Case No: 11578 of 2008

Neutral Citation Number: [2012] EWHC 2346 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

The Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Monday, 16 July 2012

BEFORE:

HIS HONOUR JUDGE HODGE QC
(Sitting as a Judge of the High Court)

BETWEEN:

ALLAN ATTWOOD

Petitioner

- and -

(1) GEOFFREY MAIDMENT
(2) SARAH JANE MAIDMENT
(3) ANNACOTT HOLDINGS LIMITED

Respondents

MR ANDREW CLUTTERBUCK (instructed by Stockler Brunton) appeared on behalf of the Petitioner

MR THOMAS GRANT and MR JAMES SHEEHAN (instructed by Macfarlanes LLP) appeared on behalf of the Respondents

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Approved Judgment
(Quotations unchecked)

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1. JUDGE HODGE QC: This is my fourth extemporary judgment relating to the affairs of Annacott Holdings Limited, petition number 11578 of 2008. It should be read in conjunction with, and as a sequel to, in particular, my third judgment delivered orally on Wednesday 23 May 2012, a transcript of which is now available under neutral citation number [2012] EWHC 1662 (Ch). The order that was made following the delivery of that judgment was that all consequential issues, including costs, were to be adjourned to a further hearing, to be fixed. This hearing today, Monday 16 July, is that further hearing. Mr Andrew Clutterbuck of counsel appears for the petitioner, Mr Allan Attwood, as he has done at all previous hearings. For the respondents, and in particular the principal respondent, Mr Geoffrey Maidment, Mr Thomas Grant appears leading Mr James Sheehan.

2. There was before me an application notice issued by Mr Maidment on 10 July 2012 seeking orders for the removal of unilateral notices placed against the titles to certain properties presently owned by Mr Maidment at the Land Registry, but, happily, that matter has been resolved by agreement.

3. There is evidence before me in the form of the tenth witness statement of Mr Iain Halliwell Mackie, a partner in the respondents' solicitors, Macfarlanes, dated 10 July 2012, and a tenth witness statement from Mr Maidment dated 13 July 2012. The first of those two witness statements was directed principally at the application which has now been resolved by agreement; but both witness statements do also address the issue of the timing of the payment to be made by Mr Maidment to Mr Attwood pursuant to the buy-out order that I made on 22 September 2011.

4. In addition to that evidence of witnesses of fact, there is a second expert valuation of the company from the single joint expert, Mr Taub of RSM Tenon Limited. That report is dated 10 July 2012, and is supplemental to Mr Taub's earlier report of 5 April 2012. In addition to that material, I also have written skeleton arguments from Mr Clutterbuck dated 12 July and from Mr Grant and Mr Sheehan dated 13 July 2012.

5. At this stage there are essentially three issues for me to address. The first is the purchase price to be paid by Mr Maidment for the purchase of Mr Attwood's 50 per cent shareholding in the third respondent company Annacott Holdings Limited, and, specifically, whether any, and if so what, discount should be applied to the net asset value of the shares as it has now been agreed following my last judgment of 23 May. The second issue is whether I should revisit the rates of interest I ordered to be paid in my judgment of 23 May. The third issue is the timing of the payments to be made by Mr Maidment for the purchase of Mr Attwood's shares pursuant to my share buy-out order of 22 September 2012. I will address those issues in that order.

6. First, the purchase price: In his first report, Mr Taub had considered a discount for tax and other factors. At paragraph 4.19 of his report he had opined that the value of Annacott was not necessarily the same as the aggregate values of its net assets for two principal reasons. I quote:

> "(1) In the event of Annacott selling its portfolio of properties at the valuations arrived at by the valuers, a liability to tax would arise. However, such a liability would only arise if properties were

> sold, and the potential amount should be discounted in order to reflect the time value of the money; and
> (2) Even in the absence of a contingent tax liability, a portfolio of properties will normally attract a lower value than the aggregated value of the individual properties."

7. At paragraph 4.20 Mr Taub stated as follows, I quote:

> "In my experience, there is no standard formula for arriving at the appropriate level of adjustment. However, based on my experience and judgment, I consider it reasonable to assume a total discount equivalent to 50% of the contingent corporation tax liabilities that would arise on the sale of the properties."

8. In my judgment I addressed the issue of a portfolio discount. At paragraphs 58 and 59 of my judgment I concluded that, if there were to be a portfolio discount at all, on the expert valuation evidence from the property valuers, Mr Mason and Mr Roe, I should adopt a percentage discount of 5 per cent and not 10 per cent.

9. At paragraph 60 I indicated that, given the size of the portfolio of properties to be offered for sale, it was appropriate to accept Mr Mason's opinion that estate agents would be prepared to accept a commission fee of 1 per cent, with solicitors charging no more that half a per cent on the sale of the portfolio of properties.

10. I then addressed the valuation of the shares in chapter 5 of my judgment, beginning at paragraph 61 and continuing up to, and including, paragraph 68. I indicated that it had become apparent in cross-examination by Mr Grant that Mr Taub had included within his 50 per cent discount selling costs at an assumed level of 3 per cent. I had found that the selling costs should be half that, and therefore it might be that Mr Taub needed to revisit his aggregate 50 per cent deduction. Mr Grant points out that Mr Taub's acceptance of 3 per cent for selling costs was in fact the acceptance of a proposition put to him in cross-examination by Mr Grant.

11. I then went on (at paragraph 63) to refer to the fact that Mr Taub had been subjected in cross-examination by Mr Grant to a considerable measure of challenge so far as his adoption of only a 50 per cent discount was concerned. I expressed the view that Mr Taub had not been shaken in his evidence; and that if, and I emphasise the word "if", a discount of that kind were appropriate at all, then the Court should adopt Mr Taub's discount of 50 per cent, subject to any adjustment to reflect the fact that I had found that selling costs would be less than he had assumed, and that the portfolio discount might also be less than he had assumed because it should only be 5 per cent.

12. I then re-iterated (at paragraph 64) that if a discount were appropriate at all, then I would accept Mr Taub's evidence, subject to such revisions as he might make in the light of my judgment. I then went on to say that it seemed to me that it was not appropriate to make any discount against the valuation of Mr Attwood's shares for either their lack of marketability, or for the fact that what was being sold was a portfolio of properties. I explained my reasons for that.

13. Towards the end of paragraph 64, I made the point that there might perhaps be some discount to reflect the corporation tax that had actually been paid by the company as a result of the property transfers to Mr Maidment. What allowance should be attributed to that discount was something that should be referred to Mr Taub. However, subject to that, it seemed to me that there should be no further discount, either for the lack of marketability of Mr Attwood's shares, or for the sale of the properties in the same portfolio. I gave my reasons for that.

14. In the course of doing so, at paragraph 67 I made the point (by reference to Mr Clutterbuck's submissions) that the aim was to reach a fair value for the shares as between the parties to the proceedings. I stressed that valuation was a tool, but it was not a strait-jacket. I concluded that chapter of my judgment by indicating that it seemed to me that an approach to valuation that ignored a break up, or liquidation, of the company's 46 properties was justified. Also justified was an approach which ignored any discount that might otherwise apply for the marketability of the shares.

15. Mr Taub was invited to revisit his valuation in the light of my judgment, and this he did in his 10 July report. At paragraph 2.5, Mr Taub said that, whilst the judgment made reference to the discount to be applied, it did not conclude whether such a discount should be made, and the way in which it should be calculated.

16. In paragraph 2.6, Mr Taub said that, as detailed in his earlier report and oral evidence, the 50 per cent discount was an approximate value, intended to reflect a number of factors, including the tax liability that would arise upon Annacott selling its properties, and the fact that the properties were a portfolio. He said that there was no standard formula for arriving at such a discount.

17. Mr Taub stated in paragraph 2.7 that he had continued to include a discount based upon 50 per cent of the contingent corporation tax liabilities of the properties, adjusted for corporation tax losses, which could be set against the contingent tax liabilities. Given that that discount was an approximate value, not based upon precise adjustments as to portfolio discounts and selling costs, he did not consider it appropriate to adjust it to take account of the conclusions in my judgment in relation to those matters.

18. At paragraph 2.9, Mr Taub made reference to paragraph 64 of my judgment, and the suggestion that Mr Taub should consider the actual corporation tax paid by Annacott in the years ended 28 February 2006 and 2007, totalling £214,711.

19. At paragraph 2.10 he said that, whilst he had given that matter considerable thought, it was not capable of forming the basis of an adjustment to the valuation as at 1 October 2005. Moreover, it did not affect the potential corporation tax liability that would have resulted in Annacott, had it sold the properties at market value as at 1 October 2005, given that the properties appeared to have been sold at less than market value. He added that, where he had been provided with the actual sales proceeds, they averaged approximately 15 per cent less than the agreed values as at 1 October 2005.

20. Mr Taub concluded (at paragraph 2.11) that the potential corporation tax liability which would have been relevant to any purchaser of the company was significantly greater than the actual corporation tax paid by Annacott on the sale of the properties.

His conclusion was that the value of Annacott as at 1 October 2005 was £2,946,297; and the value of Mr Attwood's 50 per cent interest was thus £1,473,148.

21. Mr Clutterbuck, for Mr Attwood, challenges the basis of Mr Taub's approach in his second valuation report. Mr Attwood is said to be content with Mr Taub's conclusion, save in respect of his continued application of a discount. Mr Clutterbuck submits that, notwithstanding the latest judgment, Mr Taub has maintained his discount unchanged in principle. Mr Taub makes the point that, in his first report, Mr Taub had had regard, in support of his 50 per cent discount, to both the liability to tax should Annacott sell its properties, and the fact that a portfolio of properties would normally attract a lower value than the aggregated value of the individual properties.

22. Mr Clutterbuck then refers to the relevant passages from my judgment, and the fact that I had ruled that it was not appropriate to make any discount for either the lack of marketability of Mr Attwood's shares, or the fact that what was being sold was a portfolio of properties. Mr Clutterbuck emphasises that I had ruled expressly that, insofar as Mr Taub's discount had taken into account the fact that Annacott's assets were substantially a portfolio of properties, the sale of which, as a portfolio, would attract a discount to the aggregate of their individual values, that discount was inappropriate.

23. Mr Clutterbuck submits that it is also implicit in my finding that, possibly, a discount should be applied to reflect the tax that was actually paid upon Mr Maidment's property purchases. It was implicit that no discount should be applied calculated by reference to a greater notional tax liability, formulated by applying a 30 per cent tax rate to the chargeable gains arising on what was a notional sale by Annacott of all its properties. In short, as regards the application of a discount to reflect the contingent incidence of corporation tax, it is submitted that my judgment determined that it would be wrong to assume a figure for such tax based upon a one-off and, in effect, immediate sale. Rather, it concluded that it might be correct in the circumstances to work by reference to the corporation tax which was in fact incurred when the properties were sold.

24. Mr Clutterbuck submits that it is inappropriate to apply a discount calculated as Mr Taub has calculated it. Mr Taub's continued application of the discount should therefore be disregarded. Mr Clutterbuck emphasises that that is not to say that Mr Taub is wrong as a matter of share valuation. Rather, that he has, in his valuation, included a discount which it is inappropriate to take into account for the purpose in hand. Mr Clutterbuck reiterates that the valuation of Annacott, and Mr Attwood's shares, is a means to an end, and not the end in itself. The end in question is a fair purchase price as between Mr Attwood and Mr Maidment.

25. Mr Clutterbuck submits that the inappropriateness of applying Mr Taub's discount is seen most clearly in its simple disregard of the judgement's express findings that, for the purpose of determining a fair purchase price, (1) there should be no portfolio discount and (2) selling costs would have been just 1.5 per cent. Mt Taub's first report, read in conjunction with his oral evidence, made clear that his discount took into account (1) the reduced value of the properties if sold as a portfolio and (2) selling costs at 3 per cent. Given my express findings, Mr Taub's discount obviously cannot be applied unchanged because my judgment had rejected it in principle.

26. That was said to leave for consideration the Court's determination in the judgment that it might be appropriate for a discount to be applied by reference to the tax actually paid. The Court, in its judgment, had left that issue - both whether such a discount was appropriate, and, if so, what it should be - to Mr Taub. In response, Mr Taub (at paragraph 2.10 of his supplemental report) said that the tax actually paid was "not capable of forming the basis of an adjustment to the valuation as at 1 October 2005". Mr Taub's view was, therefore, that no such discount was appropriate. There should accordingly be no discount applied to Mr Taub's assessment of Annacott's net asset value. On that basis, Mr Taub's valuation of Annacott was £3,370,214, 50 per cent of which was £1,685,107; and that is the amount which, it is submitted by Mr Clutterbuck, Mr Maidment should be ordered to pay in order to purchase Mr Attwood's shares.

27. Mr Grant submitted that Mr Taub's adoption of a 50 per cent discount did not reflect the view that he had adopted that the lack of marketability should be tracked through. He emphasised that Mr Taub had never expressly adopted any discount for lack of marketability. I think that that is correct; but it is quite clear from the terms of the first report which I have cited that Mr Taub did adopt a discount for a portfolio sale, and I have held that that is inappropriate. Therefore I cannot accept Mr Grant's submission that nothing detracts from Mr Taub's first report.

28. Mr Grant submits that, given that what was in issue was the objective value of the shareholding as at 1 October 2005, the Court cannot have intended that no account should be taken of the potential for any tax to be paid on a future sale of the properties. When I asked Mr Grant whether the Court should have regard to the tax actually paid, Mr Grant submitted that that could not be determinative because the real question was: what was the value of the shares as at 1 October 2005, the valuation date. What happened thereafter, in fact, was irrelevant to that valuation exercise.

29. Mr Grant invited me to adopt Mr Taub's 50 per cent discount. He submitted that, if there were no discount, Mr Attwood would receive a value for his shares which did not reflect the in-built liability for corporation tax. If that in-built liability for tax were to be ignored, the result would be that Mr Attwood would be overcompensated. Mr Grant's first submission, therefore, was that I should adopt Mr Taub's valuation in his second report.

30. If, however, I were minded not to do so, then Mr Grant's second position was that, in fairness to Mr Maidment, I should set out specific directions to Mr Taub to address the matter in further detail, although he acknowledged that any such directions should be accompanied by a further substantial interim payment. Mr Grant made the point that the reasons why the tax payments in fact made had been made had never been properly addressed in evidence. He invited the Court to take the view that the Court should receive evidence as to the reasons why particular payments have been made, and what payments would have had to be made had there not been sales at an undervalue.

31. Mr Grant summarised his submissions as follows. First, and his preferred position, was that I should adopt Mr Taub's second report. Secondly, that I should refer the matter back to Mr Taub, with specific directions for him to consider particular matters. In particular, I should invite him to consider, first, what tax had actually been paid, and

secondly what tax should have been paid but for the sales of properties at undervalues. Mr Grant's third position, adopted I thought somewhat reluctantly, was that I should take the actual tax that had been paid.

32. In reply, Mr Clutterbuck submitted that it could not be correct to read my judgment as leaving a 50 per cent discount, as proposed in Mr Taub's first report, standing as correct. As for Mr Grant's suggestion that there should be further evidence, Mr Clutterbuck emphasised that the parties, including Mr Maidment, had known since the delivery of my judgment in May what view I had expressed in relation to the actual payment of tax. That could have been addressed in a witness statement in advance of this hearing. True it was that no direction had been given for further evidence; but Mr Maidment has never been shy in the past of putting witness statements before the Court when there was no express authority for that. Indeed, two witness statements have been put before the Court by Mr Maidment for the purpose of this hearing, although I acknowledge that they are directed to Mr Maidment's most recent application, at least in part. I would add that they also address the issue of the timing of payments, which is not a matter specific to the application actually issued on 10 July.

33. I accept Mr Clutterbuck's submission that Mr Taub cannot be justified in maintaining his 50 per cent discount. My May judgment made it clear that one of the expressed bases for that 50 per cent discount, namely that identified in paragraph 4.19 (2) of Mr Taub's first report, was held not to be a relevant consideration, in my judgment. In those circumstances, it does not seem to be that it is open to Mr Taub to maintain his 50 per cent when I have rejected one of its constituent elements.

34. Nevertheless, it does seem to me that there is force in Mr Grant's submission that I would be overcompensating Mr Attwood if I were to ignore altogether the potential in-built liability to corporation tax within the company whose shares are being valued.

35. I am not at all impressed by the submission that I should adjourn the matter further, with directions for possibly further evidence on the tax issue, and with specific directions to Mr Taub. My reasons for that are as follows: First, in my May judgment I have given as much guidance as I feel I can to Mr Taub. He has responded to that; and I do not see that anything more is likely to be achieved by seeking to give further guidance, particularly in view of the difficulties which Mr Grant experienced in seeking to formulate what such guidance should comprise.

36. Secondly, if I were to adjourn the matter, then I would be exercising the Court's case management powers under the *Civil Procedure Rules*. My order of 22 May was quite specific that all consequential issues were to be adjourned to a further hearing; and this is that further hearing. In deciding whether I should adjourn to a still further hearing, I would be exercising the Court's powers of case management. They require the court to deal with cases justly, and involve considerations such as saving expense, dealing with the case in ways which are proportionate, ensuring that it is dealt with expeditiously and fairly, and allotting to it an appropriate share of the Court's resources while taking into account the need to allot resources to other cases.

37. This is, effectively, the fourth substantive hearing, or series of hearings, in relation to this matter. It would not be consistent with the overriding objective for it to go off yet again. Under CPR 1.4(2)(i) active case management includes dealing with as many

aspects of the case as it can on the same occasion. CPR 1.4(2)(l) provides that active case management includes giving directions to ensure that the trial of a case proceeds quickly and efficiently. Sending the matter off for a yet further supplemental report from Mr Taub, which would be his third, to be followed by a further hearing before me, is hardly consistent with that.

38. There is also considerable force in the point that Mr Clutterbuck makes that Mr Maidment has known since May my views on the potential relevance of the tax actually paid and yet has not adduced any further evidence on that issue, despite the fact that Mr Maidment has displayed no reluctance in putting in evidence without prior Court sanction on earlier occasions. I am therefore not minded to stand the matter over. This is, I hope, the final hearing in this matter.

39. As I say, I am troubled by the risk of overcompensating Mr Attwood if I ignore completely the tax liabilities that were inherent within Annacott Holdings Limited at the valuation date. I have already referred to what I said in paragraph 67 of my earlier judgment, referring to Mr Clutterbuck's submission that the aim is to reach the fair value for the shares as between the parties to the proceedings. Mr Clutterbuck reiterated that in paragraph 13 of his present skeleton when he said that "the valuation of Annacott and Mr Attwood's shares is a means to an end, not the end in itself". The end in question is a fair purchase price as between Mr Attwood and Mr Maidment.

40. There are other contexts in which, in order to arrive at a fair valuation, the Court has had regard to post-valuation date events in order to render more certain that which might otherwise have been left in the field of pregnant possibility. In my judgment, the fairest approach to both parties in this case is for me to reject Mr Taub's 50 per cent discount, which it seems to me is inconsistent with the reasons set out in my May judgment, and to do the best I can with the available material. That seems to me to lead to the conclusion that I should adopt the figure of £214,711 which was the tax actually paid by Mr Maidment. True it is that, as Mr Taub says, that might have been an artificially low figure, given the apparent sales that are at less than market value; but that was a matter which Mr Maidment had control of, and, had he wished to do so, Mr Maidment could have adduced further evidence on the point.

41. I accept Mr Attwood's point, as made by Mr Clutterbuck, that there should be perhaps some slight discount to reflect the fact that those payments were made at a later date than the actual valuation date. It is impossible to be exact in these matters. Unless the parties can reach agreement on a more appropriate figure by reference to the rates of interest that have been applied to the purchase price, it seems to me that the appropriate way of reflecting that deferred payment would be simply to take a round figure of £200,000, very much on a "seat of the pants basis", and say that that is the discount that should be applied. In other words, therefore, in substitution for Mr Taub's discount of £423,653 there will be a discount of £200,000.

42. I can deal with the issue of interest quite shortly. In his skeleton argument, produced on Friday 13 July, Mr Grant made the point (at paragraph 12) that appended to Mr Maidment's skeleton argument for the May hearing (and referred to in paragraph 67 thereof) was a table obtained from the Bank of England website showing, in the right-hand column, indicative interest rates payable on what are referred to as "time deposit" accounts. No reference was made to this material in paragraph 72 of my May

judgment, where the material before the court on interest rates was discussed. Mr Grant suggests that it may be that the material was overlooked. If so, he respectfully invites the court to reconsider its decision on the appropriate rate of interest. Mr Grant added little more to that invitation in his oral submissions. He did, however, produce the table itself. In paragraph 67 of his original May submissions, Mr Grant had simply said that the table of Bank of England data appended to his skeleton argument (which was said to contain similar information to that relied on by Mr Atwood, but by reference to (1) instant access and (2) time deposit savings accounts between the valuation date and the present) pointed to an average rate of just above 2 per cent.

43. I have looked back to my notes of the May hearing. Mr Clutterbuck did submit that if I were minded, contrary to his submission, to adopt lending, rather than borrowing, rates, then I should adopt term deposit rates rather than instant access rates. Mr Grant submitted orally at the May hearing that Mr Attwood had adduced evidence of rates of interest on household loans in small sums only, and that the award of interest at the rates suggested would mean that Mr Attwood would do significantly better than if Annacott had been valued at a later date.

44. As far as I can see, Mr Grant did not specifically draw my attention to paragraph 67 of his skeleton, or to the schedule and data appended to it. In paragraph 72 of my judgment, I did say that, so far as Mr Maidment's evidence was concerned, I only had evidence in relation to instant access or electronic banking accounts. The low rates of interest spoken to in the evidence did not accord with my own experience of the rate of interest that one would earn if one were to be placing a substantial sum of money on deposit with no access for a substantial period of time, which seemed to me to be the appropriate analogy to be adopted in the present case.

45. I confess that I had overlooked the data in the right-hand column of the information appended to paragraph 67 of Mr Grant's skeleton. But I accept Mr Clutterbuck's submission that, had my attention been drawn to it, it would not have affected my conclusion. The data is said to relate to the monthly interest rate of UK monetary financial institutions (excluding the central bank) sterling time deposits - households. It does not make it clear what sums by way of deposit are referred to. Nor does it make it clear for what periods these deposits are assumed to be being placed with the relevant financial institution. Moreover, Mr Grant's average of two per cent relates not exclusively to the term deposits, but also to the instant access deposits. Had my attention been drawn to the data, for those reasons I do not consider that I would have thought it of assistance.

46. In any event, I should not now revisit the rates of interest awarded in my earlier judgment by reference to this data for a further reason provided by Mr Clutterbuck. Mr Grant's invitation to the court to reconsider its decision on interest was only conveyed in the skeleton argument supplied last Friday, 13 July. Mr Clutterbuck makes the point that Mr Maidment and his legal advisors have known my views since the May judgment was delivered. Certainly, the transcript had been available since at least the end of June because Macfarlanes had written to Mr Taub in relation to my May judgment by 28 June. As Mr Clutterbuck says, had attention been drawn to this data, Mr Attwood and his legal representatives would have wished to have put in evidence on rates of interest that might have been applied to a substantial deposit of, say, £1 million, for a substantial period of time, such as a year. Instead, it was only on Friday

that the petitioner knew that this was a matter sought to be raised. In those circumstances, it would not be appropriate for me to revisit my judgment.

47. I therefore reject Mr Grant's invitation, essentially on two bases. One, that had I had the further data in mind, I do not consider that it would have affected my conclusion. Two, in view of the late time at which this matter has been raised, and the consequent inability of the petitioner to address the matter by evidence, it would not be appropriate to allow it to be revisited at this late stage.

48. I turn to the final matter: the timing of the payment. Mr Clutterbuck rightly points to the lack of documentary evidence to support the timescale for mortgaging advanced by Mr Maidment in his evidence, with the support of Mr Mackie. Indeed, the identity of the mortgage broker who has been assisting Mr Maidment is not even identified. Mr Attwood submits that, if Mr Maidment is experiencing difficulties in raising money, then they are largely of his own making. But, I should, in any event, approach his evidence on this issue with extreme care.

49. He points to the fact that, implicit in paragraph 22 of Mr Maidment's seventh witness statement of 14 September 2011, was the underlying assumption that Mr Maidment needed to raise monies on the properties he had acquired from Annacott because he did not have other properties available to him. That, Mr Clutterbuck submits, I think with some justification, is implicit in the way in which paragraph 22 is formulated. Mr Grant says that it was never intended to convey that. But certainly the impression that one would get from reading it is that Mr Maidment did not have other substantial property interests. As Mr Clutterbuck points out, it is now clear that Mr Maidment has sufficient other property interest that he has been able to raise sums totalling £1 million on the security of them.

50. In essence, Mr Clutterbuck submits that it is Mr Maidment's fault if he cannot pay in full within a period of 28 days. Mr Clutterbuck therefore suggests that £500,000 should be paid within the 14 days timescale proposed by Mr Maidment, with the balance being required to be paid 42 days from today. He makes the point that Mr Maidment has known since the September judgment that he would have to raise funds. For him to have only a further £500,000 presently available is said to have been optimistic in the extreme in view of the sums for which Mr Attwood was contending.

51. Mr Grant submits that, apart from pragmatic reasons of practical difficulty in effecting the raising of the money, the court should have regard to five specific matters. First, that Mr Attwood has had the benefit of interest running on the sums due, and will continue to do so at rates which Mr Grant submits are better than he would do if he were to be placing monies on deposit. Secondly, that Mr Attwood has already had the benefit of two payments totalling £500,000, on 20 October and 17 November 2011. He has produced no evidence of any specific need to receive further sums of money on any particular imminent date.

52. Thirdly, Mr Grant submits that Mr Attwood intentionally delayed issuing the proceedings until after the liquidation of Tobian, as I found in my original judgment. Fourthly, Mr Grant submits that this is not a case where a contracting party has defaulted on a contractual obligation to pay a specific sum on a given date. This is not

a case where, by allowing time to pay, the court would be sanctioning the non-compliance with a contractual obligation as to the payment of money.

53. Fifthly, and finally, Mr Grant submits that I should bear in mind that the property company was formed in any event with a view to long-term asset appreciation. In short, Mr Grant submitted that I should temper the need of Mr Attwood for payment with the realism that should be applied to Mr Maidment's ability to effect such payment. Mr Grant referred me to two authorities. The first is the decision of Vinelott J at first instance in Re Cumana (1986) 2 BCC 99,453, a case that was affirmed on appeal at [1986] BCLC 430. Mr Grant points to the fact that, in that case, Vinelott J was content to allow the respondent a little over six months in order to purchase the petitioner's shares. Mr Grant also relied upon the decision of Blackburne J, sitting in the Manchester District Registry of the Chancery Division, in Re Phoenix Office Supplies Limited [2002] EWHC 591 (Ch), reported at [2002] 2 Butterworths Company Law Cases 556. At paragraph 122 of his judgment, in a section headed: "Time for Payment," Blackburne J expressed the view that Vinelott J's decision in Re Cumana did not prevent him from exercising the wide discretion conferred by what was then section 461 of the *Companies Act 1986* to order payment for the shares on deferred terms. Blackburne J went on to say that whether it was appropriate to do so must depend upon the facts of the particular case.

54. Mr Grant emphasised that the funding for the purchase of Mr Attwood's shares was to come from a re-mortgage of a number of properties, not just one, to secure a sum in the region of a further £1 million. In response, Mr Clutterbuck submitted that we still do not know precisely what assets Mr Maidment has, other than the fact that it now transpires that he has rather more than we had thought in September of last year. Mr Clutterbuck emphasised that it is for Mr Maidment to come up with the money, and not for Mr Attwood to facilitate that.

55. Both parties are agreed that the first £500,000 should be paid within 14 days. Mr Grant seeks 16 weeks for the balance whilst Mr Clutterbuck seeks six. Looking at Mr Maidment's evidence, it does seem to me that he is speaking of a timescale that is somewhat protracted and unduly pessimistic. I acknowledge that Mr Maidment must have sufficient time to raise the money. Having looked at his evidence, and borne in mind all that both counsel have said, it seems to me that, in the exercise of the court's discretion, the appropriate period to allow is a period of three months for the balance of the sums due from today's date. In other words, the balance should be paid by Monday, 15 October 2012. There will be permission for Mr Maidment to apply on notice, supported by evidence, if that date proves unduly optimistic.

56. That is my judgment on the various issues.