

# THE BUSINESS VALUER (AND OTHERS) IN COURT

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# THE EXPERT IN THE WITNESS BOX



- When it all goes wrong – Part One
- The Adversarial Expert
- The too obliging Experts
- Single Joint Experts
- Different Premises
- Clients' Conduct
- Concurrent Evidence by Experts
- When it all goes wrong – Part Two

# THE SORRY TALE OF X AND Y



EWHC B9 [2019]

Written Decision Dealing Solely with Conduct of Medical Expert

X and Y – complex disabilities and learning needs

Instructions from Court of Protection 17 July 2018

Deadline 26 October 2018

Series of promise made – and not kept

Distinguished Career as a Consultant Paediatrician

# THE SORRY TALE OF X AND Y (CONTINUED)



“Where there are justifiable reasons for adjusting the timetable it is unlikely that the court would refuse. What is not acceptable is what has happened in this case where the expert has given a succession of dates by which her reports would be delivered but, as is patently obvious, with no genuine or realistic expectation that any of the dates suggested could, in fact, be met.”

# THE SORRY TALE OF X AND Y (CONTINUED)



## A Harsh Light on Failings of an Expert

“I am deeply concerned about the way Dr Ward has behaved in this case. It does not meet the standards expected of an expert witness or the expectations of the court in this particular case. It cannot be allowed to pass without comment. That comment should be placed in the public domain.”

# ARKSEY AND CAMBRIDGE UNIVERSITY HOSPITALS TRUST



- Expert Consultant Neurosurgeon
  - Report Issued Before Witness Statements
  - Not aware of all the relevant factors
- his oral evidence was unimpressive. It was intemperate, at one stage he even used an expletive,



- “I regret to say that, in my judgment, Mr Sandeman's evidence fell far below the standard to be expected of a reasonable, competent expert witness, both in relation to the preparation of his reports and in relation to his preparing to give evidence. I could see no excuse for this whatever.”





- Winchester County Court
  - The need for Courtesy and Respect one to another

Complex Regional Pain Syndrome – no physical manifestations

Dr J appointed by Miss Ruffell.

Consultant to a London Hospital and Clinic on Harley Street.

# RUFFELL AND LOVATT (Continued)



- “Dr G is deliberately trying to raise the element of doubt in the examination findings of Miss Ruffell..... In my opinion Dr G is being misleading.”
- “Dr B does not appear to be aware of any of these basic facts.”
- “I cannot accept his views as he does not have the appropriate training and experience to make such comments and assertions.”

# RUFFELL AND LOVATT (Continued)



## The Written Evidence:

- Miss Ruffell's Medical Records
- Claim for Disability Allowance – 3 months before accident:
  - “The physical symptoms are so consuming, that I need the support of a trusted friend to break through the trance-like state.”

# RUFFELL AND LOVATT (Continued)



“The detail of this history stands in stark contrast to the impression of an active and healthy lifestyle given by the claimant in her witness statement..... and to the remarkable statement by Doctor [J] that prior to the index accident the claimant was “fit and well”.”

# RUFFELL AND LOVATT



- “I regret that I have been driven to the firm conclusion that his expert evidence in this case is so flawed that I cannot rely on any contentious aspect of the same.”
- “The contrast between Dr [J]’s determined advocacy of the claimant’s position and the more considered and balanced evidence of the other three medical experts was striking.”
- “...he repeatedly acted as an advocate for the claimant.”

# BDW TRADING AND INTEGRAL GEOTECHNICAL (WALES)



- Experienced Geotechnical Expert
- Changes to Joint Statement
- Hired Gun?

# YOUR FLEXIBLE FRIEND (PART ONE)



## Riva Properties Limited and Foster and Partners

Potential Costs of Building a Hotel

# YOUR FLEXIBLE FRIEND (PART ONE) (Continued)



Comment from the Judge on the QS Expert:

“I cannot avoid reaching the conclusion that he chose not to do so because he feared the answer to the exercise would harm the case being advanced by Fosters.”



# YOUR FLEXIBLE FRIEND (PART TWO)



- Exelon Corp. v Commissioner [2016] (USA)
- Tax Avoidance Scheme Involving Power Plants
- Sale and Leaseback

# YOUR FLEXIBLE FRIEND (PART TWO) (Continued)



## Instructing lawyers

'The Purchase Option Price is no less than 105% of the estimated "fair market value" of the Leased Property as of the expiration of the Lease term, taking into account inflation and any reasonably anticipated improvements or modifications to the Leased Property and after subtracting from such value any cost to the Lessor of acquiring possession of the Leased Property at the end of the Lease Term.'

## Valuers

'The Cancellation Option Price is no less than 105% of the estimated 'fair market value' of the Facility as of the expiration of the Lease Term, taking into account inflation and any reasonably anticipated improvements or modifications to the Facility and after subtracting from such value any cost to the Lessor of acquiring possession of the Facility at the end of the Lease Term.'

# YOUR FLEXIBLE FRIEND (PART TWO) (Continued)



## From the Written Decision

‘However, as we discussed above, [the lawyers’] tax opinions were based in large part on the appraisals prepared by [the valuers]. We found that [the lawyers] interfered with the integrity and the independence of the appraisal process by providing [the valuers] with a list of conclusions it expected to see in the appraisals to be able to issue tax opinions...Such interference improperly tainted the [valuers’] appraisal, rendering it useless.’

# THE SINGLE JOINT EXPERT



- Griffin and Wainwright
- Begum and Hossain
- Lindsay Joseph and LEBC
- David Maguire and 5pm Limited

# GRIFFIN AND WAINWRIGHT



- The Boathouse - £1.65 million or £4.5 million?



# BEGUM AND HOSSAIN



- What are the accounting records ?
- Manuscript Records of Takings



- IFA Business – Health Insurance
- Initial or Renewal Commission?

# LINDSAY JOSEPH AND LEBC (Continued)



- Value £294,000 or £1,088,000?
- Two national firms



# DAVID MAGUIRE AND 5PM LIMITED



- Issue of Valuation Report
- Not initially issued as a draft report.
- Valuer asks clients to treat as a draft.

# DIFFERENT PREMISES



VB Football Assets and Blackpool Football Club  
(Properties) Limited

Aswath Damodaran

Number crunchers

Story tellers



## The Experts:

Income Approach using DCF – which League?

Equity £48.1 million

Market Approach – “Impressionistic” – Prices for  
Which League Division Two clubs transacted.

Equity £5.5 million

# VB FOOTBALL ASSETS AND BLACKPOOL FOOTBALL CLUB (PROPERTIES) LIMITED



- Decision by Judge:
  - Same amount of cash as taken by Oystons to be paid to VB Football Assets - £26.8 million;
  - Repayment of amounts invested by VB Football Assets of £4.5 million
  - No further value in equity

# DIFFERENT PREMISES 2: FW AND FH [2019] EWHC 1338



- Private Equity Business
- Three experts
- Calibration?
- Should a Terminal Value be included?

# DIFFERENT PREMISES 2: FW AND FH [2019] EWHC 1338



- The Investment by A Limited in 2017 – indicative value of £100 million for equity?

# DIFFERENT PREMISES 2: FW AND FH [2019] EWHC 1338



What was basis for excluding a Terminal Value?

£18.8 million or nil?

Discount of 30% for equal largest holding of 40%

# CLIENTS' CONDUCT



- Gul Bottlers and Nichols plc
- Estera Trust and Singh
- Ingram and Hall and Ahmed
- Riva Properties and Foster and Partners



# CLIENTS' CONDUCT



Riva Properties and Foster and Partners

# CONCURRENT EVIDENCE



- Sir Rupert Jackson's 2010 Report
- July 2017 Supplemental Report
- Swains and Swains plc 2015
- Sudicka and Morgan 2019
- *This involved taking series of topics which were the major points in issue. Each witness had the opportunity to express a view about the topic and counsel and the parties had a chance to ask questions on that topic (and going to expertise generally). I also was able to ask question to clarify matters. For this sort of evidence it was a very effective way of proceeding."*

# WHEN IT ALL GOES WRONG (PART 2)



- Trial by Ordeal: Van Oord UK and Allseas UK
- Twelve Failings of Expert:
  - Did not reach his own view of acceptable rates
  - Did not read witness statements of other side
  - Did not prepare alternative figures
  - Did not consider actual costs incurred by claimant
  - The many errors in his report undermined his credibility
  - After cross examination he disowned his own reports

# WHEN IT ALL GOES WRONG (PART 2)



## Twelve Failings of Expert (continued):

- He accepted that parts of his own reports were misleading
- He appended documents to his report which he had not considered
- Assertions in the reports were those of the clients
- Maintained that schedule produced by clients was his own
- He recited what others had told him
- He used rates which were neither fair nor reasonable.

# WHEN IT ALL GOES WRONG (PART 2)



*“His abrupt departure from the witness box at a short break for the transcribers, never to return, was an indication of the undoubted stress he was under. But I regret to say that I came to the conclusions that his evidence was entirely worthless.”*



- By contrast, I found Mr Battersby to be a wholly straightforward and reliable witness

AND FINALLY...



Thank you for listening!