Neutral Citation Number: [2011] IEHC 79

THE HIGH COURT

2007 475 COS

IN THE MATTER OF ROLLVILLE LIMITED AND

IN THE MATTER OF THE COMPANIES ACT 1963 – 2007 AND

IN THE MATTER OF S. 205 AND S. 213 OF THE COMPANIES ACT 1963

BETWEEN

MARTINA BELL

PETITIONER

AND

ROLLVILLE LIMITED AND DESMOND BELL

RESPONDENTS

JUDGMENT of Mr. Justice Herbert delivered the 26th day of January 2011

The petitioner is a director and the holder of one of the two issued ordinary shares in Rollville Limited a company incorporated on the 29th March, 1999. The second named respondent is the holder of the other issued ordinary share and, is the other director of the company, of which he is also the secretary. The petitioner and the second named respondent were married on the 17th April, 1990. In or about February 2006, unhappy differences arose between the petitioner and the second named respondent which are the subject matter of legal proceedings in Northern Ireland. The petitioner claims, pursuant to the provisions of s. 205 of the Companies Act 1963, and additionally or alternatively, pursuant to the provisions of s. 213(g) of the said Act of 1963, that the affairs of the company are being conducted and, that the second named respondent has exercised his powers as a director and as a member of the company, in a manner which is oppressive to and in disregard of her interests as a member of the company and, in disregard of the interests of the company and, that the relationship of trust and confidence between them has irretrievably broken down.

In Amended Points of Claim, delivered on the 20th April, 2009, a number of grounds were put forward by the petitioner in support of her claim:-

> "In the financial year ending 31/10/2006, the second named respondent wrongfully and fraudulently procured the first named respondent to make a loan €965,904 to Duval Estates Limited: €439,239 of this advance was taken from the Ulster Bank account of the first named respondent and, the balance of €511,000 was raised by way of a loan from the Bank of Scotland (Ireland) Plc, on which interest of €15,666 had to date accrued.
>
> The second named respondent fraudulently forged her signature on the following documents in order to obtain the said loan from the Bank of Scotland (Ireland) Plc:
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> > An Acceptance dated 16th March 2006, of a loan facility letter from the Bank dated the 13th March, 2006.
> >
> > A Board Resolution of the first named respondent dated the 16th March, 2006.
> >
> > Insurance Instructions dated the 16th March, 2006.
>
> The second named respondent caused and wrongfully procured the first named respondent to create a charge over three apartments at Mountgorry Wood in favour of the Bank of Scotland (Ireland) Plc, as security for the said loan.

In the financial year ended the 31st October, 2006, the second named respondent wrongfully caused and procured the first named respondent to make an unauthorised loan of €30,000 to Bell Contracts, the name under which the second named respondent and his brother, Mr. Martin Bell carry on business as building contractors in Northern Ireland.

By a Combined Building Agreement and Contract for sale dated the 22nd May, 2006, the second named respondent wrongfully caused and procured the first named respondent to sell an apartment in Block A, Mountgorry Wood, Malahide Road, Swords, Co. Dublin, constructed by the first named respondent, to his brother, Mr. Martin Bell and his wife, for the sum of €246,696, when the average sale price achieved by such apartments was €285,837.

In late 2005 and, throughout 2006, after development works had been substantially completed at Mountgorry Wood since April or May 2005, the second named respondent procured and authorised payments and purchases to be made by the first named respondent for which no proper or sufficient vouched details or invoices were forthcoming.

Fox Engineering €36,248
J.C. Campbell Electrics €7,385
M.B. Protective Coatings €121,641
Junemar Limited €17,264
Bell Contracts (Plant Hire) €53,600
Bell Contracts (Administration) €90,000
Bell Contracts (Engineering and Quantity Survey) €64,686
Motor and Telephone Expenses 2006 €14,616

Tractor (September 2006) €29,000
Total €434,440

> In addition to his salary as a Director of first named respondent, in 2004 the second named respondent exceeding his authority and without the consent of the petitioner drew €550,570 from the first named respondent as "Directors Drawings" and in 2005 drew €746,000 from the first named respondent as "Directors Drawings"

At the trial of the action the second named respondent represented himself, his former Solicitors prior to trial having been granted an Order pursuant to the provisions of O. 7 r. 3 of the Rules of the Superior Courts, declaring that they had ceased to act for the second named respondent.

On the second day of the trial of the action as Senior Counsel for the petitioner, was about to call in evidence a handwriting expert and several bank officials, the second named respondent admitted that he had forged the petitioner's signature on the three documents as alleged. He offered by way of explanation the fact that his sole concern was to ensure that he could remain successful in the development and construction business and the re-development project at Perry Street, Dungannon, appeared to him to be an opportunity which he could not afford to miss. He accepted, as pleaded in the Amended Points of Claim, that the petitioner, supported by members of her family who were successful in this field in Northern Ireland, was wholly opposed to this project.

At the hearing of this Petition it was admitted by the second named respondent that without informing the petitioner or, seeking her approval as the sole other shareholder and additionally director of the first named respondent, he had given three apartments at Mountgorry Wood, Malahide, to the Bank of Scotland (Ireland) Plc. as security for this facility. He admitted that this facility had been obtained by him without the knowledge or approval of the petitioner and by forging her signature on the aforementioned documents. During the hearing of this petition the second named respondent accepted that the petitioner was not informed and had not given her consent to the drawing down on the 21st March, 2006, of this sum of €511,000 and to the transfer of that sum to Duval Estates Limited as part of what the second named respondent claims was a "loan" by the first named respondent to Duval Estates Limited of €965,904.

It was accepted at the hearing of this petition that this alleged "loan" was included as such in the draft accounts of the first named respondent for the financial year ending the 31st October, 2006, but under the erroneous designation of Duval Properties Limited. The second named respondent gave evidence and it was accepted on behalf of the petitioner that €150,000 of this money had been repaid to the first named respondent during 2006. It was admitted and accepted at the hearing of this petition that Duval Estates Limited was incorporated in Northern Ireland on the 30th January, 2002. The second named respondent and his brother, Mr. Martin Bell, each held 6000 ordinary £1 shares in the company, while the first named respondent and the petitioner each held a single "A" share in the company, which carried restricted rights. For the purpose of the instant case it is not necessary for the court to delve further into the structure, ownership or objects of this company or into whether, as pleaded in the amended Points of Claim, it was intended to constitute the first named respondent and Duval Estates Limited related companies in order to facilitate the purchase of property by Duval Estates Limited at Fivemiletown, Co. Tyrone.

The second named respondent, while accepting that the petitioner was entirely unaware of and, did not authorise the payment of this money by the first named respondent to Duval Estates Limited, claimed that the petitioner had at all times left every aspect of the running of the first named respondent exclusively to him, as instance, the fact that there had never been any board meetings. He claimed that this was a *bona fide* loan from the first named respondent to Duval Estates Limited, a related company, which was fully recorded in the draft accounts of the first named respondent for the financial year ending the 31st October, 2006, as an asset of the first named respondent. He stated that his sole object in arranging for this loan to be made to Duval Estates Limited was to ensure a supply of work for himself in order to provide for the family, even after the breakdown of the marriage in February 2006. The second named respondent claimed that a further sum of €289,000 would have been repaid by Duval Estates Limited to the first named respondent in September 2007 but for the refusal by the petitioner as a holder of a single "A" share in Duval Estates Limited to agree to the sale by it of two properties in Ballygawley, Co. Tyrone.

I am satisfied on the evidence that the sole reason why the petitioner refused to agree to these sales in September 2007, was that she was concerned that the properties, - a detached residence and a semi-detached residence were being sold at an undervalue. Having regard to the contemporary valuation reports put in evidence at this hearing, I am satisfied that the petitioner had substantial grounds for her belief having regard to the material difference in the amount of the respective valuations and, to the mis-description of the properties in the valuation report prepared for the second named respondent. I also find that having regard to the information of which she was in receipt about the conduct of the affairs of the first named respondent by the second named respondent, from Mr. Desmond Kelly, an accountant appointed by her for that purpose, from April 2007 onwards, the petitioner had a genuine concern which was both reasonable and rational as to whether any of the proceeds of the proposed sales would in fact be paid to the first named respondent by Duval Estates Limited.

The second named respondent accepted in cross examination that at the date of the petition in the instant case there was no money in the account of the first named respondent. The second named respondent claimed that the reason why he had not admitted to the forgery of the petitioner's signature on the Bank of Scotland (Ireland) Plc, documents, between the 20th April, 2009, when this was first expressly pleaded in the amended Points of Claim and, the second day of the hearing of the petition by this Court was that he wanted his day in court.

I find that this transfer of €965,904 from the first named respondent to Duval Estates Limited was a fraud on the petitioner as member of the first named respondent and was not for her benefit or that of the first named respondent. It was for the sole benefit of the second named respondent at the expense of the petitioner. This was an exercise of directors' powers by the second named respondent in a manner oppressive of the petitioner as being in total disregard of her interest as a member of the first named respondent.

In the period from May 2003 until February 2006, when three Family Law orders were made in Northern Ireland in favour of the petitioner against the second named respondent, the petitioner was paid a salary of £2,000 per month as a director of the first named respondent. The second named respondent was paid a salary of €56,000 for the financial year ending the 31st October, 2004, €64,000 for the financial year ending the 31st October, 2005 and €73,720 for the financial year ending the 31st October 2006, as a director of the first named respondent. I am satisfied on the evidence that in all cases P.A.Y.E. Income Tax was deducted at source by the first named respondent. The petitioner's sole complaint with respect to these salary payments related to the unilateral total cessation of salary payments to her after February 2006.

In addition to these salary payments, I am satisfied on the evidence, that the second named respondent in the financial year ending the 31st October 2004, made drawings of €55,570 from the first named respondent and for the financial year ending the 31st

October, 2005, drawings of €746,000. All of which were reflected in the accounts of the company. In the Amended Points of Claim it was alleged by the petitioner that she did not consent to these payments which were therefore ultra vires. During the hearing of this petition a dispute arose between Mr. Desmond Kelly, Accountant, called in evidence by the petitioner, and the second named respondent, as to whether or not tax had been paid on these drawings, - the second named respondent insisting that it had. After an overnight adjournment during which further inquiries were made from the Revenue Authorities, it was conceded by Mr. Kelly that tax of €258,570 had been paid to and accepted by the Revenue Commissioners in respect of the drawings of €550,570 and, €350,836 in respect of the drawings of €746,000. The second named respondent gave evidence that he had spent 99.9% of the sum remaining after payment of tax on the family. This was denied by the petitioner. However, it was accepted on behalf of the petitioner that to the extent that this court was satisfied that some or all of these drawing were applied by the second named respondent for the benefit of the family, she had no genuine ground for a complaint of oppression. Mr. Desmond Kelly gave evidence that there were no minutes of any board meetings approving of these drawings and that the former Auditors of the first named respondent had no information as to the circumstances in which these drawings were made. Mr. Kelly pointed out they designated as "expenses" and not as "loans", by these former auditors. Mr. Kelly gave evidence that in the financial year ending 31st October, 2002, the second named respondent had drawings of €105,000 and in the financial year ending 31st October, 2003, his drawings were €160,000.

Despite the paucity of physical evidence in this case, ie. bank records, payment instruments, invoices and others documents, I am satisfied on the general evidence before the court and I so find, that in the period 31st October, 2003, to February 2006, the second named respondent, the petitioner and their children lived an extraordinarily lavish lifestyle. This was typified by expenditure on constructing and furnishing a particularly fine dwelling house, purchase of expensive motor cars, jewellery and holidays and the purchase of a string of very expensive ponies to enable the children to compete in equestrian events at a national and international level. Until the unhappy differences arose between them in February 2006, the second named respondent and the petitioner operated a joint bank account at the Northern Bank Plc. There was also a Home Loan account with the Ulster Bank Plc. to which repayments of €2,000 per month was consistently made by the second named respondent.

Having considered the oral evidence given to the court by Mr. Desmond Kelly and the second named respondent relative to this issue and, the documents and records proved or admitted into evidence and referred to by them, in particular, the accounts and draft accounts of the first named respondent; the Northern Bank Plc. joint account statements, the Ulster Bank account statements; the Northern Bank joint account cheque book stubs from the 6th September, 2005 to 6th October, 2006 (book of 100); the bank drafts and cheques relating to the purchase of ponies; and photographs; I am not satisfied that the second named respondent has discharged the evidential burden of establishing that 99.9% of these drawings, after the payment of tax, was spent on the family.

The petitioner herself gave very little credible positive evidence in relation to this issue. While I accept her evidence that she was not asked to and did not give prior approval to the majority of this expenditure, in particular in relation to the ponies, I am satisfied that she was fully aware of and accepted and, did not seek either to question or oppose it. I accept the evidence of the second named respondent that their son and daughter were at this time brilliant and dedicated riders who constantly competed in National and even International Pony Events, with his enthusiastic support and approval. I also accept the evidence of the second named respondent that this skill and interest was supported by an equestrian establishment run at a highly professional level with trainers, grooms, transporter, extensive facilities and equipment. I find on the evidence that the petitioner, while not herself terribly interested in this sport was very pleased with her childrens' success and was happy at all times to support them, even if not at the same level of interest as the second named respondent.

I am satisfied that sufficient evidence of expenditure on household, family and family interests has been demonstrated by the second named respondent as to enable the court to be satisfied on the balance of probabilities that these drawings, however irregularly they may have been made as a matter of proper corporate governance, were not made as part of a conscious or deliberate scheme to misapply or reduce the assets of the first named respondent in disregard of the interests of the petitioner as a member of the first named respondent and, so as to cause her loss and damage as such member.

At the hearing of this petition the second named respondent accepted that on the 22nd April, 2006, an apartment at Mountgorry Wood, Malahide Road, Swords, was sold by the first named respondent to his brother Mr. Martin Bell and his brother's wife for €246,696. The second named respondent did not dispute the evidence of Mr. Desmond Kelly that the average selling price for such apartments at the time was at the time €285,837. The breakdown of the petitioner's marriage to the second named respondent in February 2006 did not alter in any way her position as the sole other shareholder in and sole other director of the first named respondent. Despite this she was not informed of the sale nor was she asked to consent to it.

At the hearing of this petition the second named respondent accepted that this sale to his brother and his brother's wife was at an undervalue and he stated that he was prepared to repay 50% of the €40,000 underpayment to the first named respondent. By way of an explanation for this sale the second named respondent stated that, "he did not want to be too hard on his brother" as he had been of enormous assistance to him in the building of the Mountgorry Wood Apartment Complex. He accepted in cross examination that his brother had been fully paid for his work in this respect. In my judgment this disposal of an important asset of the first named respondent at a serious undervalue, without giving the petitioner full prior information about the proposed sale and, without obtaining her prior consent, was a misapplication of the assets of the first named respondent in the second named respondent's own interests, and was an exercise of the directors powers in a manner which was "burdensome, harsh and wrongful" and in total disregard of the petitioner's interests as a member.

I am satisfied on the evidence that building work on the Mountgorry Wood Apartment Complex was substantially completed in April or early May 2005. Involved was a total of 48 apartments in 4 Blocks on which work commenced in September 2003 and was completed in the order of Block "D", Block "C", Block "B" and Block "A". The first named respondent was the site owner, the developer and, the building contractor. However, the second named respondent told the court that almost all the work had been done by subcontractors. He said that his brother Martin Bell and a team of men from Northern Ireland were responsible for the foundations, the substructure, bricklaying, plastering, roofing, landscaping and some other work. Plumbing, electrical, joinery and painting subcontractors were employed in addition. It was his recollection that the last sale of an apartment at Mountgorry Wood was in May 2006, just as the property market was starting to fall.

The second named respondent told the court that between 1999 and 2003 the only building work carried out by him was through the first named respondent. In 2003 he and his brother Mr. Martin Bell using the business name "Bell Contracts" started to get back into the building business and the property market in Northern Ireland. They built some new houses, but most of their work consisted of building and renovating hospitals, schools and public offices. He had handled most of this work until early 2007 when his brother Martin returned from working in the Republic of Ireland. Bell contracts operated a joint account in the name of Desmond and Martin Bell, trading as Bell Contracts at the branch of the Northern Bank at Cookstown, Co. Tyrone.

The first named respondent paid Bell contractors €28,800 on foot of an invoice dated the 5th April, 2005, for the hire of scaffolding

for sixteen weeks, order dated the 30th April, 2005. (sic) Bell Contractors were paid €24,800 on foot of an invoice dated the 5th April, 2005, for the hire of portacabins and a digger for sixteen weeks, order dated the 31st May, 2005. (sic) The first named respondent paid Bell Contactors €64,685.95 on foot of an invoice dated the 2nd December, 2005, for "the provision of procurement, engineering and quantity surveying services" and, €90,000 on foot of an invoice dated the 2nd December, 2005, for "the provision of administration expenses to Rollville". The first named respondent paid the second named respondent €14,616 for diesel fuel consumed (Diesel Card Ireland) and telephone calls made (Vodafone) in 2004 and 2005. The second named respondent claimed that he ran the project at Mountgorry Wood, Swords, from his office at 20 Union Street, Cookestown, Co. Tyrone and, that theses costs were incurred in travelling between this office and Swords and, telephone calls made for the purpose of the building work at Mountgorry Wood. In October 2006, a loan of €30,000 was made by the first named respondent to Bell Contracts. This sum was included in the accounts of the first named respondent for the financial year ending the 31st October, 2006, as a "loan". The second named respondent claimed that this was a genuine loan and stated that he was willing to repay to the first named respondent 50% of whatever remained outstanding on foot of this loan. The petitioner claimed that each of these payments was unauthorised by her and was made in total disregard of her interests as a member of the first named respondent and, was an exercise by the second named respondent of his power as a director of the first named respondent in a manner which was oppressive to her as a member and as a director of the first named respondent.

On the evidence I am not satisfied that these payments, amounting in total to €249,968 represented bona fide transaction for the benefit of or from which the first named respondent had derived a benefit. If these had been payments from which the first named respondent received a benefit, the failure of the second named respondent, even after February 2006, when matrimonial problems had arisen between him and the petitioner, to inform the petitioner of and, to seek her approval for the making of these payments though irregular, would not amount to oppression of the petitioner. However, for a number of reasons I am not satisfied that these were bona fide payments from which the first named respondent derived the benefit: the invoices and payments relate to a period after May 2005, when on the evidence the building work at Mountgorry Wood had been substantially completed; the sequence, dates and appearance generally of the invoices in unconvincing; the invoices lack any proper details of the work alleged to have been done or the services alleged to have been rendered; no documents, records or details of any sort were furnished in evidence to support these claims for work done, goods supplied and services rendered by Bell Contracts to the first named respondent; the evidence established that the work at Mountgorry Wood started in September 2003 and was substantially completed in early May 2005, yet the particular sixteen weeks invoiced was not identified, or why it was isolated in this fashion or what particular aspect or aspects of the work at Mountgorry Wood was involved; there was a close interest between the second named respondent who authorised these payments on behalf of the first named respondent and Bell Contracts.

In the circumstances I am satisfied that theses payments amounted to a continuous misapplication of the funds of the first named respondent for the purpose of enabling the second named respondent to re-establish himself in the building and property development sector in Northern Ireland. In this respect the second named respondent acted in total disregard of the interests of the petitioner as a member of the first named respondent. In authorising these payments the second named respondent acted recklessly, unscrupulously and unfairly and, in a manner which was wrongful and, oppressive of the petitioner as a member of the first named respondent.

Having heard the evidence of the second named respondent, despite the wholly unsatisfactory lack of particularity in the invoice legends, "work done to the above", I am prepared to accept that the total sum of €121,641 paid by the first named respondent to M.B. Protective Coatings Limited (a company controlled by Mr. Martin Bell brother of the second named respondent) in 2006 was a *bona fide* payment for "snagging", public services and, other external works at Mountgorry Wood. I am also prepared to accept on the balance of probabilities that the sum of €19,595 paid to Junemar Limited (a company controlled by Mr. Martin Bell and his wife) despite the unsatisfactory nature of the legend on the invoice dated the 10th October, 2006, "work on Mountgorry Wood" was a bona fide payment for work done in remedying an ingress of water into the underground car park at Block A, Mountgorry Wood.

In September 2006, a year after all development work had been completed at Mountgorry Wood, a tractor was purchased by the first named respondent for a sum of €29,000, I find on the evidence that this tractor was principally used in maintaining the sand arena and for other purposes associated with the equestrian establishment maintained for the benefit of the petitioner's and the second named respondent's children and therefore to be regarded as a "family" expenditure. On the 13th June, 2006, a steel-frame shed was purchased by the first named respondent from Fox Engineering Limited for a sum of €36,248. I am satisfied on the evidence that this must be regarded also as a "family" expenditure as it was mostly used by the children of the petitioner and the second named respondent in connection with their equestrian activities. The court will therefore regard this total expenditure of €213,869 as genuine and as not constituting oppression of the petitioner as a member of the first named respondent.

Section 205(1) of the Companies Act 1963, employs the phrase "are being conducted/exercised". This envisages that the oppression complained of, is operative at the date of the presentation of the Petition, (see Greenore Trading Company Limited and the Companies Act 1963 [1980] I.L.R.M. 94 at 101 per Keane J. (as he then was)). I am satisfied on the evidence of the petitioner and of Mr. Desmond Kelly, the accountant, that in April 2007, following an investigation of the accounts and draft accounts of the first named respondent by Mr. Kelly, the petitioner learned of the borrowing by the first named respondent of the sum of €511,000 from the Bank of Scotland (Ireland) Plc. and of the transfer of that sum together with a sum of €439,238 from the funds of the first named respondent in Ulster Bank Plc, to Duval Estates Limited. Mr. Desmond Kelly also became aware of the drawings made by the second named respondent from the first named respondent and of the various payments and loans made by the first named respondent hereinbefore considered.

I accept the evidence of Mr. Kelly that in June 2007, he made inquiries from and entered into correspondence with the former auditors of the first named respondent regarding these matters. He was not satisfied with the information which this firm was able to provide to him and, he was ultimately referred by them to the second named respondent. He then contacted the second named respondent but received no response whatever from him. In July and August 2007, the petitioner, through her solicitors, continued to protest to the then solicitors for the second named respondent with respect to the manner in which the second named respondent was conducting the affairs of the first named respondent and, she also continued unsuccessfully to seek information through them and from the former auditors of the first named respondent regarding these loans, payments and drawings. By a letter dated the 25th September, 2007, the petitioner proposed that the second named respondent purchase her shareholding in the first named respondent, failing which proceedings pursuant to the provisions of s. 205(1) of the Companies Act 1963, would issue. Correspondence in this regard was exchanged between the solicitors for the petitioner and the then solicitors for the second named respondent throughout the months of October and November 2007. The petition was presented on the 12th December, 2007.

In the points of defence delivered on the 12th March, 2008, on behalf of the second named respondent by the solicitors then acting on his behalf, it was pleaded, (at para. 6) that the petitioner had consented to and/or acquiesced in the first named respondent making the alleged loan to Duval Estates Limited. The second named respondent maintained this position until the second day of the hearing of this petition, despite the pleading in the Amended Points of Claim, delivered on the 20th April, 2009, that the second named

respondent had fraudulently forged and/or procured the forging of the documents attached to the Bank of Scotland (Ireland) loan facility letter of the 13th March, 2006. Having regard to all of these circumstances, I am satisfied that the oppressive conduct by the second named respondent may properly be regarded as having continued up to the 12th December, 2007, when the petition was presented.

At paras. 36 and 37 of the Points of Defence, the second named respondent pleads that without prejudice to his claim that the petitioner is not entitled to relief under s. 205(1) of the Act of 1963, or to any relief, by reason of the fact that the first named respondent is deadlocked because of the breakdown of the matrimonial relationship between him and the petitioner, he is prepared to purchase the petitioner's shares for fair market value or to consent to an order that the first named respondent be wound up. The petitioner prays that the second named respondent be ordered to purchase her shares in the company at their full market value; in the alternative, she seeks an order winding up the first named respondent.

Neither party at the hearing of this petition urged upon the court that an order be made winding up the first named respondent. I am satisfied on the evidence that for the court to make an order winding up the first named respondent, would not be in the interests of the members, even though the circumstances of the case would justify the making of such an order pursuant to the provisions of the s. 213(f) and (g) of the Companies Act 1963. Therefore the alternative remedy pursuant to the provisions of s. 205(3) of the Act of 1963, that the second named respondent purchase the petitioner's shares in the first named respondent at a proper price must be provided. In, *In Re. Clubman Shirts Limited* [1991] I.L.R.M. 43 at 53, O'Hanlon J. approved and adopted the dictum of Oliver L.J. in *In Re. Bird precision Bellows Limited* [1985] 3 A.E.R. 523 at 529 where he held that:-

> ". . . the 'proper' price is the price which the court in its discretion determines to be proper having regard to all the circumstances of the case."

In arriving at this proper price the court is entitled to include an element of compensation for whatever injury may have been inflicted on the petitioner by the party responsible for the oppression. (see Horgan v. Murphy [1997] 3 I.R. 23 per. Barron J. at pp. 28/29).

In my judgment the proper price to be paid by the second named respondent for the petitioner's shareholding in the first named respondent having regard to all the circumstances of this case is 50% of the value of the first named respondent as a whole, without any premium or discount because of the nature of the shareholding and, making the following assumptions:-

(1) That the full sum of €965,904 has been repaid by Duval Estates Limited to the first named respondent.

(2) That so much of that sum as amounts to €439,238.62 now stands unencumbered in the bank account of the first named respondent.

(3) That all sums of whatever nature and kind due on foot of the loan to the first named respondent from the Bank of Scotland (Ireland) Plc. have been repaid in full and that the first named respondent has received a full and final discharge from the bank.

(4) That all sums paid by the first named respondent to the Bank of Scotland (Ireland) Plc. by way of drawdown charges, interest, penalties or otherwise on foot of the said loan have been repaid by the second named respondent to the first named respondent and now stand unencumbered in the bank account of the first named respondent.

(5) That the sum of €30,000 has been fully repaid by Bell Contracts to the first named respondent and now stands unencumbered in the bank account of the first named respondent.

(6) That the sum of €40,000, being the amount by which Mr. Martin Bell and his wife were undercharged by the first named respondent in the purchase of an apartment at Mountgorry Wood, has been paid to the first named respondent and now stands unencumbered in the bank account of the first named respondent.

(7) That the total of the several payments found by this judgment to have been wrongfully made by the first named respondent to Bell Contracts and, to the second named respondent in respect of Diesel Card Ireland and Vodafone charges has been repaid to the first named respondent and stands unencumbered in the bank account of the first named respondent.

(8) That the three apartments at Mountgorry Wood, are no longer held as security by the Bank of Scotland (Ireland) Plc. and have each a value of €285,837 less the ordinary average costs of sale. There was no evidence before the court of any of the 48 apartments at Mountgorry Wood having been let by the first named respondent. I am satisfied on the evidence that but for their having been given as security to the Bank of Scotland (Ireland) Plc. each of these apartments would have been sold by mid 2006 for this average price. I am satisfied on the evidence that between mid 2006 and January 2011, the open market price of these apartments has fallen considerably. I am satisfied therefore, that by assuming that each of these apartments has a current market value of €285,837, less the ordinary costs of sale, the petitioner is sufficiently compensated for the oppressive acts of the second named respondent in causing or permitting the first named respondent to give these three apartments as security to the Bank of Scotland (Ireland) Plc. in March 2006.

(9) That the first named respondent has no liabilities.

As I do not regard this figure as, "erring on the side of generosity" and, because the conduct of the second named respondent, both prior to, - since the 16th March, 2006, - and subsequently to the presenting of the petition in this case until the second day of the hearing, has been exceptionally oppressive to the petitioner as a member and as a director of the first named respondent, the court will award interest on the purchase price from the 31st October, 2006 to the date of this judgment. This interest is to be calculated by reference to the rates paid from time to time by Ulster Bank Plc. for deposits of this amount withdrawable on 30 days notice. The total purchase price payable to the petitioner by the second named respondent for her shareholding in the first named respondent is to be regarded as a judgment debt and carry interest accordingly from this date to the date of final payment.

The court will award the petitioner her costs of the proceedings against the second named respondent to include any (if any) reserved costs, the same to be taxed and ascertained in default of agreement.

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