003, the Royal Court was faced with competing opinions from forensic accountants
- Mr Peter Beamish of Deloitte Touche for the wife, and Mr Anthony Pushman of Ernst & Young for the husband. The initial difference between the experts was almost £3.5 million but, by the time of the hearing, had shrunk to £1.5 million. In summary, Mr Beamish valued the husband's interest in the CCB Group at £4.4 million, whereas Mr Pushman valued the interest at £2.9 million. 9. The main point of difference between Mr Beamish (for the wife) and Mr Anthony Pushman (for the husband) was the method of valuation. Mr Beamish adopted the Dividend Yield Method, or Methodology ('DYM'). The DYM values the historical or future anticipated dividend stream of a company on an investment return basis. It computes a capital value for the company based upon the dividends, at a yield comparable with that achievable from a similar investment. In the first instance, this method relies upon the declared dividend stream of a company, although it is important also to take account of cash actually withdrawn. Mr Beamish, eventually, estimated the yield to be 10%. Mr Pushman, in contrast, considered that the appropriate method of valuation of the CCB Group was to apply a Price/Earnings Ratio ('PER'). In his opinion the DYM was best suited to the valuation of the interest of a minority shareholder who had no control over the level of dividends distributed. His evidence was that the interest of a controlling shareholder would

traditionally be valued by applying a PER. By this method a multiple is applied to post-tax profits. 10. The Royal Court resolved this factual dispute as follows (paragraph 20 of the 2003 judgment):- "We found the evidence of Mr Beamish to be the more persuasive. Without in any way doubting the professional expertise of Mr Pushman, we gained the firm impression that Mr Beamish's experience as a forensic investigator had enabled him to get closer to the heart of the matter. The PER may well be the appropriate method of valuation looking at the matter from a buyer's perspective. But the CCB Group is not for sale and we have to try to assess the value of the husband's interest on a realistic basis from his perspective. Notwithstanding the evidence of Mr Pushman, we think it highly unlikely that the husband would contemplate for one moment selling a share in a business which in 2001 yielded annual profits for him approaching £1 million at a price of £2.9 million. We agree with Mr Beamish that the husband is a very astute businessman who has responded to the perceived threats to the financial services industry in Jersey by spreading the risk and placing the CCB Group in a position where it can very quickly respond to changed political and market conditions. We note that one of the husband's partners is in the course of buying out the share of another partner which appears to demonstrate confidence in the future of the CCB Group. We accept the evidence of Mr Beamish that the CCB Group is a very attractive asset which is worth a great deal to the husband. We also agree that the DYM is the appropriate way of valuing the CCB Group and the husband's 63% interest in it. We will value the husband's interest, in accordance with the evidence of Mr Beamish, at £4.4 million." 11. The sentence "But the CCB Group is not for sale and we have to try to assess the value of the husband's interest on a realistic basis from his perspective" , is now relied on by the husband to contend that it was wrong for the Royal Court to accept any valuation of the group that was based on a prospective, or hypothetical, purchase. 12. When it came to the Swiss subsidiary (or subsidiaries), the subject of the present dispute, the Royal Court in 2003 recorded the position of the wife's expert as follows: "up-to-date information on a Swiss subsidiary was not available, and Mr Beamish thought that had a value, although the latest figures showed it to be making a loss" (paragraph 15 of the 2003 judgment). Mr Beamish therefore valued the Swiss business at cost, viz £42,846. 13. In relation to the Swiss business and the husband's expert, the Royal Court said this (paragraph 19 of the 2003 judgment):- "Mr Pushman had not been instructed to value the Swiss subsidiary, but only the principal trust company operating in Jersey. Mr Pushman had accordingly not factored in any value for the Swiss subsidiary. It is true that the Swiss subsidiary has not yet, on the figures available to Mr Beamish and to the Court, made a profit. But it is clear that a significant percentage of the business formerly conducted in Jersey has been transferred to Switzerland. In May 2002 the turnover of the Jersey business was approximately £3 million, whereas the turnover of the business in Switzerland was £1 million. In Mr Beamish's view the Swiss business was poised to move into profit. Nevertheless that aspect of the CCB Group had been excluded from Mr Pushman's brief." 14. The Royal Court determined, in 2003, that the total award to the wife would be £4,855,921, or approximately 56% of the joint assets. The cash adjustment of £2,200,000 in favour of the wife was ordered to be paid by the husband within five years. Pending payment of that amount, the husband was ordered to pay interest

on that capital sum to the wife on any outstanding balance at the rate of 6% per annum monthly in arrears, the first proportionate payment to be made on 1 st August 2003. 15. In July 2005, the wife presented to the Court a Representation that the husband "had been guilty of material non-disclosure of financial information leading up to and during the course of the [2003] hearing". In broad summary, the complaint was that if the Court (and the wife's expert) had then had the benefit of full and complete financial disclosure, there would have been, or may have been, a substantially higher valuation of the husband's interest in the CCB Group - which, in turn, would or might have resulted in a substantially higher lump sum award being made in favour of the wife. 16. On 9 th October 2006, the Royal Court (Family Division) set aside that part of the 2003 award ordering a lump sum of £2.2 million in favour of the wife, with argument to follow (in default of agreement) as to the figure to be substituted. The basis for the decision was as follows (paragraph 37 of the judgment):- "(1) We think that the husband is prone to prevaricate, and to seek to undermine the evidence of the wife if he can. In contending that there was no necessity to appoint a forensic accountant outside Jersey he insisted in evidence that he had not been on holiday with Mr Branch and their respective partners. It was only when faced with the prospect of contrary evidence from the wife that he instructed his counsel to concede that he could in fact now recall this shared holiday. We find that he is prone to holding back information if he thinks that he can avoid disclosure.

- (2) The husband is an intelligent and articulate chartered accountant as well as being the architect of the success of the CCB Group and its chairman. We find it incredible that he did not know in reasonable detail about the draft Client Entity Transfer Agreements nor the considerations agreed or in contemplation. To the extent that he disavowed such knowledge, we reject his evidence.
- (3) With the benefit of hindsight it seems plain to us that the decision to instruct Mr Pushman, his expert adviser in 2002/2003, not to investigate or assess the value of the Swiss operations was deliberate. The husband wanted to obscure the picture in relation to the CCB Group's activities in Switzerland and it would not have been helpful to instruct Mr Pushman in that respect.
- (4) We find that the husband's evidence was less than candid. In particular he failed to disclose the existence of Mayo and the options agreement in relation to the shares of Mayo, and the fact that Client Entity Sale Agreements were in draft. Mr Beamish's final report stated at paragraph 4.2.9: "CSA. We understand that this company represents CCB's investment in its Switzerland-based operations." The husband knew that this was inaccurate but failed to say anything. Mr Whale [one of the husband's business partners] eventually agreed in evidence that the board of CFSL was aware of the agreements and the prospective considerations.
- (5) The failure to volunteer this information to Mr Beamish led him to undervalue the Swiss operations of the CCB Group. In addition it was, in our judgment, an important contributory factor in persuading Mr Beamish to reduce his estimate of the value of the husband's shares in CFSL from between £5.1 million and £6.6 million (see paragraph 4.5.11 of his final report)

to a significantly lower figure when he gave evidence at the hearing." 17. There was no agreement between the parties as to the substituted figure for the lump sum award, and accordingly further hearings became necessary. On 27 th July 2007, the Court ordered that the re-determination process was to be conducted "on the basis of valuation evidence as at the original date of trial which commenced on 28 th April 2003". This was further clarified by the Bailiff in his ruling on 1 st November 2007. In summary, the court's task was the endeavour to ascertain the true and fair value of the CCB Group in April 2003 and, in particular, the value of the husband's interest in that group, at that time. 18. The Act of 1 st November 2007 (which contained various directions) was the subject of an application for leave to appeal to this court. On 12 th March 2008 the application was refused, and this court issued further directions to ensure there was an early and final determination of the valuation issue. 19. The hearing to determine the figure to be substituted eventually took place in March 2009. The Royal Court identified three elements of the CCB Group to be considered: first, the value of Caversham Fiduciary Services Limited ("CFSL"), essentially the Jersey business conducted by the Group; second, Caversham SA ("CSA"), and Mayo Services SARL ("Mayo") - referred to as CSA/Mayo, which was the Swiss arm or branch of the Group's business; and third, Just Wills Limited ("Just Wills"), an enterprise unrelated to the first two and based in London. The relationship between these, and other component companies in the CCB group, is helpfully set out in a group structure diagram entitled "Caversham Group 2003" put before the Royal Court. The diagram shows the husband owning 63% of Caversham Holdings Limited which in turn owns 100% of the shares in Marylebone Investment Holdings Limited, which in turn holds 100% of the shares in Just Wills. 20. The original experts who had represented the parties in 2003 did not give evidence in 2009 (Mr Beamish who had advised for the wife had retired). The Royal Court heard expert valuation evidence for the wife from Ms Julia Wallace-Walker of FTI Forensic Accounting Limited, and for the husband from Mr Andrew Dann of Ernst & Young. Ms Julia Wallace-Walker is referred to in the Royal Court's judgment as "JWW", Mr Dann as "AD". 21. We will consider the detail of the Royal Court's factual findings when we consider the various Grounds of Appeal. GROUNDS OF APPEAL 22. When considering the grounds of appeal it is helpful to keep well in mind the role of the Court of Appeal. An appeal to the Court of Appeal is limited to a review of the decision of the lower court, unless the appellate court considers in any given case that it would be in the interests of justice to hold a re-hearing. The appellate court should be extremely reluctant to reverse the judge's evaluation of the facts, or to interfere in matters involving the exercise of a discretion (see *Abdel Rahman v Chase Bank (C. I.) Trust Co Ltd*

[1984] JJ 127, at page 134 and *United Capital Corporation Limited v. Bender and others*

- [2006] JLR 269 , Beloff JA at [23] to [27]). This Court is also slow to interfere with the judge's evaluation of mixed questions of law and fact such as "obviousness" and "insufficiency" which involve no question of principle but are matters of degree. 23. In particular in this context we note that although valuation is more science than art, it is on no view an exact science: see, for example, as to the valuation of pictures, *Luxmoore-May v. Messenger May Baverstock*
- [1990] 1 WLR 1009, Slade LJ at 1020, and *Jackson & Powell on Professional Negligence* (4 th Ed.) at pp287-290. Valuers can differ in their approaches, and indeed, as to the application of those approaches, and in their assessment of the factual material to be considered. As long as a valuer's approach is rational, a fortiori if it applies recognised professional guidance, a Court of First Instance is entitled to accept it in preference to another approach of equal quality. This is what judgment is all about. In this context, as in others, a Court of First Instance has the advantage over an appellate court of hearing and seeing the witness - in short of sight and sound. And even if a choice by such Court between competing valuations will not usually, or even often, be based on a view so informed that an expert is being less than objective or candid, the conviction and cogency of presentation as well as the perceived logic of the analysis can properly underlie the Court's choice. 24. We mention these points at the outset because some of the arguments advanced on behalf of the husband trespass into the area of attempted re-hearing before this court, and fail to recognise that to a great extent the Royal Court was engaged in the process of evaluating for itself the evidence of opposing professional experts. In our view, this court should strongly discourage the pursuit of grounds of appeal that are little more than an invitation to the Court of Appeal to substitute its views for the views of the Royal Court. For this Court to contemplate intervention there has to be advanced before it some identifiable error of law, not merely a disagreement on the facts dressed up as a legal error. 25. When considering the grounds of appeal we keep in mind to overall approach to be applied in matrimonial finance cases - that the distribution of assets by the courts should be fair (*White v White*
- [2001] 1 AC 596 , House of Lords, as applied in *Jersey in J v M*
- [2002] JLR 330 , at [29] "The touchstone in all cases involving a division of matrimonial assets is fairness"). 26. There are 9 grounds of appeal in the Supplementary Notice of Appeal. There is a degree of overlap, and in our opinion, it is useful to combine the several pages of grounds into the following shortened 5 headings
- although retaining the particulars. This approach was reflected in the order of submissions made on behalf of the husband by Advocate Clarke. He took his original ground of appeal 6 out of order, and we have followed that lead in our re-casting of the grounds:- (i) The Royal Court misdirected itself in the valuation of Just Wills Limited, and/or in the alternative failed to provide adequate reasons for its decision. (ii) The Royal Court misdirected itself when making adjustments to the 2000 to 2003 dividends of CFLS, and/or in the alternative failed to provide adequate reasons for its decision. (iii) The Royal Court misdirected itself in the

valuation of CSA/Mayo, and/or failed to provide adequate reasons for its decision. (iv) The Royal Court erred in law, or misdirected itself, by failing to conclude that the appropriate rate of return, when applying the Dividend Yield Method of valuation, was 10.5% rather than 10%. (v) The Royal Court misdirected itself on the correct method of valuation of the Appellant's shares in the CCB Group, by failing to adopt the Price-Earnings Ratio method. Ground 1 - The Royal Court misdirected itself in the valuation of Just Will Limited, and/or in the alternative failed to provide adequate reasons for its decision. [This incorporates Grounds 1 and 2 in the Supplementary Notice of Appeal.] 27. The husband's complaint, shortly put, is that the Royal Court ignored the losses made by Just Wills and should either have deducted the losses from the value of the CCB Group, or at least have concluded that the losses would have affected the price to be paid by a prospective purchaser for the husband's interest in the CCB Group. The husband also criticises the reasons given. 28. The Royal Court considered this issue briefly but succinctly in paragraphs 16, 19 and 20 of its judgment (with our comments added in paragraph 16 and in the 5th sentence of paragraph 19):- "16. The reality was that in April 2003 [this should be reference to June 2002 - see paragraph 19] an investment had been made in Just Wills. It may (or may not) have been a bad investment, but it was an investment nevertheless. It seems to us that a notional purchaser would have been bound to accept that position. Whether he would have acquired the loss making business or Just Wills is another matter to which we shall turn in due course.

19. We turn to the final area of disagreement which involves Just Wills. The Just Wills Group was acquired by the CCB Group in June 2002 for £500,000. It made a loss of £488,484 in the year to 31st May 2003 and continuing losses in the following years. In 2003 the husband indicated that it had no value and should be ignored for the purpose of computing the worth of his interest in the CCB Group. JWW gave evidence that this was the appropriate approach in 2009, [this could perhaps be more clearly expressed, as was accepted by Advocate Clarke, if it read, as we are sure it was intended to read, as 'JWW gave evidence in 2009 that this was the appropriate approach'] because a prospective purchaser in 2003 would either have been unwilling to acquire the loss making business of Just Wills or would have acquired it on the basis of its future potential. In either event there would have been no justification for depressing the value of the CCB Group in order to offset future losses by Just Wills. AD's consolidated accounts for 2003 took account of the losses incurred by Just Wills.
20. We think that the approach of JWW is to be preferred, not least because it was the approach adopted by both parties in 2003. As a matter of logic, it seems to us that the losses incurred by Just Wills would not have affected the price to be paid by a prospective purchaser for the husband's interest in the CCB Group for the reasons given by JWW." 29. There was expert evidence before the Royal Court to support this conclusion - see paragraph 53 of the Report from Ms Wallace-Walker:- "In my opinion, based on the accounts disclosed, the Just Wills Group should be valued at £Nil at May 2003". This conclusion was supported and explained in the preceding paragraphs of that report, and also in Appendix 2 to her Supplemental Witness Report dated 2nd January 2009. 30. Advocate Clarke for the husband argues that the Royal Court should not have accepted Ms Wallace-Walker's analysis because:- (i) The losses

incurred by Just Wills as at May 2003 were an undisputed fact and relevant to the valuation of the Group as a whole and should not have been ignored. If it was permissible for the Court to look at valuation on the basis of a prospective purchaser, then that prospective purchaser would not have valued Just Wills at nil, but would have required a value that reflected the known losses already made; (ii) The exclusion of Just Wills on the basis of what a potential purchaser would be likely to have done in 2003 was far too speculative to form the basis for a proper valuation. Further, under this head of complaint, the husband draws attention to the conclusion of the Royal Court in 2003 (see paragraph 10 above) that a valuation then on the basis of a sale was inappropriate because "the CCB Group is not for sale" and the valuation must therefore be from the husband's perspective, rather than from the perspective of a buyer; (iii) On a more general basis (and this criticism applied to other grounds of challenge) the Royal Court erred because it preferred the evidence of Ms Wallace-Walker which was "flawed, skewed and contrary to practice". 31. In its judgment the Royal Court referred to the husband's own valuation and approach in 2003 - "In 2003 the husband indicated that it [Just Wills Limited] had no value and should be ignored for the purpose of computing the worth of his interest in the CCB Group". The Court was, in effect, agreeing with the husband's approach, finding support in the expert opinion for the wife in 2009. 32. Advocate Robinson, for the wife, replies by submitting that the Court, faced with the competing views of experts on this issue was entitled to choose, and cannot be criticised in this court for so doing. He argued that the valuation exercise inevitably involves a degree of subjectivity by the experts. And when, as here, it was considered necessary by an expert valuer to consider the position of the hypothetical purchaser, it was not irrational or wrong to reach a view as to what considerations that hypothetical purchaser would be likely to take into account. Ms Wallace-Walker's professional and reasonable view was that the hypothetical purchaser would have either disregarded the losses in Just Wills (when considering the overall value of the group), or carved Just Wills out of the group. In either event, the result would be that the overall value of the group would not be affected, and the value would not be reduced by the £488,484 (or any similar sum). 33. Advocate Robinson also pointed to the valuation approach of the husband's valuation expert in 2003 when it was said that the valuation basis "is that of a hypothetical sale of the company on an open market basis between a willing buyer and a willing seller". But, as pointed out by Advocate Clarke, that approach was not accepted by the Royal Court in its 2003 judgment. This was recognised by Ms Wallace-Walker in her report dated 15 th September 2008, but some consideration of the approach of the hypothetical potential purchaser remained relevant to the valuation exercise:- "Based on the preceding and my previous experience of valuing professional practices, I believe that the mid-point of the DYM valuation of £7.75 million is reasonable. In my opinion, it represents in May 2003, the inherent value to [the husband] of the future dividends receivable and his share of a hypothetical valuation payable by a third party purchaser taking into account, gross profit, the type of client base, margins, adjusted net profits, the quality of staff and clients, the competitive market, regulatory compliance risk, cash flow and market conditions in 2003." (emphasis added) 34. The wife's alternative, or additional, argument is that the husband could not sensibly have been ignorant of the Just

Wills losses in 2003, and there had been deliberate failure to disclose that information, and "the reason for the husband's silence can only be that to ignore Just Wills represented a good outcome for H, given his inside knowledge of the reality of Just Wills' performance". This argument does not appear to have been addressed by the Royal Court, but we mention it briefly here. We consider it to be a reasonable inference in the context of this dispute, and the Royal Court's finding on material non-disclosure, that the husband was concerned to attribute the lowest value to his assets so as to diminish what his wife might receive, and to divert attention from Just Wills' potential profit. In 2009 he invited the Royal Court to take account of Just Wills no longer as a neutral factor in the equation but one which actually operates in his favour by focussing on the fact of losses by itself. In our view, especially where, as the Royal Court held, his evidence was suspect, we would be reluctant to reach a conclusion that allows the husband to blow hot and cold. 35. We were initially troubled by this ground because there appeared to be a mis-match between the Court's approach in 2003 to a valuation based on a notional sale of the CCB Group, and what appears to be a contrary conclusion in its 2009 Decision, even although the stated intention was to respect the approach in 2003. But, and this applies to the husband's complaints more generally in relation to reasoning, the decision of the Court must be read in context and in light of the documents and other evidence known to the parties. It is important to keep in mind the reason for the purchase of Just Wills, and the date when it was purchased, in mid-2002 only a few months before the assumed date of valuation. Just Wills had been purchased on the basis that it would provide diversification within the group, and could be used as a marketing tool to attract high value clients. 36. As noted above there was material in Ms Wallace-Walker's report, and her oral evidence, to support the Royal Court's conclusion, and we not accept the submission that this evidence was skewed, or in any other way incapable of properly being relied on by the court. This was essentially a matter of rival expert evidence as to how the impact of the admitted losses in Just Wills were to be treated. We do not accept that the court could not reach the conclusion set out in paragraph 20 of the 2009 Decision, and we cannot see any basis for criticising the reasoning. Ground 2 - The Royal Court misdirected itself when making adjustments to the 2000 to 2003 dividends of CFLS, and/or in the alternative failed to provide adequate reasons for its decision. [This includes Grounds 3, 4 and 5 in the Supplementary Notice of Appeal.] 37. The complaint is that the Royal Court made a series of errors in the adjusted dividend figures in paragraph 21 of its judgement. For 2000, it should have been £724K rather than £786K, in 2001 it should have been £1,360K rather than £1,437K, in 2002 £615K rather than £721K, and for 2003 £715 (or less), rather than £1,161. If not merely a series of errors, the husband complains that there was not sensible basis upon which the Royal Court could reject the evidence of his expert witness. Further, the husband complains that there was insufficient explanation for the use of these figures. 38. As explained in paragraph 21 of the 2009 Decision, the table is an adaptation of a chart placed before the court by Ms Wallace-Walker. Again, this paragraph (as with others) should be read with an understanding of the documents/reports. The table here referred to must be based on Appendix 6B to Ms Wallace-Walker's report of th September 2008 headed "Summary of CFSL results adjusted for income transferred to

Caversham SA & Mayo". This is clear from paragraph 17 of the 2009 Decision, distinguishing the first method (Appendix 6A) from the second method, which involved "calculating the attributable profit to be derived from this transfer business, using a profit margin calculated by reference to the accounts of each year, which is then added back into the calculation to arrive at the adjusted dividend stream". This is a reference to Appendix 6B. The adjusted dividend stream figures are taken directly from that report and, in the paragraph 21 table, and then adjusted (for the years 2002 and 2003) to take account of "extraordinary and non-recurring items", as set out earlier in paragraph 16 the judgment, where the sum of £321,178 to be deducted is explained. The Royal Court there makes it plain that they prefer the evidence of Ms Wallace-Walker on this valuation issue but "subject to one reservation". The reservation is that they prefer "the methodology of Mr Beamish [the wife's expert] which the Court accepted in 2003". We do not see any error of law by the Royal Court in this approach, or in forming their own view of the correct figures in light of all the material presented. 39. The figures suggested by the husband in his Skeleton Argument are taken in part from Appendix 6A to Ms Wallace-Walker's report, namely £1,360K and £615K for the years 2001 and 2002. The calculations in Appendix 6A are explained in the report, and in the notes to the Appendix. Ms Wallace-Walker had also explained the difference between Appendix 6A and 6B in her report and in her oral evidence. She confirmed in oral evidence her overall valuation and that she had used "four different valuation methodologies, all pointing to £7.7 million my absolute opinion is that the valuation of this business in May 2003 was £7.7 million, and I use different methodologies to arrive at that calculation" (the £7.7 million, as an average, is explained in Appendix 6 to Ms Wallace-Walker's report). 40. The husband points out that Ms Wallace-Walker had accepted that there was an arithmetical error for her 2000 figure, but on examination this is in Appendix 6A not 6B - the figure being £724K rather than £776K. The figures in Appendix 6B were not corrected. Further, it is the Appendix 6A figures that appear as agreed figures in the "Valuation of Caversham using the Dividend Yield Method", as attachment 1 to the Joint Statement of Ms Wallace-Walker and Mr Dann (the husband's expert). It is in that valuation that the midpoint of £7,669K is given by Ms Wallace-Walker (compared with £4,094K by Mr Dann). 41. The initial confusion between Appendix 6A and 6B becomes even more apparent in the husband's written submission that the figure of £1,161K was a mistake "as not even Ms Wallace-Walker was arguing for such a high sum". The husband's analysis is based on £1,036K being the correct starting point, and that that sum should be reduced further by £321K. But £1,036K is the adjusted dividend stream in Appendix 6A, not Appendix 6B. The adjusted dividend stream, as already noted, in Appendix 6B is £1,161K after deduction of the extraordinary items (£321K). The difference between the two figures is the £125K attributed in Appendix 6B to "notional dividend adjusted for profit on transfer". 42. When it is understood that there is a significant difference between Appendix 6A and Appendix 6B, the husband's written criticisms of the table in paragraph 21 of the judgement fall away. We are also satisfied that the further criticisms made by Advocate Clarke in the course of his oral submissions cannot be accepted. The Royal Court was entitled to accept Ms Wallace-Walker's evidence on this point, and rely on the figures in Appendix 6B which, in the reasonable opinion of the Court,

were not erroneous. We do not accept that there is anything in this ground. Ground 3 - The Royal Court misdirected itself in the valuation of CSA/Mayo, and/or failed to provide adequate reasons for its decision. [This includes Grounds 7 and 8 in the Supplementary Notice of Appeal.] 43. This ground of appeal also involves a complaint that the Royal Court should have preferred the evidence of the husband's valuation expert. It is said that the Court, instead of placing a particular value on CSA/Mayo, should have accepted the consolidated accounts for the CCB group as a whole, which took into account the valuation of CSA/Mayo. The Royal Court is accused of engaging in "a confused approach by adopting a different method of valuation for CSA/Mayo (i.e the Turnover Basis) than that which it had adopted in valuing CFSL (i.e the Dividend Yield Method)". 44. In summary, Advocate Clarke submits that the valuation of CSA/Mayo should have been nil, and should not have been based at all on the figure of £1,443,000 - an artificial figure based on 3 x turnover, rather than the more appropriate 1 x turnover. The fact that this is an area of dispute between experts is made clear in paragraph 64 and 65 of the husband's skeleton argument:- "64. JWW's value of £1.443m, which she placed on CSA/Mayo, was based on a 3 times multiple of turnover. However, AD's evidence was that a 3 times multiple was unsustainable in Jersey; and that, based on his experience and knowledge of the industry, it should be 1 times turnover. 65. In AD's experience, trust companies for sale are valued based on the Price/Earnings Method. A multiple of 3 times would never be used, as it equates to a turnover of 15 times (based on a profit margin of 20% tax for year ended 31 May 2002 and 2003), which is unattainable [B2/565]. The Royal Court failed to consider this part of the Appellant's evidence." 45. As observed by Advocate Robinson, the Royal Court did not in the end accept Ms Wallace-Walker's first method of valuation, which refers expressly to the £1.443m figure (see Note 4 to Appendix 6A). It is clear on a fair reading of paragraphs 17 and 18 of the judgment, and as already noted, that the Royal Court preferred Ms Wallace-Walker's "second method", which involved "calculating the attributable profit to be derived from the transfer business, using a profit margin calculated by reference to the accounts of each year, which is then added back in to the calculation to arrive at the adjusted dividend stream". The Royal Court concluded in paragraph 18 that they were satisfied that the fairer approach to the valuation of CSA and Mayo was that adopted by Ms Wallace-Walker, rather than the use of consolidated group accounts as suggested by Mr Dann. We cannot see any basis for criticising this conclusion, and it appears to us that the Royal Court did take account of all material expert evidence. But, as it was entitled to do, the Court reached its own conclusions, concentrating on the concept of fairness. 46. In our judgment, this ground of appeal also falls to be dismissed. Ground 4 - The Royal Court erred in law, or misdirected itself, by failing to conclude that the appropriate rate of return, when applying the Dividend Yield Method of valuation, was 10.5% rather than 10%. [This is Ground 6 in the Supplementary Notice of Appeal.] 47. The Court proceeded on the basis that the valuation of the CCB Group (and the husband's interest in it) should be the Dividend Yield Method ("DYM") rather than the Price/Earnings Ratio ("PER"), because the DYM was used in the 2003 judgment and that judgment had not been appealed. The husband argues that the calculation of the value of the CCB group in the 2003 judgment was on the basis that the rate of return using the DYM was 10.5% and that

that percentage should have been retained in the 2009 Decision. But the 10.5% figure, in 2003, was based at least in part (according to Ms Wallace-Walker) on the fact that the wife's then expert (Mr Beamish) had not been fully informed "about CSA/Mayo and the spreading of the risk by moving business abroad to Switzerland" (see paragraph 10 of the 2009 Decision). The 10.5% figure was not fixed in stone, and was the subject of discussion and debate in 2009. The sole reason advanced on behalf of the husband for the retention of 10.5% is that the Royal Court should have accepted the evidence of Mr. Dann in preference to the evidence of Ms Wallace-Walker, because Mr. Dann "had a very considerable experience of valuing Jersey trust companies, whereas Ms Wallace Walker accepted that she had never previously undertaken the valuation of a Jersey trust company prior to her involvement of case". But with great respect to Advocate Clarke this is a vain argument to put before a Court of Appeal. The Royal Court carefully addressed this issue in paragraphs 10 to 14 of its judgment and, at paragraph 13, expressly accepted that Mr. Dann had a greater experience of the local market than Ms Wallace-Walker, "whose firm is based in London and who has not advised or been concerned in the sale of any Jersey trust companies". 48. Paragraph 14 contains the Royal Court's decision on this issue:- "We agree that the CCB group was not in the premier league, but we would have placed it in the first division. Our conclusion is that the appropriate rate of return to be applied in the context of a notional sale of the husband's interest in the CCB group is 10%. We reached that conclusion on the basis of a consideration of all the evidence placed before us; as it happens, it is also the point at which the opinions of the two experts touch." 49. The Royal Court was entitled to prefer the views of Ms Wallace-Walker on this topic, and was entitled to depart from the judgment in 2003. Further it is to be noted that the court's conclusion was at the upper end of the range of figures Ms Wallace-Walker put before the court after her discussions with Mr. Dann. 50. Accordingly we reject this ground of appeal. Ground 5 - The Royal Court misdirected itself on the correct method of valuation of the Appellant's shares in the CCB Group, by failing to adopt the Price-Earnings Ratio method. [This is Ground 9 in the Supplementary Notice of Appeal.] 51. We turn to the final ground of appeal. Here the husband complains that the Royal Court fell into error in selecting the Dividend Yield Method as the correct method of valuation in this case. And again, the basis for the complaint is that the Royal Court has failed to accept the expert opinion of Mr. Dann. It was Advocate Clarke's submission (supported by the evidence of Mr Dann) that the CCB group did not meet the underlying conditions necessary for the application of the DYM, because (1) the husband did not hold a minority shareholding, (2) the value of the CCB group was not dependent on the dividend stream, and (3) the dividend stream was volatile and unreliable (see paragraphs 78 to 80 of the husband's Skeleton Argument). 52. In 2003 the Royal Court, having heard the case for each method preferred the DYM over the PER as the method of evaluating the shareholding in the CCB Group. The 2003 decision was not the subject of an appeal. In 2002 the parties were the same: and the object of the exercise was the same, i.e. evaluating the shareholding, albeit new experts had been instructed on each side. The Royal Court in 2009 gave no formal direction that the new experts should utilise the DYM method, but indicated a wish that they should do so:- "6. During his opening submissions, Mr

Robinson for the wife contended that the Court was engaged in a restricted exercise, namely: (i) to ascertain the value of the husband's interest in the CCB Group in April 2003 and to determine what effect, if any, that should have upon the lump sum award contained in the 2003 judgment; (ii) to determine whether the husband could fairly afford to pay it. We agree, and we have approached the matter in that way. 7. We have also determined to disturb as little as possible the findings made in the 2003 judgment. In particular we will approach the valuation of the CCB Group, and the husband's interest in it by adopting the Dividend Yield Method ("DYM") rather than the Price/Earnings Ratio ("PER"). We appreciate that it might be more usual to use the PER in relation to a majority shareholding but both experts presented their evidence, inter alia, by reference to the DYM. The DYM was used in the 2003 judgment, and, as we have said, that judgment was not appealed. One of the advantages of using the same methodology is that direct comparisons can be made with the valuations of the CCB Group put forward by the two experts in

2003. We have noted carefully the view of the husband's expert, Mr Andrew Dann, that the PER would be the more appropriate way of conducting the valuation, and we have had regard to the alternative calculations of both experts using that method." 53. Any argument that it was not open to the husband's expert to revisit the choice of method on the basis of issue estoppel was specifically disavowed by the Advocate Robinson for the wife. But it would have been incongruous for the Royal Court to have in fact in its judgment in 2009 come to a different conclusion from that reached in 2003 as to the appropriate method of evaluation, when the exercise called for at both stages was the same, a fortiori when the only reason the evaluation had to be revisited was the husband's non-disclosure. For the party in default to gain the advantage of a second bite at the cherry would not seem to be consonant with justice. 54. But whatever the position on issue estoppel the Royal Court was clearly alert to Mr. Dann's views on this subject, and they explained, reasonably and sensibly, why the approach in the 2003 judgment was to be preferred. This is a short but complete answer to the husband's complaint, and we can see no error of law in the Court's reasoning. 55. There is nothing in this ground of appeal. THE RESPONDENT'S NOTICE OF APPEAL 56. By her Respondent's Notice of Appeal dated 30 th July 2009, the wife invites this court to vary the 2009 Decision "to award a lump sum totalling £3,284,975, comprising the £3,000,000 awarded by the Royal Court together with an amount of £284,975 in respect of the interest element at 6% per annum from 9 th July 2003 to 16 th June 2009 on the difference of £800,000 between the £2,200,000 award made on 9 th July 2003 and the £3,000,000 that has now been awarded to the Respondent". 57. As noted earlier, in the Act of Court dated 9 th July 2003, it was ordered (paragraph 2) that the then lump sum payment of £2.2 million "be paid by the Respondent to the Petitioner within five years of the date of this award and that pending payment in full, the Respondent shall pay interest on the outstanding capital sum to the Petitioner at the rate of 6% per annum monthly in arrears, the first proportionate payment to be made on the 1 st August 2003". 58. It is clear that the purpose of the 2009 hearing was to determine the lump sum payment "which should be substituted" for the £2.2 million awarded in 2003 - see paragraph 38 of the 2006 judgment set out in paragraph 2

of the 2009 Decision. 59. The wife's argument is that if the correct figure of £3 million had been awarded in 2003 the husband would have elected to pay interest (rather than pay the sum immediately), as he did with the £2.2 million. And, therefore, if that higher figure is actually substituted - back to July 2003 - the husband has escaped the responsibility to pay interest to the wife on the difference of £800,000 from 1 st August 2003. 60. The Royal Court did not address this issue in the 2009 Decision. Instead, in paragraph 23, the focus was on whether or not the husband could afford to pay the revised lump sum, and whether or not it was fair to require him to do so. The Royal Court concluded (paragraph 29) that it was not satisfied that it would be unfair, and ordered that the sum of £3 million then held in escrow be transferred immediately to the order of the wife. 61. Advocate Clarke for the husband accepted that if the judgment of the Royal Court was upheld by this court, then he could not resist the wife's application for interest. 62. In the light of that concession, we can take this matter very shortly. The effect of the Royal Court's decision is that, because of the husband's material non-disclosure in 2003, the lump sum award then made was substantially lower than it should have been. It follows that, by reason of his material non-disclosure, the husband has had the benefit of the £800,000 difference for a number of years. Paragraph (2) of the Act of th July 2003 should have read:- "stipulated that the lump sum payment of £3 million referred to in Schedule 1 be paid by the Respondent to the Petitioner within five years of the date of the award and that pending payment in full, the Respondent shall pay interest on the outstanding capital sum to the Petitioner at the rate of 6% per annum monthly in arrears, the first proportionate payment to be made on the 1 st August 2003". 63. If that order had been made, and the £3 million was not paid immediately, the wife would have received interest for five years on that larger sum. She has been deprived of that amount, and we can see any reason why she should not receive that lost interest now. 64. For these reasons, we conclude that the wife's cross appeal should be allowed, and interest added to the Order of Court as claimed. Authorities P-S-v-C

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