IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV 2009-404-002469

AND BETWEEN	CHRISTOPHER SHANE WONG AND ANGELA KIM FONG Plaintiffs
AND	NEVILLE FONG & JUNE CHONG Defendants

Hearing: 22 September 2009

Appearances: A F Grant & H M McKee for Plaintiffs
P W G Ahern for Defendants

Judgment: 16 December 2009

JUDGMENT OF KEANE J

This judgment was delivered by Justice Keane on 16 December 2009 at 4pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

Solicitors:

Glaister Ennor, Auckland
Morrison Kent, Auckland

[1] This case arises out of a business relationship within a family that proved unsustainable. There is one issue. It arises under a deed of dissolution, dated 22 April 2008, between the Cobblestone Trust, whose trustees are Christopher Wong and his wife Angela Fong, and the Hobson Trust, whose trustees are Ms Fong's father, Neville Fong, and his sister June Chong. The issue is whether Cobblestone received from Hobson, the then owner of 68% of the shares in Pave Capital Limited, the price Cobblestone was entitled to for its 32% minority shareholding.

[2] The price Hobson paid Cobblestone, ostensibly as the deed called for the 'fair market value', was fixed on 17 June 2008 by the nominated valuer Price Waterhouse Coopers at $1,072,505. This value was reduced by a 30% discount to reflect the minority nature of the holding. Cobblestone's trustees claim that the price due ought not to have been subject to any such discount. Relying on a valuation by John Hagen, dated 25 March 2009, they claim Cobblestone was entitled to receive $1,636,527 and Hobson is obliged to pay a further $564,017.

[3] It was for that reason that Cobblestone's trustees at first refused to settle the transaction as a whole on completion date, 30 April 2008. On that date, as well as selling its Pave Capital holding to Hobson at the price fixed, Cobblestone was to purchase Pave Capital's 75% shareholding in Pave Consumer Brands Limited at a price, also fixed by PWC, subject this time to a 10% discount, $1,290,388. Cobblestone was also to repay its unsecured debt to Hobson, $536,521.

[4] When Cobblestone's trustees refused to settle Hobson's trustees sought summary judgment to compel settlement. On 4 December 2008, however, Asher J withheld judgment, holding that Cobblestone's trustees had an arguable defence. The 'fair market value' the deed required paid, in contrast to the 'fair value' in Pave's constitution, he held, might arguably have been in breach of s 149 of the Companies Act 1993. Hobson might, he held, be obliged to pay for Cobblestone's minority interest without any discount.

[5] Once that decision was given, and after some further skirmishing, Cobblestone's trustees elected to settle; to accept the price for its Pave Capital shares fixed by PWC and then to bring this present action, relying on s 149, and Mr

Hagen's valuation, to recover the balance it claimed still to be owing, $564,017. Hobson's trustees denied then that s 149 came into play and deny that still but, if s 149 is definitive and always has been, they seek to offset against any further payment Cobblestone is entitled to for its Pave Capital shares the 10% discount that reduced Pave Capital's price for its shares in Pave Consumer.

[6] The issue is, then, whether the price Hobson paid to Cobblestone for its Pave Capital shareholding had to have been, and was, a 'fair value' in terms of s 149. And that turns in part on whatever interplay there is between Pave Capital's constitution, and the deed of dissolution and s 149, if it applies. The deed called for the payment of a 'fair market value'. The constitution and s 149 speak of a 'fair value'. These concepts, thus far, have been assumed to differ. To what degree that is so is an issue in itself.

[7] So too, though it does not arise on the pleadings, is whether Cobblestone's trustees entered the deed of dissolution under a unilateral mistake as to the meaning of 'fair market value'; a mistake that Asher J, with whose judgment I agree and whose reasoning I gratefully adopt, held to be irrelevant if s 149 applied. So too whether they entered the deed as trustees of an oppressed minority shareholder, an issue that Asher J held could, under s 149, go to whether a minority discount was fair.

Context

[8] In September 2005 Hobson took 68% and Cobblestone 32% of the shares in Pave Capital Limited, until then a shelf company, intending to use it as their holding company; their medium for investing in the retail, import and distribution sectors. The idea and the impetus came from Mr Wong and his wife, not long married. The money came from Ms Fong's father, a successful businessman.

[9] In 2005 – 2007 Pave Capital acquired 75% holdings in three companies, Kenny Marketing Limited, Andrew Brands Limited and Paint Aids Limited, the first for $525,000, the second for $150,000 and the third for $1.728M. In each case the principals of those companies retained a 25% interest. Mr Wong received a $20,000

success fee on the first purchase and on the second. He received $120,000 for the third. Also, Hobson funded each purchase, meeting Cobblestone's share of the price on an unsecured basis. By dissolution Cobblestone had repaid Hobson for the first two purchases. It remained indebted to Hobson for the third, $553,000.

[10] The point of rupture came in July 2007 when Mr Wong, backed by the three subsidiary minority stakeholders, agreed on a purchase of a radically different order, Amalgamated Hardware Merchants Limited; a purchase calling for $23M debt funding. And when Mr Fong said Hobson would not participate, Mr Wong, joined by the three minority stakeholders, urged him to relinquish Hobson's shareholding in Pave Capital and its holdings.

[11] Mr Fong did not wish to do anything of the sort. Hobson's investment in Pave Capital had proved very worthwhile. Then, on 13 August, when Mr Fong said that Hobson would sell, he was unwilling to see it sell to Cobblestone, despite Cobblestone's pre-emptive right of purchase under the constitution. He wanted Hobson to sell on the open market. He also wanted Cobblestone to repay the Hobson loan. In this and in the negotiation that ensued, Cobblestone's trustees complain, Mr Fong, relying on Hobson's majority interest in Pave Capital, put pressure on them rendering Cobblestone an oppressed minority shareholder.

[12] In September 2007, to take one instance, Mr Wong refused to sign a director's certificate as to Pave Capital's shares, the purpose of which was to enable Cobblestone to purchase Hobson's interest, relying on a loan to be secured against those shares. In October, to take another, he refused to accept a Cobblestone offer that Mr Wong considered fair to Hobson. The prospect then was, furthermore, Mr Wong's evidence is, that Mr Fong was intent on cutting off management fees payable by the subsidiaries to Pave Capital, in which Cobblestone shared, and to himself. Cobblestone, he considered, had no option but to give up its own shares.

[13] On 9 October 2007 Cobblestone issued a share transfer notice to Pave Capital, under the constitution, nominating a price for its shares. The effect was that Hobson could, if it chose, either purchase the shares at that price or elect to have the shares valued at arbitration. In the notice Cobblestone spoke of a 'fair market value'.

Pave's constitution used the term 'fair value'. Mr Wong says he did not then understand there to be any difference.

[14] On 1 November 2007 Hobson rejected Cobblestone's price and elected to have the shares valued. Mr Fong also proposed that the valuation be binding and that Mr Wong accept various restraints of trade, proposals Mr Wong considered beyond Pave's constitution but beyond his ability to resist. And on 20 December 2007, according to Mr Wong, Mr Fong tightened his grip. He required that dividends received by Pave Capital from subsidiaries not be paid out without special resolution. On 9 January he required Mr Wong's management fees cease, leaving Mr Wong dependent on his wife's salary.

[15] By then the primary issue had become on what basis Pave Capital's shares should be valued; and Mr Wong, in an email to his then adviser, Vanguard Advisory Limited, dated 7 February 2008, said this:

> The key point for the valuation is that it needs to be on a 'pari passu' (equal rights) and 'fair market value' basis to ensure that there is no minority discount.

[16] Consistently, on 11 February 2008, Cobblestone proposed that Hobson purchase its shares in Pave Capital, and Pave Capital sell Cobblestone its shares in Pave Consumer, on that express basis. This was not acceptable to Hobson. On 15 February 2008 it maintained that the valuation was for the valuer, and adhered to that stance when, undeterred, Cobblestone sent it a draft deed on 25 March 2008 defining 'fair market value' to be 'the price at which 100% of the shares would change hands between a willing buyer and a willing seller on the open market'. Cobblestone's ultimate stance was that even if 'fair market value' did remain undefined it should not involve a minority discount.

[17] This dispute stood in the way of the execution of the deed and the deed was executed on 22 April 2008 only after Hobson gave notice that, unless Cobblestone signed, it would face proceedings in debt for the loan outstanding.

[18] PWC, the nominated valuers, after meeting Hobson and Cobblestone on 23 April 2008, fixed their terms of engagement and on 17 June issued their assessment

of the ‘fair market value’ of the two shareholdings to be exchanged, incorporating the 30% minority discount as to Cobblestone’s shareholding in Pave Capital and the 10% discount as to Pave Capital’s 75% shareholding in Pave Consumer.

[19] Cobblestone did not accept that these discounts had ever been agreed in principle and proposed that, to the extent that the deed of dissolution and PWC’s instructions allowed them to be made, both should be amended. On 26 June, however, Hobson refused any such variation. Such discounts, it said, were inherent in the concept of ‘fair market value’. That indeed, as he confirmed in evidence, had been Mr Fong’s understanding from the outset.

[20] On 27 June 2008, relying on a right given by the deed of dissolution, Cobblestone then asked PWC to revise its valuation to give a ‘fair value’ and also argued that the minority discounts made were excessive. PWC, in its final valuation dated 4 July 2008, adhered to the opinion that the discounts were appropriate to a ‘fair market value’. PWC did say that, had it been asked to assess a ‘fair value’ for the two shareholdings, the result would likely have differed.

[21] When Cobblestone refused to settle on completion date, 30 April 2008, Hobson’s trustees brought their summary judgment application and then, for the first time, Cobblestone relied on s 149 of the Companies Act 1993 which, as it then said, consistently with Pave Capital’s constitution, required that the sale of the Pave Capital shares to Hobson be at a ‘fair value’.

[22] In his decision, dated 18 November 2008, Asher J held that, arguably, s 149 did apply; that Pave Capital was a small private company with the features of a quasi partnership; and that Cobblestone could, depending on how the facts fell out, be a prejudiced minority shareholder. He declined Hobson summary judgment.

[23] After that, when Hobson proved unwilling to go to mediation, and even though it disagreed with aspects of Hobson’s settlement statement, Cobblestone decided to settle in accord with the deed of dissolution at the PWC ‘fair market value’ for its Pave Capital shares and then to seek the further sum now claimed under s 149(4). It gave notice accordingly and settled on 12 March 2009.

[24] On dissolution, Hobson's trustees contend, Cobblestone nevertheless came away with significant benefits. Between August 2005 – April 2007 Ms Fong enjoyed a $120,000 income from Pave Capital well in excess of her modest salary before then and Mr Wong, as managing director, received as well as $190,000 in success fees consultancy fees of $13,000 each month. Cobblestone's shareholding in Pave Capital stood on dissolution at something like $2M.

[25] Hobson, Cobblestone's trustees contend, came away with a much more significant benefits. It got back everything Cobblestone owed it at 9% interest. On the exchange of shareholdings it paid out $449,558 more than it received, but gained all Pave Capital's shares, which PWC valued at $5.069M and, indirectly, the 75% interests in the three subsidiaries valued at $6M. On an outlay of $1.8M Hobson made a gain of $5.55M. And that is not all it gained.

Constitution and deed processes and values

[26] In entering into the deed of dissolution Hobson and Cobblestone elected not to exchange the two shareholdings by the mechanism in the constitution, which would have given Cobblestone the right to nominate its own price, the right to have accepted or rejected any 'fair value' fixed independently, and the right perhaps, if Hobson elected not to buy at its price, to go to the market.

[27] In that there is nothing necessarily sinister. Under the deed of dissolution there was to be an exchange of shareholdings between the only two shareholders in Pave Capital, the holding company; and Pave Capital itself also forewent the same advantages in selling to Cobblestone its shares in Pave Consumer. The fact remains that under the deed of dissolution the value of the shares was to be fixed by PWC not at their 'fair value' but at their 'fair market value', and this valuation was to be final. Cobblestone and Hobson retained only the right, within ten days of the valuation, to request PWC to reconsider its opinion and PWC was bound only to go that far before issuing its final determination.

[28] The question then is, therefore, whether the deed of dissolution, definitive so far as Cobblestone and Hobson were concerned when the shares were exchanged,

needed to be and was, as Asher J held to be arguably essential when declining summary judgment, compatible with s 149 of the Companies Act 1993.

Statutory fair value

[29] Section 149 prohibits a director of a company from acquiring shares at less than their fair value, or disposing of them at more than their fair value, if he or she has:

> information in his or her capacity as a director or employee of the company or a related company, being information that would not otherwise be available to him or her, but which is information material to an assessment of the value of shares or other securities issued by the company or a related company.

[30] Section 149(4), furthermore, imposes on a director, who acquires shares for less than their fair value, a liability to pay the vendor the sum required to give a fair value; the basis for Cobblestone's cause of action. And s 149(5) imposes the converse liability when shares are disposed of at an over-value.

[31] Asher J held, at [31], that s 149 could apply even though in the deed of dissolution Cobblestone had accepted the 'fair market value' standard. Relying on *Thexton v Thexton* [2002] 1 NZLR 780, CA, he held that s 149 applies even in the face of an express agreement; and, at [34], that the 'fair value' has to be assessed objectively. But, he then said, s 149 is no more prescriptive:

> The application of s 149 does not automatically result in a certain valuation formula being applied to ascertain fairness. Rather, 'fair value' has to be assessed objectively, on a case by case basis, after an examination of all the relevant circumstances. Those circumstances can include oppressive behaviour by a majority shareholder.

[32] No issue was taken, Asher J said at [35], as to the definition of 'fair market value' given by PWC in their letter of engagement:

> … the price that would be negotiated in an open and unrestricted market between a knowledgeable, willing but not anxious buyer, and a knowledgably, willing but not anxious seller, both acting at arm's-length.

Nor, as he continued to say, at [36], relying on *M Yovich & Sons Ltd v Yovich* [2001] 9 NZCLC 262,490 at 40, was it at all uncommon for the 'fair market value' of a minority interest to be discounted to reflect:

> the shareholder's lack of control over the affairs of the company which makes the shares less valuable to an arm's length purchaser on the open market.

[33] Though this may well be common place, it is not, however, invariable. One exception, which Asher J recognised, is where a small private company is a quasi partnership and the minority shareholder, whose shares are to be acquired, is prejudiced. The other to which Asher J did not refer, is where the minority interest has a strategic significance that makes it of special value to the majority shareholder.

Oppressed minority shareholder exception

[34] A company can be a quasi partnership, Asher J said at [37], relying on Lord Wilberforce in *Ebrahimi v Westbourne Galleries Limited* [1973] AC 360 (HL), at 379, when it has these three features:

> They are, first, an association formed on the basis of a personal relationship involving mutual confidence; secondly, an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business; and, thirdly, restrictions on share transfers. …

[35] In such a company the 'fair value' of a minority interest, Asher J said at [38], relying on Lord Hoffman in *O'Neill v Phillips* [1999] 2 All ER 961 at 975, might well be a value 'representing an equivalent proportion of the total issue share capital … without a discount for its being a minority holding'. And, he added in succeeding paragraphs, in *Yovich* the Court recognised the risk that, on a court ordered purchase of shares, a minority shareholder can be unfairly exploited if a discount is imposed.

[36] Whether Cobblestone was a prejudiced minority shareholder, Asher J said, was a matter for evidence but, under s 149, Mr Wong's understanding of 'fair market value', right or wrong, was beside the point. As he said at [48]:

> Application of the section does not turn on any question of mistake or error on the part of the vendor of the shares, but rather on the simple question

> whether the value is a fair value, considered objectively. The history of dealing may be relevant to the question of whether the valuation was "fair" …

Strategic minority interest exception

[37] The second exception, which Asher J did not speak about, one instance of which is a case to which he was not referred, *MMAL Rentals Pty Ltd v Bruning* (2004) 63 NSWLR 167, is where the minority interest has a special strategic value to the majority shareholder. Then, even if a 'fair value' is not, as Cobblestone assumes, a just and equitable value but an exchange value, objectively assessed, a minority discount may still be inappropriate.

[38] In *MMAL* the New South Wales Court of Appeal had to settle the 'fair market value' of an 18.75% minority interest over which the 80% majority shareholder had an option to purchase and Spigelman CJ, with whom the other members of the Court agreed, first contrasted, at 176, a 'fair value' with a 'market value', stressing that neither has a fixed meaning.

[39] In some contexts the Chief Justice said, and he gave several, a 'fair value' will be 'what is just and equitable in all the circumstances' and the scope of the decision maker wide. A 'market value', he said, will usually be the exchange value, the price at which a willing but not anxious buyer is prepared to pay and a willing but not anxious seller is prepared to accept. It is an objective value founded on a narrower range of considerations.

[40] A 'fair market value', the Chief Justice said at 177, is closer to a 'market value' than a 'fair value':

> … the intrusion of the word 'market' between 'fair' and 'value' points away from a process of determining what is just or equitable between the parties, towards an objective standard.

In that case also, he said, the fact that the valuer was to be a chartered accountant, whose expertise lay in assessing exchange values, suggested that it was not to be a just and equitable value; but subject always to this critical qualification:

> Nevertheless, the word 'fair' has, in my opinion, work to do. In a contractual context, this additional word suggests that the valuation should proceed on the assumption, which may be contrary to the facts of a particular contractual relationship, that there is no impediment to the process of bargaining, whether in terms of availability of information or restraints arising from the characteristics of a particular vendor or purchaser or otherwise.

[41] Speaking then of the minority interest in question, the Chief Justice said, at 179, that it was held by:

> … a person with direct involvement in a majority controlled business requiring mutual co-operation and a level of trust. (I avoid the often misleading terminology of quasi partnership.) The sale is triggered, and triggered only, by the termination of that involvement.

And then, and crucially:

> The majority shareholder has an interest in ensuring that the minority holding is not acquired by someone who has no relationship with the majority holder of mutual co-operation or trust. The ability of the majority holder to get the full advantage from its controlling interest can be considerably attenuated by activities sometimes derogatively referred to as green mail. In order to avoid the nuisance of such an investor, the majority holder will be prepared to pay more for the minority than another person.

[42] In concluding, at 186, that in that transaction the 'fair market value' of the minority interest had to take into account of its 'special value' and that this was inconsistent with a minority discount, the Chief Justice added this:

> Whether by oppression suits or other proceedings, the assertion by a minority shareholder of legal rights give such a shareholding nuisance value, … Notwithstanding the pejorative connotation it has acquired, greenmail, unlike blackmail, is neither illegal nor improper.

[43] The Chief Justice went further. Even if the transaction cost meant that the minority shareholder was unlikely to enforce his rights against the controlling shareholder, the 'special value' the majority shareholder obtained by acquiring complete control had to be inconsistent with a minority discount. And that, as I have said, was the unanimous decision of the Court.

Valuation evidence

[44] In fixing the minority discount for the Cobblestone minority interest PWC was alive to these issues. It was alive to them equally when imposing the 10% discount on the value of Pave Capital's 75% interest in Pave Consumer.

[45] PWC's premise was that 'fair market value' will vary with the size of the shareholding as size dictates to what degree a shareholder enjoys autonomy and has control. It has also implications for capital structure, financial risk and liquidity. As to control, PWC said this:

> The level of control a shareholder has over the operation of a company will affect the value of that shareholding. In the absence of specific agreements between the shareholders, interests of 25% (and under) generally have little or no control or influence over the financial performance and/or levels of return that can be expected from the company. Interests between 25% and 50%, whilst still in the nature of minority interests, do represent strategic parcels and enable and a shareholder to block special resolutions. Interests of 50% provide the ability to prevent other shareholders from implementing actions without the 50% shareholders' consent. Interests in excess of 50% represent controlling stakes. Interests in excess of 75% mean that the controlling shareholder is unobstructive from passing resolutions of a special nature requiring the consent of 75% or more of the shareholders of the company. An interest of 100% confers outright control over the company and unfettered access to the company's cashflows.

[46] The 10% discount by which PWC reduced the fair market of Pave Capital's 75% shareholding in Pave Consumer was founded on this. Pave Capital had the capacity, it said, to pass special as well as ordinary resolutions and to control the Board. It did not, however, have outright control. It had to consider the rights of the 25% shareholder.

[47] Cobblestone's 32% shareholding in Pave Capital, PWC recognised, gave it the power of a 50% shareholder. The constitution required a 75% vote to pass an ordinary as well as a special resolution and to appoint or remove a director. Also Cobblestone and Hobson each enjoyed pre-emptive rights to purchase the shares of the other at fair value and ultimately even, perhaps, to have recourse to the open market. To that extent there was equality of arms.

[48] PWC still considered a 30% discount proper and Eric Lucas, who gave that valuation on behalf of PWC, was not called as a witness for Hobson's trustees to stand behind it and to explain why it was that and not of any lesser order. By contrast, Mr Hagen, on whom Cobblestone's trustees relied, though he accepted PWC's figures, differed on that very issue and his evidence is all the sworn and tested evidence that there is.

[49] A 'fair value, Mr Hagen said, required the valuer to ensure that the 'value' itself was fair as between vendor and purchaser. That required the valuer to consider both what the vendor gave up and what the purchaser obtained. A minority interest might or might not, he said, call for a minority discount. A discount might be called for, for instance, if the vendor had acquired the shares at a discount. Or the minority interest might be a small one with no unusual rights in a widely held company.

[50] In differing from PWC, Mr Hagen described Pave Capital, even though the shareholdings were not equal, as a partnership in corporate form, and for the very reasons that PWC identified. Given also that Cobblestone had acquired its shares without the advantage of a minority discount, Mr Hagen did not consider it fair for Hobson, the only other shareholder, to acquire that interest at a discounted price.

[51] Mr Hagen did not go so far as to accept, as Cobblestone also proposed, that Hobson ought even to pay a premium for absolute control. A premium could only be justified, he said, when the result of the acquisition was to increase the cashflow to Hobson and the value of the holding. That was not so.

[52] Mr Hagen did say that while the 10% discount by which PWC reduced the value of Pave Capital's 75% holding in Pave Consumer might rest reasonably on the rationale that Pave Capital had to take account of the rights of the 25% shareholder, it should be reduced from 10% to 5%. Pave Capital controlled the minority shareholder to this extent. By selling its 75% holding it could cause the minority shareholder's shares also to be offered for sale.

Conclusions

[53] The share exchange, the subject of the deed of dissolution severing the relationship between Hobson and Cobblestone, I consider, and for all the reasons identified by Asher J, has to be an exchange subject to s 149 of the Companies Act 1993. It was an exchange in which trustees on either side, Mr Fong and Mr Wong, were directors of the entities in question. They could only have known of the value of those entities, and the values of related companies, because they were directors. The exchange of shares made had then to be at a 'fair value'.

[54] In assessing the value of the shares exchanged, even on the basis of a 'fair market value', I consider moreover, PWC was incorrect to discount the value of the Cobblestone holding in Pave Capital to the extent of 30%. Pave Capital was a corporate partnership in the three senses identified in the initial judgment. It was founded on the basis of a personal relationship involving mutual confidence. It rested on an agreement or understanding that the two shareholders would participate together in the business. It restricted share transfers.

[55] I do not accept that Cobblestone was an oppressed minority shareholder. Hobson might in the final negotiation have had, and used, the upper hand. But that is unsurprising. The three acquisitions that gave Pave Capital its value and gave such rewards to the shareholders could never have been made if Mr Fong had not put up the money. When Mr Wong and the three minority shareholders sought to oust him, and Hobson, Mr Fong not unnaturally fought back. The investment Hobson had made was worth fighting for. And his upper hand depended not just on Hobson's majority. It rested finally on the fact that Cobblestone was without means of its own and owed Hobson $553,000.

[56] The decisive factor standing in the way of a minority discount is rather the Pave Capital constitution. In requiring a 75% majority for ordinary as well as special resolutions and for any change on the board, the constitution rendered irrelevant the imbalance in shareholdings. The shareholders enjoyed equality of arms. Cobblestone was much more securely placed than the minority shareholder in the *MMAL* case and

Hobson had an even greater interest in acquiring Cobblestone's shares and outright control. That special value is inconsistent with a minority discount.

[57] Hobson, I consider therefore, in breach of s 149, paid less than 'fair value' for Cobblestone's shares and, accepting as I do Mr Hagen's unchallenged evidence, founded on the PWC valuation as to the proper value of the shares, Cobblestone is entitled to the sum claimed, subject to this. The sum to which Cobblestone is entitled should be reduced by the 10% discount by which PWC reduced the value at which Pave Capital sold Cobblestone its shares in Pave Consumer. Mr Hagen may say that there there should be a 5% discount but, in the context of the transaction as a whole, I do not consider that would be fair.

[58] Cobblestone will have judgment for the sum it claims less the discount to which I have just referred and, in the event that costs cannot be agreed, Cobblestone is to file its memorandum by 28 January 2010 and Hobson within the ten succeeding working days.

P.J. Keane J