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Case No: CR-2018-003436

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT LIST
In The Matter Of ICAMERA LIMITED
And In The Matter of THE COMPANIES ACT 2006

Remote Hearing - Teams
29 June 2021

Before :

INSOLVENCY AND COMPANIES COURT JUDGE JONES

- -

Between :

ADAM McCRUM	**Petitioner**
- and -	
(1) PAUL WILSON	
(2) KIM BONE	
(3) ICAMERA LIMITED	**Respondents**

- -
- -

Mr Bor (instructed by **W Legal Limited**) for the **Petitioner**
Mr Burr (direct access) for **the First and Second Respondents**

Hearing dates: 26-27 May 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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.....CHJ 29/06/21.....

INSOLVENCY AND COMPANIES COURT JUDGE JONES

I.C.C. Judge Jones:

A) Introduction

1. This judgment decides the fair value of Mr McCrum's shares in ICamera Limited ("the Company") which Ms Bone and Mr Wilson are required to purchase by order made on 31 July 2019 upon the petition of Mr McCrum presented pursuant to ***section 994 of the Companies Act 2006***. The order was made as a result of findings of unfair and prejudicial conduct concerning the actions taken by Ms Bone and Mr Wilson to misappropriate the Company's business by its transfer to their own, newly formed company. The order was made against Ms Bone as a shareholder and Mr Wilson as a wrongdoer whose role in the misappropriation meant he too should be ordered to buy Mr McCrum's shares.

2. The Company was incorporated on 16 October 2012 to establish a business selling vehicle cameras and tracking devices. The specific plan was to develop and sell an in-car telematic system, the product known as "ISIS", to provide information from the vehicle to insurers. This product was combined with a journey recorder/CCTV camera and had the added advantage of a GPS tracker system known as IKHNOS" , as well as a "first notification" of insurance loss system. The system would enable visual recordings of accidents to be sent to insurers via the Cloud. The link between the products and the insurance market combined the technical knowledge of Mr Wilson and the insurance knowledge of Mr McCrum.

3. This was at that time a novel and exciting idea. The Company's 10 December 2012 business plan identified huge potential for the products as market leaders within a relatively new but very large market. For the first year of business the aim was to sell the two products (ISIS and IHKNOS) to the commercial fleet motor car market and to insurance companies. In the second year the aim was also to bring Active Fleet Solutions Limited on board and to expand around the world. The use of black box recorders was seen as a "rapidly growing area". For year three, the plan was to introduce ISIS to existing car insurers and for them to include the product within their motor vehicle insurance policies. The "goal" identified for the first year was 100,000 sales of ISIS & IKHNOS. The aim was to be "the number 1 provider of telematics within the UK and Europe". Sales for years two and three were forecast for both products (i.e. the combined total) at 300,000 and 500,000 units. There is reference to market research establishing that the two products are far better than those of competitors but also an acknowledgment of the importance of brand awareness and of a six month time lag being normally required for any new marketing strategy to take effect including search engine optimisation.

4. The business plan provided information about cost, sale price, installation cost and installation sale price for both products under a fleet industry sales agreement with Active Fleet Services. Projected profits for IHKNOS in year one totalled £5.429 million on a £12 million turnover and for ISIS £589,900 on a £3 million turnover. The projection for ISIS for each of years two and three increased to a £12,399 million profit on a £30 million turnover.

5. A purchase of Mr McCrum's shares at the beginning of September 2013 would have provided Ms Bone and Mr Wilson with the right to receive 100% of the future dividends and of the growth in value of the shares resulting from business. As appears

from the judgment, the misfeasance failed. Ms Bone and Mr Wilson had anticipated their new company would be able to continue to trade with Trajet GmbH ("Trajet"), the manufacturer of the ISIS product and others as the Company would have done. In a nutshell, Trajet decided otherwise and it took advantage of the ownership of registered intellectual property rights, of the manufactured product and of the ideas. The new company was cut out.

B) The Share Valuation and The Judgment

6. The share valuation starts with the value of the Company's issued share capital at the date immediately before the misfeasance based upon the prospects of developing the business for this novel and exciting idea in liaison with Trajet and others. Findings of fact within the judgment handed down on 31 July 2019 of particular relevance to the valuation include (at paragraph 118(c)):

> *"As at 13/14 September 2013 the Company had a business:*
>
> *a) By September 2013 it had an agreement/arrangement with Trajet [GmbH] which would enable it to place orders for the Product to effect sales it achieved. Whilst frustration had been expressed by Trajet concerning the delay in receiving orders and, as a result, the finance to be provided by 30% down payments, that agreement/arrangement subsisted.*
>
> *b) The Company was developing a market for the Product in the UK, North America, Canada and the Caribbean. It had established important connections with ASF, Isotrak and others including Tbsf and Vauxhall. ASF provided access to Volvo and Isotrak access to EE and UK Mail. There was an agreement for the Carribean in place with Nautica.*
>
> *c) Whilst the Company may (an assumption not a finding) only have had exclusivity in the UK, there did not appear to be any doubt that areas such as North America, Canada and the Caribbean could be developed by it and its contacts/associates as a market for the Product without objection from and/or with the approval of Trajet.*
>
> *d) Mr Wilson in his email sent 2 September 2013 was extremely positive about the business the Company was developing and its future opportunities. A memorandum of understanding was concluded between the Company and Isotrak on 10 September 2013 concerning marketing and sales.*
>
> *e) There is no evidence to suggest that the business would not develop via Trajet, Isotrak and others. Of course, nothing was certain but the evidence suggests that at least a 75% prospect of success. The Company had a goodwill value.*
>
> *f) There was potential for significant further funding by Mr Patel."*

7. The judgment with reference to emails of 13 September 2013 also identifies the following steps to be taken by Mr Wilson (amongst others) to achieve the misfeasance (paragraph 118(e):

"The steps taken by Mr Wilson included:

i) Contacting Tbsf to inform them about the business moving under the control of Mr Wilson and others to the exclusion of Mr McCrum and to seek their custom.

ii) Informing Isotrak that a new business entity will be created to take the Company's 'technology, accounts and current clients' with contracts being adjusted to reflect the new company; the 'IP [transferring] to the new company with Trajet' with the intention of developing and using the association developed by the Company.

iii) Identifying Surecam and CamTrak as potential names for the new company and selecting CamTrak.

iv) Informing Nautica that the new business would start on the Monday with the same business model but operated by CamTrak Limited. The aim was to supersede the Company.

v) Agreeing with Mr Horn and Mr Patel [potential investors] that CamTrak would provide a 'clean start and new penetration to the market'."

8. Paragraph 123 of the judgment includes the following finding which is also relevant to the valuation exercise:

"The point is that as at 13/14 September the Company had a business and goodwill based upon the work undertaken, the progress achieved and the business opportunities described. The decision to leave and try to divert business ended those opportunities and destroyed the goodwill."

9. The judgment provided the following guidance for the valuation but expressed as representing my "current view" and making clear it had been reached without having heard submissions:

"a) The starting point must be the value of the Company's business as a whole as at 13 September 2013. Namely its value in the open market assuming a willing purchaser and vendor. The purchaser would propose an offer based upon an assessment of the development value of the business opportunities.

b) That value will be based upon the Company's potential taking into consideration the findings of fact summarised at paragraph 82 above and the signing of the Memorandum on 10 September. The findings of fact indicate to me from the perspective of a willing purchaser, a 75-80% prospect of successfully developing the business in association with Trajet, Isotrak, Nautica and others. Expert opinion will be required to value the purchase price a willing purchaser would place upon those "prospects" by reference to the reasonable expectation of future value in goodwill and profits.

c) It is extremely doubtful that experts will be able to value the business on the basis of its development from there until the date of judgment. There will be too many variables and issues of fact. That being so, interest on the purchase value should account for that period.

d) Once value is established, 50% is the percentage of value fairly attributable to Mr McCrum's shareholding. Obviously, there will be no minority discount."

C) The Valuation Evidence – A Summary

10. That guidance has largely been accepted by both sides' experts, who have provided individual reports and a joint expert report for these proceedings based on the 13/14 September 2013 valuation date; the date when the unfair and prejudicial actions occurred. Only Mr Ashing, the expert instructed on behalf of Mr McCrum, attended trial and gave evidence. I was informed by Mr Burr, counsel for Ms Bone and Mr Wilson, that their expert, Mr Cook, has not attended because of their impecuniosity. I will accept that statement on face value, although there is no evidence in support. It is an unfortunate outcome, especially since the experts' opinions are so far apart and the concept of "hot tubbing" appeared an attractive one. However, that is the position and at least Mr Cook's reports are before the Court. There are no witnesses of fact for the purposes of valuation.

11. Mr Ashing is a Fellow of the Institute of Chartered Accountants in England & Wales and Managing Director of the firm Ashings Limited. He established its corporate finance practice and has assisted many start-up and early stage businesses raise finance. He also has considerable experience as a director and as an advisor to boards of directors including in respect of technology businesses. Mr Cook is a Chartered Accountant who specialises in accountancy, taxation and valuation matters. He is a corporate finance specialist and a partner at MHA MacIntyre. He has been responsible for the last 15 years for business valuation issues arising from commercial transactions including minority shareholding valuations. Whilst he appears to have more direct dispute valuation experience, there is no doubt that both are experts in their fields and equally capable of fulfilling their overriding duty to the Court to assist on matters within that expertise.

12. Mr Ashing's valuation for the issued share capital is £22,400,000 producing a valuation of £11,200,000 for Mr McCrum's shareholding. That is based upon annual estimated profits of around £5.6 million with a price to earnings multiplier of 4. It is apparent from the comparison of draft profit and loss accounts drawn to establish his and Mr Cook's valuations that he relied upon sales totalling £15,639,000 produced by averaging the estimated results for three years to 2016. In contrast, Mr Cook's valuation identified sales by 2016 of £16,880,000. Mr Cook described the proposition that sales' levels might be sustained at £16.88 million as *"speculation"*. Notwithstanding Mr Cook's more favourable turnover figure, he opined that the shares had little value. The cause for this divergence of over £22 million are the experts' estimates for the costs of sales and overheads.

13. Mr Ashing's cost of sales figure achieves a gross profit margin of 58.1%. His figure for gross profits of £9,086,000 based upon £6,554,000 costs of sale is to be contrasted with Mr Cook's figure of £3,714,000 which results from sales' costs totalling £13,166,000; a 78% margin. The divergence in respect of overheads is equally significant. Mr Ashing produces a profit before tax of £7,052,000, Mr Cook a loss of (£974,000). Mr Ashing's estimates sales and marketing costs at 3% of the gross profit and other overheads at 10%. Mr Cook uses 10% for the first two years and 5% thereafter for sales and marketing. His overheads' estimate is fixed at £3,000,000 for each of the three years to 2016. Notwithstanding the resulting loss, Mr Cook has found a value for the shares by referring to a comparator, TrakM8 Holdings Limited, to produce a best earnings valuation of £50,000 for the issued share capital; £25,000 for the shares to be purchased.

14. A feature of those valuations is the relatively few documents available to the experts. There is a document with accompanying graphs produced by the Company in respect of projects for the ISIS Product and separately for the IHKNOS Tracker Product detailing (amongst other matters): the price offered for the units, the potential invoice figures and an assessment of "probability". That assigns a percentage of probability based upon the stage the project has reached. Namely, 10% when the project is identified, 30% at the first technical stage, 50% at the final technical stage, 90% for a verbal order and 100% for a written order. It includes written details of the status of each project. It lists for the ISIS Product and separately for the Tracker Product a planned, consequential turnover from September 2013 to 2016 and also identifies production quantities.

15. This document ("the Company's Forecast Spreadsheet"), which is also an appendix to Mr Cook's report but in shortened form, is used by both experts for the purposes of estimating turnover. Its contents and Mr Ashing's methodology are summarised within Appendix 1 to Mr Ashing's report. He produced his turnover figure having ignored the probability information (and the resulting inferred amounts) and reling instead upon the judgment's 75-80% probability for the successful development of the business in association with Trajet, Isotrak, Nautica "and others". There is an exception to that approach for the "others" for whom he used 25%.

16. For the purposes of calculating the costs of sale for each unit, Mr Ashing relied upon a document described as a "Costs Card" on the assumption that this was a contemporaneous document setting out the costs the Company would have to pay for the Product. Its contents are set out in Appendix 2 to his report. It is in tabular form and shows the pricing per unit was subject to the volume of units being purchased, the cost decreasing at various specified levels. It also sets out the trade price after various currency calculations. Its last column lists "profit minus 3%" but that reference to 3% has not been explained at the trial or understood by Mr Ashing.

17. Mr Cook did not use the Costs Card. His report draws attention to the importance for the purposes of establishing gross profit of knowing whether the Company was and should be treated as a manufacturer or a distributor. His understanding is that the Company should be treated as a distributor because it did not own any intellectual property in the products. In his opinion it is appropriate draw an analogy between the Company and distributors of specialist designer household projects. As a result, the gross profit margin will be considerable less than the margin applied by Mr Ashing.

18. This raises issues concerning the intellectual property rights and whether the analogy is appropriate. As to the former, Mr Ashing understood from instructions based upon evidence before the Court at the liability trial that Trajet owned the registered intellectual property rights on the basis that they were held as security for repayment of a debt which resulted or would result from Trajet's agreement to cover ongoing costs. The rights would return to the Company after 5 years upon repayment provided at least 200,000 units manufactured by Trajet were sold.

19. The 10 December 2012 business plan produced for the Company by Mr McCrum and Mr Wilson is contained in Appendix 5 to Mr Cook's report. Mr Ashing stated during examination that he did not rely upon it. It does not appear to have been relied upon by Mr Cook.

20. The experts' joint report dated 25 August 2020 identify agreed bases for valuation and their differences are essentially those described above. The agreed bases include:

    20.1 The products are sourced from Trajet in Germany.

    20.2 The 12 December 2012 business plan provides illustrative sale and gross profit forecasts over three years but does not address marketing and operation costs or cash flow nor attempts to prove viability (noting that the latter must be intended to refer to detailed figures because it does identify intended methods of marketing for year 1).

    20.3 The starting point should be prospective sales of £90,600.000. The target selling price per ISIS unit being agreed at £289/unit (subject to identified lower figures on the prospective sales information) but there being no technical performance evidence to address potential client satisfaction.

    20.4 For a business developing towards orders and sales, a P/E figure of 4 is consistent with inherent risk and return and with a discounted cashflow factor of 25%.

D) Submissions

21. Mr Burr's overriding oral submission was that the Court should and, indeed, had to reject the expert evidence from both sides with the result that Mr McCrum had failed to establish any value for his shares. The basis for that being that the experts relied upon factual and financial information derived from others and that this evidence of fact was not before the Court, no witnesses of fact having been called. In addition, the experts had no knowledge concerning the source of the documents upon which they relied, whether in terms of who produced them, the circumstances in which they were produced or otherwise. Insofar as the source could be attributed, for example to Mr McCrum as all the evidence relied upon by Mr Ashing can, it was self-serving. In any event Mr McCrum's decision not to give evidence meant the facts underlying the documents and the information they contained had not been tested.

22. In the alternative, as set out in paragraph 29 of Mr Burr's written closing submissions, the Court has a stark choice between the evidence of Mr Ashing and Mr Cook. The Court could not conduct an exercise of "cutting and pasting" from the two reports. Mr Ashing's evidence should be rejected bearing in mind the doubt to be cast on his independence as a result of an absence of frankness and openness concerning (in summary) the involvement of his company as the Company's auditor from about 2018, by it providing its postal address for the Company and Mr McCrum to use and having worked for the person who had introduced Mr McCrum to the firm, and that person's many companies. In any event, Mr Ashing's expert opinion was obviously spurious in the context of the Company never having traded or only ever having achieved four sales worth no more than in the region of £1500 and having been dormant for years.

23. Mr Bor observed on behalf of Mr McCrum that the documents relied upon by the experts had been provided to them by the parties respectively for use in presenting their expert evidence. They were Company or Company connected documents and the

experts were entitled to rely upon them. Mr Ashing was a competent and experienced witness who met the requirements set out in ***Helical Bar Plc v Armchair Passenger Transport Ltd*** [2003] EWHC 367 (QB) at [29] ("the Helical Bar Requirements"). His report addressed the valuation from the correct basis of the findings in the judgment and his understanding of the nature of the Company reflected the business plan. It was not comparable to a distributor of specialist designer household projects. This was a business with huge potential and everyone was anticipating very substantial profits which would value the Company in terms of £millions. In contrast, if Mr Cook's opinion is correct, everyone involved at the time was deluded, including Ms Bone and Mr Wilson when they conspired to steal the Company's business. His opinion simply does not match, for example, the desire of Trajet to enter into partnership with the Company. Mr Cook's evidence should also be treated with caution because he was not called and it is to be observed that notification of that decision was only given the day before the trial.

24. Mr Bor submitted with specific reference to the reports and to the documents relied upon that the methodology of Mr Ashing was to be preferred. I will not detail those submissions because they are reflected in the summary of the evidence above and the points made will be referred to when necessary within the decision. He submitted that whilst Mr Ashing's valuation of the Company arrives at a substantial sum, that is sustained by the figures relied upon which are derived from the documents. The Court should feel comforted by the fact that the figures Mr Ashing used are conservative, perhaps (although they are not resiled from) unnecessarily so in certain cases, for example by his 25% discount for "other" contractors. He also submitted that insofar as the Court had any matters of concern or doubt in respect of specific aspects of Mr Ashing's report, the Court could reach its own judgment and alter the valuation accordingly. Even if the Court decided to reject the evidence of both experts, which was not advocated, it could and should use the evidence before it to reach a valuation including the business plan.

E) Expert Witness Evidence at Trial

25. Mr Aishing was a good witness, considering and answering the questions with care and openness. I found him to be mindful of his overall duty throughout the examination. His answers were fair, for example acknowledging the limitations of the material he had for the purposes of his valuation and accepting that other routes or approaches to valuation could also be appropriate. There is an issue arising in respect of his independence due to his company's previous involvement with Mr McCrum, the Company and the person who introduced Mr McCrum. I do not consider those matters offend ***CPR Rule 35*** (in particular applying the notes at ***CPR 35.4.3*** and the Helical Bar Requirements) but they should have been disclosed in his report. The fact they were not leads me to treat his evidence with caution on that basis but not to reject his evidence. Mr Ashing's report is based upon an analysis of the information provided within the documents referred to and whilst it incorporates opinion and judgment he satisfied me in the witness box that he had opined and judged from an objective standpoint of expertise.

26. As mentioned, Mr Cook did not give evidence but his report and the joint expert report are before me. I am sure from reading his report that he approached his task in accordance with his duties and I have already commented upon his expertise. His

absence meant that his evidence could not be tested but in practical terms that means that he was unable to opine further on the matters or issues it gives rise to. It does not mean that I cannot consider them as presented within his report. The causes for the differences between his valuation and Mr Ashings include:

25.1 Whether the Company should be treated as a distributor for the purposes of estimating the cost of sales and to justify or support a decision not to rely on the Costs Card.

25.2 Whether sales and marketing costs would reach 10% of turnover level reducing to 5% because of the need for market awareness of and penetration for a new product.

25.3 Whether the overheads should be at a 17.8% of turnover level taking into consideration, for example, the administration, offices and warehouse facility required.

27. Mr Ashing during cross-examination did not disagree with the relevance of the factors set out by Mr Cook in paragraph 2.7 of his report. He accepted that he (and it follows, Mr Cook) had to opine without access to the Company's books and records except to the extent of the limited documents identified within their respective reports. As to those documents, he accepted that he had to take them on face value for the purposes of his report. He had not interrogated their source or circumstances of creation or sought to verify them. He could not always construe specific parts of their content. However, he explained that he had adopted a cautious approach to them taking into consideration that directors would be likely to have a tendency to be optimistic and to "over-egg the pudding". This resulted in the assumptions he identified in his report, which are cautious/prudent. Insofar as he was required to rely upon judgment, he made clear that he had the knowledge and experience in particular with start-up technology businesses to do so. I accept that. He maintained in answer to his cross-examination questions that his methodology, judgment and opinion were appropriate.

28. On the issue of the difference in gross profit margin between him and Mr Cook, he opined that his margin was appropriate because he had based his figure for cost of sales on the Costs Card and also because it was a margin suitable for that type of business. He did not accept that it was valid to calculate costs as Mr Cook had, based upon experience of distributors. In his opinion an analogy with a distributor of household products (specialist designer or otherwise) should not be drawn from the Company's business relationship with the manufacturer, Trajet. Although Trajet held registered intellectual property right, he understood that to be based on an agreement to assign them to the Company upon payment over 5 years of a debt resulting from Trajet having covered costs subject to 200,000 ISIS units being sold. He did not hesitate to accept, however, that he was not giving evidence of the existence of this agreement but of his understanding.

29. Mr Burr took Mr Ashing through other material parts of Mr Cook's report. He accepted there were no calculation errors and (amongst other matters): (i) observed in respect of paragraph 2.9 that Mr Cook had only considered 7,715 units and not looked at the higher gross margin; (ii) accepted paragraph [2.10] and agreed with [2.11], although his £37.7 million is over 3 years; (iii) agreed in respect of [2.12] that he had not seen any orders and that his evidence of orders only identified one which had been described

within the Company's Forecast Spreadsheet as 100% and that this was only for some £1,156; (iv) in respect of the difference in marketing costs, he explained that he and Mr Cook had agreed to disagree but he considered Mr Cook's estimate to be far too high for the marketing required and that it failed to take into consideration the fact that directors could reasonably be expected to address these costs within the context of the Company's ability to make a profit; (v) he also in respect of operating expenses could not accept the fixed annual sum of £3 million projected by Mr Cook; (vi) he offered a potential hybrid approach to operating expenses by applying a fixed £500,000 with a lower percentage figure but he was satisfied with his approach.

D) The Law

30. "Fair value" is the general principle to be applied when the court exercises its wide discretion to put right and cure unfair prejudice. As Lord Justice Oliver explained in ***Re Bird Precision Bellows*** [1986] Ch 658 at 669 when addressing the predecessor to ***section 994 of the Companies Act 2006***, ***section 75 of the Companies Act 1980*** :

> *"The whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the cases, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which the price is to be assessed."*

31. A fair value must be based upon reality and make commercial or business sense. For example, the price may be affected by adjustments (whether to net assets or earnings) to take account of the value a purchaser will identify within a company as a potential area of profit for the future. Similarly, it may be fair to increase the value in the balance sheet of fixed assets and/or to reduce expenditure because the purchaser will appreciate that these are matters which may be adjusted once the shares are purchased to improve the "bottom line" and, therefore, increase the price the willing purchaser may pay. The other side of the coin being that the price willing to be paid may be reduced by risk, uncertainties or reasonably anticipated business deterioration. These are all examples of potential elements of reality and it is the principle of reality which must be addressed at the valuation date subject to giving effect to the hypothesis of a sale (see ***Chilukuri v RP Explorer Master Fund*** [2013] EWCA Civ 1307). As Lord Justice Briggs as he then was, observed in that case at [52]:

> *"It is axiomatic that in any complicated process of valuation, the valuer must take the relevant aspects of the world as he finds them (unless constrained by his instructions), and that he must, after looking at each element of the process, stand back and ask himself whether his provisional valuation makes commercial or business sense, viewed in the round."*

32. The opinions of experts will of course be respected and appreciated for the purpose of achieving fair value but share valuation is an art not a science and involves questions of law and principle. The Court retains a wide freedom to disregard the views of experts if

they do not, in the Court's view, produce a fair and sensible result in all the circumstances (see ***Re Bird Precision Bellows*** (above) at 669 and ***Re Planet Organic Ltd*** [2000] B.C.C. 610 Ch D). However, the assistance of experts should ensure that commercial and business sense is applied. As explained in many authorities, the nuts and bolts of the business, figuratively speaking, are to be taken for what they are at the date of valuation. Although it is an art, valuation is not a speculative exercise but one to be based upon evidence to reach the fair value in the context of the assumption of a willing, commercially minded but reasonable purchaser and vendor in the positions of the petitioning creditor and the respondent(s) ordered to purchase the shares (see generally ***Joiner & Another v George & Others*** [2002] EWCA Civ 160, [2003] BCC 298).

E) Decision

E1) General Approach

33. This share valuation is required to put right for the future the unfair prejudice Mr McCrum sustained as a shareholder by reason of the misappropriation or attempted misappropriation of the Company's business by Ms Bone and Mr Wilson at the beginning of September 2013. Their unfair and prejudicial conduct had the effect of ending the Company's future trading. The findings of fact and other relevant passages from the liability judgment referred to above apply and need not be repeated. It is apparent from the judgment that the plan of Ms Bone and Mr Wilson and the result which would have occurred had that plan succeeded was to become the sole owners of the business which the Company was developing and which had at the time at least a 75% prospect of success in association with Trajet, Isotrak and others. This is a valuation of a start-up business with the opportunity to have its products manufactured in Germany and supplied by Trajet and for its business to develop in accordance with the aims of the business plan drafted by Mr McCrum and Mr Wilson some ten months before.

34. The Company's 10 December 2012 business plan annexed to Mr Cook's report identifies the huge potential for the products as market leaders within a relatively new but very large market. Pertinent details have already been set out at paragraphs 3-4 above. Whilst neither expert relied upon it, it is not without significance that Mr Wilson put his name to projected profits for IHKNOS in year one of £5.429 million on a £12 million turnover and for ISIS of £589,900 on a £3 million turnover. In addition to projections for ISIS for each of years two and three increased to a £12,399 million profit on a £30 million turnover.

35. Notwithstanding that the plans of Mr McCrum and Mr Wilson (who are expressly named as the people who completed the Plan) identify huge potential for the business, my first impression with regard to both experts' valuations was that their results may not match reality even though their overall methodology and approach appeared sound (i.e. subject to addressing the differences). £22 million is a high value for the issued share capital of a company which only has a business opportunity, however exciting that opportunity is. The terms of manufacture and supply appear settled but Trajet as at the date of valuation owned the registered intellectual property, it had to provide credit and no or minimal contracts were in place with potential purchasers. The bank account

was yet to be used and funding would be required, hence the discussions with Mr Horn and Mr Patel referred to in the judgment. Undoubtedly the Company was a potential money maker and the business plan anticipates significant profits within a very short time but (I ask rhetorically) a £22 million valuation?

36. At the other end of the spectrum, a valuation of nil or £50,000 appears to ignore everything within the business plan, the findings in the judgment and the reality of the understanding of all those involved in this venture including Ms Bone and Mr Wilson. Nobody has ever suggested that Ms Bone and Mr Wilson took the steps they did to misappropriate the business from the Company because it would be a loss making business. Venture capitalists would surely have jumped at the opportunity to invest at those levels.

37. Of course, first impressions can be wrong and careful consideration must be given to the opined valuations and to their underlying methodology and detail. However, those impressions draw attention to the need to bear in mind in particular the need for reality as expressed in case law. The approach I will adopt to address this is to first consider the expert evidence in effect on an item by item basis and then review the outcome within a global overview. The overview will enable general consideration of a variety of factors in the context of reality.

E2) Expert Evidence – Item by Item

38. In overall terms the valuation methodology is not in issue. Both experts consider it appropriate to work from an estimated draft profit and loss account for the next three years of potential trading to identify a multiplicand. Both, albeit with a different approach, conclude that the multiplier should be 4. Nor is there any major disagreement over turnover, although the difference of about £1.25 million will obviously make a material alteration to the price to be paid. The main differences between the experts' opinions concern the cost of sales and operating expenses.

39. It must be borne in mind when considering their reports and reaching a decision that there is an absence of documentation to rely upon. The source and circumstances for the creation of the documentation relied upon by the experts is generally opaque. The information contained within those documents has not been verified. All these are important points to bear in mind when neither side has chosen to adduce factual witness evidence. To be placed in the balance with those factors are the facts that: the business plan speaks for itself, even though caution must be applied to reflect inevitable enthusiasm and optimism; both experts are satisfied that the Company's Forecast Spreadsheet Schedule should be relied upon; and the only document effectively in issue between the experts is the Cash Card.

40. The Costs Card was not used by Mr Cook but his objection to its use (expressed within the Joint Report) is that it is based upon the consequences (described as an assumption) that the Company did not own the relevant intellectual property not as to whether it is a genuine/reliable contemporaneous document. Whilst that can be attributed to the fact that Mr Cook does not have personal knowledge to enable him to challenge its genuineness/reliability, there is no suggestion in his report that he had received instructions from Ms Bone and Mr Wilson to consider and raise such matters as an

issue. In addition, there is no evidence from Ms Bone or Mr Wilson raising issue with the Cost Card's use for the purposes of valuation whether in terms of source, accuracy or reliability.

41. It is also to be borne in mind that an absence of documentation arises in circumstances of their decision to misappropriate the business from the Company. It is they who created the hiatus which prevented the business from proceeding and establishing its future with the documentation that would inevitably follow. The submissions of Mr Burr criticising the limited existence of documentation for the purposes of valuation have to be viewed in that context. Ms Bone and Mr Wilson should have addressed the questions of the genuineness/reliability of a document in evidence if they wished to introduce any facts or matters to justify the rejection of a document as reliable evidence.

42. Taking all those matters into consideration, I do not accept Mr Burr's submission that the Court should reject the experts' opinion because they relied upon documents not placed in evidence by witnesses of fact. The experts received those documents from the parties for the purposes of opining upon them. They are before the Court within the expert evidence. They are contemporaneous documents. The parties did not adduce evidence to challenge their admissibility or weight except to the extent that the evidence of the experts is relied upon.

43. I also observe that a decision that the documents were inadmissible could not apply to the business plan, a document created by both Mr McCrum and Mr Wilson. This would be the evidence that I would need to apply to reach a valuation in any event. I appreciate that matters of judgment would need to be addressed concerning the application of the December 2012 forecasts should I do so but its projections plainly do not assist the case for Ms Bone and Mr Wilson that Mr McCrum's shares were (virtually) worthless.

44. Although the methodology, as described, is not in issue, there are possible alternatives. Mr Bor in closing submissions made reference, as an example, to the possibility of deciding a royalty figure based on the assumption that the business concept was licensed to the new company formed by Ms Bone and Mr Wilson. He made reference to the fact that this had been addressed in correspondence. However, it is too late in the day to try to change to that track.

45. Both experts opine that the appropriate approach is to project the profits down to and including the 2016 financial year. Their method of doing so is (in general terms) to first identify the turnover based upon the finding that there was at least a 75% prospect of success. The result is that the experts present a choice of Mr Ashing's lower and Mr Cook's higher turnover figures.

46. Albeit whilst making clear that Mr McCrum still relies upon Mr Ashing's estimate, Mr Bor in closing submissions observed that Mr Ashling was more conservative when applying his 25% probability figure for "the others" but I conclude that this is to be noted for comfort and not to lead the Court to consider his figure to be too low. His submissions also proposed that Mr Ashling's opinion was probably too generous because the Company's Forecast Spreadsheet Schedule only addresses "projects" identified before September 2013 and does not take into consideration the prospect of other projects over the next three years. However, that was not a point addressed to Mr

Ashing and it is reasonable to conclude that this would have been appreciated by both experts.

47. In addition, and probably a matter they will have had in mind, their projected figures will have been reached knowing that they have to be estimates based upon the best available evidence, that there are obviously many inherent uncertainties and that their respective valuable experience needs to be relied upon in order to opine. It was and is not practical to try and pick and choose elements concerning the specific "projects", it was and is not possible to establish as fact which project would have progressed to orders. On an item by item approach it is appropriate to use the percentage approach to project the turnover for the 2016 financial year end.

48. In my judgment it is right to rely upon their opinions but to choose Mr Ashing's as the lower figure advanced on behalf of Mr McCrum. That item by item decision will be subject to a global overview.

49. The next matter is the cost of sales and Mr Ashing's reliance upon the Costs Card in contrast to Mr Cook's figure being produced from experience on the basis that the Company should be treated as a distributor. I do not accept that analogy, whether of high quality designer household products or otherwise. The relationship with Trajet was different. There was a collaboration based upon the Company being responsible for the idea of the products, their markets (in terms of ideas and establishing them) and their future developments and Trajet being responsible for manufacture and to provide financial assistance through credit. This is not a case where Trajet, as owner of the goods, could/would dictate a low margin for the Company as its distributor. This was far more a joint venture.

50. Whilst it is correct that findings cannot be made concerning the intellectual property ownership issue because of the absence of evidence, that does not lead to the conclusion that Mr Cook's assessment of the cost of sales must be accepted when it does not reflect the true nature of the relationship. In addition, the Costs Card provides evidence of the understanding between the Company and Trajet concerning anticipated cost. As previously explained, Ms Bone and Mr McCrum have not provided evidence to raise issue with what appears from the face of the document. Further, as mentioned above, they have allowed their expert to address it within his evidence by only raising the issue of relationship.

51. As a result of all of the matters above, I conclude that Mr Ashing's approach is to be preferred but some caution must still be introduced to reflect the fact that the Costs Card is a document being applied at face value and that there is no evidence of a concluded contract with Trajet on those terms. I will take this into consideration within the global overview.

52. Moving next to operating expenses, neither expert has sought to specifically identify the outgoings that might reasonably be expected for the Company in respect of its business. Both have effectively used their experience to provide a percentage. That may well be an appropriate course but the difference between those percentages is stark and not one the Court can easily evaluate absent details explaining how the percentages were reached. Take marketing, for example: the business plan identifies what marketing was anticipated in year one but no apparent attempt has been made by the experts to relate their percentages to this plan. There is also no apparent consideration of the difference

between year one and year two when the aim was to expand overseas. There is no apparent consideration of a management approach to marketing being based on cost having to be reflective of anticipated and (when appropriate) existing revenue. Looking at the nature of this business and the anticipated turnover, one would have expected management to control the expenditure to ensure it was within profit parameters; although it is also to be recognised that this could lead to a reduced turnover.

53. Another example concerns warehousing costs. The Court has no idea how much, if anything, has been assigned to this potential expenditure. A further example introduces a new element that has not been specifically addressed by the experts. The Company plainly required finance and the judgment refers to the involvement of Mr Horn and Mr Patel as potential investors in the Company and the new company. At paragraph [44] there is reference to Mr Patel injecting £20,000 in return for a 20% shareholding in the new company and to Mr Horn receiving a 10% interest in the Company if he invested £10,000. These are matters which either side could have referred to in the context of valuation but have not done so. They are matters which have not been advanced before me whether in terms of statement of case, evidence or submissions. I therefore cannot deal with them both as a matter of principle and because there is no evidence to explain the relevant circumstances or to provide the necessary detail required.

54. However, I can identify the general point that significant working capital must have been required for the future operation bearing in mind the anticipated turnover and that it would be normal for this funding to be raised either through equity or by borrowing. It would be unlikely that cash flow would avoid its need. Neither expert has assumed an injection of share capital but I do not know what approach has been adopted by them for the purposes of their operating expenses' estimates.

55. Based upon the information available to me, my first conclusion on an item by item basis is that I should find a balance between the percentages used by both experts for the operating expenses but with a preference towards a lower percentage figure. That is for three reasons. First, because Mr Cook's expressed experience relates to a distributor of specialist high quality designer household products. If the reference to distributor in this context means (simply) importing manufactured product for sale, that may be appropriate in itself. However, there is no explanation for the comparison and it appears wrong when the Company's products are not high quality designer household products. Second, because Mr Cook has not identified or provided any other details concerning the distributor referred to. Third, because his approach leads to losses and there should be a reasonable expectation that management would have decided to cut the cloth to suit the purse. This may be balanced by a resulting reduction in turnover but Mr Cook has simply not addressed this issue.

56. However, that conclusion does not overcome the problem that the percentages used provide no assistance concerning detail. In my judgment Mr McCrum, and to the extent that they wish to oppose his case, Ms Bone and Mr Wilson, should have provided the experts with information which would have enabled them to have a far better grasp of the probable operating expenses over the first three years. The experts should have been able to base their opinions upon at least an outline of the probable steps which would have been taken to achieve the business with the turnovers identified. This would enable the Court to evaluate the percentage difference. The absence of at least an outline does not mean I should reject their evidence and turn to the business plan. It means I should choose a percentage applying my conclusion at paragraph 55 above but

then consider whether the resulting figure should be altered bearing in mind that problem. This will be part of the global overview. Reality will be relevant when doing so and it will be appropriate to try to cross-check the figures/the final valuation produced from the experts' evidence as accepted by the Court.

57. There are two further matters to mention before reaching a conclusion on an item by item basis and then turning to a global overview. The first is the multiplier. There is a difficulty with the multiplicand in that the net profit figure used will represent the projection for the 2016 financial year. If left there, Mr McCrum will receive the benefit of the 2016 share value in 2013. This returns, I suppose, to Mr Burr's submission that the shares in 2013 must have been worthless because the Company had not even started to trade. A counter to that submission is that the Company would have carried in its 2013 year's end balance sheet the value of the cause of action of Ms Bone's and Mr Wilson's misfeasance. The value of that claim represents the value of the loss of the Company's business and business opportunities. It is a submission which does not reflect the value the Company had based upon its future prospects. However, the specific point concerning accelerated receipt is that the experts have taken this into consideration within their respective multiplicands. Mr Ashing's being far lower than would otherwise have been the case. The Court should accept their expert opinions in respect of the multiplier. Nothing has been presented to challenge them.

58. The second matter is Mr Cook's reference to TrakM8 Holdings Limited as a comparator. A fundamental problem is that he provides no information about this company. I might assume that it is a subsidiary of TrakM8 Holdings Plc but, if so, that in itself raises interesting valuation questions concerning the potential the Company had to also float on the London Stock Exchange. Mr Cook uses TrakM8 Holdings Limited's 16% year on year growth of sales to provide projected profit and loss accounts for the Company but otherwise uses the same percentages for the Company's gross margin, sales and marketing and administration overheads as previously considered. I do not find this of any help and will not use the comparator.

59. Applying a balance for overheads in accordance with paragraph 55 above in my judgment subject to a global overview with cross-checks (as explained within paragraph 55 above): (i) the sales and marketing figure should be reduced to £0.938 million applying 6% of the turnover; and (ii) the administrative overheads reduced to £1.877 million applying 12%. That produces a net profit after taxation of approximately £4 million, a valuation of £20 million for the issued share capital and £10 million for Mr McCrum's shares. The figures now needs to be considered in the context of a global overview.

E3) Global Overview

60. It is sensible to start the global overview with a valuation cross-check. Mr Ashing accepted during his cross-examination that a legitimate, alternative method of valuation might have been to apply to the projected turnover the average margin for net profit after tax for the Company's business's sector. Whilst I tested the waters with the suggestion of between 5-10%, Mr Ashing opined from his experience that a sector margin of between 10-15% was appropriate. Based upon his expertise and bearing in mind that his opinion can be considered reasonable applying judicial notice, I accept his

evidence for the purposes of establishing a cross-check. It produces a range of net profit after taxation of between £1.564 million and £2.346 million from £15.639 million sales. The share capital would then be valued at between approximately £6.255 million and £9.384 million.

61. This cross-check suggests the figures produced from the documents relied upon by the experts when addressing operating expenses are overly optimistic. It is not easy to cross-check that conclusion against the business plan's figures and that plan has its inherent limitations but it appears that its profit figures do not include operating expenses and, if that is correct, that too supports this conclusion.

62. The application of that conclusion needs to be considered together with the following factors which apply to the figures used by the experts as a whole (in particular): the above-mentioned first impressions and the need for reality; the documents are opaque; the inherent uncertainties within the Company's Forecast Spreadsheet Schedule (albeit appreciated by the experts and approached cautiously by Mr Ashing); the fact that the Costs Card does not reflect a concluded contract and is being applied at face value; and the absence of detail concerning the approach to operating expenses including the issue of investment and/or lending for working capital. The global overview needs to balance the points concerning the Company being at the beginning of its anticipated journey with the evidence establishing good cause for huge potential.

63. Applying that global approach to the item by item valuation, in my judgment the £20 million valuation for the issued share capital needs to be significantly reduced to achieve reality for the purposes of a fair valuation. That being so, in my judgment it should be brought into line with the cross-check which provides the foundation of a sector average.

64. Whilst appreciating that this appears to be of little practical consequence if there is indeed impecuniosity, a reduction of the net profit after taxation to £2 million produces a value of £8 million for the issued share capital and £4 million for Mr McCrum's shares. A reduction of net profit by 50% might appear generous but it is within the range of net profit after taxation of between £1.564 million and £2.346 million from £15.639 million sales which results from applying the 10-15% average net profit margin after tax for the Company's business's sector.

65. In my judgment that approach achieves reality by reference to the Company's business sector. It reflects the belief identified in the Business Plan that this Company was at the beginning of a fast track route to net profit, whilst also offering conservatism through caution to reflect the fact that there can be "many a slip between cup and lip". The fair valuation is in my judgment £4 million.

Order Accordingly