



Neutral Citation Number: [2024] EWHC 970 (Ch)

Case No: CR-2019-LDS-000783

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURT IN LEEDS**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF TRANSWASTE RECYCLING AND AGGREGATES LIMITED**  
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

Leeds Combined Court Centre  
1 Oxford Row, Leeds, LS1 3BG

Date: 26/04/2024

**Before :**

**MR JUSTICE ADAM JOHNSON**

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**Between :**

**STUART WELLS**

**Petitioner**

**- and -**

**(1) PAUL HORNSHAW**  
**(2) MARK HORNSHAW**  
**(3) TRANSWASTE RECYCLING AND**  
**AGGREGATES LIMITED**

**Respondents**

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**Paul Chaisty KC (instructed by Ward Hadaway LLP) for the Petitioner**  
**Thomas Grant KC and Gabriella McNicholas (instructed by Milners Solicitors) for the**  
**Respondents**

Hearing date: 15 April 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10am on Friday 26 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **Mr Justice Adam Johnson:**

### **The Issue and the Relevant Background**

1. An issue arises as to whether the Petitioner, Mr Wells, should be awarded a payment in lieu of interest (or "*quasi-interest*") on the purchase price payable for his shareholding in Transwaste Recycling and Aggregates Ltd ("*TRAL*"). The point arises following the liability trial in these proceedings and my Judgment dated 19 February 2024 (the "*Judgment*"). It comes about in the following way.
2. Mr Wells is a minority shareholder in TRAL. The majority shareholders are two brothers, Paul and Mark Hornshaw. In September 2015, Mr Wells signalled his intention to leave TRAL and to sell his shareholding. Certain pre-emption provisions in the parties' Shareholders' Agreement ("*SHA*") stipulated for a valuation exercise to be conducted to establish a value for Mr Wells' shareholding. A valuation was produced by TRAL's auditor, Mr Clark, but Mr Wells was not happy with it. It valued the shareholding at approximately £550,000, which Mr Wells thought too low, including because the figure was arrived at by applying a discount to reflect the minority status of the shareholding.
3. The parties' relationship unfortunately deteriorated. Mr Wells instructed solicitors (at that stage Rollits, although they were later replaced by Ward Haddaway who with Mr Chaisty KC represented Mr Wells during the trial). In January 2017 Rollits sent a letter before claim making a large number of allegations, among them two points which would come to have major significance in the later proceedings between the parties. One was Mr Wells' claim that his shareholding in TRAL was not 14.3% but instead 24.9% - he alleged that his shareholding interest had been improperly diluted. Another was his claim that Paul and Mark Hornshaw had illegitimately extracted significant sums of money from TRAL over time, essentially by authorising payments to associated companies which were not properly due or were commercially excessive. The letter of claim attributed a value of at least £7m to Mr Wells' shareholding. A figure given later in the proceedings was even higher - £17.3m.
4. The Respondents in pre-action correspondence took the view that Mr Wells was bound by the outcome of Mr Clark's valuation. They said so in an initial letter from their solicitors dated 7 April 2017, and in a later letter dated 2 March 2018, they pressed Mr Wells to make a written offer to sell his shares at that valuation price. They said that otherwise they would seek a mandatory injunction to enforce the terms of the SHA, although in the end they did not do so.
5. Mr Wells issued a Petition under s.994 Companies Act 2006 on 10 July 2019. He claimed he had been unfairly prejudiced as shareholder. His Petition effectively ignored the valuation conducted by Mr Clark. Among the matters of unfair prejudice relied on by Mr Wells were the alleged dilution of his shareholding, and allegations of corporate wrongdoing by the Hornshaws along the lines I have described. In terms of relief, Mr Wells sought an Order for the purchase of his shares by the Hornshaws, but for a value which corrected the effects of the alleged corporate wrongdoing, and which reflected him having a 24.9% shareholding which (he argued) should be valued on a pro-rata basis and without any minority discount.

6. The Hornshaws in their Defence denied any wrongdoing, denied that Mr Wells's shareholding had been improperly diluted, and as a first line of defence said that there was no unfair prejudice to Mr Wells because he was bound by the valuation carried out by Mr Clark (see, for example, the Amended Defence at para. 173). In his Reply, Mr Wells took the position that the Clark valuation was not binding, and amongst other things said that Mr Clark was biased, an allegation which I rejected in my Judgment (see at [122]).
7. The course of the parties' dispute was not entirely smooth. In submissions Mr Wells' counsel, Mr Chaisty KC, referred to correspondence between the parties both before and after the issue of the Petition, showing the Respondents being responsible – as he submitted – for a number of periods of delay. This included being slow to provide responses to requests for information made before the Petition, and alleged delays in the giving of proper disclosure once the Petition was up and running. Mr Grant KC for the Hornshaws was likewise critical of certain aspects of Mr Wells' behaviour, or rather that of his previous solicitors, by reference to certain items of correspondence I was shown.
8. Be all that as it may, there was a trial of the Petition in September and October 2023, and in the Judgment I have already mentioned, I determined that Mr Wells *had* been unfairly prejudiced, but in a limited sense and not in the ways he had alleged.
9. The overall logic of my conclusion was that September 2015, when Mr Wells had indicated his intention to leave TRAL, was a natural cut-off point, in the sense that at that point a “*sale eventuality*” had occurred under the SHA and Mr Wells became bound to sell his shares for their value as at September 2015 (Judgment at [115]). His interests as a shareholder in TRAL crystallised at that date, and thereafter were effectively limited to realising the value of his shareholding as it then stood (Judgment at ([222]-[223])). He was thus not able to say that matters occurring after that, such as the non-payment of dividends, were unfairly prejudicial, because such matters would not affect the price to be realised on sale. That conclusion, to my mind, was consistent with the way all parties had behaved after September 2015, including Mr Wells, who had played no further part in TRAL's business; and the Hornshaw brothers, who thereafter acted on the basis that Mr Wells had effectively cashed in his chips, and so conducted TRAL's affairs on the basis that it was theirs alone (see Judgment at [220]). They had thus paid no dividends, but had taken out substantial directors' loans in a way which suited them (Judgment at [185] and [200]).
10. As to the main items raised by Mr Wells said to affect value, I rejected his allegation that his shareholding had been improperly diluted. I also rejected the many allegations of corporate wrongdoing against the Hornshaws, whether put on the basis of dishonesty or on the basis of ill-judged overpayments to associated companies. Further, I rejected the suggestion that Mr Wells' shareholding should be valued on a pro-rata basis, rather than subject to a minority discount.
11. I said however that Mr Wells *was* entitled to complain about the manner in which the valuation was carried out, insofar as it unfairly prejudiced him. In that regard, I held that Mr Clark had not properly followed the instructions given to him, because he had not used the most up-to-date information available to him as auditor at the time of preparing his valuation report in June 2016, as he should have done (Judgment at [126]-[128]). This amounted to unfair prejudice because the production of the

valuation by TRAL's auditor for the purposes of the pre-emption rights in the SHA involved conduct of the affairs of the company for the purposes of s. 994, and there was both prejudice and unfairness because the failure to use up-to-date information was likely to have an impact on the proper calculation of the sale price to be paid for Mr Wells' shares, and Mr Wells had a contractual right under the SHA to insist that any valuation carried out by Mr Clark was properly carried out in accordance with the instructions given to him (Judgment at [240]).

12. As it happens, this conclusion reflected concerns expressed at the time of his valuation by Mr Clark himself, who in an email shortly after providing his report said that "*[t]he delays in producing this report are such that the figures are out of date*", and proposed that a new valuation be prepared "*by an independent expert to be jointly funded and agreed by both parties*" (Judgment at [11]). That proposal was not however taken up by either side in the dispute.
13. The upshot of the Judgment is that neither side got the first prize they were seeking. Mr Wells' claim sought to bypass the mechanism under the SHA and more importantly sought a series of findings (as to the size of his shareholding, as to alleged corporate wrongdoing, and as to the appropriateness of a pro rata valuation) which were plainly designed to boost significantly the price to be paid for his shares. All those points were rejected, although Mr Wells did succeed on some other, relatively minor issues (Judgment at [138]). On the Hornshaws' side, their first prize was to hold Mr Wells to the valuation conducted by Mr Clark. That point was rejected, although if I can express it colloquially, they were successful in defending Mr Wells' claims in respect of the three "*big money*" issues I have mentioned and which Mr Wells was pressing with some vigour.
14. There will now need to be a new valuation. I have given directions to that effect. A valuer is to be appointed, but to act as expert not arbitrator, in the manner contemplated by the SHA .
15. That new valuation is to take September 2015 as the valuation date (the parties have settled on 26 September). That being so, I flagged in my Judgment at [249] the question whether provision should be made for the payment of interest to Mr Wells, to be paid on the amount eventually determined to be due to him for his shareholding. The suggestion arose from the fact that Mr Wells was not himself the original cause of the problem, because he was not responsible for Mr Clark's failure to follow instructions. But I left the matter over for further argument, because as I put it in the Judgment at 249(ii), Mr Wells had chosen not to take up the suggestion of a new valuation in 2016 when it was suggested (see above at [12]), and his "*attack when it did come took the form of the present Petition, which made a wide-ranging set of allegations, a number of them very serious, the majority of which have not been made good*".
16. It is this question whether a payment of interest (or quasi-interest) should be made which I now have to determine.

## **Discussion**

17. In successful cases under s.994 of the Companies Act 2006, the question of awarding interest, or more accurately quasi-interest, is linked to the question of the date of

valuation of the Petitioner's shareholding.

18. In many cases, the Order made in favour of the successful Petitioner is for his minority shareholding to be sold at its current valuation – i.e., for the value as at the date of the Order for sale. In the general run of such cases, it is difficult to see a principled basis for the award of interest in respect of prior periods. The principled view is that the Petitioner who is selling his shares will ordinarily be entitled to interest if he tenders his shares for sale but the purchase price is not paid when due: he will then be out of his money, and will be entitled to interest to compensate him for the ongoing lack of it. But in the standard case at any rate, there would seem no obvious basis for the payment of interest, or sums in lieu of interest, in respect of prior periods, because the Petitioner will not have been out of his money during such periods, and indeed will have been the owner of the shares in question and entitled to derive value from them, for example in the form of dividends. As I understand it, this is the point made by Jacob J in Elliott v. Planet Organic Ltd [2000] BCC 610, in rejecting a claim by the successful Petitioner Mr Dwek for a payment of pre-judgment interest, when he said at p. 616:

*“I have sympathy with [counsel for Mr Dwek’s argument]. But I do not accept it. In this case Lloyd J ordered Mrs Elliott to pay within one month of determination of the price. Mr Dwek has no entitlement to any money until that date. And indeed he is entitled to and owner of the shares until the sale goes through. There is simply nothing upon which interest should run. This forced sale is not like a case where damages have been caused and interest runs on the damages. So I do not include any interest element in my order.”*

19. In Profinance Trust SA v. Gladstone [2001] EWCA Civ. 1031, [2002] 1 WLR 1024, however, the Court of Appeal emphasised that the general position does not express an invariable rule, and said that in some cases it may be appropriate for the Court to award the equivalent of pre-judgment interest under s. 994 (see at [23]). The question most obviously arises in cases where the Court fixes an early valuation date, perhaps the date of the Petition or even before. In some such cases, fairness may require the successful Petitioner to receive a payment corresponding to interest on the price to be paid for his shares, even though the Order for sale comes much later and provides for payment upon transfer. At [30], Robert Walker LJ gave a hypothetical example. He said:

*“ ... the circumstances in which it may be fair for the court to take an early valuation date ... may also be highly relevant to the petitioner’s claim for the equivalent of interest. If (to take an extreme example) a majority shareholder had used his control to misappropriate the company’s staff, customers and goodwill so as to make the company’s shares virtually worthless at the time of the hearing, the only fair valuation date may be the date of presentation of the petition ... But in the meantime the petitioner has (in an extreme case of that sort) been receiving no benefit of any sort from his membership of the company, either in the form of dividends, or in the form of director’s remuneration, or otherwise. He has been locked*

*into an investment which has been made worthless as a result of the majority shareholder's oppression. It would be different if he had been continuing to receive a stream of dividends and director's remuneration and his complaint was limited to excessive remuneration and benefits enjoyed by the majority shareholder. In the latter case there would be obvious force in Jacob J's observation that he should not be entitled to interest or the equivalent of interest so long as he owns the shares. But in a case of that sort there would probably be no good reason to select an early valuation date anyway."*

20. In the present case, Mr Wells, like the Petitioner in Robert Walker LJ's example, has received no value from his shareholding since September 2015. He has been treated as, in effect, a non-shareholder since then. I do not say there was anything wrong about that, looked at in isolation, given my finding that from September 2015 Mr Wells was contractually committed to a process which required him to offer his shares for sale at their then value. But the fact is that the required sale did not happen, and Mr Wells has neither had the purchase price for his shares nor any value from them since then. In my opinion, the starting point is that fairness requires some form of response to take account of that fact. That is why I said in my Judgment that I was open to awarding Mr Wells a payment in respect of interest, reflecting the fact that he should have received payment for his shareholding long before now.
21. If one thinks of it in terms of what should have happened, or more accurately in terms of what Mr Wells was contractually entitled to, it seems to me he was contractually entitled to receive a compliant valuation properly carried out under the SHA by some point in early 2016 - I will say by the end of March 2016, some 6 months after Mr Wells signalled his intention to exit, which is broadly consistent with the timetable the parties are now working towards for their new valuation (but some 3 months before Mr Clark produced his actual report in June 2016, which was somewhat delayed). One would then have expected Mr Wells to have received payment for his shareholding shortly after that - I will say by the end of April 2016.
22. I think it follows that Mr Wells has been kept out of his money since then, and so as a starting point I think he should be entitled to compensation reflecting the fact that he has not had use of the purchase price for his shares for a period of some 8 years.
23. The complicating factor, however, is why that has happened. Fairness must demand some analysis of how the present situation has come about, and some assessment of who is responsible for it.
24. On this point both sides had quite a lot to say. As I have already mentioned, Mr Chaisty KC for Mr Wells took me to various items of correspondence showing what he said were examples of delay on the part of the Respondents. I do not find that sort of micro-analysis very useful, however. Being taken to snapshots of the procedural story revealed by individual pieces of correspondence has obvious limitations, and is not a reliable technique for assessing the relative degrees of culpability of each of the parties for the overall delay.
25. Mr Chaisty KC had a better point, however, which was to say that the reason Mr Wells has not been paid for his shares is because the Hornshaws consistently took the

position that he was bound by Mr Clark's valuation, whereas the Court has now decided he was not so bound. The Hornshaws' insistence that Mr Clark's valuation was binding created an issue which needed to be resolved, and which has been finally put to bed only by the recent trial, and in the meantime Mr Wells was effectively locked into a position in which he was receiving no ongoing value from his shareholding, while at the same time being deprived of the purchase price calculated on a proper basis.

26. For the Respondents, Mr Grant KC said that the real problem was Mr Wells. He argued that even if the valuation exercise had been properly carried out by Mr Clark in 2016, using up-to-date information, the parties would still have ended up in the same position overall. The reason is that Mr Wells can be expected, in that counterfactual scenario, still to have advanced the main points of dispute which have separated the parties for a number of years, and which it has taken a trial to resolve. The most important of such matters are those I have mentioned, namely (1) Mr Wells' claim to a 24.9% (not 14.3%) shareholding, (2) Mr Wells' widespread allegations of corporate wrongdoing and mismanagement by the Hornshaws, and (3) Mr Wells' insistence that he should be entitled to a pro-rata valuation of his shareholding, without any minority discount. Mr Grant said that all these points had emerged early on in the parties' dispute, and the vigour applied to them in the proceedings by Mr Wells, in the hope they would boost the value of his shareholding, provided the clearest possible evidence of what Mr Wells is likely to have done even if Mr Clark had produced a compliant valuation in 2016.
27. I think there is some merit in both points of view, but neither provides a complete answer to what is fair in the circumstances. Mr Wells' view is deficient because it ignores the effects of his own behaviour in advancing points, some of them very serious, which took a great deal of time and effort to resolve, and which have been dismissed. The Hornshaws' view ignores the effects of their insistence that Mr Wells was bound by Mr Clark's report, when he was not. In argument, Mr Grant KC said that the deficiencies in the report found by the Court were not matters which his clients were responsible for. That is true, but the fact remains that even though it was pointed out by Mr Clark himself that the information he had used was deficient, the Hornshaws' starting point remained that his valuation was binding and thereafter both sides allowed their respective positions to become polarised and entrenched. They must each in their different ways bear the consequences of that.
28. Some form of middle course is required, but this must be arrived at on a principled basis. In my opinion, a principled response is to say that the Court should award interest (or quasi-interest) for a period corresponding to the period of time it would have taken to resolve any question about the binding nature and effect of Mr Clark's report, had the proceedings not been adulterated by the main points raised by Mr Wells and designed to boost the value of his shareholding, on which he eventually lost. There is no doubt that such matters greatly increased the complexity and length of the proceedings. I recognise in putting forward this approach that there is a degree of artificiality in it, because a new valuation on a limited basis is not what Mr Wells sought and is not what he really wanted to happen. Nonetheless, it seems to me the fairest and most principled way of disaggregating the effects of what actually *did* happen in this case, given the way the parties chose to conduct themselves in the litigation.

29. Another way of articulating the point is to ask: if Mr Wells had confined himself to challenging Mr Clark's report and seeking a new valuation, which in substance is what he has achieved, how long would that have taken? The exercise is necessarily a somewhat crude one, but I would say that even allowing for the usual problems and inefficiencies, such a claim would have been resolved within 12-18 months of receipt of Mr Clark's report in June 2016. There would then have needed to be another valuation exercise conducted. I would allow, say, another six months for that (consistent with what is now expected – see above at [21]), and then a further short period of say one month to organise the logistics of payment and of the share transfer (again, consistent with what is now expected after the new valuation I have ordered). Overall, I would say that on this hypothesis, it would have taken an overall period of 2 years for Mr Wells to reach a resolution and receive payment for his shares, rather than the 8 or so years it has in fact taken so far.
30. In light of those observations, what I propose to do is to make an Order for the payment of quasi-interest by the Hornshaws, on the sum eventually determined to be payable for Mr Wells's shareholding, for the period between April 2016 (when it seems to me Mr Wells should have received payment for his shares), and June 2018 (which is the point by which, had he taken more limited and appropriate action on receipt of Mr Clark's valuation, he could have expected to receive payment following a further valuation ordered by the Court).
31. There is then a question of the rate of interest to apply. In *Profinance v. Gladstone* at [32], Robert Wallker LJ said that the power to award quasi-interest was one which should be exercised with great caution, and went on to say that “[u]nless a petitioner is asking for no more than simple interest at a normal rate he should also put before the court evidence on which the court can decide what amount (if any) to allow”. In this case, Mr Wells has put forward no evidence, and in his Skeleton Argument Mr Chaisty said only that the rate should be “commercial”. I think I therefore need to be cautious, and will order a rate of 1% above the Bank of England base rate from time to time, for the period mentioned above.

## **Conclusion**

32. My conclusion is that Mr Wells should be awarded compensation corresponding to interest payable on the amount eventually determined to be due for his shareholding, calculated at a rate of 1% above the Bank of England base rate from time to time, during the period 30 April 2016 to 30 June 2018. I should be grateful for the parties' assistance in reflecting this outcome in an appropriate form of Order.