IN THE SOUTH GAUTENG HIGH COURT

(JOHANNESBURG) **CASE NO. 2008/18332**

In the matter between:

HICKMAN, MARC HAROLD

Applicant

and

OBAN INFRASTRUCTURE (PTY) LTD	First Respondent
ROCKE, DAVID	Second Respondent
WISON, GREORY MICHAEL	Third Respondent
OOSTHUIZEN, RENE	Fourth Respondent
JACOBS, FRANCOIS	Fifth Respondent

REASONS FOR JUDGMENT

NATURE OF APPLICATION

1. The Applicant is a minority shareholder in Oban Infrastructure (Pty) Ltd. He claims that as a result of minority oppression, he is entitled to an order for the winding up of the company on just and equitable grounds under Section 344(h) of the Companies Act 61 of 1973,

alternatively, that he is entitled to the purchase of his shareholding by its other members under Section 252(3) of that Act. Unless otherwise stated, a reference in this judgment to a section will be a reference to a section in the Companies Act.

GROUNDS FOR RELIEF SOUGHT

2. The Applicant contends that he has been excluded from the management of the company, that the relationship between the Applicant and one of the other shareholders, Mr Wilson, has broken down by reason of his conduct and that the other shareholders have allied themselves with Mr Wilson.

3. The Applicant sought to rely on the just and equitable ground for winding up under Section 344(h) by contending that the affairs of the company were run effectively as a partnership (i.e. a domestic type company) and that there was a justifiable loss of confidence in the way the other shareholders were managing the company through their majority control of the board of directors.

4. The complaint against the other shareholders and directors related to the Applicant being excluded from the operations of the company's subsidiary, Oban Consulting (Pty) Ltd, a failure to

properly attend to the business operations resulting in customer complaints, unauthorised renovations, financial irregularities, lack of supervision of staff as well as trumped up charges levelled against the Applicant, which he alleges, wrongly claimed that he had failed to perform his contractual obligations as an employee and had lost interest in the affairs of the business. There is also a broad complaint made by the Applicant that the direction taken by the company was detrimental to its client base and not in accordance with the underlying philosophy and ethos of the company.

5. The grounds for claiming a buy-out of shares under Section 252 were based on similar considerations.

6. Much of the Applicant's case as originally presented by *Mr Willis* on the Applicant's behalf focused on demonstrating that Oban Infrastructure was a domestic company and that it was unlikely that the Applicant would obtain an equitable price for his shares if a buy-out was ordered because of what was contended to be a manipulation of the books. Reliance was also placed on a report by the company's auditors which valued Oban Infrastructure at R1,46 million. This, the auditors said, was based on the following factors; that the company was only able to survive another three years because it had lost key personnel, that the company has been unable to replace lost revenue, that a senior member would

probably retire in the near future and that the remaining shareholders do not have the technical expertise to service any new business. The auditors also pointed to a large tax liability.

7. The Applicant argued that no reliance could be placed on the audit. Not only was it inaccurate, but was used to justify what was contended to be a ridiculously low value for the company's shares of some R1,284 million in January 2008. On the basis that the Applicant was a 24.5% shareholder, he would therefore be entitled to be paid out not more than some R314 600,00.

8. In my view, no point would be served in debating whether or not the nature of the relationship between the parties was sufficient to establish a basis to bring the company within the ambit of a domestic company for the purposes of triggering a Section 344(h) winding up. The reason is that the company is clearly viable and has employees who may be affected by a winding up and their interests in continued employment outweigh the Applicant's concerns that he will not be able to have a fair price determined for the value of his shares. The view I take is that there is a satisfactory alternative remedy to a winding up because the Applicant has made out a case for the purchase of his shares under the provisions of Section 252 and that an order can be properly

framed to ensure that he will receive a fair price for his shares. My reasons are set out in the following paragraphs.

SECTION 252 AND ITS APPLICATION

9. The applicable provisions of Section 252 read as follows :

"*252 Members remedy in case of oppressive or unfairly prejudicial conduct. –*

(1) Any member of a company who complains that any particular act or omission of a company is unfairly prejudicial, unjust or inequitable, or that the affairs of the company are being conducted in a manner unfairly prejudicial, unjust or inequitable to him or to some part of the members of the company, may, subject to the provisions of subsection (2) make an application to the court for an order under this section.

(3) If on any such application it appears to the court that the particular act or omission is unfairly prejudicial, unjust or inequitable, or that the company's affairs are being conducted as aforesaid and if the court considers it just and equitable, the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the future conduct of the company's affairs or for the purchase of the shares of any members of the company by other members thereof or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise."

10. *Mr Bam*, on behalf of the Respondents, contended firstly that the application under Section 252 was misconceived because its

provisions could only be triggered if the Applicant could demonstrate that the affairs of the company were being conducted in an unfairly prejudicial, unjust or inequitable manner in relation to the Applicant. He argued that this essential element was lacking because the Respondents had not admitted any of the averments relied upon by the Applicant, and that in any event the acts complained of related to the operating company, Oban Consulting, and not Oban Infrastructure, being the company in which the Applicant held his shares.

11. Mr Bam also argued that all the complaints were either denied or related to matters that were subject to majority decision and that the Applicant cannot be heard to complain if he elected to be bound by majority rule through the corporate structure. This was linked to the argument that all the complaints related to the Applicant's dissatisfaction with the direction the company was taking since Mr Wilson became a shareholder and director and not to the oppression of the Applicant as a minority shareholder.

12. It is necessary to first deal with a proper interpretation of Section 252. It struck me that both parties appeared to be guided by a case history check list of what does and does not fall within the purview of oppressive or unfairly prejudicial conduct for the purposes of triggering Section 252.

13. It is clear that the exclusion of a shareholder from the management of the company is a recognised ground for invoking a Section 252 buy-out. The question is when the section can be legitimately applied. In my view it is evident that where an active shareholder invests a significant amount of capital in a company (whether in cash, invention, labour or expertise) in a company in return for shares and where his portion of the share capital (and any loans he may provide as a shareholder or dividend sacrifices he makes) is used to build up the capital base (infrastructure) of the company or to create profit (such as the purchase of stock and materials for resale or manufacture), then unless there are indications to the contrary, it is unlikely that he will allow the other shareholders, if they are few in number, to manage the affairs of the company and place his investment at risk without retaining a say with regard the management of the company.

14. This is the only effective way of obtaining some protection for his investment in the company, namely through the ability to persuade his fellow directors at board level. More so where there are restrictions on his ability to dispose of his shares to others. It is illustrated by asking whether the shareholder, having regard to the number and nature of the other shareholdings, intended to allow his investment to be left entirely at the mercy of management decisions made by the other shareholders without being able to extract his

investment when he was removed from having the power of persuasion in the management of its affairs. It is also illustrated by asking whether the shareholders contemplated that if one of them was precluded from the company's management or if effectively thrown out of the company as employee and director the other shareholders could compel him to retain his capital investment in the company. In the present case the applicant was thrown out of the company and offered a pittance for his shares failing which he would effectively forfeit his investment for their benefit as the penalty.

Section 994(1) of the English Companies Act 2006 allows a shareholder to petition a Court for relief if :

"*(a) ... the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interest of its members generally or some part of the members (including at least himself) or*

(b) that any actual or proposed act or omission of the company (including any act or omission on its behalf) is or would be so prejudicial."

15. There is a common thread running through both our and the English enactments. It is the inclusion of the term "*unfairly prejudicial*", a term which has a far more elastic content than simply oppressive conduct against a minority shareholder.

16. In **Donaldson Investments (Pty) Ltd v Anglo-Transvaal Collieries Ltd** 1980 (4) SA 204 (T) at 209, the Court considered that the phrase "*unfairly prejudicial, unjust or inequitable*" is intended to be interpreted purposively so as to advance the remedy provided for under the section. It also is to be contrasted with the term "*oppressive*" that was expressly removed from the body of that section.

17. Accordingly, while majority rule is a natural consequence of becoming a shareholder in a company and does not of itself found a basis to trigger Section 252 if the shareholder finds himself always in the minority (see **Sammel v President Brand Gold Mining Co Ltd** 1969 (3) SA 629 (AD) at 678) and while a loss of confidence in the way in which the company's affairs are being conducted does not constitute prejudice, injustice or inequity, nonetheless having regard to whether the purpose of the conduct complained of is to exclude a shareholder from continuing to be involved in the management of the company remains a significant basis for considering the invocation Section 252 relief.

18. I proceed to apply these principles to the issues raised by the Respondents. In doing so, it is necessary to deal with the shareholding relationship and structure adopted by the parties. It is also necessary to consider whether or not the facts which I am

entitled to take into account, where final relief is sought in motion proceedings, demonstrate that the Applicant was excluded from the management of the affairs of the company. I refer to the application of **Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 (A) at pp 634E to 635B.

STRUCTURE OF SHAREHOLDING

19. Oban Infrastructure is a holding company. It was established as a vehicle to hold the shares of two companies for the benefit of the Applicant and his co-shareholders. Accordingly, Oban Infrastructure was not an operating company nor was it a company administering the affairs of its two subsidiaries. It was devised solely to facilitate the holding of shares of two operating subsidiaries for the benefit of the ultimate shareholders of the holding company by reference to the respective pro-rated value of the operating subsidiary each had previously “owned” and to enable the shareholder to extract dividend income at the agreed percentages.

20. The two operating companies were Oban Consulting, which was a 100% subsidiary of Oban Infrastructure, and Reflex which was either a 40% or 30% held subsidiary.

21. At the time relevant to this case, the shareholders of Oban Infrastructure were the Applicant, David Rocke, Gregory Wilson,

Rene Oosthuizen as to 24.5% each and Francois Jacobs as to 2%. The position of Francois Jacobs is not relevant to the determination of this matter because his nominal shareholding was acquired solely pursuant to an employee share incentive arrangement.

THE RELATIONSHIP BETWEEN SHAREHOLDERS *INTER SE* AND WITH THE COMPANY

22. Oban Infrastructure has a memorandum and articles of association.

23. At the outset, I am required to only have regard to the evidence presented by the Respondents, including admissions made by them, unless the circumstances identified in **Plascon-Evans** (supra) are present.

24. Prior to Mr Wilson becoming a shareholder, and the introduction of Reflex (a company which he had claimed was effectively owned by him), the other shareholders all held their shares in Oban Consulting.

25. There were extended negotiations regarding the introduction of Mr Wilson and his company. Both were regarded by the shareholders of Oban Consulting to be necessary for the future of Oban Consulting's business.

26. Difficulties arose when it appeared that Mr Wilson was not the sole beneficial shareholder of Reflex. However, negotiations were advanced and Oban Consulting still wished to amalgamate Reflex's business with its own because of their synergies.

27. Various documents were presented in the Court papers reflecting the arrangement between the parties which resulted in the acquisition of the Reflex business through the creation of Oban Infrastructure as the holding company for both Reflex and Oban Consulting. The relative value of the two businesses was determined. It resulted in only some 30% of Reflex being acquired by the holding company since this equated with the entire value of the Oban Consulting business.

28. The documents I mentioned are effectively memoranda of understanding that passed between the parties in relation to the creation of the holding company and the individual shareholdings. At that time, the parties were considering the introduction of yet another company. However this did not materialise.

APPLICANT'S EXCLUSION FROM MANAGEMENT AND ITS EFFECT

29. It is common cause that on 25 January 2008, the Applicant received two formal notices of a board meeting to be held on Friday, 8 February 2008, one in respect of Oban Infrastructure (Pty) Ltd (then

known as Oban Services (Pty) Ltd) and the other for Oban Consulting.

30. Each notice is in identical terms and is signed by David Rocke as managing director. The body of the notice in respect of Oban Services reads :

> "*The purpose of the meeting is :*
>
> *To decide on whether to proceed with disciplinary action against Marc Hickman for gross misconduct;*
>
> *To determine whether Marc Hickman should be suspended from work on full pay, without loss of benefits pending the outcome of the disciplinary enquiry;*
>
> *To agree on whether Marc Hickman should be removed as a director from Oban Services (Pty) Ltd"*

In the case of the Oban Consulting Board meeting notice, its name was substituted for Oban Services in the last paragraph.

31. The evidence before me reveals that the removal of the Applicant as a director was *a fait accompli* before the board meeting. This appears from the minute of a meeting held on 25 January 2008 by all the other shareholders, after the Applicant had been excused, which shows that in their capacity as directors they had already decided to remove the Applicant as a director. Furthermore, the

minute which attempts to set up non-performance as the basis for the pre-determined decision to dismiss the Applicant is at odds with the tenor of the notice and, perhaps more significantly, the records of the company which demonstrate that the Applicant was in fact producing revenue that accounted for some 50 % of Oban Consulting's turnover.

32. The Respondents contend that all their actions were legitimate and that by becoming a shareholder in the company, the Applicant undertook by his contract to be bound by the majority decision even if they adversely affected his own rights as a shareholder or otherwise prejudiced his interests. Reliance was placed on **Blackman, Jooste and Everingham's "*Commentary on the Companies' Act"*** vol 2 at p 9-21 to that effect and which cites **Sammel** (supra) at p678.

33. Furthermore, the Respondents argue that there was no agreement reached that any member had an automatic right to participate in the management of either the holding company or the operating company.

34. I deal with each in turn.

35. I am satisfied that the facts which cannot be disputed by a bare denial reveal that fundamental to the relationship of Applicant and the other shareholders participating with their capital and business enterprises in the affairs of the vehicles used to conduct the business of Oban Consulting (and its predecessors) and Oban Infrastructure was that they could not be excluded from a say in the management of the company by being removed as a director. Indeed the conduct of Mr Wilson demonstrates an implicit requirement that his shareholding gave him a say in the management of the business enterprises through holding a directorship at both holding and operating company level. So too for the other main shareholders. Again Mr Jacobs' nominal shareholding by reason of his employment is irrelevant in considering the position regarding the basis of the implicit relationship between the other shareholders, since the basis of his acquisition of shares is far different.

36. By way of illustration, directors' remuneration of all four investing shareholders was the same and not insignificant, moreover shareholders intended to restrict the transfer of shares by acquiring a right of first refusal to obtain a divesting shareholder's interests. Moreover the minutes of the meeting of 25 January 2008, both while the Applicant was present and also in his absence, was premised on his continued shareholding being inimical if he was required to

resign. Historically the basis of the relationship between shareholders in Oban Consulting (and its predecessor) was based on personal relationships with a shared purpose and with each investing shareholder participating in the management of the business.

37. The housing of the shareholders' respective businesses in a holding company and the structure adopted which pro-rated their holding and maintained the level of participation and control without the acquisition of Reflex' assets or shares by Oban Consulting or conversely by Reflex, further demonstrates the intention of the respective shareholders to maintain an individual say in the control of the operating and holding companies.

38. It is significant that the Respondents introduced and relied on a draft shareholders agreement, which Mr Wilson claims met with approval (including from the Applicant) although not every shareholder signed it. Despite not being signed by all shareholders it expresses unequivocally the nature of the business relationship between the parties within the corporate vehicle chosen. No document was produced suggesting that another form of relationship was considered or that the parties had reconsidered the basis of their relationship within the company. The provisions of the draft agreement are consistent with the investing shareholders enjoying a

continued right to be involved in the management of the company. This is illustrated by the following clauses:

"2. SHARE CAPITAL

2.2 Save as otherwise provided in this agreement, unless the Shareholders shall agree in writing to the contrary, the existing authorized share capital of the Company shall not be increased, nor shall any un-issued share capital be allotted to any person or entity, nor shall the rights attaching to any of the shares in the Company be varied.

2.3 No shareholder shall dispose of its shares in the Company save with the prior written consent of the other Shareholder or in accordance with any of the express terms of this agreement.

3. SURETYSHIP AND RECIPROCAL INDEMNITY

3.2 In the event of any Shareholder being called upon by reason of its having furnished any security, to remit on the Company's behalf an amount in excess of its pro rata share of the relevant liability, in respect of which:

3.2.1 all Shareholders have bound themselves jointly and severally in writing; or

3.2.2 any one of the Shareholders has bound itself with prior written consent of the other Shareholders.

3.2.3 the other Shareholders do hereby indemnify the Shareholder concerned to the extent of its proportionate share of the relevant liability, pro rata to their respective shareholding in the Company and they respectively undertake to make payment of their share for which they are responsible on request, and irrespective of whether the Shareholder has yet paid the excess amount claimed from it by the creditor concerned. The parties renounce the benefits of exclusion and division in respect of any claim made under the clause.

4. SHAREHOLDER'S LOAN ACCOUNT

4.1 No shareholder will be obliged to lend or otherwise provide any funds to the company unless that shareholder previously agreed to in writing.

4.3 Loan Accounts shall as far as possible be:

4.3.1 Pro rata to the Shareholder's respective shareholdings as existing from time to time;

4.3.2 All subject to the same terms as to payment of interest, repayment and otherwise;

4.3.3 Advanced by all Shareholders simultaneously

4.7 No Shareholder shall dispose of its Loan Account save with prior written consent of the other shareholders or in accordance with any of the express terms of this Agreement.

6. DIRECTORS

6.5 Save as otherwise contemplated elsewhere in this agreement resolutions must be approved by one Director nominated by each shareholder, in order to be of force and effect.

6.7 Should a deadlock arise at any Board meeting, the issue shall immediately be referred for determination to a Shareholder's Meeting of the Company which shall be convened immediately and the resolution of the Shareholders regarding the matter so referred, shall be the decision of the Company regarding that matter and be binding on the Board.

6.8 If the Shareholders cannot resolve the deadlock, the resolution shall fail but such failure shall not constitute a ground for the winding up of the Company.

6.10 The Directors shall consult each other on all matters affecting the conduct of the company's business and formal Board meetings shall be held at such frequencies as decided by the Board at such times and places as the Board may determine. Any Director shall by written notice to the others, be entitled to convene a meeting of the Board.

6.12 Employment. Directors agree to work full-time and exclusively for the Company. Neither party shall be permitted to own an interest in, operate, join, control, participate directly or indirectly, or be connected as an officer, employee, agent, independent contractor, partner, stockholder or principle of or in any company, partnership, association, person or other entity soliciting orders for, selling, distributing or otherwise marketing products, goods, equipment and/or services which directly or indirectly compete with the business of the Company, without the express written consent of the other, which consent shall not be unreasonably withheld.

7. TRANSFERS OF SHARES

7.1 Unless otherwise agreed in writing by all Shareholders, a Shareholder may sell or otherwise dispose of the shares held by it in the Company only if it does so in items of this clause 7 and then only if, in one and the same transaction, it disposes of all its shares and its entire Loan Account. The directors shall not approve or permit to be registered the transfer of any shares by a Shareholder unless transferred together with the Loan Account and as provided in this clause.

10. DIVIDENDS

10.1 No dividend shall be declared or paid by the Company unless the Company is solvent at the date of the declaration of the dividend.

10.2 After providing for fixed capital and working capital requirements dividends of not less than 50% (fifty percent) of the after-tax profits of the Company shall be declared and paid on an annual basis, unless otherwise agreed by the shareholders."

39. Accordingly the attempt to remove the Applicant as a director of Oban Infrastructure and of Oban Consulting in terms of each of the notices as read with the pre-determined decision apparent from the minutes of the meeting of 25 January 2008 constituted conduct that is unfairly prejudicial, unjust and inequitable to him as contemplated under section 252(3) of the Act.

40. Since a notice was issued and a decision was taken regarding the Applicant's removal as a director in both companies, the point raised by Mr Bam that the offending act only occurred in the operating company is incorrect. Even if it had only occurred in the subsidiary company, then by reason of it being an operating company whose board decisions materially affected the Applicant's interests at holding company level, I would still have found that the affairs of the holding company were being conducted in a manner unfairly prejudicial to him by reason of the other shareholder's use of the operating company as a means of preventing the Applicant from having an effective say in the management of that company. On the facts of this case, that would directly have prejudiced the affairs of the holding company in relation to the Applicant, since the holding company was effectively concerned with the distribution of dividend income from that operating subsidiary to the ultimate shareholders. See **Rackind v Gross** [2005] 1 WLR 3505.

41. The reasons I have given preclude the Respondents from relying on what amounts to an implied compact that on becoming a shareholder the Applicant undertook by his contract to be bound by the majority decision even if they adversely affected his own rights as a shareholder or otherwise prejudiced his interests. I have already mentioned that Section 252 uses the phrase "*unfairly prejudicial*" which has regard more to what may be termed the legitimate expectations, or implied terms of the relationship that the parties actually established, and which the court will recognise despite the adoption of a standardised memorandum and articles of association. See generally **Gower and Davies' Principles of Modern Company Law (8th ed) para 20-8 to 20-9** referring to Hoffmann LJ in **Saul D Harrison & Sons Plc. Re** [1995] 1 BCLC 14 at p19 and the later change of terminology in **O'Neill v Phillips** [1999] 2 BCLC 1 HL.

42. The same reasons dispose of the Respondents further argument that there was no agreement reached that any member had an automatic right to participate in the management of either the holding company or the operating company. I have found that there was a fundamental understanding between the parties, evidenced in the manner I have indicated earlier, including the particular vehicle chosen to synergise their respective businesses conducted through the utilisation of corporate entities.

43. There was also a suggestion that the Applicant had voluntarily resigned. The facts reveal that his removal as a director was a *fait accompli*. Put bluntly, he was pushed. It was their unfairly prejudicial conduct in making it clear that he would be excluded from any say in the management of the company and would no longer be recognised as holding a directorship which remains the reason for the Applicant being unable to participate in the management of the company and his resignation was as a consequence of that, not the cause.

44. I consider it unnecessary to deal with the other arguments raised by the Applicant as to the appropriateness of the section 252 remedy.

APPROPRIATE RELIEF

45. It is necessary to determine what relief would be just and equitable in the circumstances so as to bring an end to the conduct complained of.

46. The First Respondent through its subsidiaries is profitable and is a going concern. I have already indicated that the interests of employees in an operational business must be taken into account as I do that none of the Respondents wish to liquidate a company that enjoys substantial goodwill.

47. Each of the other registered shareholders was joined and was represented. None suggested an order in substitution of a buy-out should I find in the Applicant's favour.

48. A buy out by the Respondents of the Applicant's shareholding and loan account is the appropriate remedy that will satisfy the just and equitable requirements of section 252(3) of the Act.

49. The parties assisted in formulating an appropriate order should I find in favour of the Applicant, and taking into account certain considerations that I considered necessary or advisable. I am satisfied that the final form of the draft order as I amended it accords with what I consider to be appropriate in order to achieve a fair and proper valuation.

ORDER

50. I accordingly made the following order on 22 July 2009:

1. The 2nd, 3rd, 4th and 5th Respondent's are ordered and directed to purchase the Applicant's shares and claims in the First Respondent, including the amounts owing to the Applicant in respect of his loan account and shareholders dividends at a price to be determined by Peter Goldhawk ("the valuer") in the proportion that each of those

Respondent's shares in the 1st Respondent bears to the total number of shares that they hold in the 1st Respondent.

2. The valuer is to make the determination in respect of the said purchase price within a period of forty-five (45) days from the date of this order and shall deliver to all parties a written notice indicating the fair market value of the shares in the 1st Respondent.

3. The costs of the valuer are to be borne by the Applicant, 1st, 2nd, 3rd, 4th and 5th Respondent's jointly and severally.

4. In determining the aforesaid purchase price the valuer shall act as an expert and not an arbitrator and:

    a. The purchase price of the Applicant's shares is to be determined at fair market value as at 28 January 2008, being the value at which the shares would have exchanged between a willing buyer and a willing seller, neither being under compulsion, each having full knowledge of the relevant facts and with equity to both;;

    b. The price must not be adjusted by any discount for the reason that the Applicant has a minority interest in the First Respondent;

    c. The value of the shares shall be determined on the basis that the 1st Respondent owns 100% of the issued ordinary shares in Oban Consulting (Pty) and 33% of the ordinary shares in Reflex (Pty) Ltd;

d. Each of the parties to this Application shall fully and timeously co-operate with the valuer and furnish all documentation, information and explanations as the valuer may require in the course of his determination;

e. The valuer shall have the following further powers:

i. the right to make all investigations necessary and in particular to obtain from the parties or any third party or entity all information and documentation considered by the valuer reasonably necessary for the valuer's determination;

ii. the right to obtain information regarding the financial affairs from any bank, financial institution or other entity where monies may have been invested or to which/whom monies may be owed by any of the entities relevant to the determination;

iii. the right to obtain and call for balance sheets in respect of any entity or business relevant to the determination, including but not limited to Oban Consulting (Pty) and Reflex (Pty) Ltd;

iv. the right to inspect books of account in respect of any company or entity, including but not limited to bank statements, paid cheques, deposit books and personal statements of affairs and liabilities which the valuer considers relevant for the determination;

v. the right to make physical inspection of assets and take inventories;

vi. the right to question any person or party and obtain explanations deemed necessary for the purpose of making the determination;

vii. to do anything or take any such steps as may reasonably be considered by the valuer to be relevant to the valuer's determination;

viii. to be entitled to apply to this Court for any further directions that the valuer shall or may consider necessary in order to perform his determination;

ix. to take into account any matter which the valuer considers relevant to determining what the valuer considers to be a fair price as at 28 January 2008 ("the strike date").

5. All of the parties hereto shall be entitled to forward any documents or representations to the valuer and shall be entitled to copies of any documents or representations made by any other party in respect of which other parties are entitled to comment in writing to the valuer.

6. The determination of the valuer shall be final and binding on the parties.

7. Payment of the price so determined shall be made within 7 days of such determination being made.

8. Upon a full discharge by the 2nd, 3rd, 4th and 5th Respondents of the Applicant's claim referred to in paragraph 1 above and a full discharge of the 1st, 2nd, 3rd, 4th and 5th Respondent's liability in respect of the purchase price determined by the valuer, the Applicant shall transfer his shareholding in the 1st Respondent to the 2nd, 3rd, 4th and 5th Respondent's in the proportion that each of these Respondent's shares in the 1st Respondent bears to the total number of shares that they hold in the 1st Respondent.

9. Any costs borne by any of the 1st, 2nd, 3rd, 4th and 5th Respondents in respect of this Application (i.e. under case number 2008/18332) shall be excluded in the valuer's determination, and the purchase price is accordingly to be determined as if such costs had not been borne by any of the 1st, 2nd, 3rd, 4th and 5th Respondents.

10. The 1st, 2nd, 3rd, 4th and 5th Respondent's are directed to pay the costs of this Application jointly and severally including the costs consequent upon the employment of two Counsel.

B S SPILG AJ

DATES

HEARINGS: 29/06/2009 and 17/07/2009

ORDER: 22/07/2010

LEGAL REPRESENTATIVES

APPLICANT;	ADV N KADES
	ADV RS WILLIS
	ADV SB ROSE
	ADAM WITKIN-MITCHELL ATTORNEYS
RESPONDENT:	ADV A BHAM
	ADV D LEIBOWITZ
	DENEYS REITZ