

IN THE GRAND COURT OF THE CAYMAN ISLANDS
BEFORE JUSTICE KIRSTY-ANN GUNN
IN CHAMBERS

Cause No. FAM0227/2017



M.S.

Petitioner

AND

F.S.

Respondent

Appearances: Mr Todd QC and Mr Yates QC instructed by Mr D. McGrath and Miss S Ismail of McGrath Tonner for the Petitioner
Mr Cusworth QC instructed by Mr K Broadhurst and Miss Y Mullen of Broadhurst LLC for the Respondent

Heard: 2 September 2020

Draft Judgment circulated: 7 September 2020

Judgment delivered: 16 September 2020

These proceedings were heard in private. The judge has given permission for a redacted version of the judgment to be released at this time. No publication may be made of the children's names or educational institutions. Redactions have been made to protect the privacy of the children and to prevent commercially sensitive information from being made public.

Headnote

Matrimonial proceedings - Judgments – Barrell jurisdiction – Court's discretion to review decisions before order perfected – has the right of pre-emption been triggered? – appointment of single joint expert - appointment of company director - further orders concerning the management, distribution and monetisation of matrimonial assets

JUDGMENT

1. I have before me three summonses dated 4 June 2020, 7 July 2020 and 14 July 2020. The first two are filed by the Respondent and the last by the Petitioner. I trust the parties will not be offended that I referred to them once more as husband and wife.

2. On 28 April 2020 I delivered the substantive judgment on the wife's application for ancillary relief. My final orders were that:

- (i) All matrimonial assets are to be divided equally between the parties;
- (ii) The husband shall be awarded a lump sum the of equivalent to US\$83,333.33 per month from the proceeds of the sale of either Company U's business or Company U's assets calculated from the date of separation to the date that the G Inc sale concluded as remuneration for post-separation work with the companies. The remaining proceeds of the sales due to the parties shall be applied to discharge any professional fees and tax liabilities due by the parties in connection with the sale. Thereafter, the proceeds of the sales shall be distributed equally to the parties.

(iii) Steps shall be taken forthwith to ensure that the parties are equal shareholders in and directors of Company N and Company U and any joint ventures with equal voting rights.

(iv) The parties in the first instance shall obtain a joint valuation report for Company U. Upon receipt of the report, the husband shall have the option to purchase the wife's 50% share of Company U. If he elects not to pursue this avenue, then Company U shall be placed for sale immediately. If a sale cannot be secured within 12 months of this Judgment, then either party may apply to the Court for directions as to the means by which the value of the parties' interests shall be realized.

(v) Neither party shall without prior written consent of the other cause there to be any dilution of shares in Company U whether by script issue, further allotment or otherwise.





- (vi) If one party wishes to sell their share of Company U to a third-party investor, then there shall be a right of pre-emption at the sale price offered by the prospective third-party with a 56-day notice period.
- (vii) The husband shall be remunerated for his work running Company U at the rate of US\$60,000 p.m.
- (viii) The husband shall pay to the wife the sum of US\$70,000 per child per annum until the children reach the age of 18.
3. I also made orders concerning the division of smaller matrimonial assets which I will not rehearse.
4. The order for the foregoing has not yet been perfected.
5. On 4 June 2020 I delivered a further judgment which largely addressed the constitution of the board of directors of Company U, as well as reiterating that –
- (a) The parties shall not take any steps which shall have the effect of diminishing the value of their respective shareholdings except by agreement;
 - (b) The definition of “ordinary and proper course of business” shall be that as understood at common law;
 - (c) That each party shall take reasonable steps to ensure that the other party has full access to all papers of the company which a director would ordinarily be expected to have access to.
6. Unfortunately, the parties require further judicial intervention as they continue to have conflict, most notably, with the day to day running of the board of Company U and the monetization of Company U.
7. The many issues I have to determine on this occasion can be summarized as follows:
- (a) Has the wife elicited an offer to purchase her share of Company U thereby triggering the right of pre-emption?



- (b) Should the previous Single Joint Expert (SJE) FTI be reappointed or should Kellie Gread of PwC be appointed to value Company U?
 - (c) How should Company U's board of directors be constituted after the resignation of Mr. S?
 - (d) Should the husband, as the Chairman of the board, be prohibited from exercising his casting vote as ascribed by the Articles of Association?
 - (e) Should paragraph 146 of the substantive judgment be varied to provide that, upon receipt of the SJE report, both parties shall have the option to make an offer to purchase the other party's interest in Company U?
 - (f) Should the board of directors be permitted to pass a resolution using the previously agreed share plan to issue new shares to staff members?
 - (g) Should there be an immediate declaration of dividend from Company U and to what amount?
 - (h) How should the parties' real property be divided?
8. There was a further matter of an outstanding child maintenance payment, but I was advised that this issue was resolved by the time of the hearing.

Barrell Jurisdiction

9. Some of the matters I am being asked to determine constitute a material reconsideration of certain aspects of my substantive judgment. The judgment was delivered and published in April of this year but the order has not yet been drawn up.
10. The term 'Barrell jurisdiction' is believed to have been coined by counsel some years ago when referring to the case of **Barrell Enterprises [1973] 1 WLR 19**. In that case the Court of Appeal declined to reopen an unsuccessful appeal in which judgment had been given some months previously but the order had for some reason never been drawn up. The court held that only exceptional circumstances could justify a variation of a judgment after delivery. Their rationale was that parties ought to be able to assume that a judgment is a valid and effective one.

11. **In re Blenheim Leisure (Restaurants) Ltd (No. 3) The Times, 9 November 1999**, Neuberger J opined that a mistake by the court, the parties' failure to draw a relevant fact or point of law to the court's attention or the discovery of new facts after judgment was given were exceptional circumstances in which a court might review and vary its decision.
12. In the English Supreme Court decision in **Re L-B [2013] 1 WLR 634** Baroness Hale reviewed the various authorities speaking to the Barrell jurisdiction and concluded at paragraph 27–

“Thus one can see the Court of Appeal struggling to reconcile the apparent statement in principle in the Barrell case [1973] 1 WLR 10, coupled with the very proper desire to discourage the parties from applying for the judge to reconsider, with the desire to do justice in the particular circumstances of the case. This court is not bound by the Barrell case or by any previous cases to hold that there is any such limitation upon the acknowledged jurisdiction of the judge to revisit his own decision at any time up until his resulting order is perfected. I would agree with Clarke LJ in Stewart v Engel [2000] 1 WLR 2268, 2282 that this overriding objective must be to deal with the case justly. A relevant factor must be whether any party has acted upon the decision to his detriment, especially in a case where it is expected that they may do so before the order is formally drawn up. On the other hand, in re Blenheim Leisure (Restaurants) Ltd, Neuberger J gave some examples of cases where it might be just to revisit the earlier decision. But these are only examples. A careful considered change of mind can be sufficient. Every case is going to depend upon its particular circumstances.”



The other justices agreed with Baroness Hale's conclusions. I find the dicta of Baroness Hale to be highly persuasive.

13. The Cayman Islands Court of Appeal came to the same conclusion in **Smith v Smith 2004-05 CILR 225** finding that the judge was entitled to reverse his decision as long as the order had not been drawn up and entered. They held this to be the case whether the judge's original decisions was given orally or in writing.
14. I am satisfied that I have the discretion to revisit my earlier decisions as the order has not yet been perfected.

Background

15. The parties were previously shareholders in Company N and Company U. Following the Ancillary Relief Hearing, the parties accepted an offer from G Inc to purchase all of the assets of Company N as well as significant assets from Company U for a total of US\$ XX million. Company U retained its registry, 21 generic top-level domain names (“gTLDs”) as well as several joint ventures. Company U was also renamed. The current board members of Company U are the wife, the husband and Mr S. The husband is the Chairman of the board. To date, the husband and wife have each received US\$ XX million from the proceeds of the sale. US\$ XX million of the sale proceeds remain with Company U.

16. In February 2020, following discussion with the husband, M Inc made an offer to purchase all of Company U’s owned and operated gTLDs and joint ventures, including Company U’s most successful gTLDs. M Inc’s offer was to purchase the assets for US\$ XX million cash, XX million shares in M Inc and an annual dividend of US\$ XX. M Inc estimated that the shares offered would be worth US\$ XX million in 2020 and US\$ XX million in 2022. The husband and wife considered the offer but concluded that they should seek more cash. Ultimately, the negotiations with M Inc did not go any further due to a dispute arising between the two companies.

17. On 27 May 2020, following a conversation with Mr H of M Inc earlier that day, the wife wrote to Mr H setting out her desire to sell her 48.1% stake in Company U and set out a number of proposals that she would find acceptable. Mr H replied later that day reiterating the terms of the offer made in February and expressing some reservations about acquiring the wife’s minority share only. The following day the wife wrote to Mr H once more seeking further clarification on the February offer and inviting Mr H to table offers to purchase her share in Company U and the entire company. Mr H replied later that day that he would like to continue their discussions by phone. It is apparent from the correspondence that at least one further exchange must have followed as the next correspondence was from the wife to Mr H on 26 June advising -





"As matters have progressed beyond an offer to acquire my shares and interest in [Company U] to a bid for the majority of its assets, your proposal will need to be considered by [Company U]'s board. It would not be appropriate for me to comment on all aspects of the proposal without their input."

18. The very next day, 27 June 2020, M Inc wrote to Company U's board of directors with Heads of Terms ("HoT") for the acquisition of Company U's assets. The proposal provided that Company U retain ownership of the Registry and back end services business ("RY-BES"). M Inc would pay US\$ XX million in cash to Company U, while the wife would be assigned XX million M Inc shares in consideration for her returning her Company U shares to Company U in addition to a levelling payment between all shareholders for the wife's share of any surplus pre-completion net assets in Company U. For the purposes of the HoT, it was estimated that XX million shares in M Inc would be worth US\$ XX million within two years. The wife's shares in M Inc would be locked-up for two years after which M Inc guaranteed a pay-out of at least US\$ XX million. At no time prior to the HoT had the wife disclosed to the board that she had been in discussions with M Inc. The wife's evidence is that she was participating in confidential discussions with M Inc about a potential sale of her assets and that, when it became apparent to her that M Inc were only interested in purchasing the company assets, she immediately referred M Inc to speak with Company U's board. Notably, the HoT states that while the wife had not reviewed or approved the wider Heads of Terms she had given her *"agreement in principal"* to returning her Company U shares to Company U in exchange for M Inc stock with a two year lockup. The wife denies that she agreed to the transaction, a subject to which I will return very shortly when I consider whether the right of pre-emption has been triggered.

19. The wife's discussions with M Inc overlapped with the hearing of her summons seeking injunctive relief pertaining to the constitution of the board of directors. It also overlapped with the sale of the C strings. In early April 2020 the husband sought to obtain the wife's agreement to purchase X Co's share of the C strings. She eventually declined to consent and, at X Co's behest, the C strings were registered for auction. At a board meeting on 22 June 2020 Company U's directors agreed to participate in the auction in the hope of acquiring the entire interest in the C strings. The auction proceeded on 13 July 2020 but Company U was unsuccessful. To

date Company U holds the \$ XX million proceeds of the sale of their share of the C strings (“the auction proceeds”).



Right of Pre-emption

20. Paragraph 146 of the substantive judgment provides that -

“If one party wishes to sell their share to a third-party investor, then there shall be a right of pre-emption at the sale price offered by the prospective third-party with a 56-day notice period.”

21. The husband argues that the HoT of 27 June constitutes an offer to purchase the wife’s shares at US\$ XX million in two years’ time which she accepted. He points to the document referencing the wife *“agreement in principal”* to support his argument that her agreement to the proposal has triggered the right of pre-emption. The husband submits that the wife also believed that the right of pre-emption had been triggered because she wrote to the husband only two days after the HoT letter inviting the husband to make an offer to purchase her share of Company U –

“If you need it, you now have a guide price provided by [M Inc]. Armed with that, how much better could your offer be or should we be selling all of this to [M Inc]? Previously you offered me XX to buy me out. Now that [M Inc] has offered us XX, and my shares at XX, what is your revised offer?”

22. While the wife refers to a US\$ XX million offer from M Inc this is slightly misleading. The M Inc offer was for US\$ XX million cash and M Inc stock to the wife which M Inc will guarantee at \$ XX million but estimate will be worth US\$ XX million in two years’ time. The remaining US\$ XX million is the value M Inc attribute to Company U’s registry which they propose would be retained by Company U.

23. The husband seeks either a declaration that the right to pre-emption has been triggered which he in turn would seek to exercise, or alternatively, an amendment to the substantive judgment

that the wife shall relinquish her share of Company U for a total of US\$ XX million paid over two years, that being the fair market price she has negotiated.

24. The wife argues that the HoT is no more than an 'invitation to treat' and is in truth a non-binding agreement and, therefore, does not trigger the right of pre-emption. The wife points to various elements of the HoT to support her contention –

"We are pleased to submit this non-binding Heads of Terms..." (Introduction)

"...[the wife] has not reviewed or approved these wider Heads of Terms." (4.2)

"...the parties agree that this HoT does not constitute a binding offer or agreement to acquire UNR, nor does it create binding or enforceable obligations by either party." (9.1)



25. Additionally, the wife argues that the document was not capable of acceptance as -
- (i) the proposal assumed that the C strings would form part of the assets to be purchased (3.2); and
 - (ii) Any agreement would be conditional on all members of the board agreeing to the proposal (4.2).

26. The wife's final submission is that even if there had been an agreement to purchase her share of Company U, the value of the transaction would be in excess of US\$ XX million as that was merely the minimum guarantee with a confident estimate that the true value would likely be in the region of US\$ XX million.

27. Considering the terms of the HoT, it is readily apparent that M Inc and the wife hoped that the shares would be worth in the region of US\$ XX million in two years' time but in truth that is speculative. It could be less than US\$ XX million. The true value in two years' time is simply an unknown factor and a risk the wife might be prepared to take. But the value of any transaction is of little moment as I am not persuaded that the HoT is an offer triggering the right of pre-emption. The language of the HoT itself is clear that it does not seek to bind anyone. The reference to the wife giving her *"agreement in principal"* does not materially change the intention of the document. Also, I am satisfied that the HoT was not capable of being accepted

because it was conditional on the C strings being part of the purchase, however, these had already been committed to auction at the relevant time. I must, therefore, conclude that the right of pre-emption set down in paragraph 146 of the substantive judgment has not been triggered.

28. Given the uncertainty as to the true value of Company U at this stage (particularly after the sale of the C strings), it would be unjust to amend my judgment to permit the husband to purchase the wife's share in Company U for US\$XX million or any other amount that has been canvassed. The next stage must be to appoint a SJE as soon as possible.

Appointment of a Single Joint Expert



29. Paragraph 146 provides that -

"The parties in the first instance shall obtain a joint valuation report for the residual business, the costs of which shall be shared equally."

30. The husband seeks to have the previous SJE, FTI, reappointed to carry out this new valuation. He argues that they are the most suitable valuers as they are familiar with the business already, are not conflicted and can produce a report in a matter of a few weeks at lower cost. He hopes that appointing FTI will allow for swift progress to the next step in the process of monetizing Company U. The wife strongly opposes the reappointment of FTI. She argues that FTI's methodology was so flawed that their previous report could not be relied upon. The husband asserts that the wife's past objections and delays in responding to his requests to identify a SJE were a ploy to delay the valuation while the wife secretly negotiated the sale of her share to M Inc.

31. This was a very contentious issue between the parties. It is not necessary to set out the history of correspondence between the parties on this subject matter or to determine whether one or other party had an ulterior motive for the position they have taken. As a matter of principle, a SJE should be a person or organization that both parties are confident will provide an independent and reliable report or, if the parties cannot agree on a SJE, one that the court determines is suitable.
32. I have not had the benefit of examining the previous FTI report as it was not relied upon during the Ancillary Relief Hearing. I am not in a position to properly assess its reliability without hearing evidence on the matter. Given that the wife is so averse to FTI, I am certain that whatever the outcome of the report, it would most likely lead to further litigation and, consequently, more cost and delay Company U's monetisation even further. A new appointment is likely to be less contentious in the long term. In the circumstances, I direct that the alternative expert identified by both parties as suitable, namely Kellie Gread of PwC, be appointed as SJE to value Company U. The terms of her engagement letter shall be agreed by the parties within seven days.

Constitution of the Board



33. Company U currently has three directors: the wife, the husband and Mr S, who is a long-time friend and employee of the company. Mr S has now given notice of his resignation as director with effect from 8 September 2020. A board meeting has been called for 7 September for a new director to be appointed in his place¹. The husband has identified the company's Chief Operating Officer ("COO") as a suitable replacement due to her familiarity with the company. The wife objects to this appointment as she believes that the COO will not be independent and instead favour the husband's agenda.

¹ The draft judgment was circulated ahead of the board meeting to instruct the parties as to the way forward.

34. The constitution of the board has been a long-standing source of conflict between the parties as the wife firmly believes that the husband is intent on marginalising her and reducing the funds she is due under the substantive judgment. This was her concern with Mr S, who she believed favoured the husband in all matters, and she now fears that this will be repeated if the COO is appointed. The husband has expressed his confidence that the COO will act in the best interests of the company and shareholders.



35. While there is no evidence before me to suggest that the COO would act contrary to her duties as a director were she to be appointed, I am sure that her appointment will only further undermine the wife's confidence in the board and likely lead to further conflict between directors and further litigation. I have to accept that at this stage the board is struggling to function and appointing someone that the wife does not approve of is likely to further impede the work of the board, which is not in the parties' or the company's best interests.
36. The wife proposes that each party appoint a director of their choosing and that the third and fourth director nominate a professional director, thereby increasing the board of directors to five members. The husband opposes this course as it would make the husband and wife minority directors in a company in which they are the majority shareholders.
37. I agree with the husband that it would be contrary to the best interests of the husband and wife to become minority directors in their own company. That being said, I am satisfied that the time has come to appoint an independent professional director to the board to bring an independent view to the decision making of this board and hopefully thereby reduce conflict and litigation.
38. I order each party to prepare a list of three independent professional directors of their choosing which are to be exchanged within seven days. The nominees shall have confirmed that they are conflict free. If there is a name that appears on both lists then the parties shall pass a resolution appointing that person as the third director of the company. If no such match is forthcoming then each party shall consider the other's list to determine whether there is someone that both parties can agree on. They have seven days to do so. If a consensus cannot be found, then the names and CVs of the proposed directors with short submissions shall be submitted to the court

within forty-eight hours of the expiration of the last seven days and I will, without the need to give a judgment, select the third director from one on the lists and the parties shall pass a resolution appointing said person.

39. The wife has in recent times considered appointing a proxy. The husband is keen on this proposal also. The Articles of Association do not permit such a course at this time. I find that a proxy may further reduce opportunities for conflict on the board. To that end, I order that both parties shall vote in favour of a resolution amending the Articles of Association to allow the appointment of a proxy by any director. Any such proxy must be confirmed to be conflict free before their appointment. The wife may then elect to appoint a proxy should she wish to do so.

The Casting Vote

40. The Articles of Association provide that the husband, as Chairman of the board, has a casting vote, meaning that if there is a deadlock he can cast a further vote ending the deadlock. Paragraph 141 of my substantive judgment provides that -

“Steps shall be taken forthwith to ensure that the parties are equal shareholders in and directors of the residual business and joint ventures with equal voting rights.”

41. In subsequent correspondence I was asked to clarify my order which I did in the following terms -

“The judgment expressly calls for both parties to be equal directors and shareholders of the residual company with equal voting rights. The judgment does not seek to curtail the parties’ rights, duties and obligations as directors and shareholders to meet company needs and obligations (both past, present and future) and to operate the company in the normal course of business.”²

² 13 May 2020 @ 10:59AM



42. Since my substantive judgment, the husband has refrained from exercising his casting vote but more recently has expressed his intention to do so in future should the need arise. The wife objects to the husband acting in this way as she considers it to be contrary to paragraph 141 of the substantive judgment.

43. My intention was, and continues to be that the parties are to be treated as equals on the board. As there will be a third independent director going forward there should be few occasions where a true deadlock arises. However, in order to ensure the equality of the parties going forward I hereby confirm, for the avoidance of doubt, that in the event that there is a deadlock in the board, the husband is prohibited from exercising his casting vote as Chairman of the board.



Option to purchase

44. Paragraph 146 of the substantive judgment provides for only the husband having the option to buy out the wife share in Company U. This was because at the time of the Ancillary Relief Hearing the wife expressed that she had no wish to continue being involved in any of the companies and simply wishes to be bought out. The wife now seeks an amendment to paragraph 146 which would give both parties the option to buy out the other after the SJE report has been prepared.

45. The husband objects to this course as he considers it to constitute an appeal rather than a reconsideration given the wife's position at trial. He asserts that the wife is motivated by her continuing but wrongly held belief that the husband is trying to diminish her share in the proceeds of the company.

46. When I asked Mr Todd QC whether the wife had a genuine interest in purchasing the company he replied that she had and that, on receiving the SJE report, she may wish to purchase the husband's share with the intention of selling the company on at a higher price than the valuation.

47. The M inc proposal has revealed that my original decision has caused a disparity between the parties. My decision potentially places the husband in a stronger bargaining position as he currently has the sole right to purchase. This was not my intention. It remains my intention that the parties shall have equal rights. Now that the wife's position has crystallised, I am satisfied that fairness requires an amendment to paragraph 146 to give each party equal option to buy out the other. Consequently paragraph 146 is amended to read as follows:

"Upon receipt of the report, each party shall have the option to purchase the other parties' 50% share of the business. Each party has the right to reject an offer made by the other party. [Remaining part of paragraph redacted to protect commercially sensitive material]."



The Employee Share Plan

48. At paragraph 146 of my judgment I provided that –
- "Neither party shall without prior written consent of the other cause there to be any dilution of shares whether by script issue, further allotment or otherwise."*
49. In my correspondence with the parties on 13 May 2020 clarifying my judgment I stated –
- "The judgment does not seek to curtail the parties' rights, duties and obligations as directors and shareholders to meet company needs and obligations (both past, present and future) and to operate the company in the normal course of business. This includes any pre-existing share plan if previously agreed by the directors."*
50. The husband now proposes to issue new shares to Company U employees as part of an incentive initiative. The husband says that his restructuring of the shareholdings of both Company N and Company U together with the issuing of new share will in fact increase the husband and wife's shareholding. The wife is concerned that the husband is using a long-dormant share plan to water down her shareholding and thereby reduce the amount of dividends she would receive and reduce the proceeds of the sale of her share of Company U.

51. This issue should be beyond doubt; no steps shall be taken to dilute the parties share in the business. If the husband's restructuring does not do so then the board may proceed to consider it and, if sufficient support is there for the scheme, the resolution may pass. However, if the scheme in fact dilutes the value of parties' overall shareholding then it is prohibited.



Dividends

52. Paragraph 140 of the substantive judgment provides for the equal distribution of the G Inc proceeds after professional fees and tax liabilities have been discharged. Company U currently holds US\$ XX million in cash comprising the proceeds of the G Inc and C sales. The board of directors has approved US\$XX million be set aside as working capital for the company. This leaves US\$ XX million unallocated. The wife seeks an immediate declaration of a dividend to distribute this whole remaining amount. She argues that the husband is stalling and that according to Company U's accounts the husband intends the company to hold the funds until 31 December 2020. While the husband accepts that a dividend should be determined, he does not agree that it should be the full amount. Given the many issues and disputes that have arisen since my substantive judgment I am not persuaded that the husband has intentionally delayed the determination of a dividend.
53. Now that I have determined that the right of pre-emption has not be triggered I see no reason why the remaining US\$ XX million held by Company U should not be paid out to shareholders forthwith. A significant amount of working capital has been allocated to allow the company to meet its liabilities and operate in the normal course of business, including new investments. The husband has received his retrospective salary allowance. There is no reason to further delay. I, therefore, order that the parties pass a resolution at the next board meeting that all the proceeds of the G Inc and C sales, excluding the agreed working capital, shall be distributed by way of a dividend.

Division of Real Property

54. The parties have a significant number of real estate properties. They have been attempting to divide these by agreement. The husband has asked for orders that the matrimonial estate bear the costs of -
- (i) Any taxes due prior to the transfer of the any matrimonial real estate property (whether to one of the parties or to a third party); and
 - (j) The sale of the Malibu, California property.
55. As I have stated repeatedly, the parties are to share everything equally, which includes any liabilities which become due in relation to any property while it is jointly owned. Consequently, I make the orders as requested by the husband.
56. The parties jointly own 2 adjoining lots of land in Malibu, California which the parties agree shall be sold. The wife's evidence is that two realtors have valued the joint lots at US\$ XX million. The husband believes that there is potential to make up to US\$ XX million if the lots are sold together. It is his proposal that the lots should be marketed at US\$ XX million. The wife disagrees and has offered to sell her share in the land to the husband for US\$XX million. It is not clear to me from the evidence why the husband has not accepted that offer given his level of confidence that a higher price can be achieved. The longer these lots go unsold the higher the likelihood of further conflict between the parties. I maintain the view that the sooner the parties can have a clean break the better it will be for them and their children. With that in mind, the husband is hereby given the option of agreeing to buy the wife's share in the Malibu properties for US\$XX million within thirty days. This option will give him the opportunity of then marketing the property at the increased price after he has full ownership. If the husband does not avail himself of this option within the allotted time, then the properties shall be marketed at the rate recommended by the two independent realtors.



57. The husband also requests an order that the Company I shares held by the parties but which interest has historically been utilized by Company U be sold to Company U. The husband says that Company U would be damaged if the Company I interest was no longer available to it. No value has been suggested for these shares. The wife objects to the course, instead seeking to share the shareholdings between the parties in line with the substantive judgment.
58. My original order was that the joint ventures should either be allocated as the parties agree or be liquidated. The parties remain at odds and so liquidation would normally follow. A sale to Company U would be a middle ground which I accept would benefit the company of which the wife remains a shareholder. Consequently, I amend my substantive judgment and order that the Company I interest be purchased by Company U at market value (assessed by a SJE if necessary and costs shared equally) and that the wife be paid forthwith her equal share of the proceeds.


Hon Kirsty-Ann Gunn
Acting Judge of the Grand Court

