

Business Helpsheet

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The Expert Valuer in Court Proceedings www.menzies.co.uk

Differences of opinion regarding business valuation often arise depending on whether you are buying or selling. Resorting to formal Court proceedings can be costly and time consuming. Often, resolving the key points between the two valuers can bring about agreement without going to Court.

The following example demonstrates how this can work and achieve a satisfactory result at a much lower cost.

1. Introduction

An action was brought by a minority shareholder alleging oppression by the majority shareholder, through various actions, which were stripping value from his shares and was progressing through solicitors towards proceedings in the High Court.

2. Summary of Events

The case stemmed from an event back in 2005 but the legal dispute was not in fact resolved by the parties until the end of 2009.

During 2007 the matter was considered and discussions were held between the disputing parties but, due to a major difference in opinion, a valuation report was commissioned from Menzies by the alleged oppressed shareholder to provide an indication of value in order to try to bridge the gap. Unfortunately this still did not resolve the matter and in 2009 each party commissioned a report from their own expert valuer, which again reflected differences of opinion.

As a result of those differences, as part of the Court proceedings, which by now had commenced, the expert valuers for each side were instructed to issue a Joint Statement. Such a procedure is common in Court proceedings where there are experts for each side and the aim is to identify common points agreed and to highlight points of disagreement so that the Court can focus on the key matters and rule accordingly.

Finally, on the steps of the Court the parties were able to compromise on their views and reach settlement without proceeding with the full trial in the High Court.

3. Detailed Circumstances

The minority shareholder held 20% of the shares and the other 80% was owned by one other shareholder with whom the business had been set up to exploit an opportunity back in the 1990s.

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Due to personal reasons the minority shareholder had to leave in 2005 but under the articles of association was able to retain his shares. This retention itself caused the essential problem since both parties wished for the shares to be acquired but there was no set mechanism how this would occur or indeed how the price would be arrived at.

Clearly the best solution to both would be for the majority shareholder to buy out the 20% not so owned but the price could not be agreed. Furthermore, due to actions being taken by the majority shareholder post departure, it was alleged that profits were being withdrawn to the detriment of the minority shareholder and hence the action commenced in the Court. Ultimately the Court would have the power to order the shares to be bought, but needed the opinion of valuation experts to establish the proper value, which ultimately ended up with the valuation process.

The Joint Statement is a document which forms part of the Court Process and sets out the facts, which are agreed, the matters agreed and the matters disagreed. The Statement is prepared as a guide to the Court and that is the party to whom it is addressed.

The experts agreed that the appropriate valuation methodology should be a profit multiple of adjusted earnings after tax and up to and including the last annual accounts. The experts disagreed on the quantum of adjustments to the profits and the multiple to be used but those differences, in this case, were not material.

There were essentially 2 major areas where the experts disagreed:


1. In Menzies view there was further value to the company that should be added to the value of the earnings multiple value represented by surplus cash. It was believed that there was money in the bank which could be withdrawn from that account without jeopardising the earnings being generated. The other expert did not hold that view despite a consistent high bank balance demonstrated by a graph over 2 years.
2. In Menzies view there was a need to consider that what had existed between the shareholders was a 'quasi partnership' such that the parties had set the business up with a view to each participating in full from earnings and capital value with no separate regard to the specific holding involved. The other expert took the view that this did not exist and therefore a full discount for the minority aspect needed to be brought in. The other expert also took the line that, even if a 'quasi partnership' did exist then a discount of 20% should be applied. Both experts agreed that an appropriate discount for full minority interest, if this needed to be recognised, would be 60%.

The question of whether or not surplus cash existed was an accounting and valuation consideration although ultimately the parties could not agree on the conclusion. The question of whether a 'quasi partnership' existed was one for the Court to determine by reference to case law on the subject. Therefore in that situation the experts referred the Court, in their Statement, to key judgements in earlier cases for them to consider in the light of the facts of this case compared to those of the leading cases.

4. Conclusion

The Joint Statement by experts is a necessary mechanism for parties to identify key points and to provide guidance to the Court so that areas of accounting disagreement can be highlighted but also areas where legal judgement is necessary, although the Court can be advised of the implications of a determination either way.

In this case, fortunately for the parties, the matter was resolved in a settlement without long Court attendance by all concerned (including the expert valuers) primarily by both parties seeing what was agreed and disputed by both expert Valuers.

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