

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Claim No. PT-2020-BHM-000041

IN THE MATTER OF the Estate of Laurence Fell (Deceased)

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

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MAY 2021 AT 10.00AM**

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**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**(AGREED) CASE SUMMARY**

Served for Trial on 20<sup>th</sup> May 2021

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1. This is the trial of the Claimant's Part 8 Claim to remove the Defendant as an Executor of the estate of Laurence Fell ("the deceased").
2. The deceased died on 8<sup>th</sup> October 2019, aged 58, leaving a last will, dated 28<sup>th</sup> May 2008. The Claimant and the Defendant are two of the deceased's four brothers and were appointed as Executors by the deceased's will.
3. This is also the trial of the Defendant's Part 20 Claim to remove the Claimant as Executor of the deceased's estate.

**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**(AGREED) CHRONOLOGY**

Served for Trial on 20<sup>th</sup> May 2021

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06/04/2002	The Dennis Williams Spiers Fell Settlement
05/09/2002	Last Will of Dennis Williams Spiers Fell
10/04/2004	The Martin Anthony Fell Settlement
18/01/05	First Codicil to Dennis Fell's last Will
20/02/05	Margaret Fell dies
10/05/05	Second Codicil to Dennis Fell's last Will
14/01/06	Dennis Fell dies

24/04/07 Grant to the Defendant and Timothy to Dennis Fell's estate

28/05/08 Last Will of the deceased

06/04/11 Claimant resigns as Trustees of the 2002 Settlement and the 2004 Settlement

08/10/18 Transfer of freehold reversion in 99 Mossfield Road, Kings Heath from CPL to DFPL

18/09/19 DFPL transfers its reversionary interest in 99 Mossfield Road, Kings Heath to the Defendant and his wife

08/10/2019 Deceased dies

17/03/20 Claimant's Solicitor's initial letter seeking information

19/03/20 Claimant's Letter of Claim

22/04/20 Defendant's response to the Letter of Claim

14/05/20 Claim Form

06/11/20 First Directions' hearing and Application made in the face of the Court by the Defendant for permission Order to bring a Part 20 Claim for the removal of the Claimant

27/11/20 Part 20 Claim Form (by Defendant for removal of the Claimant)

06/01/21 Second Directions' hearing

19/01/21 Proceedings issued against the Defendant and Timothy for an Account as to  
Dennis's Estate and/or their removal (Claim Number PT-2021-BHM-  
000006)

**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**(AGREED) TRIAL TIMETABLE**

for Trial on 20<sup>th</sup> May 2021

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10:30 – 10:45	Housekeeping
10:45 – 12:15	Submissions from the Claimant
12:15 – 1:00	Submissions from the Defendant
2pm – 2:45	Submissions from the Defendant (continued)
2:45 – 3:00	Submissions by the Claimant in reply
3:00 – 4:30	Judgment (and costs)

1. Should the Defendant be removed as an Executor of the estate of Laurence Fell.
2. Should the Claimant be removed as an Executor of the estate of Laurence Fell.

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**(AGREED) PRE-READING**

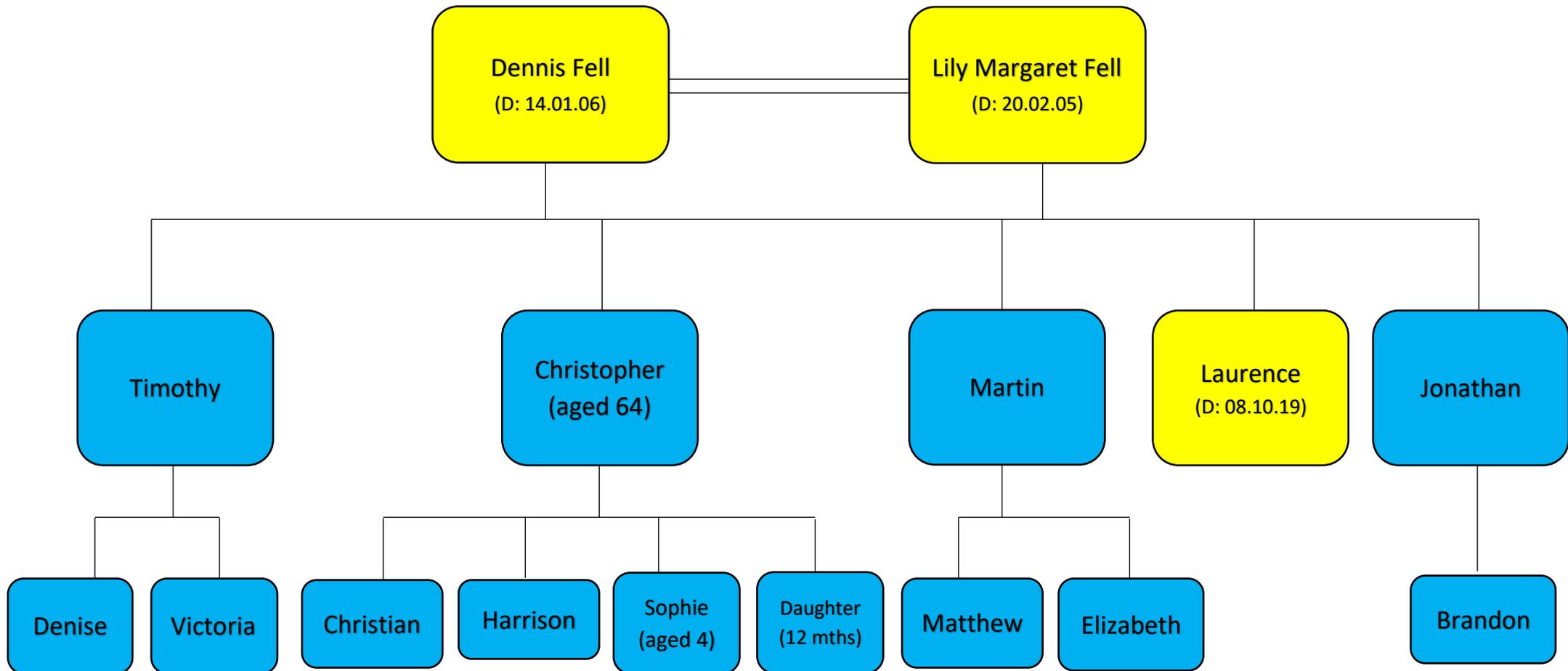
Served for Trial on 20<sup>th</sup> May 2021

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1. Family tree [Tab 5 of Trial Bundle]
2. Claim form [Tab 6 of Trial Bundle]
3. Part 20 Claim Form [Tab 15 of Trial Bundle]
4. C's first, second, third and fourth witness statements [Tab 7 of Trial Bundle], [Tab 11 of Trial Bundle], [Tab 12 of Trial Bundle] and [Tab 17 of Trial Bundle]
5. D's first, second and third witness statements [Tab 8 of Trial Bundle], [Tab 13 of Trial Bundle] and [Tab 16 of Trial Bundle]
6. Witness statement of Michelle West [Tab 9 of Trial Bundle]
7. Witness statement of Jonathan Fell [Tab 10 of Trial Bundle]

# Family Tree

(updated 20.12.19)





# Claim Form (CPR Part 8)



<b>In the</b> High Court of Justice Business and Property Courts at Birmingham Probate, Trusts and Probate List (ChD)	
<b>Claim no.</b>	PT-2020-BHM-000041
<b>Fee Account no.</b>	PBA0089151
<b>Help with Fees - Ref no.(if applicable)</b>	H W F - [ ] [ ] - [ ] [ ]

### Claimant

Mr Martin Anthony Fell

Camp House, Camp Lane, Henley-in-Arden, B95 5QQ  
(As an Executor of the Estate of Laurence James Fell, deceased)



### Defendant(s)

Mr Christopher John William Fell  
99 Mossfield Road, Kings Heath, Birmingham, B14 7JE  
(As the other Executor of the Estate of Laurence James Fell, Deceased)

Does your claim include any issues under the Human Rights Act 1998?  Yes  No

### Details of claim (see also overleaf)

1. Part 8 of the Civil Procedure Rules 1998 applies to this claim.
2. The Claimant claims the following relief:
  - a. An Order removing the Defendant as an Executor of the Estate of Laurence James Fell, deceased;
  - b. An Order that the Defendant pays the costs of this application; and
  - c. Such further or other Order as may be just.

**Defendant's name and address**  
Mr Christopher John William Fell  
c/o Wright Hassall LLP  
Olympus Avenue  
Leamington Spa  
Warwickshire  
CV34 6BF  
Ref: 1005/9091/052162.00004

	£
<b>Court fee</b>	528.00
<b>Legal representative's costs</b>	
<b>Issue date</b>	

For further details of the courts [www.gov.uk/find-court-tribunal](http://www.gov.uk/find-court-tribunal).  
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

Claim no.	
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**Details of claim (continued)**

3. The legal basis for the Claimant's claim is as follows:
  - a. Laurence James Fell deceased died on 8 October 2019, leaving a last Will dated 28 May 2008, but probate has not yet been applied for;
  - b. The said Will appoints the Claimant and Defendant as Executors;
  - c. The Defendant cannot continue as an Executor as there are significant matters concerning his conduct of the deceased's affairs during the deceased's life which require investigation and as such the Defendant is conflicted;
  - d. The Claimant has both requested the Defendant to provide information (including documentary evidence) as to his conduct but to the date hereof he has neglected and / or refused to do so; and
  - e. The Claimant has invited the Defendant to renounce his Executorship, and whilst he accepts he should, to the date hereof he has not done so, such that the intervention of the Court is required.
4. This claim is made under Section 50 of the Administration of Justice Act 1985.
5. The Claimant relies on his Witness Statement dated 13 May 2020, copies of which are served herewith.

**Statement of Truth**

I believe that the facts stated in this Claim Form are true. I understand that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:   
 Martin Anthony Fell (Claimant)

Date: 13.05.2020

<b>Statement of Truth</b>	
<del>*(I believe) (The claimant believes) that the facts stated in these particulars of claim are true. I am duly authorised by the claimant to sign this statement.</del>	
Full name _____	
Name of claimant's legal representative's firm _____	
signed _____	position or office held _____
<del>*(Claimant) (litigation friend) (legal representative)</del>	<del>(if signing on behalf of firm or company)</del>
<del>*delete as appropriate</del>	

Meridian Private Client LLP  
 Wood Rydings Court, Packington Lane  
 Little Packington  
 Warwickshire CV7 7HN

Claimant's or claimant's legal representative's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

01675 443465  
 Ref: MXA/FEL4.1

## Notes for claimant on completing a Part 8 claim form

- Please read all of these guidance notes before you begin completing the claim form. The notes follow the order in which information is required on the form.
- Court staff can help you fill in the claim form and give information about procedure once it has been issued. But they cannot give legal advice. If you need legal advice, for example, about the likely success of your claim or the evidence you need to prove it, you should contact a legal representative or a Citizens Advice Bureau.
- If you are filling in the claim form by hand, please use black ink and write in block capitals.
- You must file any written evidence to support your claim either in or with the claim form. Your written evidence must be verified by a statement of truth.
- Copy the completed claim form, the defendant's notes for guidance and your written evidence so that you have one copy for yourself, one copy for the court and one copy for each defendant. Send or take the forms and evidence to the court office with the appropriate fee. The court will tell you how much this is.

## Notes on completing the claim form

### Heading

You must fill in the heading of the form to indicate whether you want the claim to be issued in a county court or in the High Court (The High Court means either a District Registry (attached to a county court) or the Royal Courts of Justice in London).

Use whichever of the following is appropriate:

'In the County Court at.....'  
(inserting the name of the court)

or

'In the High Court of Justice.....Division'  
(inserting eg. 'Queen's Bench' or 'Chancery' as appropriate)

.....District Registry'  
(inserting the name of the District Registry)

or

'In the High Court of Justice.....Division,  
(inserting eg. 'Queen's Bench' or 'Chancery' as appropriate)  
Royal Courts of Justice'

### Claimant and defendant details

As the person issuing the claim, you are called the 'claimant'; the person you are suing is called the 'defendant'. Claimants who are under 18 years old (unless otherwise permitted by the court) and patients within the meaning of the Mental Health Act 1983 must have a litigation friend to issue and conduct court proceedings on their behalf. Court staff will tell you more about what you need to do if this applies to you.

You must provide the following information about yourself and the defendant according to the capacity in which you are suing and in which the defendant is being sued.

When suing or being sued as:-

#### an individual:

All known forenames and surname, whether Mr, Mrs, Miss, Ms or Other (e.g. Dr) and residential address (including postcode and telephone and any fax or e-mail number) within the United Kingdom or in any other European Economic Area (EEA) state. Where the defendant is a proprietor of a business, a partner in a firm or an individual sued in the name of a club or other unincorporated association, the address for service should be the usual or last known place of residence or principal place of business of the company, firm or club or other unincorporated association.

#### Where the individual is:

**under 18** write '(a child by Mr Joe Bloggs his litigation friend)' after the child's name.

**a patient within the meaning of the Mental Health Act 1983** write '(by Mr Joe Bloggs his litigation friend)' after the patient's name.

#### trading under another name

you must add the words 'trading as' and the trading name e.g. 'Mr John Smith trading as Smith's Groceries'.

#### suing or being sued in a representative capacity

you must say what that capacity is e.g. 'Mr Joe Bloggs as the representative of Mrs Sharon Bloggs (deceased)'.

#### suing or being sued in the name of a club or other unincorporated association

add the words 'suing/sued on behalf of' followed by the name of the club or other unincorporated association.

#### a firm

enter the name of the firm followed by the words 'a firm' e.g. 'Bandbox - a firm' and an address for service which is either a partner's residential address or the principal or last known place of business.

#### a corporation (other than a company)

enter the full name of the corporation and the address which is either its principal office or any other place where the corporation carries on activities and which has a real connection with the claim.

#### a company registered in England and Wales

enter the name of the company and an address which is either the company's registered office or any place of business that has a real, or the most, connection with the claim e.g. the shop where the goods were bought.

#### an overseas company (defined by s744 of the Companies Act 1985)

enter the name of the company and either the address registered under s691 of the Act or the address of the place of business having a real, or the most, connection with the claim.

## Details of claim

Under this heading you must set out either

- the question(s) you wish the court to decide; or
- the remedy you are seeking and the legal basis for your claim; and
- if your claim is being made under a specific CPR Part or practice direction, you must state which.

## Defendant's name and address

Enter in this box the full name and address of the defendant to be served with the claim form (i.e. one claim form for each defendant). If the defendant is to be served outside the European Economic Area, you may need to obtain the court's permission.

## Address for documents

Insert in this box the address at which you wish to receive documents, if different from the address you have already given under the heading 'Claimant'. The address you give must be either the business address of your legal representative or European Lawyer or your own residential or business address within the UK or in any other EEA state.

## Statement of truth

This must be signed by you, by your legal representative or your litigation friend, as appropriate.

Where the claimant is a registered company or a corporation the claim must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

## Notes for defendant (Part 8 claim form)

**Please read these notes carefully - they will help you to decide what to do about this claim.**

- You have 14 days\* from the date on which you were served with the claim form to respond to the claim
- If you do not return the acknowledgment of service, you will be allowed to attend any hearing of this claim but you will not be allowed to take part in the hearing unless the court gives you permission to do so
- Court staff can tell you about procedures but they cannot give legal advice. If you need legal advice, you should contact a solicitor or Citizens Advice Bureau immediately

### Time for responding

The completed acknowledgment of service must be returned to the court office within \*(14 days) ( ) of the date on which the claim form was served on you. If the claim form was:

- sent by post, the \*(14 days) ( ) begins 2 business days from the date of the postmark on the envelope.
- delivered or left at your address, the \*(14 days) ( ) begins the second business day after it was delivered.
- handed to you personally, the \*(14 days) ( ) begins on the second business day it was given to you.

### Completing the acknowledgment of service

You should complete sections A - E as appropriate. In all cases you must complete sections F and G.

#### Section A - not contesting the claim

If you do not wish to contest the remedy sought by the claimant in the claim form, you should complete section A. In some cases the claimant may only be seeking the court's directions as to how to act, rather than seeking a specific order. In these circumstances, if you wish the court to direct the claimant to act in a certain way, give brief details.

#### Section B - contesting the claim

If you do wish to contest the remedy sought by the claimant in the claim form, you should complete section B. If you seek a remedy different from that sought by the claimant, you should give brief details in the space provided.

#### Section C - disputing the court's jurisdiction

You should indicate your intention by completing section C and filing an application disputing the court's jurisdiction within 14 days of filing your acknowledgment of service at the court. The court will arrange a hearing date for the application and tell you and the claimant when and where to attend.

#### Section D - objecting to use of procedure

If you believe that the claimant should not have issued the claim under Part 8 because:

- there is a substantial dispute of fact involved; and
  - you do not agree that the rule or practice direction stated does provide for the claimant to use this procedure
- you should complete section D setting out your reasons in the space provided.

#### Section E - written evidence

Complete this section if you wish to rely on written evidence. You must send your written evidence to the court with your acknowledgment of service. It must be verified by a statement of truth or the court may disallow it. If you have agreed with the other party(ies)

an extension of time for filing your written evidence, a copy of your written agreement must be filed with your acknowledgment of service. Please note that the agreement can only extend time by 14 days from the date you file your acknowledgment of service.

### Claims under section 1 of the Inheritance (Provision for Family and Dependents) Act 1975

A defendant who is a personal representative of the deceased must file and serve written evidence which must state to the best of that person's ability:

- full details of the value of the deceased's net estate, as defined in section 25 of the Act;
- the person or classes of person beneficially interested in the estate, and
  - the names and (unless they are parties to the claim) addresses of all living beneficiaries; and
  - the value of their interests in the estate so far as they are known;
- whether any living beneficiary (and if so, naming him) is a child or protected party within the meaning of Rule 21.1(2); and
- any facts which might affect the exercise of the court's powers under the Act.

### Section F - name of defendant

Print your full name, or the full name of the defendant on whose behalf you are completing this form.

### Serving other parties

You must send to any other party named on the claim form, copies of both the acknowledgment of service and any written evidence, at the same time as you file them with the court.

### What happens next

The claimant may, within 14 days of receiving any written evidence from you, file further evidence in reply. On receipt of your acknowledgment of service, the court file will be referred to the judge for directions for the disposal of the claim. The court will contact you and tell you what to do next.

### Statement of truth

This must be signed by you, by your solicitor or your litigation friend, as appropriate.

Where the defendant is a registered company or a corporation the statement must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

*\*For claims under the Inheritance (Provision for Family and Dependents) Act 1975 the period is 21 days.*



On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 1  
Exhibits : "MAF1", "MAF2", "MAF3", "MAF4",  
"MAF5", "MAF6" &  
"MAF7"  
Date : 13.05.2020

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Claim No. \_\_\_\_\_

IN THE MATTER OF the Estate of Laurence Fell (Deceased)  
BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**WITNESS STATEMENT OF THE CLAIMANT**

---

I, Martin Anthony Fell, of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 5QQ, company director, wish to rely on the following evidence in support of this application to remove the Defendant as one of the Executors of my brother, Laurence's, estate:-

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. I am exhibiting to this statement seven exhibits marked "~~MAF1~~", "~~MAF2~~", "~~MAF3~~", "~~MAF4~~", "~~MAF5~~", "~~MAF6~~", and "~~MAF7~~". Where I quote page numbers in this witness statement, I am referring exhibits "~~MAF4~~", "~~MAF5~~", "~~MAF6~~", and "~~MAF7~~" and in each case make reference to the specific exhibit.

## **Introduction**

3. My parents, Dennis and Lily Margaret Fell ("Margaret"), had five children: myself, Christopher (the Defendant), Timothy, Jonathan and Laurence.
4. Laurence passed away on 8th October 2019. He was aged 58. He developed mental health problems during his twenties and was ultimately diagnosed as a paranoid schizophrenic, something which was to affect him for the rest of his life.
5. Given his condition, my parents were keen to ensure that he was looked after both during their lifetime and indeed after their deaths. They devoted themselves to Laurence, determined he received the very best care and comforts his condition would allow. As a result of this, Trusts were set up for him. This started after Margaret was diagnosed with cancer, and issues of estate planning became more important. Margaret was ill for 6 or 7 years before she died. Every family member, personal friends and close professional advisors, were fully aware of their wishes for Laurence to be well provided for after they were gone, and for Laurence's future financial security to be guaranteed.
6. Margaret passed away on 20<sup>th</sup> February 2005 and Dennis on 14<sup>th</sup> January 2006.
7. During his lifetime, my father built up and ran a number of successful property companies and held shares in them equally with Margaret. Timothy, Christopher and Laurence were employed by those companies for very many years up until and after the death of my parents. Jonathan and I had occasional periods of employment, with Jonathan employed at the time of my father's death.

## **The family companies**

8. The Dennis Fell Companies (a collection of separate companies rather than a Group) were built up over a lifetime by my father, and had successfully traded in property for 50 years or so. The companies' assets mainly comprised of substantial holdings of residential investments and freehold ground rents acquired over many years, with the ground rents in particular held at historic low book values.

9. The companies to which I refer are as follows:-

- (a) Dennis Fell Properties Limited ("DFPL")
- (b) Heronfield Developments Limited ("HDL")
- (c) Martinvale Developments Limited ("MDL") - (subsidiary of HDL)
- (d) Speedwell Estates Limited ("SEL") - (subsidiary of MDL)
- (e) Cressingham Properties Limited ("CPL")
- (f) Marymar Investments Limited ("MIL") - (subsidiary of CPL).

**The Dennis William Spiers Fell Settlement, dated 6<sup>th</sup> April 2002**

10. A Trust, ("the 2002 Settlement") was set up on 6 April 2002. A copy of the 2002 Settlement is attached at "MAF1". [Tab 3 - pages 11-40]
11. At the time this Trust was established, I understood that Laurence, as an employee of one of the companies, was in receipt of income (salary and pension contributions) in the region of £50,000 per annum. My father was the Settlor, and Christopher, my father and I were the original trustees. Laurence was the principal beneficiary, and the main purpose of the Trust was to ensure he was adequately provided for. I resigned as a Trustee on 6<sup>th</sup> April 2011, for the reasons I set out below.
12. I understand that Christopher and Timothy are the present Trustees and that the assets of the Trust comprised two shares (out of a total of 8) in DFPL, being 25% of the issued share capital, and six shares (out of a total of 24) in HDL, again 25% of the issued share capital. In turn, MDL is a subsidiary of HDL. MDL owns SEL.
13. Following Laurence's death, the fund is held on a discretionary trust for a class that includes me and my brothers. I understand that Christopher and Timothy have never prepared any Trust Accounts.

**The Martin Anthony Fell Settlement, dated 10<sup>th</sup> April 2004**

[Tab 7 - pages 51-81]

14. In 2004, a further Trust ("the 2004 Settlement") was subsequently created. A copy of the 2004 Settlement is attached at "**MAF2**". On this occasion, I was the Settlor and the original Trustees were my father, Christopher and I. The principal beneficiary was Laurence. This Trust initially arose out of a matured M&G investment, and the proceeds of this policy were used to purchase a residential investment property, 7 Yarningale, Harwood Grove, Shirley. This property became vacant and was sold in or around 2008 for £124,000. Subsequently, I understand, further investment properties were purchased and sold, rents received and cash held.
15. My understanding is that the Trust recently comprised of two properties (and the rent received from them), namely:-
- (a) 15 Scarborough Crescent, Maltby, Rotherham, South Yorkshire, S66 7HL ("15 Scarborough Crescent"); and
  - (b) 67 Teynham Crescent, Liverpool, L11 3BH ("67 Teynham Crescent").
16. I understand that the protected tenant vacated 15 Scarborough Crescent, and Timothy and Christopher decided to repair and refurbish the house rather than sell with vacant possession. However, there were insufficient funds in this Trust, and the Trust borrowed about £20,000 from Laurence's loan account in CPL. This needs to be repaid to his estate. I dispute that this loan was in Laurence's best interest, as he had little income or other funds.
17. I understand that both 67 Teynham Crescent and 15 Scarborough Crescent have recently been sold by way of auction. At "**MAF3**" I am attaching completion statements received from Jacqui Boyle and Marissa Jacquet, both of Grove Tompkins Bosworth ("GTB"). The net proceeds of sale in relation to 15 Scarborough Crescent were £43,796.25. In relation to 67 Teynham Crescent, the net proceeds of sale were £63,800. [Tabs 113 - pages 376-377][Tab 114 - pages 378-379][Tabs 116 and 117 - pages 382-385]
18. Following Laurence's death, then the fund is held on a discretionary trust for a class that includes my children and my brothers. I understand that Christopher and Timothy

have never prepared any Trust Accounts.

**The Will Trust of my Father, dated 5 September 2002 (together with two codicils)**

19. On 24<sup>th</sup> April 2007, Timothy and Christopher were Granted Probate to my father's last will, dated 5<sup>th</sup> September 2002, together with two codicils dated 18<sup>th</sup> January 2005 and 10<sup>th</sup> May 2005, out of the Birmingham District Probate Registry. The net estate was sworn at £684,976 (and the gross estate at £1,742,588). A copy of my Father's last will, the two codicils and the Grant of Probate are between pages ~~1 and 14~~ of "MAF4". [Tab 4 - pages 41-48] [Tabs 8 and 9 - pages 82-86] [Tab 18 - page 118]
20. I have seen some Estate Accounts prepared by GTB under which the sum of £258,139 was to be transferred into the Dennis Fell Will Trust for the benefit of Laurence and that such was achieved by the transfer in specie of 50 shares in CPL, being 50% of the issued share capital. The share value was the discounted probate value. A copy of these Estate Accounts are attached at pages ~~15 to 26~~ of "MAF4". [Tab 20 - pages 124-135]
21. Under the terms of the Dennis Fell Will Trust, the Trust Fund was held by the Trustees (being Timothy and Christopher) for the benefit of Laurence for life and then upon his death for Timothy, Christopher, Jonathan and I in equal shares. It follows that the income from the Will Trust is an asset of Laurence's estate.

**Laurence's Will**

22. Laurence left a last will, dated 28<sup>th</sup> May 2008, under which Christopher and I were appointed as Executors. A copy of Laurence's will is attached at pages ~~1 to 3~~ of "MAF5". [Tab 24 - pages 152-154]
23. Whilst she has stopped work due to issues that have arisen (which this Application is intended to resolve), Liz Wyatt of Penmans Solicitors has been instructed by Christopher and I in relation to the estate administration. No Grant of Probate has yet been issued.
24. Under the terms of the May 2008 will, Laurence's estate is due to be divided equally between his four brothers, being myself, Christopher, Jonathan and Timothy.

25. Insofar as his assets are concerned, Laurence had the following:-

- (a) The property known as 57 Meliden Road, Prestatyn, LL19 8RH. This property is registered in the joint names of Laurence and Jonathan. I am told that Jonathan has a 10% interest in it;
- (b) Cash in HSBC account(s) approximately £31,500;
- (c) Loan due from Jonathan £23,963.85 (recently repaid to Penmans);
- (d) Balance of loan due from CPL approximately £2,000;
- (e) Loan due from the 2004 Settlement of approximately £20,000;
- (f) Barclays ISA approximately £2,000;
- (g) Monies held by me of £7,818, which I disclosed to Penmans in my letter of 17<sup>th</sup> March 2020 (page 1 of "MAF6") when I copied them into the original letters dated 17 March 2020 sent to Christopher and Timothy (please see below);
- (h) The net proceeds of 39 Sandway Crescent, Liverpool, Merseyside, L11 2SN. This was a tenanted property that Laurence owned as an investment property. It was sold prior to his death because Laurence was running short of money as he had not been receiving money from the Trusts. He also had to cash in part of his pension; and
- (i) Personal Registration Number LJF 100 (Retention Certificate with Christopher).

[Tab 103 - page 343]

26. The only potential liabilities that I am currently aware of are:-

- (a) Outstanding Personal Tax Return y/e 5/4/19 – Tax liability (if any) unknown;
- (b) Personal Tax Return for period 6/4/19 to 8/10/19 – Tax liability (if any) unknown; and

- (c) Inheritance Tax ("IHT"), depending on the gifts made by Laurence in the last 7 years (of which I am presently unaware).

**The historic dispute / my resignation as Trustee**

27. Whilst I have initially been a Trustee of both the 2002 Settlement and the 2004 Settlement, from about 2008 Christopher started to refuse to provide me with any financial information about the companies whose shares we held as Trustees. This continued, and it was not just the company information that I was denied access to; it also included financial information as to Laurence and the Trusts themselves.
28. During my parents' lifetime it had always been the case that Laurence was paid salary and pension contributions by the family companies instead of paying dividends. Laurence's funds were administered by my father's assistant, Michele Hogg (nee West), who privately expressed misgivings to me on a number of occasions concerning the conduct of Timothy and Christopher, particularly with regard to increasing disparity in company drawings by Timothy and Christopher in comparison to Laurence. By the beginning of 2010 or thereabouts, I believe that Laurence's salary and pension had been substantially reduced.
29. Further, Christopher purchased Jonathan's shareholdings in two of the companies in clear conflict with his duties as a Trustee, as the Trusts should have acquired a proportion of the shares. I was also concerned that Timothy and Christopher expressed the view to me on more than one occasion that Laurence had plenty of assets and money whereas their needs were greater.
30. The position eventually reached in 2011 has parallels with the now, in that I was requesting information, but Christopher had refused to provide it (despite being the Financial Director and Company Secretary) and this was despite us having a 7½ hour trustee meeting in July 2010 at which Christopher failed to answer any relevant questions as to his financial dealings concerning Laurence.
31. Laurence (for matters relating to his sectioning under the Mental Health Act) instructed Solicitors who (understandably) wanted the funds paying to Laurence to which he was entitled to. I was concerned that I was being asked to release funds when I did not

know anything as to the financial situation the Trusts found themselves in (due to Christopher's failure to provide information), but as Laurence's Solicitors were threatening to issue proceedings, and Christopher instructed his own Solicitors, who threatened proceedings, I decided it was in Laurence's best interest that I simply walked away and resigned as Trustee on 6<sup>th</sup> April 2011.

32. I attach to this Statement at "~~MAF6~~" the relevant correspondence at this time:-

- (a) Penmans letter to GTB of 28<sup>th</sup> July 2010 (~~pages 2 to 5~~); [Tab 47 - pages 209-210]
- (b) Penmans letter to GTB of 4<sup>th</sup> November 2010 (~~pages 6 and 7~~); [Tab 61 - pages 226-227]
- (c) My letter to GTB of 15<sup>th</sup> November 2010 (~~pages 8 and 9~~); [Tab 62 - pages 228-229]
- (d) GTB's letter to me of 2<sup>nd</sup> February 2011 (~~pages 10 and 11~~); [Tab 63 - pages 230-231]
- (e) GTB's letter to Christopher of 2<sup>nd</sup> February 2011 (~~pages 12 and 13~~); [Tab 64 - pages 232-233]
- (f) My letter to GTB of 3<sup>rd</sup> February 2011 (~~pages 14 and 15~~); [Tab 65 - pages 234-235]
- (g) My further letter to GTB of 7<sup>th</sup> February 2011 (~~pages 16 and 17~~); [Tab 66 - pages 236-237]
- (h) Christopher's Solicitor's (Wright Hassall LLP) letter to me of 28<sup>th</sup> February 2011 (~~pages 18 and 19~~); [Tab 67 - pages 238-239]
- (i) GTB's email to me of 4<sup>th</sup> March 2011 at 10:00am (~~pages 20 and 21~~); [Tab 70 - pages 253-254]
- (j) My fax to GTB of 16<sup>th</sup> March 2011 (~~pages 22 and 23~~); [Tab 72 - pages 256-257] which properly reflects my position at that time and the reason for my resignation:-  
***"Again, I do not propose to repeat the litany of transgressions carried out by my brothers and in particular, Christopher, other than to state that I am both appalled and disgusted by their conduct in amongst other things putting their self-interest before that of Laurence and in total disregard of my late parents' wishes.***

***As we discussed and as you have stated in your email to me of 4<sup>th</sup> March, it appears that there is absolutely no desire whatsoever on the part of Christopher to behave in a fair or reasonable manner and that the only way to bring him to account would be through litigation. Clearly this would be financially ruinous and whilst I am confident I would ultimately be successful, this would in fact only exacerbate Laurence's financial position as the majority of his wealth is tied up in family company shares which inevitably would become valueless in such circumstances. As much as it distresses me to be unable to uphold my late parents' very strong wishes to safeguard Laurence's inheritance, I find myself in an utterly impossible position.***

***I believe it is now time for me to resign from all the Trusts involving my brothers and to make a clean and absolute break from them, both personally and businesswise. I do not wish either myself or my immediate family or business, to be associated, connected or tainted by them in any way, shape or form whatsoever. ... The only issue for me now is one of timing and in the light of the various threats of litigation, I would prefer to resign from the various Trusts at the earliest opportunity..."***

- (k) My letter to Wright Hassall, dated 18<sup>th</sup> March 2011 (~~pages 24 and 25~~). [Tab 73 - pages 258-259]

#### **After Laurence's death**

33. I was appointed as one of Laurence's Executors, and it therefore falls to me to collect in his estate, which includes ensuring that his Estate receives what it is entitled to receive from the Trusts and the family companies. Whilst I have not been involved in the family companies, I have recently become aware of certain transactions conducted in particular by Christopher (as well as Timothy), which appear to have disadvantaged Laurence (and therefore his Estate). For this reason, I instructed Solicitors to assist me in my capacity as one of Laurence's Executors and on 17<sup>th</sup> March 2020 (~~pages 1~~

[Tab 104 - pages 344-355]

~~to 12 of "MAF7"~~ they wrote to Christopher (as well as Timothy in similar terms) seeking information, as well as an authority from the family / company accountants to obtain information directly, so that I could, with professional advice, determine what the assets of Laurence's estate were and what steps should be taken to recover what was rightly his.

[Tab 104 - page 351]

34. At page 8 of that letter (~~page 8 of "MAF7"~~) my solicitors gave an example of steps that were taken to the detriment of Laurence. This relates to assets that were transferred from CPL to DFPL for sums significantly below true value. One of these, a freehold reversion secured on 99 Mossfield Road, Kings Heath, was transferred between these companies on the 8 October 2018 for a consideration of £10,400. In my opinion a true investment value would have been more like £60,000.

35. I further understand that Christopher transferred this reversion to himself and his wife on 18 September 2019 for a consideration of £32,000. In my opinion a more realistic investment value would have been £70,000, and a 'non-qualifier' open market value much higher still. This transaction was entered into to facilitate the merging of the freehold reversion (there were only 18 years unexpired) with the short leasehold vacant possession house which he had purchased simultaneously at £260,000. In my opinion the freehold value of the merged interests was in excess of £400,000.

36. In addition, I was concerned as my brother Jonathan told me that Christopher and Timothy intended to sell company properties and pay themselves the proceeds. For this reason, I sought undertakings from Timothy and Christopher and the companies (of which they were directors). These were eventually provided (~~and are at pages 13 to 21 of "MAF7"~~) [Tab 105 pages 356-364]. The authority was also given to deliver up documentation (~~pages 22 and 23~~) but to date the accountant has not cooperated (see letter dated 24 April 2020 which is at ~~page 24 of "MAF7"~~) [Tab 119 - page 389]

[Tabs 106 and 111 - pages 365 and 374]

37. However, I have still not received any substantive response to these requests for information, despite almost 2 months having passed. Even if (which I do not accept) Christopher does not have access to the Companies' paperwork, he has access to the Companies' electronic records and I understand that he has the company computer at home for just this purpose. In any event, he can provide detailed information as to some of the recent matters raised in the letter (of which he is no doubt well aware). I

understand that Timothy goes into the office each day and could no doubt be asked to provide any documents to Christopher or to me.

38. In fact, this is simply the background to this Application. On 19<sup>th</sup> March 2020 (~~pages 25 and 26 of "MAF7"~~), my Solicitors wrote a formal letter to Christopher asking him to stand aside as an Executor of Laurence's estate due to the conflict that arose due to the matters raised in the 17 March letter. The claim to remove him as Executor is made under:-

(a) Section 116 of the Senior Courts Act 1981; and/or

(b) Section 50 of the Administration of Justice Act 1985

39. Christopher was already well-aware that he should not continue to be an Executor, as this was advised to him by Liz Wyatt of Penmans Solicitors by letter dated 12<sup>th</sup> March 2020 (~~page 27 of "MAF7"~~). [Tab 99 - page 331]

40. In response to the letter Christopher emailed my Solicitors at 17:52pm on 19 March 2020 (~~pages 28 and 29 of "MAF7"~~) stating, amongst other things, that the directors had not seriously adversely prejudiced Laurence. My Solicitors responded on 20 March (~~pages 30 and 31 of "MAF7"~~) reiterating what it was that I was seeking. In response to the letter he emailed my Solicitors on 20 March at 16:29pm (~~pages 32 and 33 of "MAF7"~~) accepting that he would stand aside when stating in the penultimate paragraph:-

***"I will confirm next week my standing down as executor"***

On 23 March at 02:28am Christopher wrote to my solicitors stating, amongst other things, that he would reply more fully to the letter of 17 March (~~page 34 of "MAF7"~~). [Tab 112 - page 375]  
On 2 April my Solicitors sent him the renunciation form to sign (~~pages 35 and 36 of "MAF7"~~) but that has not been returned. [Tab 115 - pages 380-381]

41. Christopher then instructed Solicitors who (very belatedly) wrote on 22<sup>nd</sup> April 2020 in response to the formal letter of claim (~~pages 37 to 39 of "MAF7"~~). In this letter they admit that Christopher should stand aside, so this appears no longer to be in issue, [Tab 118 - pages 386, 388]

but they appear to assert that I should also stand aside. The letter fails to set out any properly particularised reason for this, so on 27<sup>th</sup> April 2020 (pages 40 to 43 of "MAF7") [Tab 121 - page 391-394] my Solicitors responded answering the points made and seeking particulars as to why I should stand aside and be replaced by expensive 'independent' Personal Representatives. They will have to conduct the same enquiries as I intend to do and (if they do not) I, as a beneficiary of Laurence's estate, will still have standing to do so. The response to that letter, dated 5<sup>th</sup> May 2020 (which was received after the deadline and when Counsel had commenced drafting these proceedings) (page 44 of "MAF7") [Tab 122 - page 395] did not advance the question of why I should be removed at all.

42. I anticipate that given the Covid19 lockdown, Christopher will say that he cannot properly respond to the claim. However, given Christopher has already accepted that he needs to be removed as one of Laurence's Executors, then he does not need to provide any further evidence on such matters. As I have not been involved in the running of the Trusts since March 2011 or the family companies at all (and had no access to information in the period following my father's death), I do not see why Christopher cannot respond to the claim within the normal timetable set down in the rules. Christopher has already instructed a Solicitor, who is aware of the issues raised by these proceedings. The recent delay in correspondence, is simply Christopher refusing to deal with the difficult questions he has to face.
43. In the premises, I invite the Court to remove Christopher as one of Laurence's Executors. There is no need to replace him, as Laurence did not own any real Property in his sole name at the date of his death, so there is no need for a second Personal Representative to be appointed.

#### **STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed ...  .....  
Mr Martin Anthony Fell

Dated this 13<sup>th</sup> day of May 2020

Claim No. \_\_\_\_\_

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell  
(Deceased)

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**WITNESS STATEMENT OF CLAIMANT**

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Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

Party: Defendant  
Name: Christopher John William Fell  
No. of Statement: First  
Exhibit: CJWF1  
Date: 17 June 2020

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**Claim No. PT-2020-BHM-000041**

**B E T W E E N:**

**MARTIN ANTHONY FELL**

-and-

Claimant

**CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**FIRST WITNESS STATEMENT OF THE DEFENDANT IN RESPONSE TO  
THE CLAIMANTS CLAIM ISSUED ON 14 MAY 2020**

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I, Christopher John William Fell of 99 Mossfield Road, Kings Heath, Birmingham, West Midlands, B14 7JE WILL SAY as follows:

1. I am the Defendant and I make this witness statement in response to Martin's ("Martin") claim to remove me as one of the executors of my brother, Laurence Fell (deceased) ("Laurence's") estate as detailed in his Claim Form dated 14 May 2020 and Witness Statement dated 13 May 2020 ("the Chris's Witness Statement") together with exhibits MAF1 to MAF7.
2. In order to avoid unnecessary repetition of information and documents, throughout my witness statement, I refer to paragraphs and exhibits of Martin's Witness Statement. I have adopted the same abbreviations for my family in this witness statement as in Martin's Witness Statement.
3. I understand that Martin is alleging that I have a conflict of interest in being an Executor of Laurence's estate. My response to the points which Martin has raised are detailed below under the heading "Response to Martin's witness statement". It is my opinion, it is clear that Martin has a conflict of interest in being an Executor of Laurence's Estate for the reasons given below under the heading "Conflict of interest". As a consequence Martin should be removed as an Executor. Martin is very much a confrontational character, who will take an aggressive stance to litigation, as can clearly be shown by the correspondence I have received from his solicitors

and the content of his witness statement. As both Martin and I openly accept that we will have difficulties in acting as joint executors, in order to avoid unnecessary legal costs being incurred, prior to this litigation I openly offered that both Martin and I be removed as Executors and an independent Executor be appointed. This offer was made to allow Martin to “save face” and I did not want to be involved in continuing arguments with Martin, which have now lasted on/off for 2 decades. Equally, however, I do not accept that I should step down as an Executor and allow Martin to be an Executor and administer the Estate, as he has a clear conflict of interest as detailed below.

4. As I have stated in correspondence, a lot of the information requested by Martin relates to various companies, which are not a party to this litigation. Clearly such companies will need to be separately advised as to the merits of any requests made. Accordingly, this witness statement only deals with matters which I am able to personally comment upon. In addition, at the time this witness statement was prepared I have been and continue to self-isolate due to the Covid-19 pandemic. I am nearly sixty-five and have diabetes and partial epilepsy and take daily medication for both. Although not formally part of the shielded group, I considered from an early stage that my condition is such that I am at a greater risk than many in the population. I took my children out of school on 13 March (before formal lock-down started) and we have been self-isolating since then. I have been hampered by not having documents to hand at home and accordingly a lot of the information detailed below is my best recollection of events.

#### **Conflict of Interest**

5. In short, Martin owes substantial monies to Laurence’s estate (as detailed at paragraph 33g and 34 below) which to date he has failed to account for. I do not believe it is remotely appropriate for him to investigate himself.
6. In addition to the above, Martin complains about dealings of various trusts which were set up for the benefit of Laurence. Martin was a Trustee of such Trusts, in one instance for 9 years. Accordingly, if he has reservations regarding these Trusts and whether monies are owing to Laurence’s estate, I fail to understand how there is not a conflict of interest, as Martin in his role as an Executor of Laurence’s estate will be investigating himself, in his role as a Trustee.

#### **Response to Martin’s witness statement**

7. I confirm that paragraphs 3, 4 and 6 of Martin’s Witness Statement in relation to our family are accurate. I agree with the majority of the contents of paragraph 5, however, I recall that our mother had cancer for over 10 years, not 6 or 7. Jonathan’s recollection is that our mother in fact had cancer for some seventeen years.

### The family companies

8. In relation to paragraph 7 of the Martin's Witness Statement, it is correct that our father built up and ran numerous property companies. The number of companies owned and ran by the family fluctuated over the years and was as high as about 34 companies at its peak. Over the years the number of family companies have been reduced to 5, being:
- a. Dennis Fell Properties Limited ("**Dennis Fell**");
  - b. Heronfield Development Limited ("**Heronfield**");
  - c. Martinvale Developments Limited ("**Martinvale**");
  - d. Speedwell Estates Limited ("**Speedwell**"); and
  - e. Cressingham Properties Limited ("**Cressingham**").

I refer to the above 5 companies together as, ("**the Companies**").

9. I have not included Marymar Investment Limited in the Companies above as it was dissolved in March 2015. It is correct at paragraph 8 of Martin's witness statement that the Companies assets mainly comprise of holdings of residential investments and freehold ground rents acquired over many years.
10. Martin, Tim, Jonathan, Laurence and I were all employed by the Companies over differing periods and in our own individual roles. I have no idea whether the Companies will have specific details as to the time/roles/employment my brothers worked for them. Detailed below is my best recollection.

### Family roles in the Companies

11. I worked as company accountant and secretary and I was employed in the Companies from about 1982 until around 1992 or 1993 which is when I fell ill suffering from partial epilepsy which I acquired following an accident in 1967. I was also a director of some of the companies. There was a period of time from around 1993 until approximately 2001 that I was not employed by the Companies and instead set up a successful beauty salon with my wife. In 2001, I returned to work in the Companies and have remained there since.
12. Historically, our father owned a golf course and Martin was employed originally on father's golf course. From early to mid-1970s Martin worked in the Companies assisting and dealing with the ground rents in the Companies until approximately 2001. The ground rents were several thousand in number and I understand that not only did he earn a salary for managing the ground

rents but also that he earned a commission for the same. Tim worked for the Companies from approximately 1973, since the age of approximately 22 or 23 years old. His role was in purchasing and selling investment properties for the Companies. Eventually, by the time Martin was about thirty years old, Tim had taken over the residential investment properties and Martin dealt with the freehold ground rents. Our father still had significant input.

13. Laurence was employed from approximately 1981 until about 2010 or 2011. However, he suffered with his mental health and he was schizophrenic. As he was ill, I remember that Laurence would spend time with father, Tim or Martin in the office.
14. Jonathan worked for the Companies on an on and off basis from about 1987 until 1992 when he dealt with repairs and the maintenance of the investment properties. During that period we also purchased properties which required improvement to sell.

The Dennis William Spiers Fell Settlement dated 6 April 2002 ("the 2002 Settlement")

15. I confirm that paragraph 10, referring to MAF1, a copy of the 2002 Settlement, is accurate.
16. In relation to paragraph 11, I agree with the majority of it save that I recall that Laurence was employed by the Companies from 1981 onwards, as I set out above. However, I do not think it is correct that he was paid in the region of £50,000 per year. I remember that Laurence was paid a salary of approximately £18,000 per year in 2002 and so I consider it a substantial increase if he was ever paid in the region of £50,000. Further, from about 2002 onwards father only earned around £10,000 or £20,000 per year in salary as he had a substantial pension and so, it seems high and certainly not my recollection that Laurence was ever paid in the region of £50,000 per year by the Companies. This will need to be clarified by the Companies.
17. In April 2002, my father transferred to me, Tim, Jonathan and Laurence (in trust) each 25% of the shareholdings in Dennis Fell, Heronfield, Martinvale and Speedwell, meaning that we owned the companies together, in equal shares. Father kept Cressingham and Marymar for himself. I understood that father transferred the 4 companies mentioned above ("the Four Companies") because, firstly he and mother were in ill health; and secondly, that father wanted to equalise assets/income between his 5 children.
18. From 1992 onwards, Martin and my father jointly owned a company together in equal shares. In about 2000 or 2001 Martin persuaded my father to transfer 5% of his 50% in the company to one of Martin's children. This left my father with a 45% share in the company and Martin's family with a 55% in the company. As Martin's family owned the majority of the company, their attitude

towards father changed in relation to the company and they referred to it as 'their' company. I understand from my mother that she felt that Martin had taken advantage of father's and her illness' and so was reluctant to give him an interest in future companies, such as the Four Companies. None of us paid for our interest in the Four Companies. By this time, Martin had already purchased approximately 400 ground rents from father at base cost only (which were worth significantly more than he paid) and owned a majority share in a company with father.

19. In relation to paragraph 12 and 13, I confirm that they are accurate to my knowledge. As far as the trust accounts are concerned, Grove Tompkins Bosworth, who acted for the companies and for the trust, confirmed to me that they did not feel that trust accounts were required on an annual basis as Laurence was paid all of the income from the trust.
20. Martin, my father and I were initially named as joint trustees for the 2002 Settlement.
21. Between 2002 and 2006, my father retained his shareholding in and directorship of Cressingham and Marymar and did not take an active role as a trustee of the 2002 Settlement. Dividends for The Four Companies were assessed on a year by year basis and some years they were not paid. Between about 2002 and 2006, I would often decide whether to pay a dividend with father's approval. I do not recall which years from 2002 dividends were paid. Between 2006 and 2011, I decided whether dividends were paid. I do not have the information to hand as to when and the amounts of the dividends which were paid. Clearly this is information which the Companies will need to take legal advice upon as to whether it can be disclosed.
22. In 2007 and 2008, there was a significant economic downturn and there was a risk the Companies would not survive. The bank ordered the repayment of the revolving facility of £1m within six months and assets had to be sold to pay the same. Again, I do not have specific information to hand, which will need to be addressed to the Companies.
23. From 2011, Timothy was appointed as a joint trustee. I am not aware that at any time the trustees have produced Trust Accounts, including the 9 years Martin was a trustee. Any criticism that Trust Accounts have not been prepared equally applies to Martin for the period he was a trustee.
24. Between 2002 and 2010, I do not recall Martin and I having any specific conversation regarding our roles as trustees or whether monies should be paid to Laurence. I never sought legal advice in relation to my duties and responsibilities as a trustee of the 2002 Settlement. I understood the role of a trustee to mean putting the beneficiaries' needs first. I do not know whether Martin sought any legal advice on his role as a trustee.

25. Between 2006 and 2009, Martin did not ask for any information in relation to the Companies except on one occasion. In or around 2009/2010, Jonathan wanted to sell his shares in all of the Companies and at that point, Martin expressed an interest in buying the shares personally and so requested the Companies information. He requested not only the accounts but also stock sheets, individual valuations etc. I considered Martin to be a competitor to the Companies, given Martin's background (not least the purchase of 400 odd ground rents from father and his interests in companies that dealt in freehold ground rents) and so was reluctant to hand over the company information to him. When I looked at the articles of association for the Companies, I noticed that there was reference to the shares being offered first to existing shareholders before anyone else. In accordance with the articles of association, I called a formal trustee meeting, after giving the required notice, at Fell House. Tim, Jonathan and I attended. As a trustee, Martin was also invited; however, he did not attend. At the meeting, I voted for Laurence to have the shares, however, Jonathan did not want that. During this process, Martin did not raise any concerns about Laurence or enquire about what monies had been paid to Laurence.
26. As I understood matters, the request for the Companies information (which went far beyond what a trustee is allowed to see) had nothing to do with the trust but instead was for Martin's own personal business dealings.

The Martin Anthony Fell Settlement dated 10 April 2004 ("the 2004 Settlement")

27. I agree that paragraph 14 of Martin's Witness Statement is accurate save for the omission of some relevant history. In 1992, when Mother retired from Taymatic Ltd, an engineering business, at the age of 60 she received a lump sum of about £40,000. That same year, mother was directed by father to loan the money to Martin for a joint company. The condition was that Martin would set up an M&G policy (for a ten year period) with the eventual proceeds being split between the remainder of the brothers. I understand that it was those monies which were used to purchase 7 Yarningale, Harwood Grove, Shirley ("Harwood Grove"), which formed the basis of the 2004 Settlement. I do not have any paperwork for Harwood Grove. I am not aware that Martin paid any of this rental income to Laurence and no requests were made to me regarding releasing any funds. When Harwood Grove was sold, all of the sale proceeds were paid into Grove Tompkins Bosworth's bank account, instructed I think by Tim.
28. I confirm that paragraph 15 of Martin's Witness Statement is accurate and I have adopted the same abbreviations for 15 Scarbrough Crescent and 67 Teynham Crescent.

29. In relation to paragraph 16, in or about 2018 15 Scarbrough Crescent became empty. Before it could be re-let, a considerable amount of renovation works were required before it could be rented out. This would also have increased the value of the property. The renovation works cost between £15,000 and £18,000. At the time of signing this statement, due to self-isolating, I have not been able to check the paperwork for the exact amount of the works. The monies were paid out by the companies to renovate trust property and need to be repaid to them.
30. I believe that paragraphs 17 and 18 of Martin's Witness Statement are accurate. I was advised by Grove Tompkins Bosworth that trust accounts were not required

The Will Trust of my Father, dated 5 September 2002 (together with two codicils)

31. I confirm that paragraphs 19, 20 and 21 of the Claimant's Witness Statement are accurate.

Laurence's Will

32. I confirm that paragraphs 22, 23 and 24 of the Martin's Witness Statement are accurate.
33. In relation to Laurence's assets, my comments are as follows:
- a. 57 Meliden Road, Prestatyn, LL19 8RH ("Meliden Road"). I understand that Laurence and Jonathan bought Meliden Road in 2011 for £157,000. When they bought it, it was a wreck and needed approximately £50,000 worth of work doing to it to bring the property up to a good standard. I understand this property is now worth about £325,000.
  - b. Cash in HSBC (£31,500). I understand this is correct and I recall seeing bank statements for this.
  - c. Loan due from Jonathan of £23,963.85 (recently repaid to Penmans). This is correct. I understand that when the property at Sandway Crescent, Liverpool was sold, Jonathan borrowed monies from Laurence to purchase a property which he already owned the ground rent to as he considered it would be more profitable to sell both the property and ground rent together. He borrowed the monies from Laurence for this.
  - d. Balance of loan due from Cressingham of approximately £2,000. I do not have the exact figures relating to Laurence, but I understand that the monies owing to Laurence in relation to his loan account are approximately £28,000 to £30,000. The sum of about £10,000 has been spent on funeral and other associated expenses which need to be deducted from that loan which leaves a balance of about £20,000. If Martin means that the £18,000 odd I referred to in paragraph 31 above which the companies provided to renovate should be paid back by way of a reduction of the amount loaned by Laurence to the company, I

suspect this might be correct. If not, I do not understand how the figure of £2,000 has been arrived at.

- e. Loan due from the 2004 Settlement of approximately £20,000. I do not understand what this is.
  - f. Barclays ISA (£2,000). I have not seen any statements for this and so I am not able to confirm whether or not this is accurate.
  - g. Monies held by Martin (£7,818) which he disclosed to Penmans in his letter to them dated 17 March 2020. I understand Martin owes considerably more monies to Laurence. It is interesting to note that Martin made no reference to monies owing to Laurence prior to 17 March 2020, even though he had been asked by Penmans as to what he understood formed part of Laurence's estate. In 2019 I was present, together with Martin and Tim at Fell House whereby Martin asked whether anyone owes Laurence any money. I replied to Martin, "*apart from you?*" and he became extremely angry and asked me whether "*I really want to go there*". I understood that Martin owed Laurence £16,000 and I have not seen any evidence to support that any monies have been repaid. Clearly this will need to be investigated and I understand this creates a conflict of interest in Martin continuing as an Executor of Laurence's estate.
  - h. The net proceeds of 39 Sandway Crescent, Liverpool, Merseyside, L11 2SN ("Sandway Crescent"). Sandway Crescent was sold, however, I do not believe that Laurence was short of monies. Again, Martin has not provided any evidence to support his throw away comments.
  - i. Personal registration number LJF100. This belongs to Cressingham and so does not fall into Laurence's estate. Clearly Cressingham will need to make representations in due course. I also understand that Martin owes Laurence's estate £3,600 in relation to a number plate that he took belonging to Laurence's (1MAF). I understand that the number plate is currently on Martin's son's car. I consider that the Martin owes further significant monies to Laurence's estate and investigations need to be undertaken of his bank statements.
34. In addition to the above, there were 16 properties at Sker Walk, that father held a 25% share in (via a company called Coolrace Ltd originally owned by Martin, father and father's business associate David Sumash). The properties on Sker Walk were old ground rents. There was an agreement in place between Martin, Tim and myself that a 5% proportion of the monies earned from the ground rents from 2001 in Skerr Walk would be paid to Laurence. Martin agreed that as and when the Skerr Walk ground rents were sold, he would split the proceeds between the 5 brothers equally. I am not aware that Laurence has received any monies from Sker Walk. Again, an investigation will need to be undertaken as to monies received by Martin and the amounts paid to Laurence. Again, this shows a clear conflict of interest in Martin continuing to be an Executor of Laurence's estate.

35. From the information I have seen to date, I agree with the liabilities Martin details in paragraph 26 of his Witness Statement.

The historic dispute and the Claimant's resignation as trustee

36. In relation to paragraph 27, as detailed in paragraph 25 of this witness statement in or around 2009/2010, Martin was interested in purchasing Jonathan's shares in the Companies and taking over the ground rents. As Martin was a competitor to the Companies, I was reluctant to hand over to Martin any information over above the information he was entitled to as a trustee. Martin requested financial information from the Companies not as a trustee but as a potential business deal to benefit himself. This is the only occasion that I have withheld information from Martin. The accounts have always been available. Otherwise, Martin has never requested any information or trust accounts. Whilst an Executor, at no time did Martin pursue any Court action regarding the trusts, which he now complains about.
37. I recall that some dividends were paid to Laurence and it was not just salary and pension contributions that Laurence received. I was not a party to any conversations between Martin and Michele Hogg in relation to any alleged misgivings. Neither he nor she raised any concern with me. In 2007 and 2008, there was a financial crash which impacted the properties in the Companies and as such, pensions were reduced or halted. Requests regarding this historical information should be addressed to the Companies, as I am not in receipt of this information.
38. In relation to me purchasing Laurence's shares, my recollection is that although all the articles were slightly different the main theme was that the shares should first be offered to existing shareholders in proportion to their existing shareholdings. As it happened the Trust could buy the shares as Martin did not turn up. The trust itself didn't have the money to buy the shares. Therefore, Tim and I purchased the shares equally. There was an understanding that Martin was to be excluded from the companies.
39. I do not recall the specific meeting that Martin talks about at paragraph 30 of his Witness Statement. The only meeting of significance that I can remember is one where both Mike Ingamells (GTB) and Chris Denny (the company accountant) were present and the meeting was held at Grove Tompkins. Without further information I'm unable to confirm.
40. In relation to paragraph 31, I accept Laurence instructed solicitors in 2010 requesting funds from the various trusts to be paid to him. I wanted these funds to be paid but Martin refused. Laurence had made a valid request for the income to be paid to himself according to the Trust

Deed. He also required his solicitor to write. Laurence's doctor had deemed him compos mentis and capable of making financial decisions. If, Martin genuinely had concerns, I understand he could have issued proceedings seeking an account, which he did not do. Instead, after I instructed Wright Hassall to threaten his removal as Trustees of the various trusts if monies were not paid to Laurence, he simply stepped down as Trustee claiming it was in Laurence's best interests. I do not understand, as a Trustee acting in Laurence's best interests, if he had genuine concerns regarding the funds, he would simply walk away without investigating the same.

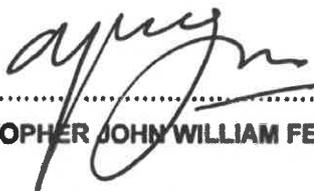
#### After Laurence's Death

41. I have read exhibit MAF7 and at page 8 it refers to assets being transferred from Cressingham to Dennis Fell Properties for sums significantly below true value. I have noted no professional valuations have been produced by Martin to support his allegations and clearly Cressingham and Dennis Fell Properties are best placed to respond to his concerns in relation to 99 Mossfield Road, Kings Heath ("Mossfield Road"). Complaint is made firstly in relation to the transfer from Cressingham to Dennis Fell of the freehold reversion to Mossfield Road on 8 October 2018 for consideration of £10,800. The Claimant estimates that the true value would have been more like £60,000. In relation to this transaction, a transfer did take place on 8 October 2018 for £10,400. Although I now appreciate that Mossfield Road was worth approximately £55,000, however, at the time, I thought that £10,400 was a reasonable price to pay. However, upon reflection, I agree that it should have been approximately £55,000. Subject to any comment from either company it appears that there will need to be an account taken between Cressingham and Dennis Fell to determine what properly ought to be repaid. I can confirm that I have paid £32,000 for the freehold reversion of this property. Further I purchased the shorthold leasehold for £260,000.
42. In relation to 4 Forest Road, Oldbury I can confirm that I purchased the leasehold for around £110,000. 4 Forest Road was water damaged and I could not get a lender to give a mortgage in order for me to renovate the property. I decided to put the freehold and leasehold up for auction and I was lucky it sold for around £170,000.
43. In relation to paragraph 36 of the Claimant's Witness Statement, it is entirely incorrect that Tim and I intended to sell company properties and keep the sale proceeds. I felt pressured by the Martin to sign the undertaking that he mentions in his Witness Statement. Martin stated that he would 'sue me' if I did not sign it.
44. In relation to paragraph 37 of Martin's Witness Statement, it is correct that I require papers from Fell House in order to respond in detail. The only documents that I am able to access

electronically are the company's salary details, which are not required here. Given the current pandemic and the current Government advice, I am unable to travel to Fell House in order to obtain the relevant information. I will do so once it is safe for me to do so.

45. In relation to my e-mail to the Claimant's Solicitors on 20 March 2020 confirming that I would stand down as executor, I did not think that I had any choice in the matter as this was prior to me obtaining legal advice. In relation to me being removed as an executor, I am agreeable to stepping down, on the basis that the Claimant also steps down and an independent professional executor is appointed to make investigations into Laurence's estate and monies owed to it.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



.....  
**CHRISTOPHER JOHN WILLIAM FELL**

Dated: 17 JUNE 2020 .....

On behalf of : Claimant  
Statement of : Michele Elizabeth West  
Number : 1  
Exhibits :  
Date : 14-07-20

**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell (Deceased)

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**WITNESS STATEMENT OF MICHELE ELIZABETH WEST**

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I, Michele Elizabeth West, of 14 Lawrence Gardens, Kenilworth, CV8 2GH, retired, make this statement in relation to the estate of Laurence Fell (Deceased):-

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.

**Introduction**

2. I am saddened to hear of the current dispute between Christopher and Martin in respect of Laurence's estate. I spent a great deal of my life working for the Fell family and became very fond of and close to Laurence.
3. I confirm that I have been provided with copies of Martin's witness statement and exhibits dated 13 May 2020, and Christopher's witness statement dated 17 June 2020.
4. I have known the Fell family for over 20 years. I was employed by Dennis Fell in August

1988 as a secretary and remained as an employee of the Dennis Fell group until 27 February 2008.

5. During my employment, I got to know all members of the Fell family well; Dennis, Margaret and the five children, and their families. All of the children were employed by the companies in some respect during the period of my employment.
6. My employment initially began as a part time secretary within the company. Over the years my role changed, and I became the personal assistant to Dennis. This was a varied role and included responsibilities such as keeping cash books and other financial information for the company. I regularly dealt with the salaries and general banking. I had a particularly close relationship with Dennis and Margaret and I had their full trust in all of the tasks I was assigned. I was also involved in a number of personal matters for Dennis, which included, for instance, the sale of his shares.
7. I believe the trust that Dennis had in me was evidenced by the fact I was later officially appointed as the Company Secretary of Dennis Fell Properties Limited, Heronfield Developments Limited, Martinvale Developments Limited and Speedwell Estates Limited in the period 28 April 2005 to 24 January 2007. I also became company secretary of Cressingham Properties Limited and Marymar Investments Limited between 20 January 2006 to 24 January 2007.
8. I resigned from this position and Christopher became the Company Secretary within all of the aforementioned companies. As stated in paragraph 4, I remained as an employee of the companies for a further year and left on 27 February 2008.
9. I became a friend of Laurence and understood right from the outset that he had an illness. I know that he was eventually diagnosed as a paranoid schizophrenic. However when I started working for Dennis, the effects of his illness were not so severe. However, his deterioration was very evident and towards the end of my time at the companies there was a marked difference. The effects became progressively worse and were more pronounced. I recall on occasions I would prepare his tablets or take him for a walk if he got a little worked up or stressed.
10. As a result of Laurence's condition, it is my understanding that Dennis and Margaret made arrangements to ensure that Laurence was provided for both during and after their lifetime. They were particularly concerned as to what would happen after their

deaths and therefore keen to do what they could to protect his position. Indeed this was of paramount importance to them. It was something they stressed to me on a number of occasions. As a result, I recall that Trusts were set up for the benefit of Laurence.

11. I also recall Dennis telling me that he was having to give assets to the boys for the purposes of estate planning.
12. I would also assist Laurence and the family members in respect of the day to day affairs of Laurence. For example, I would often deal with his:-
  - (i) Salary from the companies;
  - (ii) Bank statements and credit card bills;
  - (iii) Cash float within the office safe; and
  - (iv) Company loan account held with Cressingham Properties Limited. I well recall Dennis saying he was trying to build this up as much as he could.
13. It is my understanding that there should have been sufficient resources in place to enable Laurence to maintain the lifestyle he had when his parents were alive. It was the primary concern of Dennis and Margaret that Laurence was looked after. They took the view that the other boys were independent, and could fend for themselves. The fact that the position appears to have changed, somewhat dramatically, after the death of Dennis and Margaret and my departure from the business, is something that would have horrified them both.

#### **Historical position**

14. As stated in paragraph 6, all of children worked within the companies. I recall that Martin left the companies in the early 1990's to set up his own business. This was done with the blessing of Dennis. Dennis and Martin continued to conduct business in an amicable fashion and remained close, right up until the point of Dennis' death.
15. I recall the other family members, specifically Christopher and Timothy, were resentful of Martin deciding to set up his own company. I recall that the relationship between

Christopher and Martin was 'on/off' for decades and they would often argue.

16. I recall that Martin and Christopher were appointed as Trustees for the benefit of Laurence. Dennis took an active part in these trusts whilst alive. The focus, as already explained, was to ensure that Laurence had financial provision for the rest of his life.
17. I was surprised to learn that Martin had resigned from his position as a trustee in 2011. It was my view that he offered a level headed approach to matters and I would certainly consider him to be the more reasoned of the two. From what I witnessed, I do not believe that Christopher or Timothy would have the best interests of Laurence at heart. Indeed both were very poor when it came to dealing with and looking after their own money, which was not likely to be a good facet when it came to dealing with Laurence's financial interests.
18. Christopher was an impulsive character. He would often spend many months at a time away from the office abroad, leaving his responsibilities to Timothy. I recall there was an incident (during the late 1990's or early 2000's) when Christopher wanted to go to Thailand on short notice. Without a word to anyone, he raided the safe in Dennis' office. He took money out of Laurence's float and then disappeared. I remember Dennis was not at all impressed. He immediately instructed me that Laurence's money should be replaced and debited to Christopher. My recollection is that this was a significant sum, possibly in the region of £2,000 or thereabouts.
19. As I have mentioned, Christopher was not particularly good with money. I recall that Dennis would often give both Christopher and Timothy money from cash he had on him, to keep them going. Dennis always had cash on him. The brothers were paid their salaries on top of this, irrespective of the amount of work they had done. As I say, Christopher would spend many months at a time out of the country but would be paid all the same.

### **The Dispute**

20. Having considered the witness statements of both Martin and Christopher, there are several comments that I would make in respect of the position of the administration of Laurence's estate.
21. It would appear that Christopher has on several occasions abused his position of

authority in respect of the companies and his responsibility towards the maintenance of Laurence's affairs and subsequent estate.

22. In respect of paragraph 22 of Christopher's statement, I believe that this situation was made worse by the fact Timothy and Christopher did not have the contacts and relationships with people that their father had. Dennis had a very good relationship with members of staff at HSBC and negotiated favourable terms on occasions in respect of the company. Following Dennis' death, Christopher and Timothy simply did not have the same relationships as a result of their failure to forge the same whilst Dennis was alive. I believe this was to the detriment of the companies.
23. Paragraph 37 of Christopher's statement comments upon the dividends and salary of Laurence. I can confirm that Laurence was certainly paid a regular salary right up until my departure in February 2008. I cannot now recall what the figure was. Further, regular payments were made to his pension. As I have said, Dennis was also keen to build up his loan account.
24. I cannot comprehend the fact that Christopher has asserted he is unable to provide the necessary documentation in respect of this matter. Given he was often away, he was always dealing with company documents remotely. Laurence was of course an employee of the companies. Detailed records of salaried individuals were kept. In any event, during my time with the companies there were only very few employees.
25. In respect of paragraph 41 of Christopher's statement, it is clear that he has underpaid for 99 Mossfield Road. During my time of employment, I recall there was a specific formula that was used whereby you could ascertain the value of the freehold interest when considering the length of the remainder of the lease, together with the ground rent payable. I dealt with many freehold sales during my time at the company. I understand that the value of Mossfield Road is now approximately £400,000. Therefore a large net gain is apparent. I can see from the first sentence of paragraph 41, the property transferred from Cressingham Properties Limited to Dennis Fell Properties. I am aware that Laurence held shares within Cressingham, therefore, the fact that the purchase of the property was conducted as an undervalue as admitted by Christopher, must have a detrimental impact upon Laurence's share and therefore estate.
26. I have read the statements carefully and considered the dispute and effect this is

having on Laurence's estate. It appears to be clear to me that Christopher has delayed matters significantly and is disrupting the administration of Laurence's estate.

27. I note in the penultimate paragraph of <sup>[TAB 110 - page 373]</sup> ~~page 33~~ of "MAF7" in Martin's witness statement, Christopher confirms that he will be '*standing down as Executor*', yet has continued to delay matters and has failed at every opportunity to provide Martin with the necessary documentation he has requested.
28. I do not believe that Martin is in any way a confrontational character. I have known him for several years and he the most level headed and reasoned of the five siblings. Dennis and Margaret certainly held this view about him, as they repeatedly made clear to me. He has simply taken the necessary steps in order to attempt to administer the estate of his late brother.
29. It is clear from the admissions within Christopher's statement that Christopher has in the past conveyed poor judgement in respect of the companies and indeed has taken advantage of Laurence in the past and may have done so on several occasions. Whilst I cannot provide an account for company matters post 2008, I can confirm that substantial provisions were in place for the benefit of Laurence prior to this stage.
30. Dennis had specifically nurtured his estate enable his children to properly care for Laurence. I have now learnt that at some point after I left the companies that Laurence's salary and pension contributions were stopped. Whilst this does not in any way surprise me, I am dismayed to learn at the way in which he was treated, contrary to the wishes of his parents.
31. I have also been asked to comment on the rent collection process of the various Fell companies. It was the practice of the companies to employ third party agents; for instance Bigwoods or Pennycuick Collins amongst others, to do the rent collection. However, a number of tenants would receive payments from DHSS. These were made either directly to the relevant company or alternatively by way of bank transfer.
32. I can also categorically state that throughout the period of working with Dennis and knowing Martin, Martin had no interest at all in being back involved in the family business. He was happy being separate to it and having various business dealings with his father as and when it suited them both. This arrangement seemed to work very well for Dennis too.

33. I do not believe that Christopher is suitable to act as an executor to Laurence's estate as it is apparent that he has himself taken steps or has allowed steps to be taken that are detrimental to Laurence and his estate.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed .....  .....

**Mrs Michele Elizabeth West**

Dated this 14<sup>th</sup> day of July 2020

Claim No. PT-2020-BHM-000041

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell  
(Deceased)

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**WITNESS STATEMENT OF MICHELE ELIZABETH WEST**

---

Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

On behalf of : Claimant  
Statement of : Jonathan P Q Fell  
Number : 1  
Exhibits : "JPQF1", "JPQF2",  
"JPQF3" "JPQF4",  
"JPQF5", "JPQF6" &  
"JPQF7"

Date 15/07/2020

IN THE HIGH COURT OF JUSTICE

Claim No. PT-2020-BHM-000041

BUSINESS AND PROPERTY COURTS AT BIRMINGHAM

PROPERTY TRUSTS AND PROBATE LIST (ChD)

IN THE MATTER OF the Estate of Laurence Fell (Deceased)

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**WITNESS STATEMENT OF JONATHAN PAUL QUENTIN FELL**

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I, Jonathan Paul Quentin Fell, of 57 Meliden Road, Prestatyn, LL19 8RH, make this statement in relation to the estate of Laurence Fell (Deceased):-

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. I am exhibiting to this statement seven exhibits marked "~~JPQF1~~", "~~JPQF2~~", "~~JPQF3~~", "~~JPQF4~~", "~~JPQF5~~", "~~JPQF6~~" and "~~JPQF7~~". Each time a document is referred to, I shall state both exhibit and page number.

## Introduction

3. I make this statement in an attempt to clarify issues so that the administration of Laurence's estate may proceed without further delay.
4. Other than confirming that I am the brother of Laurence, Martin, Timothy and Christopher, I say no more about the family structure and company information, to which Martin has alluded in his statement.
5. As Martin has referred to in his statement, Laurence passed away on 8th October 2019. He was aged 58. He had always suffered with his mental health and was diagnosed as a paranoid schizophrenic.
6. I recall shortly before my mother's death, I made a solemn promise to her that I would look after Laurence when she and my father had passed. Of my siblings, I had the closest relationship with Laurence and eventually became his full time carer.
7. It became apparent that Laurence would require full time care in or around 2009 and I became Laurence's full time carer that year. It was a very involved and demanding role, made more difficult by Laurence's condition. I was also severely hampered by the fact that Laurence's income levels inexplicably reduced at some point after my parents passed away.
8. Given Laurence's condition, my parents ensured that he was looked after during their lifetime, and made provision for his welfare after their deaths. As a result of this, Trusts were set up for Laurence during his lifetime which I understand are exhibited at "MAF1" [Tab 3 - pages 11 - 40] and "MAF2" of Martin's witness statement. I can confirm that all members of the family were well aware of my parents' wishes for Laurence to be well provided for after they were gone, and for Laurence's future financial security to be guaranteed. Sadly neither Christopher nor Timothy complied with their wishes, which troubles me greatly. [Tab 7 - pages 51 - 81]
9. My siblings and I have all at various points over the last 40 years worked for the various family companies. I was an appointed director of Dennis Fell Property Limited, Heronfield Developments Limited, Martinvale Developments Limited and Speedwell Estates Limited between April 2002 and April 2005. I was also a shareholder in the

companies (from 2002), however, I sold my shareholding to Christopher and Timothy in 2009, although I now suspect that it was for significantly less than it was worth.

10. The aforementioned Trusts were created in order for Laurence to maintain an income for the rest of his life. He also received a salary, dividends and pension from the companies, although those financial benefits appear to have been terminated against the wishes of my parents.
11. I was appointed as a Trustee of the Cressingham Trust in or around 2011, shortly after Martin resigned from his position.

#### Events following the death of my parents

12. I have a very strong suspicion that at some point after the death of my parents (my mother on 20<sup>th</sup> February 2005 and my father on 14<sup>th</sup> January 2006) steps were taken by Christopher and Timothy which were absolutely to the detriment of Laurence and to the benefit of themselves.
13. I am not fully aware of the extent of the actions taken by Christopher and Timothy, however, I can confirm that there was a period of steady decline in the amount of available funds for the benefit of Laurence. This caused great concern to me, as looking after and providing for him was an expensive business. Certainly, when considering the provisions of the Trusts, I firmly believe that greater funds should have been made available for the benefit of Laurence.
14. I was appointed as an attorney to Laurence by way of a Lasting Power of Attorney for Property and Financial Affairs on 1 March 2011, exhibited at pages ~~1 to 12~~ of ~~"JPQF1"~~ [Tab 68 - pages 240-251]. Christopher was also appointed as an attorney.
15. I recall at the time of our appointment Christopher was informed by Liz Wyatt at Penmans Solicitors of his possible conflict of interest. This related to him being an attorney for Laurence, a trustee and also a director of the various companies. Christopher may have taken further advice in respect of the same at the time.
16. At the time of my appointment as an attorney, Laurence had a comfortable lifestyle

and indeed had money of his own. Laurence had previously received his inheritance from our parents and Laurence and I made the decision to move to North Wales in April 2010 in attempt to enable us to have a more peaceful way of life. Further, there was a pot of money available following the sale of Laurence's house, 'Far End Cottage' in Claverdon.

17. Upon further reflection, it is my belief that Laurence should have had further funds readily available to him at the time. From my recollection I believe Laurence should have had access to the following revenue streams:-

- (a) Income from the companies (salary and dividends - circa £50,000 per annum);
- (b) Funds available in his Loan Account; and
- (c) Rental income from the 2004 Trust, specifically from 15 Scarborough Crescent and 67 Teynham Crescent.

18. In reality the position was very different. In my capacity as an attorney, I requested on numerous occasions that additional funds be provided for Laurence. I recall specifically in 2014 I had to request several times for Christopher and Timothy to transfer money across for Laurence. Most of the requests were made orally. Although, by way of an example, I have found such emails dated 7 May 2014 (page 2 of "JPQF2") and 26 December 2014 (page 5 of "JPQF2"). [Tab 86 - page 282]

19. We would often argue about this. Although Laurence was an employee of the various companies, the payments due to him simply stopped for a period. I recall asking Christopher about this repeatedly. I cannot ever recall obtaining a suitable answer. Further examples of my requests can be seen from the chains of emails at pages 4 to 10 and 11 to 16 of "JPQF2". [Tab 86 - pages 284 - 296]

20. As stated in paragraph 13 above, there was a steady decline in funds available. In 2016 it reached a point whereby funds were running very low. At the time there was an issue in respect of fitting Laurence's room with a toilet. He was on occasion soiling himself and his room. However, funds were never made available. Christopher's suggestion was to purchase a portable toilet, which was simply not practical for

Laurence's requirements. As a result, a decision was made to partially cash in the pension Laurence had accrued with the companies.

21. The issue I faced on many occasions was ascertaining information from Christopher and Timothy in respect of the company information and requests for additional funds for Laurence. Having read Martin's witness statement, it would appear that we have both faced similar difficulties. Any request that I have made in the past was done so with the sole intention of assisting Laurence. He was of course entitled to the provision as specified within the Trust documents. I was merely seeking to plan for the future for Laurence to ensure that he was provided with the lifestyle he had become accustomed to that had been put in place by my parents.
22. I recall on several occasions I was stonewalled by Christopher and Timothy when making requests for information or funds. They would respond with further questions and rarely answer my questions. I have reviewed historic emails and Facebook messages to Christopher evidencing the correspondence we exchanged.
23. In February 2019, I tried in vain to obtain further information in respect of Laurence's financial position from Christopher. It is clear from the correspondence exchanged (exhibited at pages ~~17 to 21~~ of "JPQF2") that Christopher would not provide any further information to me. I also asked questions in respect of the termination of Laurence's employment (14 February 2019), Christopher responded with a completely unrelated message six days later about speed cameras. [Tab 89 - pages 310-314]
24. I sought further information on 27 February 2019, I asked Christopher for a '*break down of the shares Laurence has in each company and any remuneration. Over the past 10 years*'. (~~page 22~~ of "JPQF2"). I was not provided with an answer to my question. Christopher instead replied on 1 March 2019, '*Remuneration – you will have already plus Chris Denny has copy of Laurence tax return. You should know Lal shares – that was a problem which you had when you sold your shares to Tim and myself. On the contrary I need Laurences figures – expenditure over the last 10 years as power of attorney before we can discuss other matters.*' (~~pages 22 to 23~~ of "JPQF2"). [Tab 89 - page 315]  
[Tab 89 - pages 315-316] Unfortunately, this was often how Christopher would respond by stating he required further information. This was a simple request. Whilst it may have taken a little time to process 10 years of information, it should have been readily available.

25. What Christopher and my other siblings failed to understand was that looking after Laurence was, at times, an overbearing task. I agonised over this point to Christopher on many occasions. This can be seen in the exchange of messages at pages ~~24 to 34~~ of "~~JPQF2~~". It was difficult to care for Laurence and also a very time consuming and expensive task.

[Tab 87 - pages 297-307]

26. I recall there were times when I had to prepare 6 meals a day for Laurence. He would on occasion simply throw food on the floor and therefore further meals would be required at further cost. I complained about the same to Christopher at the time (page ~~25~~ of "~~JPQF2~~"). The weekly bills far exceeded that of two 'regular' people. Further, the cleaning requirements were extensive. It was known to Christopher and Timothy that Laurence did on occasion soil his bed sheets (increasingly often in the last two years of Laurence's life) and did on occasion walk through the house in this condition. Therefore, the property would have to be sterilised. This was a thankless task which was both costly and time consuming. This was often met with laughter from Christopher and Timothy, which I found to be offensive. An example of such message can be seen at pages ~~29 to 30~~ of "~~JPQF2~~".

[Tab 87 - page 298]

[Tab 87 - pages 302 - 303]

### The Dispute

27. I have been alerted to the current dispute between Martin and Christopher in respect of Laurence's estate. I have had sight of Martin's witness statement dated 13 May 2020 (and correspondence within the Exhibits to the statement, notably a letter dated ~~17 March 2020~~ at pages ~~1-12~~ of ~~MAF7~~ in Martin's witness statement) and Christopher's witness statement in response dated 17 June 2020.

[Tab 104 - pages 344-355]

28. I was of course aware that both Martin and Christopher were appointed as the co-executors of Laurence's estate under his Will dated 28 May 2008. Having considered the information contained within the aforementioned statements, there are several comments that I would wish to make which I believe will assist the Court .

29. First and foremost, it causes great concern to me that the administration of Laurence's estate is currently embroiled in a dispute.

30. It is my belief that a member of the family should be appointed as the executor of

Laurence's estate given the detailed history of his affairs, his involvement in the various 'Dennis Fell Companies' and the complex nature of the ownership of assets/shares within the same. This family knowledge is in my view crucial to the role of executor.

31. I believe that Martin would be well placed to act as the executor of Laurence's estate. Upon reflection of the aforementioned witness statements, I believe that Martin has the best interests of Laurence's estate at heart. Further he has always been the most measured and impartial member of the family.
32. Martin is not a confrontational individual. From the evidence available to me at this stage I do not believe the same can be said for Christopher. I shall expand on my reasoning for this below and would make a number of comments in relation to the witness statement of Christopher.
33. There are a number of factual inaccuracies that I would seek to attempt to clarify below, based upon my knowledge of the matter.
34. Having considered Christopher's statement in more detail, I am surprised that there is no real mention of Timothy's actions. Christopher would spend many months of the year abroad (up to 6 months in a year), often in Thailand and the Philippines. Timothy would manage the day to day running of the companies in Christopher's absence. During his absence Timothy and Christopher would communicate.
35. In relation to paragraph 22 of Christopher's statement, I recall a conversation I had with Christopher following the collapse of Northern Rock Bank. It was indeed suggested that several of the assets were sold. However, I believe that further properties were also purchased during this time.
36. I have a recollection (although cannot recall the exact year) that Timothy visited the bank in order to discuss the repayment to HSBC as Christopher was abroad at the time, I believe Christopher may have even got married in Bali during this time. It is my understanding that the repayment of the 1 million pound sum was made at a later date and not as a result of the economic downturn. I recall in early 2008 it was suggested by Christopher that a good proportion of the properties should be sold prior to the possible economic downturn. I recall that in or around March 2008 at an auction two

properties were sold, and one was purchased. If, as suggested, the properties were sold, there would have been sufficient cash flow to negate any issues with the bank. Further, there is a possibility that the companies may in fact have benefited from the collapsing market in purchasing property at a lower value.

37. I disagree with the facts in paragraph 25 of Christopher's statement. I do not recall the meeting referred to. In 2009/10 I was no longer a director of the company nor was I a trustee at that stage. I was not privy to the information required in order to make a reasoned decision in respect of the shares.
38. As a result of not being a director or trustee, I was not provided with any formal financial information or valuations. For Christopher to state that '*I did not want that*', simply is not reflective, because I was not at any stage provided with the necessary information to make a reasoned decision as to the benefit of Laurence having the shares.
39. Further, if the repayment of 1 million pounds was indeed required at this stage, it seems strange to me that Christopher and Timothy would have wanted to increase their individual shareholdings at that time.
40. I am well aware that Martin always held a sum of money belonging to Laurence, akin to a float. He would utilise this as and when necessary in relation to the various items of expenditure required for Laurence. All of the family was aware of this. I note Christopher makes reference to this in paragraph 33(g) of his statement.
41. I refer to paragraph 33(h). I confirm that 39 Sandway Crescent was sold shortly before Laurence's death in 2019 due to his poor and deteriorating financial position. Previously there would never have been any thought or consideration of the sale of this income producing asset. I would however state that Laurence's financial position was dwindling prior to this sale. The increased balance within Laurence's accounts was solely because of this sale. The payments from the Trusts had indeed slowed as referred to in paragraph 25 (h) of Martin's statement.
42. Having considered the comments made in paragraph 41 of Christopher's statement, there is a clear admission from Christopher that 99 Mossfield Road, Kings Heath ("Mossfield Road") was purchased at an undervalue. For reasons set out below, this

must have been deliberate. In respect of Laurence's estate this causes concern. Mossfield Road was transferred from Cressingham Properties Limited ("CPL") to Dennis Fell Properties Limited ("DFPL"). When the transfer of assets occurred, Laurence should have been compensated for the same as Laurence's trust had 50% of the shares in CPL but only 25% in DFPL. I do not believe this occurred.

43. In the past I have owned several freehold ground rent properties (similar to the unexpired term at Mossfield Road, though not worth as much). I have previously been advised by Christopher in respect of these purchases. For instance in 2018 I owned a freehold ground rent at Velsheda Road for a similar length unexpired term at Mossfield Road. I was advised by Christopher as to the freehold ground rent valuation. I am aware that Christopher uses his own specialist Excel spreadsheet (that he created) which enables him to obtain accurate valuations and assess the merits of a particular freehold valuation. Indeed he used this for Velsheda Road. Examples of these spreadsheets can be found at ~~pages 1 to 11 of "JPQF3"~~. I have no doubt that Christopher would have employed and utilised this method in respect of Mossfield Road. It is therefore evident that Christopher would have been well aware of the value of Mossfield Road and continued to act inappropriately in respect of its purchase.

[Tab 128 - pages 436-446]

44. I further understand that Christopher purchased the freehold and leasehold of Mossfield Road for £292,000 for his personal use and not for the benefit of the business. I understand the market value of Mossfield Road would now be approximately £400,000. Therefore, it would appear that Christopher is likely (subject to him selling the property in the future) to receive a personal gain of over £100,000. Christopher has on several occasions attempted to persuade me that Martin is in direct competition with the family companies. Based upon the information available, it would appear that it is Christopher who is in fact the competitor of the family companies. He has in essence taken over £100,000 profit away from the company by taking advantage of an opportunity that should have been available to the company. If Christopher was to sell Mossfield Road, it will be him that benefits rather than the company. I believe that steps need to be taken to redress the balance.

45. The Cressingham Trust loses out as a result of the sale of Mossfield Road. In turn this loss will be reflected in Laurence's estate.

46. I query whether there should have been further credits to the loan account of Laurence in respect of the above transfer? I have not at any stage seen any Trust accounts reflecting the position. I would also query whether there should have been a Trustee agreement to the transfer as its outcome would have a direct influence on Laurence as a beneficiary.
47. Further, it would appear that this was not a 'one off' event. Paragraph 42 of Christopher's statement shows that a similar scenario ensued with regards to 4 Forest Road, Oldbury. The information provided contained with the statement would again suggest that Christopher has personally profited from the Company business. It would appear that Christopher has once again put his own self-interests above the companies' and undermined the position of the other shareholders, and more specifically Laurence's estate. His continued reluctance to facilitate access to documents adds to my suspicion that there may have been other similar incidents and transactions.
48. I believe that Christopher has been in direct conflict of his position as a director of the companies and as a trustee to Laurence. Christopher has failed to ensure that Laurence's interests as a beneficiary were properly considered and reflected. It is abhorrent that Christopher may have acted in this manner. It appears clear that Laurence has been detrimentally affected by his actions. Within all of this there has been scant regard for the wishes of my parents, which they reiterated to us all on many occasions due to Laurence's inability to be able to financially fend for himself.
49. In respect of paragraph 45 of Christopher's statement, I disagree that Martin should step down as executor. He has not done anything wrong. In fact to the contrary he is endeavouring to achieve the fair and just administration of the estate. To date, it is clear that the delays incurred in the administration of Laurence's estate are primarily as a result of Christopher's acts and omissions; in particular, his failure to provide the required documentation in order to progress the administration of the estate as stipulated in the letter dated 17 March 2020 contained within ~~pages 1 to 12 of MAF7~~. I <sup>[Tab 104 - pages 344-355]</sup> sent an email to both Christopher and Timothy on 8 April 2020 expressing my concern, stating that they should both be open and honest in respect of the information (page 1 of "JPQF4"). This would enable the administration of Laurence's estate to progress.

50. I understand to begin with Timothy continued to work at the office when the measures in respect of Covid-19 began. Historically, Timothy would fax information to Christopher when he spent large periods abroad. Further, if there was anything in the post for Christopher he would place it in an envelope and forward the same to Christopher's home address. I do not understand why this could not have been the position in respect of obtaining the documentation whilst Christopher self isolates. Indeed I believe from what I have been told by Christopher, that in spite of his protestations he has had access to all documents throughout the duration of the pandemic.

51. I recall having a conversation with Christopher prior to the 'lockdown' as we both have diabetes. Christopher was considering his position and I had already entered a 'half lockdown', in February prior to the strict measures being put in place. I believe that Christopher had intended to take his office computer home with him for the period to enable him to continue working. This is what he told me and I believe he has had it with him throughout the lockdown period. Indeed his Facebook message to me of 15 March 2020 at 5:36pm could not be more clear:-

**'Will go office pick up computer and printer ink and paper'** (page 1 of "JPQF5") [Tab 102 - page 339]

52. Further, I understand that as a result of the lockdown Timothy and Christopher's wife have been furloughed. I understand from discussions with Christopher that the payroll has continued to operate during the lockdown and the office computer would be required to enable this to occur.

53. I note there are several references within Christopher's statement that documentation is held at the office and he is unable to access the material. This is in direct contradiction to what he has told me in recent weeks, during the several conversations and text exchanges we have had. Within the last two weeks, Christopher has said that he does have access to documents via a memory stick. This is evidenced by the following comments within "JPQF6":-

(a) On 1 July 2020 at 12:03pm 'Fiynd [SIC] old letters from 2010 + 2012. Shows Martin just walking out of not attending and 'he can wait forever'. Dr Jago Warwick Hospital and Dr Jago supporting you on looking after Laurence' (page 4); [Tab 127 - page 405]

- (b) On 1 July 2020 at 12:08pm 'Yes but just found last night. Tim asked me for other records (which I did not find) and was looking almost all day came to file on my stick' (page 2); [Tab 127 - page 406]
- (c) On 1 July 2020 at 12:15pm 'But can send you copies of other letter from me, you Company. It makes it all clear but need to sort and put in order.' (page 3); [Tab 127 - page 407]
- (d) On 1 July 2020 at 12:19pm 'I will get cronolgy [SIC] of events. Lucky it was from old old file on computer 8- 10 years ago.' (page 4); [Tab 127 - page 408]
- (e) On 1 July 2020 at 12:24pm 'Martin was also getting **ADVICE** from Mike at GTB without our knowledge – the idiot has asked for Mike's advice and included it. Martin's stupid 'idea' was also put to me as Mike's advice!!' (page 4); [Tab 127 - page 408]
- (f) On 1 July 2020 at 12:37pm 'left some and told Martin to write to Company – costs then allowable against company per articles. Company can use. Any messures [SIC] required to defend Directors actions. So Martin just deavlying [SIC] the companies and his share' (page 5); [Tab 127 - page 409]
- (g) On 1 July 2020 at 5:27pm 'Must have been what I took off company computer ages ago a never looked at for years' (page 6); [Tab 127 - page 410]
- (h) On 1 July 2020 at 5:32pm 'he wrote sll [SIC] these letters I replied. Last but one said read my ither [SIC] replied last one I disagree (on everything). It was to him wasting my time'. (page 7); [Tab 127 - page 411]
- (i) On 1 July 2020 at 5:33pm 'at the time they wanted to know Lal income and there was possibility coyld [SIC] go back 12 years cost maybe 500k reclaim' (page 8); [Tab 127 - page 412]
- (j) On 3 July 2020 at 9:32pm 'I have found another 2 letters to GTB – it makes it clear about the trusts and how appalling [SIC] the meeting was + Martins attitude to especially you Laurence Me Dr Jago. Hiw [SIC] Martin ranted and raved and even swore at the meeting and how incompetitant [SIC] Gtb were in not even being able to supply a copy of the Trust Act'. (pages 9 to 10); [Tab 127 - pages 413 - 414]

- (k) On 3 July 2020 at 9:40pm 'GTB interpretation of father and mothers wishes are at complete odds with the facts. They were even giving [SIC]...' (page 10); [Tab 127 - page 414]
- (l) On 3 July 2020 at 9:44pm 'once I have them in order I will send you copies – you could not make this stuff up. How he also held up money due to you' (page 11); [Tab 127 - page 415]
- (m) On 7 July 2020 at 12:52am in response to my request for Christopher to send letters he has 'slowly yes. printed them off got them in order now it's sorting which file goes with what doc – should not be a problem. Then send copy files' (page 12); and [Tab 127 - page 416]
- (n) On 7 July 2020 at 12:52am 'All points raised before – so he must have had the stuff stored away' (page 12); [Tab 127 - page 416]
- (o) On 10 July at 10:25pm 'yep and my solicitor will have those next week as well. Martin may have his letters but now I have mine – he asked the questions and I gave my replies not pretty. Tim sorted out Sker Walk file!! There may be othrrs?? [SIC] (pages 13 to 14); and [Tab 127 - pages 417 - 418]
- (p) On 11 July 2020 at 9:16pm "Not in paper folder I have not got letters from Martin. They were on an old computer stick i.e. digital copy – looking for something else – just came across it. Obviously not used for years maybe from when I was first in Thailand? But I remember at the time Martin sent me long letters with lots of questions – I remember the last one – I just said "I disagree". Tim said too short so I altered to something. "I disagree with you". Martin did not reply after that! and the short one early at the end said – "read my previous answers" (pages 15 to 16). [Tab 127 - pages 419 - 420]

54. Staggeringly, Christopher has asserted within his statement he is unable to obtain documentation to assist in the matter, yet, he has made reference to the above information to me. I believe that Christopher must indeed have documentation (or ready access to it) within his possession and is withholding this information, which of course only stands to delay matters further, let alone increase cost.

55. I note from paragraph 53 (b) Christopher 'was looking almost all day' at files. It is my

understanding that this information is contained on a memory stick or 'stick' as Christopher refers.

56. I understand that Christopher has already provided his acknowledgement to step down as executor to Laurence's estate, yet has since delayed matters and engaged in unnecessary litigation serving only to increase the costs in this matter.
57. I disagree that an independent administrator should be appointed. An independent administrator would only serve to significantly increase fees and would need to spend many hours getting up to speed and understand the family history. This in turn would be detrimental to Laurence's estate and the Fell family. I believe it is important that a member of the family remains as the executor owing to the nuances and intricacies of this matter. Key background knowledge will be invaluable.

#### Christopher's actions in respect of this dispute

58. I note from a Facebook message from Christopher on 15 March 2020 at 4:57pm (page ~~1~~ of "~~JPQF7~~") Christopher states '*We should start lockdown now and schools by Friday*'. However, on 16 March 2020 at 5:22pm (page ~~2~~ of "~~JPQF7~~") Christopher stated he was "driving" and on 17 March 2020 Christopher was out shopping as evidenced by his message at 10:22am '*Going round a few shops now a lot of stuff rationed and some out*' (page ~~3~~ of "~~JPQF7~~"). It was my understanding that Christopher claimed he was self-isolating at this stage. I further note from Facebook that Christopher has very recently visited several areas in the Worcestershire area (Clent Hills, Lickey Hills Country Park and Bewdley) on 28 June, 2 July and 6 July 2020 respectively (pages ~~4~~ to ~~6~~ of "~~JPQF7~~"). Therefore, it would seem that Christopher is indeed able to leave his property and would be in a position to obtain further documents that are not already within his control. He had clearly not been open and honest and uses the lockdown as an excuse to escape having to facilitate access to the documents and information.

59. I have received several telephone calls from Christopher in recent weeks in respect of this matter. Christopher on several occasions stated:-

- (a) That Martin is at fault;

- (b) Martin only seeks to reduce the value of the company shares as he is a competitor (this is of course not a company matter, the dispute is in respect of Laurence's estate); and
- (c) Martin seeks to simply dissipate the value of the companies and intends to incur unnecessary costs in legal fees.
60. Recent communication between Christopher and I has been on the telephone. Although, there are a selection of Facebook messages that evidence the points made in paragraph 59 within "JPQF7":-
- (a) On 1 July 2020 at 12:41pm – 'As I have pointed out to Tim this exercise of Martin's will only devalue the shares' (page 7); [Tab 127 - page 421]
- (b) On 1 July 2020 at 12:44pm 'Martin is also in conflict a competitor and the only solution is for the court to appoint [SIC] someone. It will cost more to admin the estate outside [SIC] valuation for GR's will cost estate maybe £30K plis [SIC] admin another £50K' (page 8); [Tab 127 - page 422]
- (c) On 1 July 2020 at 12:49pm 'Any possible gain (of which net between companies is virtually zero. Potentially [SIC] CP will pay extra Corp tax 20% and estate 40% 50% of any gain in CP 50% Tim and mine and same with 50% of Trust. Any gain will be wiped out by tax and extra costs of admin. The only possible effect is to run the companies into the ground and make everybodies shares valueless' (pages 9 to 10); [Tab 127 - pages 423 - 424]
- (d) On 1 July 2020 at 13:01pm 'I don't think anything needs to be altered. If altered then do accounts need doing again. All in all the gross alteration would have to cover about extra net £120k. and to cover all that the amount would have to be £500K Ct 20% = £100k = £400k 50% Tim me = £200k less IHT 40% I = £80 = £120K So the tax = £180k of which Tim and I would bear the most. So Equalisation = bankrupt due to Martin and Tax'. (pages 11 to 12); [Tab 127 - pages 425 - 426]
- (e) On 1 July 2020 at 13:03pm 'Shares = zero'; (page 12); [Tab 127 - page 426]

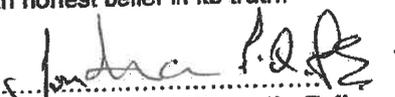
- (f) On 1 July 2020 at 13:06pm 'Martin's objective!! Not equalisation but zero for everybody = as you say might not make any diff. to him but would be if Sker walk comes in all his companies investigated by revenue might cost Martin (and his partnes) 100-200K in acc. And legal costs' (page 13); [Tab 127 - page 427]
- (g) On 7 July 2020 at 12:53am 'He always meant to do this from the start. Maybe bankrupt me or the companies or both. The stupid thing is the only person that wins would be the taxman who would get 65% and the overall difference comes down to 4.5%. To make up for the extra costs to estate excluding current solicitors = Min £75K. To cover that the figure would need to be at least £1.7m and tax of £1.1m. So it's a pointless exercise unless the goal is to bankrupt the companies'. (pages 14 to 15); [Tab 127 - pages 428-429]
- (h) On 7 July 2020 at 1:10am 'Tim and I would pay the majority and any shares worth zero. Complete waste of time. If it goes Martin may have to pay all the costs if he is removed as well – Almost from the start I have said I will stand down but he will not'. (page 16); [Tab 127 - page 430]
- (i) On 10 July 2020 at 10:00pm "The only reason Martin can be pursuing this is to bankrupt me and the companies. Martin already cost the estate £75k. If there were any adjustments which there would not be any 2/3 would go in tax anyway. £75k min extra cost to estate = almost £20k each net. Just to recover that net = £600k. So companies would have to pay tax £120k and estate £240k. And 75% of result is Tim and mine anyway so nobody gets anything." (pages 17 to 18); [Tab 127 - pages 431-432]
- (j) On 10 July 2020 at 10:02pm "On surface looks like that really it's just to put business out of business. Already costs estate £40-£50k for Court appointment. Value GR25K for valuation. Never recoverable so lost about £20K each. If there are any adjustments extra tax to pay plus maybe CD [Chris Denney] has to redo accounts. Plus additional IHT 40%. Anything I did was for the companies to survive and pay less tax." (pages 19 to 20); and [Tab 127 - pages 433-434]
- (k) On 10 July 2020 at 10:11pm "If Martin wants any more he has to go to companies – and it will be legal costs allowable on company. Overall pointless exercise. If any adjustments costs would go as well." (page 21). [Tab 127 - page 435]

61. It is clear that Christopher is attempting shift the blame and it is possible that he will seek to fund this personal dispute using companies' funds. I do not believe that this is an appropriate use of company funds. To the contrary it would seem that Christopher may in fact be guilty of dissipating funds that may be attributable to Laurence's estate.
62. Christopher appears to be fixated upon this 'costing the companies'. He appears to have lost sight of the matter at hand and has failed to take the appropriate steps to administer Laurence's estate.
63. The position to me is very clear in that Martin would be suitable to act in this matter. He has not behaved inappropriately and has taken steps in order to progress with Laurence's estate.
64. On reflection, Christopher is in fact prolonging matters and further dragging out this dispute (attempting to assert that Martin should be removed). It seems that Christopher is more concerned with the secretion of key and relevant documents and his possible wrongdoings, rather than attending to the administration of Laurence's estate.
65. If, as Christopher suggests, an independent administrator is appointed in this matter, tens of thousands of pounds will be spent in order for them to get up to speed with the family history before they are able to administer the estate.
66. As referred to above, it has been made clear in no uncertain terms that Christopher has a direct conflict of interest and has historically failed to provide sufficient information to all involved parties in respect of Laurence and his estate. It was always a battle to get Christopher to do the right thing for Laurence when he was alive. What is worse is that Christopher has deliberately prejudiced him for his own benefit.
67. On numerous occasions I requested information from Christopher in order to assist Laurence, and was met with inadequate responses throughout.
68. It has become clear to me, based upon the evidence presently available, that Martin has in fact attempted to properly administer the estate of Laurence. It is notable that Martin has been hampered at all times by the actions of Christopher, and his refusal to provide the necessary and required documentation relevant to Laurence's estate in order for it to be properly administered.

69. Having considered the relevant information in respect of the current dispute, it is clear that Christopher has delayed matters. To reiterate the points made above, I believe that it is in fact Christopher that has acted in bad faith and may have defrauded the companies by his own actions which has in turn had a detrimental effect upon Laurence and his estate. There are a number of discrepancies in this matter and it would seem the source of the problem is Christopher.
70. Having cared for Laurence for many years, I merely seek that Laurence's estate is dealt with fairly and that investigations can be conducted in order to establish the correct position to be ascertained.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed   
Mr Jonathan Paul Quentin Fell

Dated this 15 day of July 2020

Claim No. PT-2020-BHM-000041

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell  
(Deceased)

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**WITNESS STATEMENT OF JONATHAN  
PAUL QUENTIN FELL**

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Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 2  
Exhibits : "MAF8", "MAF9",  
"MAF10", "MAF11"  
& "MAF12"  
Date : 16 JULY 2020

**IN THE HIGH COURT OF JUSTICE**

**Claim No. PT- 2020-BHM-000041**

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)-**

IN THE MATTER OF the Estate of Laurence Fell (Deceased)

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

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**SECOND WITNESS STATEMENT OF THE CLAIMANT**

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I, Martin Anthony Fell, of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 5QQ, company director, wish to rely on the following evidence in response to the evidence of the Defendant and in support of the application to remove the Defendant as one of the Executors of my late brother, Laurence's, estate:-

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. I am exhibiting to this statement five exhibits marked ~~"MAF8"~~, ~~"MAF9"~~, ~~"MAF10"~~, ~~"MAF11"~~ and ~~"MAF12"~~. On each occasion that I refer to a document, I will expressly refer to the exhibit number and the page number or numbers contained within that specific exhibit.

***My approach to the Defendant's ("Christopher") Statement***

3. Whilst Christopher does not appear to be disputing in any way that his removal is appropriate, he has declined to unequivocally offer to be removed as an executor to Laurence's estate. In fact, much of what he says in his statement is untrue and I will demonstrate this where appropriate. Where it suits him, he has simply omitted to respond to issues raised seeking to hide behind:-
  - i. The Covid-19 pandemic;
  - ii. A purported inability to obtain documents;
  - iii. Contentions that the issues are company issues and not personal ones.
  
4. In about 1993 I left employment with the family businesses for the second time. However, contrary to the contentions of Christopher, I did not set out to compete with my family and in fact made a point of not doing so. My relationship with my parents remained very good most of the time and I did joint deals with my father (and hence the family companies) periodically. My business went off in a slightly different direction and I utilised and developed my own contact base to build it up. I think it is indicative of the very close and good relationship I had that my parents turned to me (notwithstanding that I had separated myself in business terms), when they wanted to put in place a succession plan in about 2001; they preferred me to anybody else in the family because they deemed me to be reliable, sensible and experienced. They knew that I would have the business and Laurence at the forefront of my mind and that I would not seek to gain personally at the expense of other family members.
  
5. As indicated in my first statement, my parents asked me to take over the running of their family companies. However I declined knowing that it would be impossible to manage my older brothers. Having successfully established my own company by then I did not want to jeopardize my own business with the risk to my family that would entail. It was mutually agreed there and then I would not be part of the family companies in the future but would benefit from joint interests, hence the later bequest to me of Freefield Investments Ltd shares (1/3rd interest), the option to purchase my father's 20% interest in Midland Freeholds Ltd, and the agreement for me to purchase

some of the many portfolios of ground rents that I had acquired for the family companies. I believe these totalled nearer 300 ground rents and the price was determined by my father.

6. Of course one of the main reasons that I have been seeking sight of documents that directly or indirectly affect Laurence and his estate is because I did not remain in the family business and therefore from the point of my departure, never had access to such documents or indeed authority to have sight of them. Whilst it is already very evident that those documents are going to be absolutely crucial in determining what the entitlements of Laurence's estate are, I do not expect the Court to grapple with these issues in these proceedings.
7. It is absolutely clear already that Christopher is not a suitable person to be an executor of Laurence's estate. The admissions in his evidence (which still warrant further investigation), particularly at paragraphs 41 and 42, are testament to this. In spite of such admissions, he has still refused to agree to be removed. Sight should not be lost of the fact that other than costs, Christopher's removal is the only relief sought in this claim.
8. Given that these allegations were made so long ago, Christopher could and should have readily made such admissions and concessions at that point, and willingly accepted his obvious unsuitability as executor. Instead, his deliberate failure to engage forced this claim to be issued. As a result significant time and costs have been incurred in an attempt to obtain the relief sought in these proceedings.  
[Tab 104 - pages 344 - 355]
9. It was made clear from the outset at paragraph 3 of page 1 of my solicitor's letter to Christopher (17 March 2020 letter ~~pages 1 - 12 of MAF7~~) that I would be happy to consider some form of immediate alternative dispute resolution. Subject to receipt of documents (categories of which were set out in that letter) this has always been and remains my position.

#### ***Contempt of Court***

10. I am aware that when signing my witness statement I had to sign a statement of truth. My solicitor has informed me that statements of truth have been varied now so that a

deponent expressly confirms that anybody making a false statement is in contempt of Court.

11. I understand that the consequences of such contempt are set out in the Civil Procedure Rules.
12. It is very sad to see that the Christopher is prepared not only to have made financial gain at Laurence's expense, but also to be in contempt in respect of so many different aspects of his evidence, which are patently untrue.

***The allegation that I have a conflict of interest such that I also should not be an Executor of Laurence's Estate***

13. Rather than deal with the issue of his position as executor, which is solely what this claim is about, his witness statement deals on occasions with me and my suitability, and many other extraneous matters.
14. Christopher has sent no Pre-action Letter of Claim seeking my removal and has made no formal claim in these proceedings. It follows that it is arguably unnecessary for me to respond to the points (belatedly) made by Christopher. It is clear that Christopher is bereft of any legitimate reasons for why I should be removed and is desperately scraping around for anything to deflect from his own predicament:-

[ Tab 101 - page 339 ]

- (a) There was a cursory reference to this in an email dated 13 March 2020 sent by Liz Wyatt of Penmans Solicitors to Christopher (~~page 1 of MAF 8~~) to me being "conflicted given your hostility towards the family companies". Leaving aside the fact that this simply is not true, this bears no relevance to the administration of Laurence's estate. However, no further correspondence has been received to substantiate this assertion. No doubt Christopher's solicitors have told him that this is not a valid reason for him to seek my removal as executor.

[ Tab 108 - pages 368 and 369 ]

- (b) In response to my Letter of Claim, dated 19 March 2020 (~~page 25 to 26 of MAF7~~), concerning Christopher's removal, his response by his Solicitors dated 22 April 2020 simply stated (without any particulars at all) that I owed Laurence's estate 'considerable monies' (~~pages 37 to 39 of MAF7~~);

[ Tab 118 - pages 356 - 358 ]

- (c) By a letter dated 27 April 2020 (~~pages 40 to 43 of MAF7 page 40~~), my Solicitors asked for more particularity, save noting that I held £7,818, which I referred to in my first statement. However, Christopher refused to provide any further details, as can be seen from his Solicitors' letter of 5<sup>th</sup> May 2020 (~~page 44 of MAF7~~) which is why I had to issue these proceedings; and [Tab 121 - pages 391 to 394]
- (d) Christopher's present position on this issue is set out at paragraphs 5 and 6 of his statement and this raises now the three matters he relies upon (which are still not properly particularised). I deal with these matters below.
15. Further, I am aware that Jonathan strongly supports me as remaining in my position as executor and is able to confirm this in his statement.
16. Indeed to the contrary, I am not in any way connected with the family companies. Although I do however understand their nature and make up, and so I can be impartial when trying to seek to properly reconstitute Laurence's estate and ensure that all of the assets to which it is entitled are included within it. The knowledge I have is in my opinion crucial to enable swift progress to be made in getting the estate administered. It would be inappropriate to start afresh and appoint independent people who would not necessarily understand the nature of the business and who would potentially cost many thousands of pounds to even get up to speed as to the family history, before getting on to deal with the estate administration.

***Comments in response to Christopher's statement dated 17 June 2020***

17. In responding to comments made by Christopher in his statement, for ease of reference I will expressly state the paragraph number in his statement to which I am referring. I do not understand why I have been referred to as confrontational, or indeed taking an aggressive stance to litigation. The correspondence that has been sent to Christopher has been done with a view to trying to avoid litigation, as alluded to above. If Christopher acknowledges that he is unsuitable to act as executor of Laurence's estate, he should stand down. On the one hand, he appears to acknowledge his unsuitability, whilst on the other manifestly refuses to do anything about it.
18. Paragraph 4 of his statement is a clear attempt to hide behind the various companies

and avoid giving disclosure of documents sought. I went to considerable effort in my first statement to explain why certain documents relating to the companies were relevant to Laurence. I am only interested in anything that relates to Laurence, because the purpose of the exercise will ultimately be to ensure that he (now via his estate) receives what he is entitled to. Anything relating to the companies that does not relate to Laurence is of no interest or relevance to me.

19. My parents always made it very clear that Laurence was their prime concern. This is why he was paid a salary and pension throughout, notwithstanding that he did not work in the companies, as his condition did not enable him to. The trusts (again explained in my first statement) were set up to ensure that he had financial benefits for life. Indeed it was unquestionably expected that he would continue to be employed by the companies and to receive the various benefits. However I understand (although I am waiting for receipt of documentation to clarify the position) that his employment and ancillary benefits were reduced by Christopher and Timothy at a relatively early stage after the death of my father, and then terminated shortly after my resignation as a trustee. As a consequence of that and also the manipulation of the interests that Laurence should have had via the trusts, his financial position deteriorated to the extent that he had to start to draw on his own cash reserves and start to cash in his pension well before expected. He also sold an investment property that ought to have been generating an income for him for life.
20. The companies are not party to this litigation and therefore should not be used as a cloak to Christopher's actions. The steps taken by Christopher are steps taken by him personally in relation to company assets which relate to Laurence. In any event, one has to ask the question as to what objections does Christopher have to so disclosing, unless he has been taking steps that are to Laurence's detriment.

***Refusal to produce documents***

21. On 5 May 2020 a letter was sent by Wright Hassall <sup>[Tab 122 - page 395]</sup> (~~page 44 of MAF7~~) to my solicitors, Meridian Private Client LLP ("Meridian"). In the final paragraph of that letter Wright Hassall state "*your letter dated 17 March 2020 requires our client to confirm and provide substantial information, which, he simply cannot obtain until after the lockdown restrictions are lifted due to the relevant information and paperwork being at his office*".

22. On 1 June 2020 an email was sent by Wright Hassall (page 2 of MAF8) to my solicitors. That email was in essence a request for an extension of time to serve witness evidence in reply. A 28 day extension was requested, however 14 days was agreed, but with a further 14 days available if Christopher was able to confirm his health/shielding status which he was relying on. Interestingly, the latter point was not answered.

23. The request was based on the fact that further time was needed to obtain documents. Indeed Kelly-Anne Carr (a solicitor at Wright Hassall) stated:-

***“Our client is in self-isolation and there is a considerable amount of detail that needs to be obtained from documents outside of our client’s home. The only information which our client has access to electronically relates to the salaries of the companies”.***

24. I assume that the request referred to above was made on direct instructions from Christopher, given in anticipation of searching for the documents. However, just 16 days later Christopher stated at paragraph 4 of his witness statement dated 17 June 2020:-

***“I have been hampered by not having documents to hand at home and accordingly a lot of the information detailed below is my best recollection of events.”***

The request made was at best misleading.

25. Further, Christopher deliberately omits to state in paragraph 4 the nature of the company premises and why in fact they are easily accessible. The company office is situated off the High Street in Henley-in-Arden. It is a small self-contained office on the ground floor of their office building with dedicated private parking immediately outside. The only people who now access their office are Christopher and Timothy. There is therefore limited and minimal risk of being affected by the pandemic. The documents that are needed to investigate the actions of Christopher could therefore be easily accessed. It is clear from the Facebook posts of his wife, as set out in Jonathan’s statement, that he is happy to venture out of his home as and when he pleases. Indeed he appears to have done so repeatedly during the period of his self-

imposed lockdown in complete contradiction to his assertions.

26. I am personally aware that Timothy (who along with Christopher is a director of various Fell family companies) attends the company offices situated at Fell House, Shallowford Court, Henley-in-Arden, B95 5FY nearly every day of the week. It is my understanding that Timothy has been furloughed during the lockdown. However, he is still in regular communication with Christopher and is able to search out and send to Christopher copies of any documents that are requested. Indeed, he has told me recently that he did from time to time in response to requests made by Christopher, re-direct post to Christopher that required his attention. Further, Timothy personally visited Christopher at home during his purported self-isolation to obtain signed documents for witnessing. Indeed it is only when the relevant documents are obtained that relate to my deceased brother, Laurence, that it will be possible to understand what was unlawfully taken from his estate and what sums need to be paid back into it to rectify the problem.
27. Timothy also advised me that before self-isolating Christopher took the office computer home to continue working. This means he has had access to company documents notwithstanding his protestations. Further, he advised me that Christopher was the only employee of the companies not furloughed as his salary was the lowest, Christopher's salary being split between himself and his wife.
28. Christopher is choosing not to travel to Fell House. He has produced no medical evidence to say that he cannot do that. It is inconceivable to think he has not been doing any company business since his self-imposed isolation commenced nearly 4 months ago, which is coincidentally the same time as receiving a request from Penmans to resign as executor due to the investigations required and his conflicts of interest.
29. I understand for instance that enquiries on properties have been received. He will therefore have available many of the records in electronic format. Further or in the alternative, he can (if he so wishes) ask Timothy and / or Chris Denney to provide the documents that he has so far deliberately prevented me from having sight of. Chris Denney is retained as accountant to the various companies and also handled Laurence's personal tax affairs. It was previously the case that Timothy attended the office every day and would post any documents to Christopher as and when requested.

Documents could easily be faxed or photographed and sent through electronically, as this is exactly what Christopher did at the outset in relation to the authorities and the undertakings that he signed. Jonathan has subsequently made it very clear to me that Christopher does have access to documents and I understand this is reflected within his statement.

30. Further, I have seen images from Facebook posts of Christopher's wife that his family have in recent weeks been out in the Worcestershire area. If Christopher is able and content to visit such places and leave his property, I see no reason why he could not visit the private office in Henley.

31. It is astonishing that in spite of his connectivity to the Fell business through which my parents wanted to ensure that Laurence was financially supported, that not one document has been exhibited to his statement in response to the very serious allegations made. In fact, Christopher, more than anybody else who has ever been connected with the family businesses, has been most reliant on emails and faxes (i.e. remote documentation) because of the very lengthy periods that he has spent both in Thailand and the Philippines. Throughout those periods which were for many years, he would spend many months away from the UK. However, during all of that period he was adamant that he could continue to "work remotely" which meant that he was highly reliant on the transmission of data and remote communication, which would be primarily by email, text and fax.

32. I have sought from the very outset of this matter to compartmentalise and simplify all of the relevant issues. This is why the initial letter of 17 March 2020 (~~pages 1 to 12 of MAF7~~) requests specific categories of documents, all of which relate to Laurence in one way or the other. I also attached a form of authority to enable and authorise the company accountant, Chris Denney, to supply those documents. That authority was originally signed by Christopher but subsequently Chris Denney stated in a letter dated 24 April 2020 (~~page 24 of MAF7~~) that it had been withdrawn by Christopher. Christopher has never told me or my solicitors this. It is currently unclear as to whether it is Chris Denney or Christopher that is refusing access to the documents. Indeed Christopher stated in an email to Liz Wyatt of Penmans Solicitors that he would liaise with the companies' accountant regarding the valuation of all of the companies (~~page 3 of MAF8~~). [Tab 104 - pages 344 to 355]

[Tab 119 - page 389]

[Tab 94 - page 323]

33. It is very evident that had the documents been supplied at the outset, then the necessity of issuing this claim would not have arisen. One of the main reasons why these categories of documents have been sought is because it is highly likely that there have been other actions taken by Christopher to his benefit, which in turn were to the detriment of Laurence, and now his estate. Of course such actions are dishonest, particularly so for someone purporting to be an executor, and somebody who held a Lasting Power of Attorney for Laurence.
34. It is further evident already that it is only as a result of the issuing of these proceedings that Christopher has admitted to the fraudulent activity which was raised in the letter of 17 March 2020. That admission alone makes it clear that Christopher is not a suitable individual to be the executor of Laurence's estate. The fact that I have been pressing for information which I know materially affects his estate is indicative that my knowledge will assist greatly in the efficient administration of his estate. Knowing what to look for is likely to save a lot of time.

***Continued comments in respect of Christopher's statement***

35. At paragraph 5 Christopher alleges that I owe "substantial" monies to Laurence's estate. The only sum that I did owe and which I acknowledged to Penmans as solicitors acting for the executors, was £7,818. I deal with this fully at paragraph 60 below in response to paragraph 33g of Christopher's statement.
36. At paragraph 6 of Christopher's statement he refers to the trusts set up for the benefit of Laurence. These are the same trusts that have been manipulated by Christopher for his benefit, to Laurence's detriment. I was initially a trustee of those trusts. Ultimately, after many frustrating attempts to obtain documentation to assist in understanding their financial position, I was forced to resign. It is both interesting and telling, given that both Christopher and Wright Hassall were involved at the time I felt it appropriate to resign, that none of the correspondence they must have was exhibited to Christopher's statement. The reason for my resignation was because I was prevented from carrying out my proper duties as a trustee and due to being denied access by Christopher to documents that directly related to the companies that Laurence had an interest in. It is now starting to become evident just why Christopher was so reluctant to give disclosure of the documents and information I sought; it was

clearly (in part at least) because of the actions that were being put in place to benefit himself.

37. At paragraph 9 Christopher refers to the dissolution of Marymar Investments Limited. Laurence had an interest in this company as it was a 100% owned subsidiary of CPL, which in turn Laurence had a 50% share in via the 2006 Will Trust. It is noted from the Marymar Investments Limited balance sheet at 31 March 2009 (~~pages 4 to 12 of MAF8~~) there was Cash at bank and in hand of £290,878 and Shareholders' Funds of £368,600 (~~page 9 of MAF8~~). An explanation is sought as to what happened to all of the assets and cash within the company. [Tab 42 - page 154]

[Tab 42 -  
pages 179 to 157]

38. At paragraph 10 I recall Christopher trained in accountancy before becoming company accountant and secretary, and later director. It is therefore surprising he has such difficulty with his recollection of financial matters. It is remiss of Christopher to say that he has no idea whether the companies will have specific details as to the times / roles / employment that our brothers worked for them. All of the information for the companies for the last 10 or 12 years will be recorded. Chris Denney could simply be authorised to send that information over (either to Christopher or directly to me). As indicated, Christopher appears to be preventing him from doing that at the moment.

39. At paragraph 11 my recollection is that Christopher was a director and company secretary except for the period around 2004 to 2006. He stepped away from those roles then due to his acrimonious divorce. Having considered the information as provided on Companies House I note that Christopher was appointed as a director of Dennis Fell Properties Limited, Heronfield Developments Limited, Martinvale Developments Limited, Speedwell Estates Limited, Cressingham Properties Limited and Marymar Investments Limited on 16 August 2002. He resigned 14 November 2003 and was reappointed on 20 November 2006 to date. Further, I note Christopher resigned as company secretary of the above-named companies on 8 January 2004 and was later appointed on 24 January 2007. Christopher remains in this position today. I do not therefore understand why Christopher has not provided the correct information within his statement.

40. Paragraph 12 is incorrect. I was born on 6 May 1959. I worked on the golf course as a teenager in the early to mid-1970's, but not for employment as I was at school until

1977. Further, I did not have continuous employment until 2001. I left the family companies in firstly in or about 1983 and secondly in or about 1993. Further, for the periods I was employed I do not recall earning commission. I may however have received bonuses from time to time.

41. At paragraph 13, Christopher indicates that Laurence's employment ceased in around 2010 or 2011. I do not think that this date is arbitrary; this seems to have happened immediately after I resigned as trustee. I do not know why his employment ceased and what severance or redundancy package was paid to him as a result. This is clearly relevant to his estate. It is understood the directors continued to be salaried and at some time later Christopher's wife was also added to the payroll.
42. As to the mention of Jonathan at paragraph 14, my understanding is that he was also employed from around 2005 to 2010.
43. As to paragraph 16, this is another example of Christopher being economical with the truth. Given his position as a director of the companies and the fact that he has access to any information that he wants, either personally or via the company accountant, he is quite able to give honest answers if he so wishes. Exhibited at ~~page 13 of MAF8~~ [Tab 54 - page 216] is a copy of a letter dated 25 August 2010 written by Christopher to me. Attached to that is the schedule referred to (~~pages 14 to 15 of MAF8~~) [Tab 55 - pages 217 and 218] prepared by Chris Denney. Christopher states:-

***"I think that Laurence's income has been consistently in excess of £50,000. This should put your mind at rest with regard to your assertions [SIC] that he has been financially disadvantaged by Timothy and myself".***

It is interesting that Christopher is prepared to arbitrarily toy with Laurence's income levels to suit himself. Further, the final sentence of his paragraph 16 is a complete nonsense; the companies can clarify that information immediately by Christopher simply checking back over the salary information data referred to by Kelly-Anne Carr in her email of 1 June 2020 (~~page 2 of MAF8~~) [Tab 123 - page 396] or alternatively by asking Chris Denney to do so. As shown in a letter from Chris Denney dated 25 February 2019 (~~page 16 of MAF8~~) [Tab 90 - page 317] by 2018 Laurence's income had diminished to such an extent he was no longer even a tax payer. This is in stark contrast to the £50,000 per annum income he had in

2006, 2007 and 2008. This is in direct contradiction to what Christopher stated in paragraph 16 of his statement.

44. At paragraph 17, the prime reason that these transfers were made was for estate planning and not to "equalise assets/income between his 5 children". I had been independent of the family companies for the majority of my working life and had separate companies, assets and income. I believe that this can be confirmed by Michele West who well recalls the intentions of my parents in relation to company assets and Laurence, to whom she was close.
  
45. The account given by Christopher at paragraph 18 needs to be corrected as follows; on 14 July 1993 I founded my own company, Fell Estates Limited. However, as previously stated, apart from two spells of employment, I had been independent from my father's companies for the vast majority of my working life (from approximately the age of 24 onwards). From time to time from the early 1980's onwards I had carried out joint deals with my father and on occasions I had separate companies with him and others. It is quite laughable to think that I could have persuaded my father to transfer his share if he did not wish to; he was very strong willed, very definitely his own man and made his own decisions. Any person that knew my father would know that he was not easily persuaded in matters such as this. It was always his decision. Further, my father and I liaised and co-operated on many business matters to ensure that we were not in conflict. Indeed, even after I set up on my own until he died, he regularly instructed me (and later my son) to act on ground rent negotiations and Leasehold Reform Act matters. However nothing that is said in paragraph 18 has anything whatsoever to do with Laurence's estate or indeed the proposed removal of Christopher as executor.
  
46. At paragraph 19:-
  - (a) I note that there is nothing exhibited to corroborate Christopher's contention that Grove Tompkins Bosworth ("GTB") confirmed that they did not feel that trust accounts were required. Christopher would have regular contact with GTB and it is inconceivable that he would not have discussed the trusts with Mike Ingamells. Christopher had spoken with Mike on many occasions and I have no doubt that he would have received advice in respect of his responsibilities.

(b) Indeed, there is correspondence between Richard Thompson and Mike Ingamells in 2009 that was copied to Timothy and Christopher. In fact, Christopher would have known that the opposite was true. Exhibited at ~~pages 17 to 22 of MAF8~~ are copies of four letters, all dated 30 September 2010, sent by Richard Thompson and Company to Timothy, Mike Ingamells at GTB, Laurence and myself. Previous correspondence addressed to me at the Henley office had not been forwarded to me. Paragraph 1 of the letter to Laurence (~~page 19 of MAF8~~) makes clear that correspondence has been sent to Christopher. Richard Thompson was previously the company accountant, (that role now taken over by Denney & Co) but still dealt with personal tax matters. Christopher was in no doubt either from him or from me as to his obligations as a trustee.

[ Tabs 57, 58, 59 and 60 - pages 220, 221, 222-223 and 224 - 225 respectively ]

[ Tab 59 - page 222 ]

(c) Indeed, Richard enquired of Christopher as to where the trust estate accounts are. His request was spelt out in very clear terms. My brothers did not pass the information on to Richard so I, not being provided with the information either, did not have the ability to respond. I reiterate Christopher's failure to cooperate was a precursor to me deciding to step down as a Trustee. The whole reason I retired as trustee (as documented in my first statement) was because I was prevented from having access to relevant documents to carry out my role. It would have been impossible for me to instruct an accountant to prepare trust accounts as I had no documents to give them. This is further evidenced by the comments of Richard Thompson as referred to in paragraph 46 (b) above. This is also confirmed in my letter of reply to Richard Thompson dated 14 September 2010 (~~page 23 of MAF8~~), conversations with him and my letter dated 4 April 2011 (~~page 24 of MAF8~~) [ Tab 76 - page 262 ]

[ Tab 56 - page 219 ]

(d) Christopher in his letter dated 20 August 2010 (~~page 25 of MAF8~~) acknowledges correspondence from Richard Thompson and therefore must have been aware of the requirements for keeping records.

[ Tab 51 - page 213 ]

47. Even if no formal accounts were prepared, Christopher needed to keep sufficient accounting records so that such accounts could be prepared, although it appears that Christopher has not done so (or if he has they have not been disclosed it so far).

48. Further concerns were raised by Mike Ingamells of GTB in respect of the will trust and money being drawn out of Cressingham Property Limited. It was apparent from his letter that the drawings were exceeding the profits being earned which is to the detriment of Laurence (pages of ~~26 to 28~~ of **MAF8**). [ Tab 79 - pages 268 to 270 ]

49. As to paragraph 21, I do not understand how Christopher could determine whether or not dividends were paid because he was not a company director between 2004 and 2006, as set out in paragraph 39 above.

50. As to paragraph 22:-

(a) There is no documentation in support of the contentions and in my view the dates have been deliberately altered to suit Christopher's contentions. In fact it was in about September 2008 when the activities of the Lehman brothers precipitated market falls. I believe that the bank required the repayment of the bank funding much later, in or around 2011/2012. This may coincide with an email between Christopher and Jonathan regarding the major sale of ground rents in 2011 as evidenced by page ~~29~~ of **MAF8**. If Christopher had wanted to be helpful and honest, he could and would have provided documentary evidence showing when these events occurred. [ Tab 78 - page 267 ]

(b) The notes to the accounts for Dennis Fell Properties Ltd, being the main borrowing company, show secured bank debts (both overdraft and loan) as follows:-

Date	Amount (£)	Exhibited within <b>MAF9</b>
31 March 2007	£1,891,092	Page 10
31 March 2008	£1,672,156	Page 21
31 March 2009	£1,498,485	Page 34

(c) The share sale financial document for April 2009 (a year after Christopher's claim of the bank ordering a £1m repayment) still shows total bank borrowing of £1,764,400 (page ~~37~~ of **MAF9**). I believe the reason for problems arising in 2007/2008 were as set out in my letter dated 6 March 2008 (pages ~~1 to 3~~ of **MAF10**), namely "there hasn't been an overall increase in assets and borrowings have increased by half a million pounds" (paragraph ~~3~~, page ~~2~~ of **MAF10**) and excessive remuneration expenses etc. [ Tab 44 - page 201 ] [ Tab 21 - pages 136 to 135 ] [ Tab 21 - paragraph 3 of page 137 ]

51. In respect of paragraph 23, please see the comments made in paragraph 46 above.

52. At paragraph 24, my father would often take the lead and was the instigator of many of the decisions relating to the trusts until his death in 2006. After my father's death I became increasingly concerned in respect of the trusts and Laurence's position. There were many times I expressed these concerns and examples of this are my letters to Timothy and Christopher of 6 March 2008, 10 March 2008 and 2 October 2008 (~~pages 1 to 7 of MAF10~~). I repeatedly made it very clear that I wanted to protect Laurence's interest. In the penultimate paragraph of 6 March 2008 and last paragraph of 10 March 2008 letters I asked for Laurence's loan account to be sent to GTB to be put on deposit for safekeeping.

[ Tabs 21, 22 and 25 - pages 136 to 138, 139 to 140 and 155 to 156 respectively ]

53. At paragraph 25:-

(a) Christopher incorrectly contends that I did not ask for information in relation to the companies other than on one occasion. In addition to repeatedly asking for information at innumerable meetings my requests were frequently made in writing - see for example letters 6 March 2008 (~~pages 1 to 3 of MAF10~~), 10 March 2008 (~~pages 4 to 5 of MAF10~~), 13 November 2008, 7 January 2009, 2 February 2009, 4 February 2009, 9 March 2009, 25 March 2009, 14 July 2010 and 18 August 2010 (~~pages 8 to 19 of MAF10~~). Further, there was correspondence between Anthony Collins Solicitors and Mike Ingamells in February and March 2010 specifically requesting financial information and this was sent to Christopher (~~pages 20 to 23 of MAF10~~). I recall that Mike Ingamells in a meeting on 1 September 2010 advised Christopher that he should provide financial information.

[ Tab 22 - pages 139 to 140 ]

[ Tab 21 - pages 136 to 138 ]

[ Tabs 28, 35, 36, 37, 39, 40, 47 and 50 - pages 159 to 160, 169 to 170, 171, 172, 174 to 175, 176, 200, and 211 to 212 respectively ]

[ Tabs 45 and 46 - pages 202 to 203 and 204 and 205 respectively ]

(b) I repeatedly asked Christopher for information; the provision of information slowed and eventually after 2010 he steadfastly refused to produce anything. I was concerned as to the increase in overheads, mainly increased salaries and expenses draining the companies' funds and the consequent dilution of share value in the trusts, and the hiding of information behind a veil of secrecy. The reason for the latter has since become self-evident. It was not because I was a competitor, but so that he could acquire all of Jonathan's shares at a knock down price, at the same time precluding Laurence's trusts from buying

them. It is also apparent from Jonathan's statement that he too was not furnished with this information.

- (c) As indicated above I have never been a competitor to the companies of my late father and now my brothers. Indeed, the opposite is the case. When my father was alive there was co-operation and where our interests were aligned we often acted together. After I left the companies in 1993 or thereabouts I was still instructed to act in negotiations on portfolios I had introduced. At that time I couldn't afford to purchase every opportunity that I found and many of those deals were still benefitting the companies after my father died and may still be doing so today. My knowledge on ground rents, and later my son's, was helpful to the companies to such an extent that for a period after my father died we still received instructions to act for the family companies. An example of these ground rent matters for 2008 is shown in a schedule headed LRA Matters ~~(pages 24 of MAF10)~~. In subsequent years where it has been mutually beneficial and our expertise has been required we have been invited to assist. A more recent example of this is when Matthew Fell dealt with a matter for Speedwell Estates Limited before the First Tier Tribunal which was successfully appealed to the Upper Tribunal ~~(pages 25 to 26 of MAF10)~~. [Tab 34 - page 165] [Tab 88 - pages 308 and 309]

- (d) I tried to continue the sensible convention whereby we liaised on potential opportunities to ensure we didn't needlessly compete against each other. However Christopher unilaterally terminated these long-standing mutually beneficial arrangements. That notwithstanding I continued to make sure I didn't bid against the family companies as I considered that this ultimately would be damaging to Laurence's interests. I doubt my brothers were even aware of this. Christopher has continually used the excuse that I'm a competitor to hide his illicit actions; he is the competitor to Laurence's interests not me.

54. Paragraph 26 is utter nonsense, Christopher fully understands what a trustee "is allowed to see". He has been told enough times, but this does not suit his purpose. This matter has nothing to do with my business or matters that appertain to me personally at all. These requests are purely for the benefit of understanding what Laurence's estate is entitled to through the trusts. It has become more and more evident due to the refusal to deliver up information and the deliberate untruths of

Christopher that the documents are likely to be illustrative of activities undertaken by him for his sole benefit.

55. As to paragraph 27:-

- [ Tab 11 - pages 55 to 91 ]
- a. Christopher refers to a loan which was made to me of £40,000. The setting up of the M & G trust was something done by my father and me. Whilst Christopher played no part in that, he was aware of its existence. Later, when the M & G Trust matured he became a trustee of the successor trust. The various trusts were discussed at meetings as evidenced at ~~page 3~~ of the attendance note dated 5 April 2006 pages ~~1 to 4~~ of MAF11. Initially I made repayments of that loan to my father. However he then decided to assign the loan to a trust for Laurence's benefit (not in any way to be split between the remainder of his brothers). On advice from Paul Doffman of Doffman Fogg & Partners, a financial advisor well known to both me and my father, the repayments were made into an M & G trust, which is confirmed by funds on maturity being paid to GTB. I believe that these monies did go towards the purchase of 7 Yarningale, Harwood Grove, Shirley. All of this will be documented. This is how the 2004 settlement in Laurence's favour was implemented.
  - b. Christopher alleges that I did not pay rental income to Laurence. There is no evidence at all that I ever had any rental income. In fact, I never had any rental income and was never involved in collecting or receiving rent from any property in this or any other trust. I believe at that time rental income was credited to Laurence's loan account in Cressingham Properties Limited. Again, once the documents that I have requested are forthcoming, this issue will be easily resolvable.
  - c. Much later, I understand that some rents were paid directly to Laurence. However I have no detail as I was not involved. My recollection is that 7 Yarningale was only owned for about a year and became vacant within six months. I believe it was then marketed for sale rather than re-let. All correspondence and management records will be with the office in Henley.

56. As to paragraph 29:-

(a) Chris Denney could very easily confirm the amounts spent on repairs and no doubt provide documents too. At page ~~5~~ of ~~MAF11~~ is a copy of Laurence's director's loan account schedule as at year ending 31 March 2019. Christopher previously indicated that approximately £20,000 had been spent on repairs. Given how long ago this occurred, the exact amount must be recorded and accounted for either in Laurence's Cressingham Properties loan account or in the accounts of Cressingham Properties Limited. If the money was spent by the companies on repairs, then Laurence's loan account would have to increase by an equivalent sum. [ Tab 91 - page 315 ]

(b) Clearly, from the sale price achieved the cost of repairs was not recovered by an equivalent increase in the value of the property. 15 Scarborough Crescent was purchased in 2008 for £51,000 and sold this year for £47,000. Either way, these repair monies are due and owing to Laurence's estate and must be repaid together with any rent received up to 8 October 2019, and the balance remaining on the CPL loan account. The loan relates to the repairs that were expended on 15 Scarborough Crescent, which cost an estimated £20,000. I sought clarification in respect of this at point 1 of my letter dated 29 October 2019 to Christopher (~~pages 6 to 7 of MAF11~~), and understand Christopher had since liaised with the company accountant to ascertain the total expenditure on the property and the balance on the CPL loan account. [ Tab 92 - pages 319 and 320 ]

57. As to paragraph 30, I have already referred in paragraphs 46 (b) and (c) above to the documents from Richard Thompson & Co dated 30 September 2010 and the failure of Christopher to properly engage in the matter.

58. As to paragraph 33d, exhibited at ~~pages 8 to 12 of MAF11~~ is a letter dated 17 February 2020 from Penmans (sent to both myself and Christopher). In it (at ~~page 9 of MAF11~~) Liz Wyatt states:- [ Tab 95 - page 96 ]

***"Chris also mentioned a Loan Account was held on behalf of Laurence and provided me with a copy Statement for the year ending March 2019. The balance stating at that time was £18,887.93 however, he advised the likely balance as at***

**8 October 2019 was £10,000. Whilst I appreciate this account has been utilised to settle Laurence's funeral costs and the valuation for Meliden Road, I have asked Chris to provide me with a statement for the account calculated to 8 October 2019."**

59. As to paragraph 33e, this is dealt with in paragraph 56 above.

60. As to paragraph 33g:-

a. I overlooked mentioning this money at the meeting with Penmans on 7 January 2020 as indeed did Christopher. I was then away until 5 February and again until 6 March and recall Liz Wyatt was also away. However, I advised Liz Wyatt in our telephone conversation on 11 March which is referenced in an email of the same date ~~(page 13 of MAF11)~~. That sum constitutes the balance of Laurence's money in my hands and has since been paid to Penmans in full. All my brothers were aware that I retained money for Laurence as it was essential to have funds readily available to meet expenditure for Laurence for his wants and needs, particularly after our father died. Indeed, Christopher acknowledged this in his email to me on 11 March 2020 ~~(page 14 of MAF11)~~ in which he refers to the sum "*regarding monies you had and were safe keeping for Laurence*". It is abundantly clear that Christopher was aware that I retained money on behalf of Laurence. It was likely that had I entrusted this money to my brothers it may not have been retained.

[ Tab 97 - page 329 ]

[ Tab 98 - page 330 ]

b. Laurence regularly stayed with me and my family both before and after my father passed away, at my own expense, and I would take Laurence shopping as the need arose, particularly for clothes which he had a habit of ruining, and shoes. These were mostly purchased at David Aitchison Menswear in Knowle, a shop and staff Laurence was familiar with. I recall Holidays to Sandbanks Hotel ~~(page 1 of MAF12)~~ and spending money for the same, a trip to Hill Valley Golf Club ~~(page 4 of MAF11)~~ and spending money were provided, for as well as a Panasonic television, dvd player (£830) referred to on the first page of the minutes 22 November 2006 ~~(pages 2 to 6 of MAF12)~~ and Christmas shopping are purchases/expenditure. Receipts for some items have been kept ~~(pages 7 to 8 of MAF12)~~. However I never had the receipts for all payments, such as the holiday at Sandbanks Hotel, as this would have been with the Henley office. It wasn't

[ Tab 17 - page 117 ]

[ Tab 11 - page 91 ]

[ Tab 13 - pages 93 to 97 ]

[ Tab 29 - pages 161 to 162 ]

anticipated that a detailed account of expenses from a period 12 to 14 years ago would now be requested when I do not particularly recall it being an issue at the time. I always kept a note of the balance (page 9 of MAF12). This ties in with another note dated 22 November 2006 from a meeting at Henley (page 10 of MAF12). This shows £300 cash given to Michele for Laurence and a then balance of £7926. After further expenditure a balance of £7,818 remained as at December 2008, which was when Laurence last stayed with me. I would never have imagined then that this would be the last time Laurence stayed with me.

[Tab 30 - page 163]

[Tab 14 - page 98]

- c. I am certain my brothers recall many of these items of expenditure and I am sure Timothy and Jonathan would accept the balance is as stated. Had I been aware at any time that Laurence needed this money, or indeed any financial assistance, I would not have hesitated in providing funds to him. Sadly, I did not know and was not asked. However, like Jonathan (who had a Lasting power of attorney over Laurence) I assumed that both Timothy and Christopher either directly via the companies or through the trusts, would have been providing Laurence with more than sufficient funds, particularly given Laurence's loan account in Cressingham Properties Limited and the firm financial provisions made for Laurence by our parents.
- d. Christopher alleges that I owed Laurence £16,000. There is no documentation to back up this allegation and it is untrue. I believe that Christopher has simply looked at or incorrectly recalled the document at (page 11 of MAF12) and seen a purported balance due from me of £16,428.80. The figure actually due from me to Laurence on that document is £3,000, in relation to the number plate (1MAF). The total consideration (£15,000) in respect of the number plate is well documented in minutes referred to below. That is actually part of the £7,818 that has been paid to Penmans and hence to Laurence's estate.
- e. There is an allegation made, once again a false one, without any documentary evidence in support, that I owe Laurence's estate £3,000 in relation to a number plate, namely 1 MAF. This number plate never belonged to Laurence and has never belonged to me. In fact it belonged to our mother. Given that my initials, as are my son's, Matthew, are MAF, it was always accepted it should remain in the family and this is minuted. As a result, Timothy and Christopher agreed a price of

[Tab 27 - page 158]

£15,000 as agreed at pages 2 and 3 of minutes 22 November 2006 (~~pages 3 to 4 of MAF12~~) [Tab 13 - pages 94 and 95]. This was raised again and agreed in a meeting on 31 January 2007 and confirmed in the meeting dated 1 May 2007. These minutes are found at (~~pages 12 to 22 of MAF12~~) [Tab 19 - pages 119-123]. I paid £3,000 to Timothy, Christopher and Jonathan, which is confirmed in my covering letter dated 13 November 2008 (autodated due to software) (~~pages 23 to 25 of MAF12~~) [Tab 28 - pages 159-160] enclosing cheques for the same. It was agreed that I would retain Laurence's share (namely £3,000) on account for expenses that would arise, particularly when I was looking after Laurence. That sum is part of the £7,818 already referred to and now with Penmans.

- f. In fact I suspect what has happened here relates to a loan made by my father to Christopher of £28,500 (balance shown in estate accounts £27,141.66). This was connected with a Standard Life policy that Christopher had. This is confirmed in Minutes of a meeting on 31 January 2007 (~~pages 12 to 17 of MAF12~~) [Tab 15 - pages 99 to 104]. Chris mentioned that the £28,500 which had been paid into Father's loan account against his Standard Life policy was not in fact due to the Estate and this will need to be dealt with after Probate. This sum is shown on page 2 of my later father's estate accounts which is found at (~~page 18 of MAF4~~) [Tab 20 - page 127]. My father told me about this loan and Michele West kept a record of it. I believe that an earlier loan of £40,000 to Christopher had been forgiven in total or in part. Christopher again later claimed that this loan (of £27,141.66) was intended as a gift and his brothers needed to repay the sum to him. This is not correct and page 2 of the estate accounts make express reference to that sum.
- g. A loan schedule dated 23 July 2008 (~~page 26 of MAF12~~) [Tab 33 - page 167] was faxed to me by Christopher which refers to CJWF Policy and purports to show sums for this owing to him by his brothers totalling £19,380, £4,620 of this from Laurence. I believe this is a sum due to Laurence's estate. There is a further sum shown of £3,800 due to Laurence from Christopher. In the absence of any explanation this sum too may be due to Laurence's estate. At page (~~11 of MAF12~~) [Tab 27 - page 158] there is a purported balance of £16,428.80 Christopher shows as owing by me to my brothers. I believe that Christopher was in Thailand at the time this was sent and the handwritten note on the fax is that of Jane Smith, who was the secretary and successor to Michele West. I believe this is in essence another version of the purported loans above. I further believe this was a ploy by Christopher to try and recover a share of the loan

that he was obliged to repay back to my father's estate.

[Tab 126 - pages 402-403]

- h. In my letter of 13 November 2008 (~~pages 23 to 25 of MAF12~~) (which as I said is now auto dated to 30 June 2020 due to the software I use) references are made to the loan. Tellingly, Christopher never did substantiate why he contended that £11,640 was owed by me to him. I will be intrigued when Christopher provides information as to what happened to Laurence's share of this purported loan, which should of course have been paid back to him. Similarly, I understand that Christopher fell out with and disinstructed GTB in relation to the estate and took the balance of estate monies remaining with them of approximately £55,000, and later obtained a refund of approximately £15,000 in costs. Laurence should of course have had his share of that and I await evidence of the same.
61. As to paragraph 33h Jonathan, in particular, repeatedly asked Christopher for monies for Laurence. Unbeknown to me, Laurence was struggling financially. There are a number of email exchanges in 2014 and many other evidences over the years that are referred to and exhibited within Jonathan's statement. Given what I have learned about Laurence's circumstances and finances to date since Laurence passed away I simply fail to understand how Christopher can state "I do not believe Laurence was short of monies" given that he was in direct control of the majority of Laurence's wealth through the three trusts created specifically to guarantee Laurence's financial security. Laurence also directly entrusted Christopher by giving him Lasting Power of Attorney.
62. In relation to paragraph 33i the personal registration number LJF 100 should be part of Laurence's estate as it was his number plate, irrespective of who holds the retention certificate. Laurence was very proud of the number plate as evidenced by the photograph at page (~~page 27 of MAF12~~). If the retention document is in the name of CPL it is most likely because his last car was a company car owned by that company.
- [Tab 147 - page 491]
63. As to paragraph 34:-
- a. None of this has at any point previously been raised in this matter. Christopher is entirely misguided. There has never been an agreement between myself, Timothy and Christopher. If he disagrees then I invite Christopher to produce a copy of it. What he is referring to relates to the period in or around 2002/2003 during or just

after the transitional period when my father's companies were being reorganised. At that time I too was concerned with rationalising assets with my father in relation to our joint matters including Coolrace Limited ("Coolrace").

- b. Coolrace is an off the shelf company which was set up in 1999 and which purchased 13 modern ground rents at Sker Walk for approximately £16,000. Coolrace is currently owned as follows; I have a 20% shareholding, my wife has 20% and my two children each have 5%. The other 50% is held by the Shamash family. David and I were the original directors and remain as directors. David Shamash was a business associate of my father and somebody I have known for many years. He, and his family, and I own many ground rents jointly through our respective family companies and have done so for nearly 30 years. A number of the ground rents at Sker Walk were sold prior to the death of my father.
  - c. I have since searched through my historical records and have identified a letter dated 3 January 2003 and completion statement in relation to this Coolrace purchase (~~pages 28 to 29 of MAF12~~). [Tab 5 - page 49]
  - d. I have raised this matter with the Shamash family and investigations are now currently ongoing. In the event any sums are due to Laurence's estate which are held by Coolrace, a payment will be made accordingly.
64. As to paragraph 36, I had no interest at all in purchasing Jonathan's shares in the companies and taking over ground rents for myself. This is simply untrue and an attempt to deflect away from what actually happened and how Christopher benefitted to the detriment of others. My position was clear throughout; to act in Laurence's best interest. There was only one very specific instance where I indicated I may consider purchasing Jonathan's shares and even that was to temporarily try and help resolve the problem created by Christopher, thus protecting Laurence's position in the matter. This is referred to in my letter dated 30 March 2009 to Chris Denney (~~pages 30 to 31 of MAF12~~). [Tab 41 - pages 177 to 178] It is quite wrong to say that accounts have always been available. Christopher then and now has steadfastly refused to allow access to documents. My first statement and the documents exhibited to it clearly show requests were not acceded to. The issue of any Court action was again dealt with in the first statement.

65. As to paragraph 37, I would like to see evidence of the dividends that Christopher says were paid to Laurence. I note from the attached schedule (~~page 15 of MAF8~~) that dividends were paid to Laurence in year ending 31 March 2009. I understand that further payments for dividends were made after the 1 April in 2009 in connection with the share transaction. As I have already said, there was no financial crash in 2007 and 2008 that had an immediate affect on the companies as I believe properties were continued to be purchased. My supposition is that the financial difficulties experienced by the companies stemmed from an increase in borrowings of approximately £500,000 without any corresponding investment, together with an exorbitant increase in salaries and expenses. In other words, there was too much money being taken out of the companies by Christopher and Timothy. It is noteworthy that Christopher again contends in the final sentence of paragraph 37 that he is "***not in receipt of this information***", in relation to the requests for historical information. I accept that Christopher may not have been a party to the conversations in respect of this, however, he certainly would have been aware of them. [Tab 55 - pages 218]
66. At paragraph 38 I note that once again Christopher relies on his "***recollection***" without any contemporaneous or substantiating documents. I do not understand the second sentence, and assume the word 'not' is missing between 'could' and 'buy'. In essence what happened was that Christopher behaved in such a way to enable him to buy Jonathan's shares at a very low value. The net result was very simple – Christopher preferred himself over the trust to the detriment of Laurence. Again, there is a bizarre reference to me being "excluded from the companies". I have never wanted to be included in the companies. Then as now my interest has only ever been on behalf of Laurence.
67. As to paragraph 39, I find it strange that Christopher now conveniently does not recollect the seven and a half hour trustee meeting in July 2010. His continued evasiveness is the reason why these proceedings are on foot.
68. As to paragraph 40, funds could not arbitrarily be paid to Laurence without first ascertaining what his entitlements were. The whole point was that Christopher refused to give company documents to enable me to understand what the position was. My recollection is that Doctor Jago, who was Laurence's consultant in Rehabilitation Psychiatry, had concluded that in terms of any kind of financial management, Laurence

could handle "day to day" expenses and did not extend beyond that. My understanding was he was not deemed capable of making major financial decisions. Indeed if he was so able, then I doubt very much whether it would have been necessary for Christopher or Jonathan to have a lasting power of attorney. I did explore the possibility of a Deputyship Order while Laurence was under Section, however this was no longer considered once a Lasting Power of Attorney was given. I did not continue at the time with any investigations because I was fully aware that the costs of so doing would be ruinous and the net loser of all of it would be Laurence. I had to walk away with a heavy heart because I was very concerned about what Christopher was doing.

69. As to paragraph 41, this is an open admission of blatant fraud on the part of Christopher both between CPL and DFP and in turn DFP and himself. Documents need to be produced that substantiate all of these alleged steps and the basis upon which they were made. This is clearly evidence of actions taken by Christopher to his benefit and the detriment of the companies and trust. There is no evidence is produced to show that £32,000 was paid. Penmans have already advised that share/trust valuations are required to enable the estate to be dealt with (first paragraph of ~~page 9 of MAF11~~). [Tab 95 - page 325] Christopher has simply ignored those requests. Given that these steps were taken during the period that Christopher was attorney to Laurence, I believe that there will have to be an investigation in relation to his actions in that respect too.
70. As to paragraph 42:-
- (a) This is yet a further admission of Christopher taking steps to directly benefit himself to the detriment of the company. These opportunities in relation to 4 Forest Road and 99 Mossfield Road were opportunities that should have been for the benefit of the companies and not for him personally. In essence all he has done is show that he is a direct competitor to companies to which he owes fiduciary duties.
- (b) I note that he fails to confirm the price paid for the freehold of 4 Forest Road and when it was paid. This is an opportunity and deal that should have been completed by the company. Documents are required to evidence the leasehold purchase at £110,000. An investigation also needs to take place as to what happened to the profit. Christopher's comment that he was "lucky" is perhaps

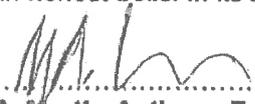
his way of trying to cover up another deal done for his benefit. The fact is he knew exactly what the true values of these freeholds were and hived off these very profitable deals from the companies that according to his own statement desperately needed these profits for their continued survival.

(c) He in fact has a system (a ground rent calculator) that enables him to do a "value check", so there would be no room for him to contend that he is guessing or has in any way been lucky.

71. As to paragraph 43, the information was given to me by Timothy and further confirmed by Jonathan who had been told a similar thing. I did not threaten to sue Christopher -- in fact I have not had any conversations with him since March.
72. Paragraph 44 is entire fiction, for the reasons I have set out above, particularly at paragraphs 23 - 28.
73. As to paragraph 45 and as alluded to earlier, these proceedings are my claim for Christopher's removal as executor. He has demonstrated in his witness statement that he is prepared to be dishonest in order to ensure that his actions are not uncovered. There is no basis whatsoever for me to step down or even consider stepping down as executor. What Christopher is trying to do is to avoid any investigation of his and Timothy's actions, which have had a direct and devastating effect on Laurence and his estate. Given the knowledge I already have of the family, the companies, their history and structures, including many of the assets and their values, it is going to be far more cost effective for me to retain the role as executor so that I can ascertain the facts and ensure that Laurence's estate is properly constituted and subsequently administered.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed  .....  
Mr Martin Anthony Fell

Dated this 16th day of July 2020

Claim No. PT- 2020-BHM-000041

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell  
(Deceased)

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**SECOND WITNESS STATEMENT OF THE CLAIMANT**

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Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 3  
Exhibits : "MAF13" "MAF14"  
Date : 7<sup>th</sup> October 2020

**IN THE HIGH COURT OF JUSTICE**

**Claim No. PT-2020-BHM-000041**

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**WITNESS STATEMENT OF THE CLAIMANT**

---

I, Martin Fell of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 SQQ, company director, wish to rely on the following evidence in support of this application to remove the Defendant as one of the Executors of my brother, Laurence's, estate:-

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. The Defendant's Statement, at paragraph 34, raised a question as to the Sker Walk ground rents. In my Witness Statement in Reply, dated 16<sup>th</sup> July 2020, at paragraph 63 I set out the background to the Sker Walk ground rents and stated that I had raised the issue with the Shamash family and that investigations were ongoing.
3. Whilst I note that Christopher in his statement provides that there was an agreement

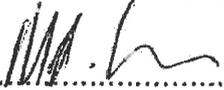
as to how the profits would be shared when ground rents were sold, I do not agree that such went back to 2001, as this was during the period when our father was alive and dealing with matters (and receiving 25% of the net proceeds).

4. As Christopher is an Executor of our father's estate, then I am prepared to now deal with matters in accordance with his direction, i.e. that the net profits that belong to our father's estate are divided as to 5% to each of my father's sons.
5. I make this statement solely to report the outcome of those investigations.
6. I attach hereto at "**MAF13**" an email I received from Anthony Shamash on 24<sup>th</sup> September 2020 in which he copied me into an email from Matthew Hann, a Partner with Grove Tompkins Bosworth ("GTB"), dated 22<sup>nd</sup> September 2020. [Tab 131 - pages 451-454]
7. I confirm that on the sales of 8, 30 and 32, my brothers were paid their 5% share of sale proceeds as sales completed.
8. In so far as the sale of 10 in 2013 is concerned, there had by this time arisen a payment of £5,073.72 due to me from my father's estate, and I refer to the documents at [Tab 20 - page 132] "**MAF14**", being a summary of funds held at GTB, a letter dated 25 January 2012 from [Tab 82 - pages 274 - 276] Mike Ingamells (of GTB) to me and an email dated 23 February 2012 from me to Mike [Tab 83 - page 277] Ingamells. Further, my father's Estate had received a refund of costs of £15,000 from GTB. I had been advised by Timothy at this time that Christopher had taken both the remaining monies belonging to my father's estate that were held by GTB, including the £5,073.72, plus the refund of costs, and none of it had been accounted for, not to me at least. I had arranged with Timothy, who was one of my father's Executors, that on the next Sker Walk completion there would be a set off to address the outstanding monies due to me. This payment would be the £2,027.50 arising upon the sale of 10.

9. No monies have been paid out in respect of 14, being the last sale in 2015. I agree that each of my brothers should be paid 5% of this (£2,219.52), and Coolrace Ltd will pay £443.90 to Penmans to hold for Laurence's estate and will arrange for the same amount to be paid to Timothy, Jonathan and Christopher (in accordance with Christopher's request in his Statement), irrespective of the fact that I have not received my full entitlement to my father's estate (as set out in the previous paragraph).
10. I confirm that when 5, 13 & 34 are sold, then Coolrace Ltd will ensure that 5% of the net proceeds are distributed to each of my brothers (and to Laurence's estate).

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed ..........  
Mr Martin Anthony Fell

Dated this 7<sup>th</sup> day of October 2020

Claim No. PT-2020-BHM-000041

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell,  
deceased

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**WITNESS STATEMENT OF CLAIMANT**

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Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

Party: Defendant  
Name: Christopher John William Fell  
No. of Statement: Second  
Exhibit: CJWF2  
Date: 29 October 2020

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**Claim No. PT-2020-BHM-000041**

**B E T W E E N:**

**MARTIN ANTHONY FELL**

Claimant

-and-

**CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**SECOND WITNESS STATEMENT OF THE DEFENDANT IN RESPONSE TO  
THE CLAIMANTS CLAIM ISSUED ON 14 MAY 2020**

---

I, Christopher John William Fell of 99 Mossfield Road, Kings Heath, Birmingham, West Midlands, B14 7JE WILL SAY as follows:

1. I am the Defendant and I make this witness statement in response to Martin's ("Martin") claim to remove me as one of the executors of my brother, Laurence Fell (deceased) ("**Laurence's**") estate as detailed in his Claim Form dated 14 May 2020 and various witness statements served in response to my first witness statement, namely Martin's second witness statement and those of my brother, Jonathan and Michele West.
2. In order to avoid unnecessary repetition of information and documents, throughout my witness statement, I refer to paragraphs and exhibits of the witness statements referred to above. I have continued to use the same abbreviations for my family in this witness statement as in Martin's Witness Statement. References in square brackets in this statement are to pages in the exhibit which accompanies it.

3. What is abundantly clear from Martin's second witness statement is that he has no intention of engaging with the critical point raised in my first witness statement. In that regard, he appears to have no answer to the suggestion that it is clear that he has a clear conflict of interest in being an Executor of Laurence's Estate. I shall comment on this briefly below.
4. In these circumstances, I should be clear at the outset that I do not propose to answer much of what is said at this stage. If a court later takes the view that the allegations need to be answered, I will happily file lengthy and detailed evidence which deals with the issues raised on an 'item by item' basis. Martin should be under no illusions that merely because I do not address everything he raises at this stage that does not mean that I accept it. By and large, I disagree with much of what he says but it seems to me unnecessary to flood the Court with evidence in circumstances where it seems clear that an independent executor is required.

#### **Martin's Position as Executor**

5. I had hoped that I had made clear in my first witness statement in response to this claim that I do not consider that Martin is an appropriate person to be an executor of Laurence's estate. If I need to make a formal application in that regard I will do so. This claim being brought in what I understand is called Part 8 means that I did not have the opportunity, as I understand I otherwise would, to file a Defence and Counterclaim expressly seeking Martin's removal. If a formal document needs to be lodged I will ensure that this is done. However, for present purposes I would respectfully request that the Court consider our position as executors at the same time.
6. The fact that Martin has to resort to the sort of language that he does in paragraph 14 demonstrates not only that he is troubled by the suggestions that I have made but also that he has no option other than to try to belittle me personally together with the legitimate points that I have made.
7. It is not good enough for him to dismiss my suggestion that he owed Laurence's estate a considerable sum of money (as I set out in my response to the letter of claim) when it is perfectly plain that was exactly the case.
8. Further, he refuses even to engage with the suggestion that the same reservations in relation to dealings with the various trusts that he alleges against me apply with equal force to him. The position, whether he likes it or not, is that for many years Martin was a trustee of various of the family trusts. A particular complaint is that no trust accounts were produced. That is precisely the case in relation to the trusts of which he was a trustee and in relation to which he states there need to be investigations. It should be plain to him and, with respect, to the Court, that Martin should not, as executor, be investigating the trusts of which he was a trustee.

9. I ask the Court to note that information in relation to Sker Walk has been in his possession for some considerable time. He has chosen to release it only when requested to do so on numerous occasions.
10. I have read Martin's third witness statement with care and think that a small number of comments need to be made in that regard. Firstly, it is clear from his email dated 23 February 2012 to Mike Ingamells ~~[page 4]~~ [Tab 83 - page 277] that Martin had a grievance in relation to the will and estate of our father.
11. Further, Martin is wrong in paragraph 8. He claims to have been entitled to £5,073.72 but specifically refused to sign off the accounts because of a misallocation of some £50,000 odd. Quite simply, Martin was not entitled to the alleged amount or any set-off. I appreciate that Martin has and will say that I am wrong. The necessary and only consequence is that this, amongst many other issues, requires further investigation. It plainly cannot be correct that Martin is the person who conducts that investigation.
12. That he thinks it appropriate, on the basis of his own mistake, to withhold sums without discussion with me displays just how inappropriate it is that he continues as executor.
13. Thus, even at this stage, where I have put Martin's position as executor directly in question, he thinks it is appropriate, in addition to the above, that he should continue to retain the proceeds of sale of a ground rent from a sale in 2015 (as he freely admits in paragraph 9 of his third statement) in circumstances where not only was I but others as well were entitled to a share of the same (and, even on his evidence, thought I confirm for the avoidance of doubt, I have not received any) is a preposterously bold way of asserting his entitlement to continue as an executor.
14. It is the sort of thinking that lies behind paragraphs such as the eighth in Martin's most recent statement, which demonstrates clearly that he is not capable of the sort of proper neutral thinking and behaviour that is required of an executor. He appears to be working on the basis of his own personal view or perception of the fairness of any given situation (by which he views his position as the focus) rather than the rational basis which underlies it. Given just this latest example, it is clear that what he really wants is my detriment. That is not appropriate behaviour from someone who wishes to continue to be an executor.
15. I also pause to note that details regarding Laurence's pension have been withheld by Martin (see for example recent correspondence between our respective solicitors ~~[pages 2 to 20]~~). Even at this stage, he doesn't think it appropriate to release those monies to me until resolution is reached. For present purposes, I need only state that he has no legal right of any kind to withhold those monies.

[Tab 129 - pages 447 - 448]

[Tab 130 - pages 449 - 450]

[Tab 132 - pages 455 - 456]

[Tab 133 - pages 457 - 459]

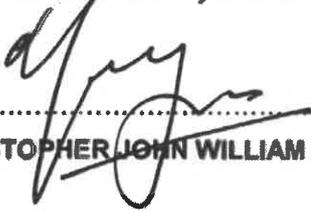
[Tab 93 - pages 321 - 322]

[Tab 100 - pages 382 - 387]

[Tab 124 - pages 397 - 398]

16. As a consequence Martin should be removed as an Executor. As both Martin and I openly accept that we will have difficulties in acting as joint executors, in order to avoid unnecessary legal costs being incurred, prior to this litigation I openly offered that both Martin and I be removed as Executors and an independent Executor be appointed. This offer was made to allow Martin to "save face" and I did not want to be involved in continuing arguments with Martin, which have now lasted on/off for 2 decades. Equally, however, I do not accept that I should step down as an Executor and allow Martin to be an Executor and administer the Estate, as he has a clear conflict of interest.
17. As I set out at the start of this short statement, I have addressed only the one issue which ought to be considered by the Court at the first hearing of this matter, namely, whether Martin is in a position of conflict such that he should be removed as an executor. I think it is rather obvious that the answer to that question is that he is, with the effect that (as I suggested at the outset of this dispute), an independent third party should be appointed to continue the administration of the estate.
18. If it would assist the Court in any way for me to provide a more detailed response to the witness statements filed by Martin, I will happily do so. For the time being, however, it seems to me that to do so would result in unnecessary expense and potentially a waste of the Court's time.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

  
.....  
CHRISTOPHER JOHN WILLIAM FELL

Dated: 29 October 2020



**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER of the Estate of Laurence Fell, deceased  
Before District Judge Rouine sitting at the Birmingham Civil Justice Centre  
On 6<sup>th</sup> November 2020

PT-2020-BHM-000041

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**ORDER**

---

UPON the first Directions hearing by BTMeetMe

AND UPON hearing Counsel, David Mitchell, for the Claimant and Counsel, Edward Rowntree, for the Defendant

AND UPON the Defendant making an Application in the face of the Court for Permission to bring a Part 20 Counterclaim for the removal of the Claimant as an Executor of the estate of Laurence Fell, deceased

IT IS ORDERED that:-

1. The Defendant has permission by 4pm on 27<sup>th</sup> November 2020 to

issue, file and serve a Part 20 Claim for the removal of the Claimant as an Executor of the estate of Laurence Fell, deceased. The Part 20 Claim shall consist of a Claim Form and a witness statement in support which sets out full and proper particulars of the grounds relied upon by the Defendant for the removal of the Claimant as an Executor;

2. The Claimant shall (if so advised) file a witness statement in response of the Part 20 Claim by 4pm on 11<sup>th</sup> December 2020;
3. The claim shall be listed for a further Directions hearing (by BTMeetMe) on the first available date after 4<sup>th</sup> January 2021 before a BP Specialist District Judge, time estimate 1.5 hrs with 1 hour's pre-reading time;
4. Costs in the Case.

DATED 6<sup>th</sup> November 2020



**Claim Form  
(Additional claims -  
CPR Part 20)**

**In the** High Court of Justice  
Business and Property Courts at Birmingham

Property, Trusts & Probate List (ChD)

**Claim no.** PT-2020-BHM-000041

**Fee Account no.** PBA0088023

**Help with Fees -  
Ref no. (if applicable)** **H W F** -    -

**Claimant(s)**

Mr Martin Anthony Fell, Camp House, Camp Lane, Henley-in-Arden, B95 5QQ  
(as an executor of the Estate of Laurence James Fell Deceased)



**Defendant(s)**

Mr Christopher John William Fell, 99 Mossfield Road, Kings Heath, Birmingham,  
B14 7 JE  
(as the other executor of the Estate of Laurence James Fell Deceased)

**Part 20 Claimant(s)**

Mr Christopher John William Fell

**Part 20 Defendant(s)**

Mr Martin Anthony Fell

**Brief details of claim**

- 1) Part 8 of the Civil Procedure Rules 1998 applies to this claim.
- 2) This claim is made pursuant to the Order of District Judge Rouine sitting at the Birmingham Civil Justice Centre on 6 November 2020.
- 3) The Defendant/Part 20 Claimant claims the following relief:
  - a) an Order removing the Claimant/Part 20 Defendant as an executor of the estate of Laurence James Fell Deceased;
  - b) an Order the Claimant/Part 20 Defendant pays the costs of this application; and
  - c) such further or Order as may be just.

**Defendant's name and address**

Mr Martin Anthony Fell  
  
c/o Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN (Ref: MXA/FEL4.1)

	£
Amount claimed	
Court fee	528.00
Legal representative's costs	
<b>Total amount</b>	<b>528.00</b>
Issue date	

For further details of the courts [www.gov.uk/find-court-tribunal](http://www.gov.uk/find-court-tribunal).  
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

Value

**Particulars of Claim (attached)**

1) The legal basis for the Defendant/Part 20 Claimant's claim is as follows:

- a) Laurence James Fell Deceased died on 8 October 2019, leaving a last Will dated 28 May 2008, but probate has not yet been applied for;
- b) the said Will appoints the Claimant/Part 20 Defendant and Defendant/Part 20 Claimant as executors;
- c) the Claimant/Part 20 Defendant cannot continue as an executor as there is a clear conflict of interest in him continuing in this role as detailed in the attached Witness Statement of the Defendant/Part 20 Claimant dated 27 November 2020, copies of which are served herewith.

2) This claim is made under Section 50 of the Administration of Justice Act 1985.

**Statement of Truth**

~~XXXXXX~~ (The Part 20 claimant believes) that the facts stated in these particulars of claim are true.  
 \* I am duly authorised by the Part 20 claimant to sign this statement.

Full name MARTIN STUART OLIVER

Name of Part 20 claimant's legal representative's firm Wright Hassall LLP

signed  position or office held PARTNER  
 \*(Part 20 claimant) ~~XXXXXXXXXX~~ (if signing on behalf of firm or company)  
 (Legal representative's solicitor) *\*delete as appropriate*

Wright Hassall LLP  
 Olympus Avenue  
 Leamington Spa  
 Warwickshire  
 CV34 6BF  
 742180 LEAMINGTON SPA 6  
 +44 (0)1926 885588  
 martin.oliver@wrighthassall.co.uk

Part 20 claimant ('s legal representative's) address to which documents or payments should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

Party: Defendant  
Name: Christopher John William Fell  
No. of Statement: Third  
Exhibit: CJWF3  
Date: 27 November 2020

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**Claim No. PT-2020-BHM-000041**

**B E T W E E N:**

**MARTIN ANTHONY FELL**

**Claimant and Part 20 Defendant**

-and-

**CHRISTOPHER JOHN WILLIAM FELL**

**Defendant and Part 20 Claimant**

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**THIRD WITNESS STATEMENT  
OF THE DEFENDANT**

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I, **CHRISTOPHER JOHN WILLIAM FELL**, of 99 Mossfield Road, Kings Heath, Birmingham, West Midlands, B14 7JE **WILL STATE AS FOLLOWS:**

**Introduction**

1. I am the Defendant and Part 20 Claimant in this matter. I make this, my third, witness statement in support of my counterclaim seeking the removal of the Claimant as an

executor of the estate of our late brother, Laurence. This statement is filed and served pursuant to the order of District Judge Rouine made in the High Court in Birmingham on 6 November 2020. In order to avoid confusion, I have continued to refer to my brother Martin as 'the Claimant' even though for the purpose of this statement he is the Part 20 Defendant.

2. In order to avoid unnecessary repetition of information and documents, throughout my witness statement, I refer to paragraphs and exhibits of the witness statements already served in this action. I have continued to use the same abbreviations for my family in this witness statement as in all previous witness statements.
3. Attached to this witness statement is an exhibit which contain documents that I refer to in this witness statement or which are otherwise relevant to the counterclaim. It is marked ~~CJWF3~~: References in square brackets are to pages in that bundle.
4. What is abundantly clear from the Claimant's second and third witness statements is that he has no intention of engaging with the critical point raised in my first witness statement in this action. In that regard, and as I have already made clear, he appears to have no answer to the suggestion that it is clear that he has a clear conflict of interest in being an Executor of Laurence's Estate.
5. Beyond the short number of paragraphs which follow immediately, I don't propose to re-iterate the factual background to the present dispute which is set out very clearly in the Claimant's First, Second and Third witness statements and my own first and second witness statements. The Court will, even from a brief glimpse, be readily aware of the matters in relation to which my brother and I have fallen out.

### **Factual Background**

6. The necessary factual background to my counterclaim is, in one sense distinctly limited. The Claimant and I are brothers. Laurence, who died in October 2019, was also our brother. We have two further brothers – Jonathan and Timothy. Laurence's last will appointed the Claimant and me as joint executors. Although a matter of regret, it will be clear from the evidence filed in this claim to date that our relationship is not good and has not been for many years.

7. I attended, albeit by telephone, the last hearing of this matter in the course of which I was ordered to file this witness statement. I think I am correct to recall that the Claimant's counsel said that if the entire family history, involving various trusts and companies from 2002 onwards needed to be investigated it would almost certainly require pleadings and at least a two week trial. As it happens, I agree with that assessment.
8. The only question for the Court as matters presently stand is whether or not the Claimant should be removed as an executor of Laurence's estate. For that reason, as previously, I do not propose to set out chapter and verse in relation to our family history as I do not think it is necessary in order to demonstrate that the Claimant's conduct renders him unfit to be an executor. I hope that this will enable the Court to come a view quickly.
9. In short, I ask that the Court read this statement in the light of the detail given in my first two statements as to the necessary factual background.

#### **Martin's Conduct**

10. I wish to draw the Court's attention to the following three specific matters which in my respectful opinion render the Claimant unfit to act as an executor of Laurence's estate. They are:
  - 10.1 his involvement in the family trusts in the period from 2002 to about 2011 or 2012;
  - 10.2 the fact that he owed considerable sums to the Estate but failed to mention them until long after Laurence's death;
  - 10.3 his failure to release information and funds in relation to a group of properties called Skerr Walk.
11. I also wish to draw the Court's attention to a series of other aspects of the Claimant's behaviour which, whether taken on their own, or with the above matters, renders the Claimant unfit to continue as an executor.

## The Family Trusts

12. The primary basis for seeking the Claimant's removal as an executor is his involvement in the family trusts. The Claimant has made a very clear complaint in the course of his evidence that it was a failing on my part that no trust accounts were ever drawn up for the two trusts.
13. I have no doubt but that the Court will recognise that it is the Claimant's own evidence that during the periods from 2002 to 2011 and 2004 to 2011 that he was a trustee of the two family trusts. If trust accounts were required, it was as incumbent upon the Claimant as it is alleged that it was incumbent on me to have trust accounts drawn up.
14. For my part, during the period when our father was still alive, which is to say up to 2006, I relied on my father in the role as trustee to undertake all necessary steps and to advise me if there was anything that I particularly needed to do. I did not, myself, fully appreciate the work that had to be done. Following the death of my father, the Claimant and I remained as trustees. I was aware that my primary responsibility was to Laurence and to ensure that any income from trust assets, whether in the form of dividend payments or rental income was made available to him. I did that throughout my period as a trustee.
15. Insofar as the tax implications of those receipts by Laurence were concerned, as far as I was aware those were a matter for Laurence's personal tax affairs and not part of my responsibility as a trustee of the two trusts.
16. As far as I am concerned, the Claimant had at his disposal all the necessary documentation if he wished to compile trust accounts himself or if he wished to have trust accounts drawn up. So far as I am aware, and absent any suggestion to the contrary from the Claimant up to this point, he did not seek or receive any advice in relation to his role as a trustee or the need for trust accounts.
17. From 2002 until the point in time at which the Claimant resigned as a trustee, he and I did not discuss the running of the trusts or any part of our involvement as trustees. I did instruct Mike Ingamells to deal with any necessary trust matters and he did not suggest to me at any point in time prior to 2011 that trust accounts were necessary.
18. However, from a point in I think 2010 (and I can't be absolutely clear given that it is a decade ago) the Claimant started to ask for information which he considered to be relevant to his role as a trustee but which to me looked very much like looking for

information which would be helpful to him in relation to his trading companies (see ~~pages 1 to 2 of Exhibit CJWF3~~). [Tab 45 - pages 202-203]

19. In the light of the fact that we didn't speak in relation to trust matters at all, this did not come as a spark to warm relations between the two of us. Merely by way of example, his requests for copies of documents such as stock schedules and assets lists for the companies in which the trusts had an interest, were nothing to do with the operation of the trust or sums of money that Laurence was entitled to. Neither were things like director's remuneration, pension expenses, or inter-company management charges. This looked to me very much like a fishing exercise which had nothing to do with the operation of the trusts. I made very clear to him in my letter dated 24 August 2010 (~~see page 3 of Exhibit CJWF3~~) that whilst the trust had an investment in the companies (in the form of shares) it was for the directors of the company to run it and not the trustees.

20. I have said throughout this matter that it is clear that the Claimant was a competitor in relation to the business of the family companies. Despite his repeated denials that this was the case, such could not have been made clearer than his own letter dated 18 May 2006 (~~see page 4 of Exhibit CJWF3~~). In that letter he noted, Tim and I being the addressees, that the 'longstanding convention' between his companies and 'Dennis Fell companies' in relation to bidding for ground rents at public auctions appeared to be at an end. He considered that a retrograde step.

21. His second paragraph, which reads "In the past, I have never bid for tenanted property where The Dennis Fell Companies were intending to bid and as a quid pro quo The Dennis Fell Companies has never bid on ground rent lots that I have been interested in. If you wish to reconsider your position on this then can you please let me know without delay", makes clear that such convention was in the past. The third paragraph made the then present position abundantly clear: "If it is the case that you wish to compete directly with me on ground rent matters then naturally I am unable to assist you on dealing with the inevitable notices and court matters that occur in this field." The fact of competition between businesses is not a matter of the choice of one or both parties. It was a simple matter of fact that as at that time, and as the Claimant expressly recognised, the businesses were competing.

22. I took the view that the requests the Claimant was making for information were inappropriate. These requests also came against a backdrop of difficulties between the Claimant and our father. A good example is the letter that my father plainly felt

[Tabs 1 and 2 - pages 9 and 10]

compelled to write to the Claimant on 5 July 2001 (see ~~pages 5 to 6 of Exhibit CJWF3~~) where the Claimant was required to return folders to our father which he had taken and which didn't belong to him.

23. I should be clear that the Claimant was provided with copies of the company's accounts, as he was entitled to as a shareholder. I think that I am correct in saying that by and large this was done in the course of a shareholders meeting. In relation to the accounts in 2009, those were sent under cover of my letter dated 4 March 2009 (see ~~page 7 of Exhibit CJWF3~~). That was the information to which he was entitled as a not only as a shareholder but also as a trustee.

[Tab 38 - page 173]

24. In or about 2011 I was aware that a tax return needed to be filed following the sale of properties which were trust assets. To that end, I instructed Mike Ingamells to prepare such accounts as were necessary to enable the tax return to be filed. He sent me the accounts under cover of a letter dated 27 October 2011 (see ~~pages 8 to 14 of Exhibit CJWF3~~) I am not aware that the Claimant took part in any part of that exercise.

[Tab 80 - page 271]  
[Tab 81 - pages 272-273]  
[Tab 77 - pages 263-266]

25. I understand that the Claimant's allegation, amongst others, is that the affairs of the trusts need to be investigated in the course of the administration of Laurence's estate. If this is the case, he stands accused of exactly the same failure as me – namely a failure to act properly as a trustee and a failure to produce trust accounts at any point during his involvement as a trustee. In that respect, he is plainly in a conflict of interest given that for the period from 2002 until 20011, he would be investigating his own conduct or lack thereof and his own dereliction or abdication of duty.

26. Further, and although he contends that it was a failure on my part to provide him with information that led to his resignation as a trustee, I would add that when the dispute arose which allegedly caused the Claimant to resign as a trustee, there was correspondence between him and my then and current solicitors (~~see pages 15 to 22 of Exhibit CJWF3~~). Whilst those letters speak for themselves, I think it is clear that at the first sign of the Claimant's faults being pointed out, he backed down very quickly and resigned as a trustee.

[Tab 75 - page 261]  
[Tab 73 - pages 258-259]  
[Tab 74 - page 260]  
[Tab 71 - page 255]  
[Tab 69 - page 252]  
[Tab 67 - pages 238-239]

It is for this reason, together with the others that follow, that it is my view (and the essence of this application) that the Claimant is not a proper person to continue with the administration of Laurence's estate. I repeat my opening position, made clear in correspondence prior to the issue of claim and prior to the vast sums which have no doubt been spent, which is that I am content to stand down as an executor provided

that the Claimant does the same. I have no doubt but that an appropriately qualified independent third party would be able to undertake the necessary investigations swiftly and, relatively, inexpensively.

### **Monies owed to Laurence's estate**

28. I made clear in my first statement that the Claimant owed nearly £8,000 to Laurence's estate. Laurence died in 19 October 2019. It was not until 17 March 2020 that the Claimant disclosed that this sum was due. I do not know what took him nearly six months to realise that this was the case or, indeed, tell anyone. Of anyone, one might have expected that the first person he might inform would have been myself – his co-executor.
29. I would note that to date the Claimant has not provided a single document which positively identifies any sum that he held for or on Laurence's behalf. Not a single bank statement or other document shows what sums he received; from what source; what was passed to Laurence; and what was retained.
30. Whilst I have no wish to repeat what I have set out in earlier evidence, paragraph 33(g) of my first witness statement is of particular importance:
- “Monies held by Martin (£7,818) which he disclosed to Penmans in his letter to them dated 17 March 2020. I understand Martin owes considerably more monies to Laurence. It is interesting to note that Martin made no reference to monies owing to Lawrence prior to 17 March 2020, even though he had been asked by Penmans as to what he understood formed part of Laurence's estate. In 2019 I was present, together with Martin and Tim at Fell House whereby Martin asked whether anyone owes Laurence any money. I replied to Martin, “*apart from you?*” and he became extremely angry and asked me whether “*I really want to go there*”. I understood that Martin owed Laurence £16,000 and I have not seen any evidence to support that any monies have been repaid. Clearly this will need to be investigated and I understand this creates a conflict of interest in Martin continuing as an Executor of Lawrence's estate.”
31. In these circumstances, again, the Claimant is going to have to investigate his own affairs in order to pursue the proper administration of Laurence's estate. That cannot be the right or proper way in which to proceed.

### Skerr Walk

32. In short, the position in relation to Skerr Walk is that the Claimant has for a long time denied that any monies were due to Laurence's estate in this regard.
33. By way of background, I understand that on 17 December 2002 13 freehold ground rents were purchased by a company called Coolrace Limited. The directors and shareholders in Coolrace initially were our father, the Claimant, a David Shamash and his son, Anthony. Each held a twenty-five per cent shareholding. Our father resigned as a director on 10 July 2003 having transferred his shares to the Claimant on 28 December 2001. Some of those 13 ground rents were sold during my father's lifetime and he obviously took his share of the profits.
34. When our left Coolrace it was agreed at that stage, given that our father had put significant money into Coolrace to enable the purchase of the ground rents, that were any of the freehold ground rents to be sold, although the Claimant would formally be entitled to the proceeds of sale accruing to the shares that our father had transferred to him, our father would still be paid twenty-five per cent of the rent and profits (see the letter from David Shamash to our father dated 3 January 2003 (~~see page 23 of Exhibit CJWF3~~ [Tab 5 - page 49])). After his death, Martin suggested that what would otherwise have been our father's entitlement (the twenty-five per cent share) would be split in equal proportions between his five children.
35. Whilst I note that the Claimant now says that he is happy to abide my request that the profits of ground rent sales be paid in a particular way, I am not sure that it is quite that simple. Although what I have put in the above paragraph is what we intended as a family, I am not sure whether as a matter of formality these funds need to be treated as having accrued to my father's estate. I should say that the accounts in relation to my father's estate which the Claimant refers to in his third witness statement were not agreed or final estate accounts.
36. I think that I first became aware of Skerr Walk shortly after my father's death in 2006. Shortly thereafter part of the proceeds of the sale of three properties was paid, I think, to Cressingham. I discussed this with my brother Timothy and we came to the view that this was an informal arrangement by which our father's notional share in the net proceeds of sale was being recognised but that, given he was no longer alive, the monies were to be split between the children. I am not sure that the Claimant is correct that those funds represented the sales of numbers 8, 30 and 32.

37. As to the sale of number 10 in 2013 is concerned, as referred to in paragraph 8 of the Claimant's third witness statement, I do not understand how the Claimant could have reached agreement with Tim without any reference to me in relation to an alleged shortfall in his entitlement from our father's estate. As I say, the accounts on which such an entitlement appears to be based were neither agreed nor final. Further, the Claimant was not an executor of our father's estate.
38. Even on the Claimant's own evidence, any such entitlement was concluded on 2013 by the set-off which he claims took place. He brazenly states that no monies have been paid out in respect of the most recent sale, being apparently that of number 14 in 2015.
39. It was only after that statement and in October 2020 that cheques were sent by the Claimant to me and to Timothy which appear to relate to the sale of other of that freehold ground rent. As I say, I am not sure whether it is appropriate for me to cash the cheque which I have received or whether the money needs to be treated differently. That is an obvious recognition by the Claimant that he has held funds that he viewed as owing to Laurence (during his lifetime and his estate after his death), me, Tim and Jonathan since 2015 without once mentioning it and has chosen to deal differently only when the matter has been raised in the course of this action. His further recognition that future sums will need to be distributed is a yet further recognition, forced from the Claimant, that he has not dealt appropriately either with information or money over the last five years. The Claimant cannot say that he was unaware of the sale of number 14 in 2015 because he is a shareholder and director in Coolrace.
40. Whilst I appreciate that the sums involved might, in in the context of this litigation and, indeed, Laurence's estate, look small, it is the principle which concerns me. Not only has the Claimant not mentioned for the best part of five years that any sums were due, I was correct in my initial view that that there will be further sums outstanding which the Claimant had not mentioned to anyone.
41. Again, this will result in the Claimant having to investigate and interrogate his own affairs which, if a legitimate complaint insofar as I am concerned, is one that applies equally to the Claimant. I would like the Court to be quite clear that although I have indicated that given the state of our relationship I would be content to step down on

the basis that the Claimant also does so, I do not accept that I am otherwise an unfit person to oversee the administration of Laurence's estate.

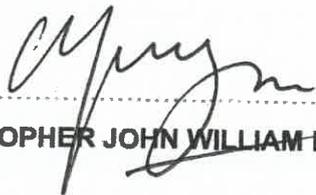
### The Claimant's behaviour generally

42. For the reasons I referred to at the start of this statement, I will avoid, for present purposes, going down every avenue that I would otherwise have to in order to explain the history of the relationship between the Claimant and me, I would nevertheless like the Court to keep in mind the wider context of our family relationship and our interactions over the course of the years. I recognise that these do not relate to the steps that the Claimant might have taken in relation to the administration of the estate but the sort of behaviour of which he is likely to stoop were he to continue to act.
43. I reiterate my concern above in relation to the Claimant's delay in informing me (or indeed anyone else) that he held funds belonging to Laurence together with his failure to provide any documentary evidence as to those sums. It is not just the fact of his failure to pay the funds, but his failure over the course of nearly six months even to mention it.
44. Even now, over a year since Laurence's death, he has next to nothing to verify his assertion as to the sums he says are due. There is plainly going to have to be an investigation in relation to these sums.
45. I am aware, as I suspect is the Claimant, of my responsibilities as an executor of Laurence's estate. All I know is that my ability to undertake the role of getting in his estate and distributing the same in accordance with the terms of his will has been significantly hampered by the Claimant's behaviour.
46. In that context, and finally, I would like the Court to consider the correspondence between my instructing solicitors and those instructed by the Claimant in relation to Laurence's pensions (~~see pages 24 to 42 of Exhibit CJWF3~~) which fall, as I understand matters, to be divided between the remaining four brothers. Again, the Claimant has been nothing other than obstructive in his dealings in this regard, refusing to release funds or otherwise deal sensibly with the issue. In fact, it occurs to me that he is obviously guilty of the very behaviour that he accuses me of – failing to deal properly with matters when they are raised with him.

[ib 129 - pages 447-448]  
[ib 130 - pages 449-450]  
[ib 132 - pages 455-456]  
[ib 133 - pages 457-459]  
[ib 93 - pages 321-322]  
[ib 100 - pages 332-337]  
[ib 124 - pages 397-398]

47. Again, the Claimant's contention that he was not involved in a business competitive with the family companies is simply not born out by his own correspondence (see ~~page 4 of Exhibit CJWF3~~). *Tab 12 - page 92*

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



CHRISTOPHER JOHN WILLIAM FELL

Dated: *27.11.2020*

On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 4  
Exhibits : "MAF15"  
Date : 10 December 2020

IN THE HIGH COURT OF JUSTICE

Claim No. PT-2020-BHM-000041

BUSINESS AND PROPERTY COURTS AT BIRMINGHAM

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

IN THE MATTER OF the Estate of Laurence Fell, deceased

BETWEEN:-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

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**FOURTH WITNESS STATEMENT OF MARTIN ANTHONY FELL**

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I, **MARTIN ANTHONY FELL**, of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 5QQ, company director, **WILL STATE AS FOLLOWS:-**

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. In the event that I refer to something outside my knowledge, I will indicate the source of my information. All references to paragraph numbers relate to the Third Witness Statement of the Defendant ("Christopher"), unless otherwise expressly stated.
3. Exhibited to this statement is an Exhibit marked "**MAF15**" to which I refer.
4. I make this statement in response to the Third Witness Statement of Christopher and

the Part 20 Claim seeking my removal as an executor of Laurence's estate.

5. I would at the outset wish to make clear to the Court that I have at all stages of this litigation provided complete, open, straightforward, and honest responses to the various points made by Christopher and I have sought to provide contemporaneous documentary evidence in support of my assertions.
6. Conversely, Christopher has at every possible stage sought to delay and obstruct matters. Further and notwithstanding the fact that Christopher has now produced three witness statements, there is still no actual evidence (purely speculation) as to why I am not an appropriate individual to act in the administration of Laurence's estate.
7. What is clear in Christopher's statement is that he has deliberately obstructed the administration of Laurence's estate, and that my contention that there are important matters concerning Christopher's conduct to investigate is well-made. Christopher has at all times had documentation relevant to this matter within his possession (despite his assertions to the contrary). Christopher has submitted misleading statements to the Court (in respect of which I am advised he may be in contempt of Court) and he deliberately seeks to delay and deflect from his personal position being investigated and scrutinised by the Court.
8. It appears very clear on the evidence that has been exchanged that not only is Christopher unsuitable to be Laurence's executor, but that he has readily admitted and accepted that. Given this to be the case, I do not understand why my claim for his removal is continuing, in the light of his position.

***Laurence's financial position***

9. My claim has been fully particularised and I do not intend to repeat the evidence of previous statements. However, in order to assist the Court in understanding my concerns, I have set out below my understanding of the historical position of Laurence's financial affairs:-

(a) In 2006 following the death of my father, an overview of the position of the companies and Laurence's financial position was as follows:-

- [ Tab 10 - page 87 ] ~~page 1 of "MAF15"~~ (i) Family companies had a total value of just under £2,500,000 (as shown at ~~page 1 of "MAF15"~~) of which Laurence's share, through two trusts, was £821,800 (Cressingham Properties Limited ("CPL") / Marymar Limited ("MM") 50% £417,500 and Dennis Fell Properties Limited ("DFP")/ Heronfield Developments Limited ("HD") / Martinvale Developments Limited ("MD") / Speedwell Estates Limited ("SE") 25% £404,300).
- (ii) A further trust (2004) had assets of approximately £118,000.
- (iii) Laurence's income was circa £50,000 per annum, from employment, dividends and rental income.
- (iv) Laurence was a higher rate taxpayer and the family accountant used to prepare a tax return for him.
- (v) Laurence had a cash loan account in CPL of approximately £120,000.
- (vi) Laurence had substantial pension investments and monthly pension contributions were ongoing.

(b) In stark contrast, at the time of Laurence's death in 2019, I understand the position to be:-

- (i) Family companies total value (as advised to me by Timothy Fell)

[Tab 134 - pages  
460 and 461]

£1,100,000. Laurence's share in trusts is estimated at only £350,000, less than a third of their original values over a period when property values have increased by fifty percent (as evidenced by data collected by the Land Registry shown at ~~pages 2 and 3 of "MAF15"~~). Further, it is understood that over £150,000 (or more) of that stated value is now reflected in Christopher's directors' loan account which is overdrawn. He has already admitted the fraudulent activity in relation to his Mossfield Road property but has not indicated as to how CPL (and therefore Laurence) will be repaid. I have also been informed that this litigation is being funded via the family companies of which Laurence's estate has an interest and which demonstrates that Christopher is in a poor financial position such that he might well be unable to repay his director's loan. The point very clearly being that not only is Christopher preventing the estate from being administered but he is actually causing further significant losses to it.

- (ii) I understand the 2004 trust had net asset value of approximately £87,000.
- (iii) Laurence's income from employment and dividends was zero and appears to have been so since my resignation as trustee in 2011. Rental income was minimal due to repairs exceeding rent.
- (iv) Laurence appears to have ceased being a tax payer for several years.
- (v) Laurence's loan account diminished to barely a few thousand pounds, and still remains unaccounted for. Repeated requests have been made for information about it and for it to be paid to Penmans.
- (vi) Laurence's company pension contributions appear to have ceased in 2011 and worse, he had to start cashing in his pension years early to survive due to being denied access to his own money.

10. It follows that by the time of Laurence's passing, his financial position had deteriorated

dramatically to a fraction of what it once was. I stress this is not something that was orchestrated by Laurence. After our father died in 2006 the person who had virtually total control of the majority of Laurence's assets and income, in all their various forms, was his brother Christopher, as:-

- a. Trustee of three trusts;
- b. Managing director of all the family companies;
- c. His duly appointed Attorney; and
- d. He was in possession of Laurence's substantial loan account in CPL.

11. I am aware that in the period after my father's death the value of the Family companies was slightly diminished by the conduct of Christopher and Timothy (in particular in significantly increasing the sums paid to them as Directors both as to salary and expenses). The reason for my resignation as Trustee in 2011 was the now admitted fact that at that time I was being denied access to company information. However so far as I am aware, as at April 2011 Laurence's financial affairs were similar to that when my father died. It follows that the key aspect of this matter that requires investigation relates to what occurred more recently, i.e. (from April 2011 until Laurence's death. Christopher has (understandably) not asserted that the period prior to April 2011 requires investigation at all, and certainly my clear focus will be on the period after April 2011.

12. The investigation, which I have sought to instigate since the passing of Laurence on 8 October 2019, could and should have been easy to undertake. All that was necessary was for Christopher to supply the documentation that has been continuously

requested. That in turn would enable me to review the same, raise any queries and hopefully then enable progress to be made in respect of the administration of Laurence's estate. Christopher has chosen not to answer or assist in anyway in finding the true position of Laurence's entitlements. There can only be one reason for the conduct; Christopher has carefully and secretly manipulated the family companies and trusts for his personal gain, at Laurence's expense.

***My approach in dealing with the recent evidence of Christopher***

13. Having considered the content of the Third Witness Statement of Christopher, in order to assist the Court, my approach to responding to the same will be set out under three headings as referenced in paragraph 10 (specifically 10.1, 10.2 and 10.3) of Christopher's statement, being:-

(a) My involvement in the family trusts;

(b) Money owed to the Estate; and

(c) Sker Walk

14. I would note that further pertinent information has come to light from the Defendant's statement which he was clearly fully aware of from the outset, but has seen fit not to disclose in these proceedings to date. Further, the statement contains large amounts of contradiction which I shall expand upon below.

***My involvement in the family trusts***

15. Much of the information has been set out in my previous witness statements. I do not intend to repeat previously submitted evidence. However, there are several

paragraphs from within Christopher's latest statement that require a response.

16. In respect of paragraph 12, I note the primary basis for seeking my removal as an executor is because of my involvement in the family trusts. When analysed carefully, this is a non-point, particularly (now) in the light of Christopher's third statement. All brothers have been 'involved' at some point in 'family trusts'. I have made clear that I was a trustee of the family trusts (paragraph 11 and 14 of my first witness statement) and that I resigned from all trusts in April 2011. The reasons for that have been extensively dealt with in previous statements. I would refer the Court to paragraphs 27 – 32 of my first witness statement. Examples of the correspondence exchanged at the time are evidenced by ~~pages 8, 9, 22, 24 and 25 of "MAF6"~~. I resigned primarily because it became impossible for me to make any decisions without having sight of relevant documentation, access to which I was continually denied. It became impossible to give proper consideration to Laurence's affairs and make decisions, without knowing the extent of his assets and how they were being controlled. I have not been involved in any trust matters since April 2011 and as set out in previous statements the actions of Christopher have, in my mind, prejudiced Laurence's estate.

[Tabs 62, 72 and 73 - pages 225 to 229, 256 and 258 to 259 respectively]

17. I would correct Christopher's assertion at paragraph 13 that there were two family trusts. There were in fact three family trusts:-

- (a) The Dennis William Spiers Fell Settlement dated 6 April 2002 ("the 2002 Trust");
- (b) The Martin Anthony Fell Settlement Trust dated 10 April 2004 ("the 2004 Trust"); and
- (c) The Will Trust of my father ("the Will Trust").

18. As acknowledged by Christopher, our late father effectively dealt with the 2002 Trust and the 2004 Trust during his lifetime.

19. It has now become apparent (contrary to my understanding to the date of receipt of Christopher's third statement) that Mike Ingamells of GTB in fact maintained trust records sufficient for an account to be given in relation to the 2004 trust in October 2011 (~~page 9 to 14 of "CJWF3"~~). These have never previously been disclosed to me and contradict statements made by Christopher in each of his three statements (specifically I refer to paragraph 19 of Christopher's first statement, paragraph 8 of his second statement and paragraphs 12-14 and 16-17 of his third statement).

[ Tabs 77 and 51 -  
pages 263 to 266 and  
272 to 273 respectively ]

20. At paragraph 14 Christopher states 'I was aware that my primary responsibility was to Laurence and to ensure that any income from trust assets, whether in the form of dividend payments or rental income was made available to him'. This is misleading because it very conveniently omits to mention Laurence's salary and pension entitlements terminated without any regard to his long employment (and the reasons for it), and severance pay Laurence would have been entitled to. Further, whilst he may have been aware of such responsibilities, he certainly does not appear to have actioned them.

21. This is further reflected in Jonathan's statement, such monies that should have been available were retained in a loan account in CPL and not paid over (as evidenced at ~~pages 2, 5 and 27 of "JPQF2"~~). [ Tabs 86 and 87 - pages 252, 255 and 300 ]

22. It has been established that that not all income was paid directly to Laurence. It can be seen from the trust accounts referred to above that GTB held income for Laurence. Not only did that firm hold income for Laurence, GTB's letter 27 October 2011 confirms

they still held that income at least 8 months after Wright Hassall's letter dated 28 February 2011 threatened me with legal proceedings if income wasn't paid to Laurence. This evidence alone shows Christopher's statement above is untrue.

23. As to paragraph 15, Christopher completely disregards the fact that he also held Power of Attorney (for Finances and Property) for Laurence and it would therefore have fallen under his responsibilities to consider Laurence's personal tax affairs.

24. As to paragraph 16, this has been comprehensively covered in my second witness statement at paragraphs 53 and 54. It is clear that I made repeated requests for financial information in respect of the trust accounts.

25. In respect of paragraph 17, I would repeat the content of paragraph 46 of my second witness statement. In addition, following the death of my father, there were many meetings at the Henley office where trust matters were discussed (as evidenced at ~~pages 1 to 4 of "MAF11"~~). There were also letters from Christopher to me in respect of Laurence's Trust (~~pages 4 to 7 of "MAF15"~~). I recall at least one meeting with Mike Ingamells at his office. For an example of this please see the exhibited letter from Christopher to me in August 2010 in which Mike's attendance prior to a meeting is noted (~~at pages 8 and 9 of "MAF15"~~). The letter in fact states 'he [Mike] would give the Trustees any advice as required'. This clearly demonstrates that discussions were had. The notion that Christopher and I did not discuss the running of the Trusts from 2002 until my resignation is simply untrue. The evidence speaks for itself.

[ Tab 11 - pages 88 to 91 ]

[ Tabs 26, 31 and 32 - pages 157, 164 to 165 and 166 respectively ]

[ Tabs 52 and 53 - pages 214 and 215 respectively ]

26. Further, Christopher has made no reference to the correspondence from Richard Thompson in his third statement, and deliberately omits to state that he was on notice from at least 2010 that accounting records were required. My correspondence with

Richard Thompson from that period is self-explanatory, this has previously been referred to in my statements (~~pages 17 to 22 of "MAF8" and pages 1 to 19 of "MAF10"~~).

[ Tabs 57, 58, 59 and 60 - pages 220, 221, 222 to 223 and 224 to 225 respectively ]  
[ Tabs 21, 22, 25, 28, 35, 36, 37, 39, 40, 47 and 50 - pages 136 to 138, 139 to 140, 155 to 156, 159 to 160, 169 to 170, 171, 172, 174 to 175, 176, 206 and 211 to 212 respectively ]

27. As to paragraph 18, Christopher has repeatedly stated that I was a competitor to the family companies. I would draw the Court's attention to paragraphs 53(b),(c) and (d) from my Second statement. I would also refer to paragraphs 44 and 60 of Jonathan's statement in respect of this. It is clear that he believes Christopher is presently in fact a competitor to the family companies owing to his self-dealing and various failures to meet his fiduciary duties. The continued accusations (which are again completely unsubstantiated) are irrelevant to the claim on foot. If I am given one (or more) specific circumstances, then I will happily respond.

28. In respect of paragraph 19, it was confirmed to me by Mike Ingamells prior to a family/trust meeting that took place on 10 October 2006 that I was entitled to any and all company information as it was clearly pertinent to carrying out my role as a trustee. Indeed all this sort of information was readily provided to me by my brothers at that time. I was helping them in the difficult period after our father's death. There was no suggestion that I was a competitor of the companies. Without being provided with the financial information (despite my requests) it was not possible to investigate the position. My role as a trustee was hampered and obstructed by Christopher. It is becoming much clearer now as to what his motives were for this.

29. As to 18<sup>th</sup> May 2006 letter relied upon at paragraph 20, Christopher attended an auction to bid on ground rent lots not long after our father had passed away breaking a long-held convention. This circumstance had never occurred before, and (to the best of my recollection) never happened afterwards. The letter chosen by Christopher

purporting to support his contention might have been relevant had both the family companies and my companies competitively bid against one another. But they did not and have not. I positively chose not to compete in this way. In fact, apart from one or two occasions in 2006 or so, I cannot recall ever witnessing my brothers attending auctions to bid for ground rents. Equally, I never bid against them to buy regulated tenancies, the investment type that comprised the majority of asset value of the family companies, at that time. As I have stated above the only business transacted by the family companies for the most part has been the disposal of assets, which cannot by any definition be considered to be 'competitive' business.

30. I continued to have a working relationship with my father up until his death. The assertions of Christopher in respect of my relationship with my father are simply not true. I have previously set out my involvement in respect of Coolrace Limited (the ground rents at Sker Walk). In the main my father and I maintained a good relationship throughout his lifetime which is further evidenced by my continued business ventures with him, even after our brief period of disagreement. This is evidenced by these subsequent joint business ventures we entered into:-

- a. Midlands Freehold Limited (my family retained 30% of the business / my father owned 20% of the business);
- b. Freehold Investments Limited (I owned one third of the company, my father owned a third and David Middleton owned a third).

31. Following the death of my father, I continued to assist the family companies in respect of matters concerning ground rents. I have previously evidenced this at paragraphs 53(b) and (c) of my second statement. One of the reasons my assistance was required

was that in the main Christopher was absent abroad and Timothy did not have the requisite expertise in so far as ground rents are concerned. As a result we maintained a good working relationship for a number of years following the death of my father.

32. Following the return of Christopher to the family companies on a more permanent basis, following his long absences abroad, he took control of the ground rents and the arrangement ceased. I do not and have not ever considered myself to be a competitor to the family companies. Indeed, at all times I sought to distance my companies from the family companies in respect of the purchase of any ground rents as I believe this to be counter intuitive for both companies. Christopher has of course on many occasions made assertions to the contrary.

33. As to paragraph 21, this point was comprehensively dealt with in my second statement. The businesses were not by any stretch of the imagination in competition. Christopher, however, has adopted a bullish stance and believed at all times that the companies were competing. Bear in mind, however, that he was out of the country for long periods and simply had little knowledge or involvement in what was happening.

34. In respect of paragraph 22:-

(a) Christopher states he 'took the view that the requests the Claimant was making for information were inappropriate'. Mike Ingamells had informed Christopher on more than one occasion, that such information should be provided to enable me to carry out my duties as a trustee. Any requests for information only arose after our father had passed away and initially, as repeatedly stated and as evidenced in early minutes, the information was freely given. However, there was a subsequent change of stance by Christopher who became obstructive.

(b) Further within the paragraph, 'These requests also came against a backdrop of difficulties between the Claimant and our father'. The exhibits referred to here are not only wholly irrelevant, both as to time-frame and connection, but are gratuitously placed here out of context to needlessly cause distress and offence. I will freely admit, and very much to my regret, that that there was a short spat between me and my father in 2001, which was very soon resolved, and to which Christopher has absolutely no cognisance of. After this short dispute in 2001, my father and I continued as previously to have a good relationship, which is self-evident from both the businesses we set up jointly and continued (Midland Freeholds and Freefield Investments) as well as the provisions which benefited me in his 2005 Codicil (~~page 9 of "MAF4"~~). The inference he seeks to draw is simply wrong. [Tab 8 - page 82]

35. As to paragraph 23, whilst it is correct that in 2006 accounts and other information were provided, the provision of accounts in 2010 only arose after the intervention of Anthony Collins & Co and Mike Ingamells. Despite Mike Ingamells writing to Christopher stating that he needed to provide all relevant information, only statutory accounts were provided together with confirmation of Laurence's income for the years 2007 to 2009 (~~pages 13 to 15 of "MAF8"~~). This information was not provided in the course of a shareholder's meeting. I note Christopher ignored the advice given to him by Mike Ingamells as to what information should have been provided to me, yet another example of his refusal to properly engage in the matter despite my protestations. [Tabs 54 and 55 - pages 216 and 217 to 218 respectively]

36. As to paragraph 24, Christopher was well aware that I had resigned as a trustee in April 2011. Therefore, I was of course not a party to that exercise.

37. As to paragraph 25, Christopher's contention is misguided. Christopher resisted every

possible opportunity to provide me with information in respect of Laurence's estate. As evidenced in Jonathan's statement it would seem that further substantial reductions to Laurence's estate have occurred.

38. As to paragraph 27, I cannot comprehend the basis upon which Christopher is trying to claim equivalence between our respective positions and make his resignation for wrong-doing conditional on mine. He has sole control over nearly all of Laurence's assets and wealth, and refuses to disclose any information relating to them. It was a similar position when Laurence was alive; it was Christopher who controlled his income stream. Again, this is a clear example of why I have requested sight of company information because matters such as Laurence's salary and pension contributions (that were due to him but not paid) are highly relevant to my role as executor.

(a) Christopher has been repeatedly and openly offered mediation, but this has been wilfully ignored. Christopher raises the spectre of 'vast sums' spent on costs; however, these could have been avoided entirely if Christopher had stepped down when invited to do so and simply provided the necessary information.

(b) As for his new claim, Christopher asserts that a third party could undertake investigations (completely unnecessary in all other parties view except his), 'swiftly and, relatively, inexpensively'. This is entirely contrary to his views expressed at ~~page 8 of "JPQF7"~~ where Christopher gave figures of £30,000 to appoint an independent Personal Representative and £50,000 to administer the estate, totalling £80,000. It is not proportionate that the estate should be burdened with this wholly unnecessary expense and further delay.

[ Tab 127 - page 412 ]

- (c) The fact remains that if Christopher wished to avoid vast expense and delay, he should have been forthright with the documentation in the first instance. In any event, even if after investigating matters at great expense an Independent Personal Representative decided not to pursue claims against Christopher (which given what he has already admitted and the bare facts of this case, would be unlikely), I as a beneficiary of Laurence's estate would have locus to pursue the very same matters (albeit that such is more difficult if I am not a Personal Representative).

**Monies owed to the estate**

39. Christopher has again made unfounded allegations against me that money is owed to Laurence's estate. I do not intend to repeat the substance of my earlier statements. This matter was dealt with in full at paragraph 60 of my second statement and evidenced by documentation within exhibits "~~MAF11~~" and "~~MAF12~~".
40. Christopher is wilfully misrepresenting the facts to try and paint a picture that simply does not exist. A full explanation has been provided and repayment made to the estate by me.
41. Given the lack of specificity, there are no particulars given by Christopher to which I can respond.

**Skier Walk**

42. Christopher has repeatedly made allegations in respect of the small portfolio of low value ground rents known as Skier Walk. This has been comprehensively dealt with in my previous statements. Indeed the entirety of my third statement was in respect of

the queries raised by Christopher at paragraph 34 of his first statement. I would refer the Court to paragraph 63 of my second statement. The matters of Sker Walk are historic and were between my father and Mr David Shamash, acting as director of Coolrace Ltd.

43. The comments raised by Christopher should more appropriately be addressed to Coolrace Limited. Coolrace Limited is a separate legal entity and this matter has been fully investigated and accounted for in full. In short, this issue is both a distraction and wholly irrelevant to whether or not I am suitable to be Laurence's executor. It is yet a further example of the desperation of Christopher to prevent me continuing with my appointment.
44. Whilst I do not intend to repeat earlier evidence, in light of Christopher's statement I would raise the following comments in addition to the above. The content of paragraphs 33 and 34 is simply speculation. Christopher was not and has never been involved in the running of Coolrace Limited.
45. As to paragraph 36, Christopher states 'I am not sure that the Claimant is correct that those funds represented the sales of numbers 8, 30 and 32.' The account of sales and proceeds was provided by GTB, Solicitors, yet Christopher still questions the facts without providing any evidence. In any event, this has no bearing on the matters at hand. My claim is in respect of Christopher being removed as an executor to Laurence's estate.
46. As to paragraph 37, as is well accepted and referred to in previous statements, Christopher was travelling and living abroad at this time, sometimes for periods of up to 9 months a year. As previously detailed in my third statement, it was arranged with

Timothy for this payment to be made and I understood that Timothy had discussed this matter with Christopher. Given what Christopher has said in relation to this, I recently had a conversation with Timothy. I asked him first of all whether or not he could recall the matter, and also whether or not he had discussed it with Christopher. His answer was in the affirmative to both points. This conversation with Timothy was as recent as last month. This simply shows, yet again, that the allegations of Christopher are wholly without foundation.

47. Christopher now states that the accounts 'were neither agreed nor final'. This is in contradiction to his previous statement where he wrongly accuses me of refusing to sign the accounts. In fact, in relation to those accounts, which Timothy originally believed to be final, Timothy authorised Mike Ingamells by fax dated 4 May 2012 to release the balance of estate funds due to me (~~page 10 of "MAF15"~~). It should be borne in mind that Timothy is the co-executor with Christopher, although it appears clear again that Christopher has made decisions in relation to our father's estate without consultation with Timothy. I have only ever been provided with those GTB accounts, such that what Christopher says at paragraph 11 of his Second Statement is untrue. At the beginning of this week, my Solicitors received an incomprehensible one-page 'Distribution of Residual Amounts Amendment 1' from Christopher (exhibited at ~~pages 11 and 12 of "MAF15"~~), which is the first time I have seen an alternative to the accounts prepared for my father's estate.

[Tab 34 - page 278]

[Tab 35 - pages 279 to 280]

48. None of the above grounds upon which Christopher seeks to remove me as an executor have any merit. Despite Christopher producing three separate witness statements, he has not produced any 'comprehensive evidence' to support such contentions.

**Response to Christopher's statement in respect of 'The Claimant's behaviour generally'**

49. I would address the following points raised under this heading in Christopher's statement. Further, these should be viewed with caution given the fact that he has shown that he is prepared to perjure himself.
50. As to paragraph 42, no evidence is provided whatsoever to substantiate Christopher's assertions.
51. As to paragraph 43, this very point was answered in detail in my second statement at paragraph 60. Christopher appears to have simply ignored my response.
52. In respect of paragraph 44, as outlined above, I have explained and verified the sum due and provided evidence in support in my previous statement (paragraph 60 of my second witness statement). For Christopher to assert that I have 'next to nothing' to verify my position is simply untrue. I would repeat that it is Christopher that has failed to evidence his assertions.
53. Within paragraph 45, Christopher seeks to assert that I have hampered the estate administration process. I have at every possible opportunity requested basic information from Christopher in respect of Laurence's assets. Rather than assist in matters, Christopher has sought to obstruct my ability to consider the assets of Laurence's estate at every possible stage. An illustration of this is the simple accounting for and payment to the estate of the remnants of Laurence's once substantial loan account in CPL. I have asked for all or anything due to Laurence's estate to be sent to Penmans; that includes the proceeds from Laurence's pensions.
54. As to paragraph 46, Jonathan, Timothy and I are in agreement that the most obvious

and sensible proposition is that all pension fund monies are paid to the estate's solicitors (Penmans) pending the resolution of this dispute. What is clear is that three brothers are content to await the outcome of the determining of Laurence's entitlements. Christopher has firmly rejected this eminently sensible solution, no doubt because he is cognisant of the fact that the outcome of any investigation is that there will be a significant debt due from him to Laurence.

55. There has not been any conduct on my part rendering me unfit to be an executor. Christopher continues to assert that I have 'a clear conflict of interest' (at paragraph 4) however, he does not provide any evidence to support his statement.
56. I repeat that Christopher should be removed as an executor of Laurence's estate.

***Christopher's reluctance to compensate Laurence's estate***

57. Begrudgingly and without any degree of openness at all, Christopher has already admitted fraudulent behaviour in relation to the property within which he lives, 99 Mossfield Road, Kings Heath, B14 7JE. No effort, proposal or suggestion has been made as to how he intends to compensate Laurence's estate. Instead, he continues to defend a claim for his removal which is (I am advised) bound to fail. In this respect, he continues to invest money in litigation rather than proposing a way by which Laurence can be compensated.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth

without an honest belief in its truth.

Signed  .....

**Mr Martin Anthony Fell**

Dated this TENTH day of December 2020

Claim No. PT-2020-BHM-000041

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**  
IN THE MATTER OF the Estate of Laurence Fell,  
deceased

B E T W E E N :-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

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**FOURTH WITNESS STATEMENT OF MARTIN ANTHONY  
FELL**

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Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant



**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER of the Estate of Laurence Fell, deceased  
Before District Judge Rouine sitting at the Birmingham Civil Justice Centre  
On 6<sup>th</sup> January 2021

PT-2020-BHM-000041

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant/  
Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant/  
Part 20 Claimant

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**ORDER**

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UPON the second Directions hearing by BTMeetMe

AND UPON hearing Counsel, David Mitchell, for the Claimant and Counsel,  
Edward Rowntree, for the Defendant

IT IS ORDERED that:-

1. The trial of the Claim and Part 20 Claim shall be listed in a trial window of 6 months commencing 1<sup>st</sup> March 2021 with a time estimate of 1 day and suggested Judicial pre-reading time of three hours. For the avoidance of doubt, there will be no live evidence at the trial and the

- 1 -

Claim / Part 20 Claim will be tried on the basis of oral submissions.

2. All parties must liaise forthwith and the Claimant's solicitor, on behalf of all parties, shall by 4pm on 13<sup>th</sup> January 2021 file with the BPC section (using the E-Filing service) dates of **joint availability** for the period covered by the trial window. In the absence of compliance, it will be assumed that there are no dates to avoid. The trial will then be fixed.
3. The file will then be referred to the Business and Property Courts Chancery Specialist Circuit Judge for review and for such further directions, including allocation of the trial Judge, as may be required.
4. It is recorded that the parties consider that
  - (a) the trial is suitable for hearing before a Business and Property Courts Specialist District Judge and a Business and Property Courts Chancery Specialist Circuit Judge.
  - (b) the trial shall be conducted by way of remote video hearing using the Microsoft Teams platform (and this approach is explicitly directed by the Court), unless the Court Orders otherwise.
  - (c) the time estimate is sufficient to allow for a hearing conducted as above.
  - (d) A start of the trial at 10am will be necessary to ensure the time estimate is effective.

5. Once a hearing date has been allocated the parties shall inform the Court in writing of any breach of any case management order which might prejudice the hearing proceeding on that date, the reason for the breach and how that breach is to be remedied. (Such a communication will not constitute an application to adjourn, which must be made in the appropriate way).
  
6. The parties must agree and the claimant must lodge at court **by post or DX only** at least 7 days before the trial (or any reading day allocated) a hard copy agreed, indexed and paginated trial bundle(s) containing:
  - (a) a succinct case summary;
  - (b) a chronology;
  - (c) a statement of issues to be determined by the Judge;
  - (d) a trial template (subject to the approval of the trial Judge);  
and
  - (e) a statement of what the Judge should read in advance of the trial.
  
7. Skeleton arguments must be filed not less than two clear working days before the trial/reading day. Skeleton arguments may be filed by email: [bpc.birmingham@justice.gov.uk](mailto:bpc.birmingham@justice.gov.uk)
  
8. By 4pm on 1<sup>st</sup> February 2021, the parties must complete and file the Birmingham Covid-19 Civil Trial Plan and Attendance Sheet.

9. Costs in the Case.

**DATED:- 08.01.2021**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant

---

**CLAIMANT'S SKELETON ARGUMENT**

Served for Directions' hearing on 6<sup>th</sup> November 2020 at 11am

---

1. This is the first hearing of the Claimant's Part 8 Claim to remove the Defendant as an Executor of the estate of Laurence Fell ("the deceased"). The deceased died on 8<sup>th</sup> October 2019, aged 58, leaving a last will, dated 28<sup>th</sup> May 2008 [123].
2. At the Defendant's request [560], the hearing Bundle unnecessarily contains the exhibits to all the statements served in these proceedings.
3. The Claimant and the Defendant are two of the deceased's four brothers (Family Tree at [4]) and were as appointed as Executors by the deceased's will.
4. The deceased developed mental health problems during his twenties, and was ultimately diagnosed as a paranoid schizophrenic. Given his condition, his parents were keen to ensure that he was looked after, both during their lifetime and after their deaths.

As a result of this, Trusts were set up for him. The deceased's mother, Margaret, passed away on 20<sup>th</sup> February 2005, and his father, Dennis, on 14<sup>th</sup> January 2006.

5. During his lifetime, Dennis built up and ran a number of successful property companies. The Defendant and the deceased were employed by those companies for very many years, up until and after the death of their parents.
6. The Claimant ran his own separate businesses. He was on good terms with his father and also had separate business interests with him, which did not involve his brothers (see paragraph 45 [350]). However, after the deceased's death, the Claimant became concerned at the lack of information being provided by the Defendant as to the family companies and trusts that had been set up to provide for the deceased, and so as to avoid further disputes, he resigned as a Trustee in 2011 (see paragraphs 27 to 31 of the Claimant's First Statement [16]).
7. Following the deceased's death, the Claimant was concerned to find out what was in (or should have been in) the deceased's estate, and wrote to the Defendant seeking information. That letter was sent as long ago as 17<sup>th</sup> March 2020 [153], and to the date hereof no information has been provided by the Defendant.
8. In fact, the Defendant has committed contempt of Court by lying as to his inability to obtain information (see Claimant's Second Statement between paragraphs 21 [343] and 34). The Defendant has chosen not to even mention this in his very recent witness statement (let alone provide an explanation for his dishonesty), neither has he chosen to provide any documentation at all (which he had previously incorrectly stated he did not have access to). The only historic document exhibited to his recent statement was

provided to the Defendant as part of the Claimant's evidence in Reply.

9. The reason for his reluctance to provide documentation is that it will no doubt show further dishonesty on his part; him having to admit in his First Statement that he had dishonestly made a personal profit at the expense of one of the family companies (and therefore at the expense of the deceased) (see paragraph 34 of the Claimant's First Statement [19] and the Defendant's admission at paragraph 41 [206]).
10. Pre-issue, the Defendant accepted that he should stand down as one of the deceased's Executors (see paragraph 40 of the Claimant's First Statement [20]), and whilst his initial statement was at best equivocal, his recent statement does not in any way seek to defend the only claim before the Court; being for his removal.
11. Prior to the provision of that Second Statement (only a week ago), the Claimant had circulated draft Directions to take the claim to a trial [565], but no response or comments have been received on them (despite the Defendant's Solicitor's assertion that such would be received [568]). However, the Defendant's Second Statement now demonstrates that a trial is unnecessary, as he does not contest (in any way) the claim to remove him.
12. The Defendant (improperly) appears to place the burden on the Court to tell him how to proceed (in a way that has parallels with the common behaviour of unadvised litigant in person).
13. If the Defendant wants to remove the Claimant as an Executor, then he (i.e. the Defendant) needs to bring a claim to do so. Such could have been done as a Part 20

Counterclaim in the present proceedings (by applying for permission, see CPR 8.7), however almost 6 months after the issue of the proceedings, and at a time when the evidence is (apparently) complete, no Application has been made.

14. The better course in such circumstances is for the Court to Grant the Claimant the relief sought on the Claim Form and then, if the Defendant (mistakenly) wants to bring a claim to remove the Claimant as an Executor, he can issue such a claim. The Claimant will undertake not to make any Application for a Grant of Probate to the deceased's estate until 14 days after the hearing (so that the Defendant can make such a Claim). It is likely that such Claim will cover significantly narrower ground than the present proceedings.
15. If the Court is not prepared to deal with the final relief today, then the Court is asked to make the Directions as set out in the draft at [565].

4<sup>th</sup> November 2020

No 5 Chambers  
Fountain Court  
Steelhouse Lane  
Birmingham B4 6DR

**DAVID MITCHELL**

Tel: 0121 606 0500  
Fax: 0121 606 1501  
DX: 16075 BIRMINGHAM  
E-mail: dm@no5.com

**IN THE HIGH COURT OF JUSTICE**

**Claim No. PT-2020-BHM-000041**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**In the estate of Laurence Fell (Deceased)**

**B E T W E E N:**

**MARTIN ANTHONY FELL**

**Claimant**

**-and-**

**CHRISTOPHER JOHN WILLIAM FELL**

**Defendant**

---

**SKELETON ARGUMENT ON BEHALF  
OF THE DEFENDANT**

---

**Introduction**

1. This is the first directions hearing in the course of proceedings brought by the Claimant (“C”) to remove the Defendant (“D”) as executor of the estate of his late brother, Laurence, (“the Deceased”). D’s response makes clear that, if for whatever reason it is considered appropriate for him to be removed, it would be equally inappropriate for C to continue.

2. D suggested at an early stage, prior to the issue of proceedings, that both parties should stand down and an independent third party be appointed [197-198]. That approach, which seemed and seems both appropriate and responsible, has been rejected by C.
3. If time permits, the Court is respectfully requested to read the following documents:
  - 3.1 Family tree [4].
  - 3.2 Claim form [5-6].
  - 3.3 C's first, second and third witness statements [10-22], [338-365] and [508-511].
  - 3.4 D's first and second witness statements [197-207] and [523-526].
  - 3.5 Witness statement of Michelle West [208-215].
  - 3.6 Witness statement of Jonathan Fell [216-234].
  - 3.7 Letter from Wright Hassall to Meridian Private Client LLP dated 22/4/20 [189-191].
4. D does not suggest that the Court reads the exhibits to the statements. If need be, the Court will be taken to specific documents in the course of the hearing.
5. References in this skeleton argument in square brackets are to page numbers in the electronic hearing bundle.

### **Factual Background**

6. The factual background is in one sense very limited. The Deceased has died; C and D are the executors of his estate and both consider that the other is not a suitable person to carry out the administration of the Deceased's estate.
7. To go much beyond that is to delve into twenty odd years of hotly disputed family history; the rise and fall of a series of limited companies; the formation and running of a series of family trusts; and the conduct of the parties in relation to those matters over the course of that period.

8. D has presently filed evidence which is deliberately limited. He has responded to the allegation that he should cease to act and sets out his reasons why he considers that C should not continue either. He has not set out complete answers to C's evidence as it is his hope that the Court will be able to resolve the action without the need to spend the time and money that such a course would require.
9. It is the divergence between the above two paragraphs which causes the divergence between the parties in relation to further directions.
10. The Court will, obviously, be alive to its ability to make provision for disclosure and further witness evidence (see, for example, *Ball v Ball* [2020] EWHC 1020 (Ch)) and the express provision in CPR 8.6 that the Court may permit oral evidence and cross-examination.

### **Directions**

11. C has provided draft directions [565-567], for which D is grateful. Whether those directions are appropriate will depend on the view taken by the Court as to the nature of the disputes that will be determined by the Court and how that process will take place.
12. The difficulty that arises is that the evidence (obviously) discloses very significant disputes of fact which are usually outside the scope of Part 8. If the Court proposes to have a trial which determines which of the myriad of allegations of inappropriate behaviour on the part of C and D are properly made out, there will need to be significant disclosure, further detailed witness statements and oral evidence at trial. That would require some modification of the directions. It is also clear that if that course is adopted, C's suggestion of a one day trial is wholly inadequate. D considers that a five day estimate would be more appropriate.
13. It is correct that D has not hitherto objected to the use of Part 8 and he does not do so at this stage. It is merely a question of procedure from this point in time to trial.

14. However, D proposes an alternative which might, depending on the view taken by the Court, 'short-circuit' either the necessary longer route detailed above in paragraph 12 above or the slightly longer route proposed by C. That would be to provide for a short-form either preliminary issue or disposal hearing on the basis of the papers as they presently stand. This would be useful if the Court felt at this stage that it would be able, on the basis of where matters stand, to come to a view in relation to the ability of both C and D to continue as executors.
15. The benefit of this approach would be as follows:
  - 15.1 A half-day disposal hearing (with two hours of judicial pre-reading) which could be heard before Easter next year;
  - 15.2 No further disclosure or witness evidence would be required.
  - 15.3 Only limited further costs would need to be incurred.
  - 15.4 If not adopted, disclosure in relation to twenty years of trust and corporate activity together with family relations will be required together with very detailed and 'heavy' witness evidence.

### **Conclusion**

16. It is hoped that a short-form action might appeal to the Court. That said, it is hoped it goes without saying that D will provide all assistance possible in relation to any course of action which the Court thinks best disposes of the issues raised in the action.

Edward Rowntree  
Counsel for the Defendant  
Hardwicke

3.xi.20

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant/  
Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant/  
Part 20 Claimant

---

**CLAIMANT'S SKELETON ARGUMENT**

Served for Directions' hearing on 6<sup>th</sup> January 2021 at 11:30am

---

1. This is the second Directions' hearing of the Claimant's Part 8 Claim to remove the Defendant as an Executor of the estate of Laurence Fell ("the deceased"). The deceased died on 8<sup>th</sup> October 2019, aged 58, leaving a last will, dated 28<sup>th</sup> May 2008 [123].
2. The Claimant and the Defendant are two of the deceased's four brothers (Family Tree at [4]) and were as appointed as Executors by the deceased's will.
3. The deceased developed mental health problems during his twenties, and was ultimately diagnosed as a paranoid schizophrenic. Given his condition, his parents were keen to ensure that he was looked after, both during their lifetime and after their deaths. As a result of this, Trusts were set up for him. The deceased's mother, Margaret, passed away on 20<sup>th</sup> February 2005, and his father, Dennis, on 14<sup>th</sup> January 2006.

4. During his lifetime, Dennis built up and ran a number of successful property companies. The Defendant and the deceased were employed by those companies for very many years, up until and after the death of their parents.
5. The Claimant ran his own separate businesses. He was on good terms with his father and also had separate business interests with him, which did not involve his brothers (see paragraph 45 [350]). However, after the deceased's death, the Claimant became concerned at the lack of information being provided by the Defendant as to the family companies and trusts that had been set up to provide for the deceased, and so as to avoid further disputes, he resigned as a Trustee in 2011 (see paragraphs 27 to 31 of the Claimant's First Statement [16]).
6. Following the deceased's death, the Claimant was concerned to find out what was in (or should have been in) the deceased's estate, and wrote to the Defendant seeking information. That letter was sent as long ago as 17<sup>th</sup> March 2020 [153], and to the date hereof no information has been provided by the Defendant.
7. In fact, the Defendant has committed contempt of Court by lying as to his inability to obtain information (see Claimant's Second Statement between paragraphs 21 [343] and 34). The Defendant has chosen not to even mention this in his very recent witness statements (let alone provide an explanation for his dishonesty), neither has he chosen to provide any documentation at all (which he had previously incorrectly stated he did not have access to). The only historic document exhibited to his recent statement was provided to the Defendant as part of the Claimant's evidence in Reply.
8. The reason for his reluctance to provide documentation is that it will no doubt show

further dishonesty on his part; him having to admit in his First Statement that he had dishonestly made a personal profit at the expense of one of the family companies (and therefore at the expense of the deceased) (see paragraph 34 of the Claimant's First Statement [19] and the Defendant's admission at paragraph 41 [206]).

9. Pre-issue, the Defendant accepted that he should stand down as one of the deceased's Executors (see paragraph 40 of the Claimant's First Statement [20]), and his initial statement was at best equivocal. However, at the first Directions' hearing the Defendant's Counsel confirmed that his client still intended to defend the claim. His position is still unclear, his recent statement does not make it any clearer and (through a recent email exchange with his Counsel) he is not prepared to commit to any formal position as to the Claim until his (very belatedly made) Part 20 Claim is determined.
10. It was noted (in the Skeleton filed, but not before the DJ, at the previous hearing) that if the Defendant wanted to remove the Claimant as an Executor, then he (i.e. the Defendant) needed to bring a claim to do so. Despite this, no Application was made until the District Judge at the first hearing made clear that one needed to be made [548]. It has now been made [550], evidence has been filed in response by the Claimant [607] and the Defendant has chosen not to file any evidence in Reply (the time for so doing having expired).
11. On Monday (given the Defendant Solicitor's failure to set out his client's position, as had been promised before Christmas), the Claimant provided draft Directions, which appeared to accord with the position adopted by the Defendant at the previous hearing (a copy of the Directions is attached). However, the Defendant now wants, in effect, to

stay the Claim and have his Part 20 Claim (which was issued only a matter of weeks ago) determined first and then to decide upon his position on the Claim.

12. It must come as no surprise to the Defendant or the Court that such an approach is not acceptable to the Claimant, for numerous reasons, including:-

- (a) As the Claimant is very confident of succeeding in defeating the Part 20 claim, all it does is delay the hearing of the Claim and incur a second set of Trial costs;
- (b) A number of issues that arise on the Claim also arise for determination on the Part 20 Claim, such that there should be only one Trial, else it risks inconsistent findings;
- (c) The Court should resolve the question of the identity of the deceased's Personal Representatives as one decision, with all options available to it, as opposed to adopting a staged approach;
- (d) The time in dealing with the Claim and Part 20 Claim, as opposed to just the Claim, is not materially different. Further, the Claimant does not accept that 3 hours (as suggested by the Defendant) is an appropriate time-estimate for the final hearing of the Part 20 Claim (including Judgment and costs). The present hearing bundle will (in essence) represent the Trial Bundle.

5<sup>th</sup> January 2021

No 5 Chambers  
Fountain Court  
Steelhouse Lane  
Birmingham B4 6DR

**DAVID MITCHELL**

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**IN THE HIGH COURT OF JUSTICE**

**Claim No. PT-2020-BHM-000041**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**In the estate of Laurence Fell (Deceased)**

**B E T W E E N:**

**MARTIN ANTHONY FELL**

**Claimant**

**-and-**

**CHRISTOPHER JOHN WILLIAM FELL**

**Defendant**

---

**SKELETON ARGUMENT ON BEHALF  
OF THE DEFENDANT**

---

**Introduction**

1. This is the second directions hearing in the course of proceedings brought by the Claimant ("C") to remove the Defendant ("D") as executor of the estate of his late brother, Laurence, ("the Deceased"). D's response makes clear that, if for whatever reason it is considered appropriate for him to be removed, it would be equally inappropriate for C to continue.

2. D suggested at an early stage, prior to the issue of proceedings, that both parties should stand down and an independent third party be appointed [197-198]. That approach, which seemed and seems both appropriate and responsible, has been rejected by C.
  
3. If time permits, the Court is respectfully requested to read the following documents:
  - 3.1 Family tree [4].
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  - 3.5 Witness statement of Michelle West [208-215].
  - 3.6 Witness statement of Jonathan Fell [216-234].
  - 3.7 Part 20 Claim [550-552].
  - 3.8 D's third witness statement [553-563].
  - 3.9 C's fourth witness statement [607-627].
  - 3.10 Letter from Wright Hassall to Meridian Private Client LLP dated 22/4/20 [189-191].
  
4. D does not suggest that the Court reads the exhibits to the statements. If need be, the Court will be taken to specific documents in the course of the hearing.
  
5. References in this skeleton argument in square brackets are to page numbers in the electronic hearing bundle.
  
6. The factual background and other relevant matters are set out in the author's skeleton argument filed prior to the first directions hearing on 6/11/20, a copy of which is filed herewith for ease of reference.

### **Matters since 6/11/20**

7. Pursuant to the order made on 6/11/20, D has filed a Part 20 Claim by which he seeks to the removal of C as an executor of the estate of the Deceased [550-552] supported by his third witness statement [553-563]. C has responded by way of a further witness statement [607-627].
8. In terms of directions, there is little between the parties at this stage. C's counsel has very helpfully provided a draft order, the bulk of which is not contentious.
9. C's suggestion is of a one-day trial on the papers alone, with three hours of judicial pre-reading in order to deal with both the claim and the part 20 claim. C proposes a trial window of six months from 1/3/21.
10. D does not object to a trial on the papers. However, he considers that it would be quicker (in two senses) if the Part 20 claim were dealt with first. Not only will the hearing and judicial reading time needed be significantly shorter (3 hours and 2 hours respectively) but it is highly likely that a date for the hearing will be available much earlier in the Court diary. If the Part 20 Claim is resolved in his favour, as he currently anticipates, D has already made clear that if C is removed, he will also stand down. That will see the end of the action.
11. If C is not removed, it has been suggested (but not agreed) that the action is stayed for a very short period while D decides whether or not to continue his defence of the action.
12. It is hoped that this is an efficient and cost-effective proposal which makes the best use of the Courts resources.
13. Save the above, D is content, gratefully, to adopt the remainder of C's counsel's draft order.

## **Conclusion**

14. It is hoped that the above represents a constructive way forwards. It goes without saying that both counsel will assist the Court in relation to any other concerns that the Court might have as best as they can.

Edward Rowntree  
Counsel for the Defendant  
Hardwicke  
Lincoln's Inn  
5.i.21

On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 5  
Exhibits : "MAF16"  
Date : 6 May 2021

**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell, deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

---

**FIFTH WITNESS STATEMENT OF MARTIN ANTHONY FELL**

---

I, **MARTIN ANTHONY FELL**, of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 5QQ, company director, **WILL STATE AS FOLLOWS:-**

1. This statement is based on facts that are within my own knowledge and belief, save where indicated.
2. In the event that I refer to something outside my knowledge, I will indicate the source of my information.
3. Exhibited to this statement is a bundle of documents marked "**MAF16**" to which I refer.
4. I make this statement ahead of the Trial listed for 20 May 2021 in respect of further evidence which has recently come to light regarding the Estate of Laurence Fell since I provided my fourth statement on 10 December 2020.
5. For the purposes of this statement, I shall set out the further issues using sub headings below.

**Cressingham Properties Limited**

6. On 15 March 2021, Cressingham Properties Limited ("CPL") filed with Companies House a 'Confirmation Statement made on 31 December 2020 with updates' (pages 1 to 4 of "MAF16").
7. At the time of drafting my First Witness Statement dated 13 May 2020 the CPL Share Capital as filed by CPL on 23 February 2017 (as at 31 December 2016) was held (as shown at pages 5 to 11 of "MAF16") as follows:-
  - (i) 25 Ordinary shares held by Christopher Fell;
  - (ii) 25 Ordinary shares held by Timothy Fell; and
  - (iii) 50 Ordinary shares held by the L J Fell Trust.
8. Following the filing of the Confirmation Statement as referred to at paragraph 6 above (pages 1 to 4 of "MAF16"), it now appears that the CPL Share Capital is held:-
  - (i) 25 Ordinary shares held by Christopher Fell;
  - (ii) 25 Ordinary shares held by Timothy Fell; and
  - (iii) 50 Ordinary shares held by the Executors of Dennis William Spiers Fell (Deceased).
9. CPL filed on 14 January 2019 (made up to 31 December 2018) and filed on 14 January 2020 (made up to 31 December 2019) Confirmation Statements 'with no updates' (pages 12 to 17 of "MAF16"). It follows that at some point between 1 January 2020 and 31 December 2020 there has been a transfer of 50 Ordinary shares held in CPL from the L J Fell Trust back to the executors of Dennis William Spiers Fell (Deceased).
10. I have not seen any evidence to suggest that the transfer was authorised by all of the Trustees of the L J Fell Trust. I am informed by my solicitor that the 50 Ordinary shares are therefore still held on a bare trust for the remainder beneficiaries (of which I am included). On the documentary evidence available, it would appear that there has been a flagrant breach of trust by the Defendant ("Christopher") in his role as Trustee and Company Director, which is therefore relevant to this matter.

11. Christopher, in his actions as outlined above has clearly shown that his conduct is not conducive of the correct and proper behaviour of an executor.
12. On 13 April 2021, my Solicitors wrote to Christopher's solicitors in both these proceedings (Wright Hassall) and in the Court proceedings referred to below (Sydney Mitchell) (pages 18 to 21 of "MAF16"). Wright Hassall responded on 23 April 2021 (page 22 of "MAF16"), the point was not considered and it was stated that the issue was a matter for CPL to respond to. No response has been received from Sydney Mitchell. The recent draft estate accounts provided by Sydney Mitchell (as set out below) do not contain any information in respect of the apparent transfer of the CPL shares.

**Other Court proceedings concerning the Estate of Dennis William Spiers Fell**

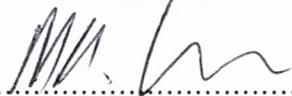
13. The above referenced breach of trust became apparent as a result of an associated Court claim currently on foot. I do not intend to set out the details of the associated Court claim in this statement, but I do exhibit the Claim Form, so the relief sought can be seen (pages 23 to 27 of "MAF16").
14. Whilst the evidence filed by Christopher in these proceedings suggests that he had concluded the Administration of our father's estate (which was also what I thought was the position), he now contends that he has not concluded the Administration. Further, he has been unable to properly account for his dealings with my father's estate, as his Solicitors, Sydney Mitchell, have been unable many months after being instructed to provide proper Estate Accounts and the preliminary admitted incomplete draft version provided in the last few days bear little resemblance to those prepared by GTB (and exhibited to my previous statement at pages 15 to 26 of "MAF4") or those provided by Christopher at the end of last year (pages 11 and 12 of "MAF15"), which led to me to issue the proceedings.
15. I do rely on these matters as yet further evidence that Christopher is unsuitable to be Laurence's Executor as he has failed to properly conclude the administration of my father's estate 15 years after his death. Again, on its face, there is a failure and breach of Christopher's duty as an Executor to diligently perform and conduct the estate administration.

**Skер Walk**

16. On 16 March 2021 at 19:31pm I received an email from my brother, Jonathan Fell, in respect of Christopher's historical knowledge of Sker Walk (pages 28 to 29 of "MAF16").
17. Christopher, in his Third Witness Statement dated 27 November 2020, has sought to assert that my involvement with Sker Walk was in conflict with my position as an executor of Laurence's Estate. The email dated 10 February 2017, between Christopher and Roddy Devlin of Grove Tompkins Bosworth Solicitors shows that Christopher was aware of Sker Walk at that time and made no attempts to raise the issue with me.
18. I further note that Christopher has not referred to the funds that he has admitted to receiving regarding Sker Walk in the draft Estate Accounts recently provided by his Solicitors (referred to above).
19. Despite Christopher producing three separate witness statements, he has not produced any 'comprehensive evidence' to support his contentions. Christopher, by his actions has shown himself to be in direct conflict with Laurence's Estate.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed .....  .....  
**Mr Martin Anthony Fell**

Dated this 6<sup>th</sup> day of May 2021

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT**  
**BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell,  
deceased

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

---

**FIFTH WITNESS STATEMENT OF MARTIN ANTHONY  
FELL**

---

Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Ref: MXA/FEL4.1

Solicitors for the Claimant

On behalf of : Claimant  
Statement of : Martin Anthony Fell  
Number : 5  
Exhibits : "MAF16"  
Date : 6 May 2021

**IN THE HIGH COURT OF JUSTICE**

Claim No. PT-2020-BHM-000041

**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**

**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

IN THE MATTER OF the Estate of Laurence Fell (Deceased)

B E T W E E N:-

**MR MARTIN ANTHONY FELL**

Claimant and Part 20 Defendant

- and -

**MR CHRISTOPHER JOHN WILLIAM FELL**

Defendant and Part 20 Claimant

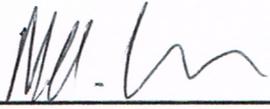
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**EXHIBIT "MAF16"**

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There is now produced to me and I verify that this is the exhibit "MAF16" that I, Martin Fell of Camp House, Camp Lane, Henley-in-Arden, Solihull, B95 5QQ refer to in my witness statement dated this **SIXTH** day of May 2021.

Signed

  
\_\_\_\_\_  
MR MARTIN ANTHONY FELL



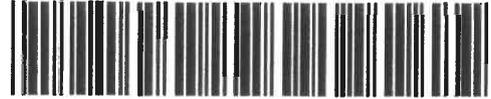
Companies House

**CS01** (ef)

**Confirmation Statement**

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**



Received for filing in Electronic Format on the: **15/03/2021**

XA0BHCLK

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**

Confirmation **31/12/2020**

Statement date:

## Full details of Shareholders

The details below relate to individuals/corporate bodies that were shareholders during the review period or that had ceased to be shareholders since the date of the previous confirmation statement.

Shareholder information for a non-traded company as at the confirmation statement date is shown below

Shareholding 1: **25 ORDINARY shares held as at the date of this confirmation statement**  
Name: **CHRISTOPHER FELL**

Shareholding 2: **25 ORDINARY shares held as at the date of this confirmation statement**  
Name: **TIMOTHY FELL**

Shareholding 3: **50 ORDINARY shares held as at the date of this confirmation statement**  
Name: **EXECUTORS DENNIS WILLIAM SPIERS FELL**

## **Confirmation Statement**

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



**Confirmation Statement**

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**



Received for filing in Electronic Format on the: **23/02/2017**

X60V5LIH

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**

Confirmation **31/12/2016**

Statement date:

## Statement of Capital (Share Capital)

---

<b>Class of Shares:</b>	<b>ORDINARY</b>	Number allotted	<b>100</b>
<b>Currency:</b>	<b>GBP</b>	Aggregate nominal value:	<b>100</b>
Prescribed particulars			
<b>ORDINARY VOTING SHARES</b>			

---

## Statement of Capital (Totals)

---

<b>Currency:</b>	<b>GBP</b>	Total number of shares:	<b>100</b>
		Total aggregate nominal value:	<b>100</b>
		Total aggregate amount unpaid:	<b>0</b>

## Full details of Shareholders

The details below relate to individuals/corporate bodies that were shareholders during the review period or that had ceased to be shareholders since the date of the previous confirmation statement.

Shareholder information for a non-traded company as at the confirmation statement date is shown below

Shareholding 1:       **25 transferred on 2016-04-06**  
                              **25 transferred on 2016-04-06**  
                              **50 transferred on 2016-04-06**  
                              **0 ORDINARY shares held as at the date of this confirmation statement**  
Name:                   **EXECUTORS OF DENNIS WILLIAM SPIERS FELL**

Shareholding 2:       **25 ORDINARY shares held as at the date of this confirmation statement**  
Name:                   **CHRISTOPHER FELL**

Shareholding 3:       **25 ORDINARY shares held as at the date of this confirmation statement**  
Name:                   **TIMOTHY FELL**

Shareholding 4:       **50 ORDINARY shares held as at the date of this confirmation statement**  
Name:                   **LJFELL TRUST**

# Persons with Significant Control (PSC)

## PSC notifications

### Notification Details

Date that person became registrable: **06/04/2016**

Name: **MR CHRISTOPHER JOHN WILLIAM FELL**

Service address recorded as Company's registered office

Country/State Usually Resident: **ENGLAND**

Date of Birth: **\*\*/08/1955**

Nationality: **ENGLISH**

### Nature of control

The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust, and the trustees of that trust (in their capacity as such) have the right to exercise, or actually exercise, significant influence or control over the company.

The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust, and the trustees of that trust (in their capacity as such) hold, directly or indirectly, more than 25% but not more than 50% of the voting rights in the company.

## Notification Details

~~Date that person became~~ **06/04/2016**  
registrable:

Name: **MR TIMOTHY DENNIS STEPHEN FELL**

Service address recorded as Company's registered office

Country/State Usually **ENGLAND**  
Resident:

Date of Birth: **\*\*/08/1953**

Nationality: **ENGLISH**

## Nature of control

The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust, and the trustees of that trust (in their capacity as such) have the right to exercise, or actually exercise, significant influence or control over the company.

The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust, and the trustees of that trust (in their capacity as such) hold, directly or indirectly, more than 25% but not more than 50% of the voting rights in the company.

## Confirmation Statement

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



**Confirmation Statement**

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**



Received for filing in Electronic Format on the: **14/01/2019**

X7X4W5IH

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**

Confirmation **31/12/2018**

Statement date:

## Confirmation Statement

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor



**Confirmation Statement**

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**



Received for filing in Electronic Format on the: **14/01/2020**

X8WNOD3V

Company Name: **CRESSINGHAM PROPERTIES LIMITED**

Company Number: **00480134**

Confirmation **31/12/2019**

Statement date:

## Confirmation Statement

I confirm that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned either has been delivered or is being delivered at the same time as the confirmation statement

# Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Charity Commission Receiver and Manager, CIC Manager,  
Judicial Factor

# meridian

Private Client LLP - Solicitors

Wood Rydings Court, Packington Lane, Little Packington, Warwickshire CV7 7HN  
Telephone: 01675 442430 Fax: 01675 443465

Wright Hassall LLP  
Olympus Avenue  
Leamington Spa  
Warwickshire  
CV34 6BF

Your Ref: 1005/9091/052162.00004  
Our Ref: MXA/EJB/FEL4.1

13 April 2021

**BY POST AND EMAIL TO: [martin.oliver@wrighthassall.co.uk](mailto:martin.oliver@wrighthassall.co.uk)**

Dear Sir

**The Estate of Laurence Fell (Deceased)**  
**Our Client: Martin Fell**  
**Your Client: Christopher Fell**

We write further to our letters of 16 and 19 March 2021, to which we have not received a response or the courtesy of an acknowledgement.

As you are aware, this matter is listed for Trial on 20 May 2021. On 15 March 2021, Cressingham Properties Limited filed a 'Confirmation statement made on 31 December 2020 with updates', no doubt acting by your client, in which it was stated that your client (in his capacity as Trustee of the L J Fell Trust) appears to have purported to authorise the transfer of 50 Ordinary shares held in Cressingham Properties Limited from the L J Fell Trust back to the executors of Dennis William Spiers Fell (Deceased).

The transfer was not formally authorised by all of the Trustees of the L J Fell Trust, such that the 50 Ordinary shares are still held on a bare trust for the beneficiaries (which includes our client). On the documentary evidence available, it would appear that there has been a flagrant breach of trust by your client. Such conduct is relevant to the proceedings in which you are instructed.

It is also relevant to the High Court proceedings on foot in respect of your client's conduct in his capacity as executor of the Estate of Dennis Fell ("the Dennis Fell Estate"). We do not know the extent to which your client has informed you about these separate proceedings. Estate accounts were produced in 2012, however, it now transpires that the administration of the Dennis Fell Estate was not ever finalised by your client and Timothy Fell (his co-executor). Our client was not aware of this fact until long after proceedings had been issued in respect of Laurence's estate.

As set out in your client's Witness Statement in the latter High Court proceedings the Dennis Fell Estate clearly has important implications for the full and proper administration of the Estate of Laurence Fell via the various trusts. In light of the above,

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A list of members is available for inspection at the registered office of Meridian Private Client LLP (address as above). Any reference to a "Partner" means a member of Meridian Private Client LLP which includes individuals (Partners) who are not solicitors. We do not accept service by email.

Authorised and regulated by the Solicitors Regulation Authority. SRA No. 424932  
[info@meridianprivateclient.co.uk](mailto:info@meridianprivateclient.co.uk) | [www.meridianprivateclient.co.uk](http://www.meridianprivateclient.co.uk)

and as indicated by your client we believe that in order to properly deal with the issues in the Dennis Fell Estate and the Estate of Laurence Fell, matters should be dealt with chronologically and the Dennis Fell Estate must be finalised and dealt with first as a priority. We are informed by Sydney Mitchell who are instructed by your client (in his role as co-executor of the Dennis Fell Estate with Timothy Fell) in respect of the Dennis Fell Estate that updated draft estate accounts are to be provided on or by 1 May 2021 for our consideration.

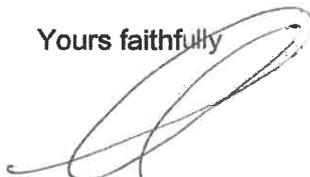
It seems that the Court should first deal with the issues which arise as to Dennis Fell Estate, as such outstanding issues impact upon the Estate of Laurence Fell. Alternatively, and at a minimum, these two cases should be heard by the Court and the case management together.

Given the close proximity to the anticipated delivery to us of the draft Dennis Fell estate accounts to the Trial listed in this matter, we anticipate that there will not be sufficient time to thoroughly consider the accounts and resolve any outstanding issues. We believe that the accounts may alter the position in respect of Laurence's estate.

In light of the above and before brief fees and other preparatory cost are incurred, we suggest that it would be appropriate to seek an adjournment of the Trial listed for 20 May 2021. We would invite your client to consent to the same. We would ask that you please provide your client's response within 10 days of receipt of this letter (i.e by 4:00pm on 23 April 2021). There is a first Case Management hearing in the other proceedings on 21<sup>st</sup> June 2021 and if necessary that could be used to provide directions as to both claims (if both are to proceed together).

We await hearing from you and would be grateful if you would please acknowledge safe receipt.

Yours faithfully



**Meridian Private Client LLP**

# meridian

Private Client LLP - Solicitors

Wood Rydings Court, Packington Lane, Little Packington, Warwickshire CV7 7HN

Telephone: 01675 442430 Fax: 01675 443465

Sydney Mitchell LLP  
Chattock House  
346 Stratford Road  
Shirley  
Solihull  
West Midlands  
B90 3DN

Your Ref: KNM/BD/Fell/883594  
Our Ref: MXA/EJB/FEL4.3

13 April 2021

**BY POST AND EMAIL TO: [k.maievadia@sydnemitchell.co.uk](mailto:k.maievadia@sydnemitchell.co.uk)**

Dear Sirs

## **The Estate of Dennis Fell (Deceased)**

Further to previous correspondence, we understand that updated draft estate accounts will be provided to us in this matter on or by 1 May 2021.

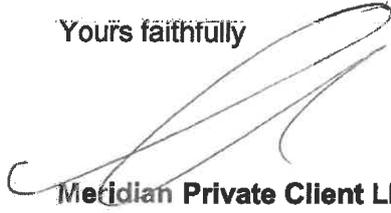
Prior to receiving the updated estate accounts, we would wish to draw your attention to recent evidence which has come to light in respect of the shares held in Cressingham Properties Limited. You will note from the enclosed Confirmation Statements filed at Companies House on 15 March 2021 presumably by one of your clients in their roles as Directors of the company, it would appear that your clients (in their capacity as Trustees of the L J Fell Trust) have improperly authorised the transfer of 50 Ordinary shares held in Cressingham Properties Limited from the L J Fell Trust to be held by the executors of Dennis William Spiers Fell.

We understand that the transfer was not formally authorised by all of the Trustees of the L J Fell Trust. Our analysis is, therefore, that the 50 Ordinary shares are held on a bare trust for the beneficiaries (which include our client). As you are aware, our client seeks the transfer of 12 CPL shares to him.

We have recently corresponded with Wright Hassell LLP in respect of the effect that this may have regarding the Estate of Laurence Fell (Deceased)(enclosed). We trust that this will be taken into consideration when producing the updated estate accounts for the Estate of Dennis Fell (Deceased) and if it is asserted that the shares still vest (or have re-vested) in the estate the basis for that assertion.

We look forward to receiving the estate accounts as soon as possible.

Yours faithfully

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes.

**Meridian Private Client LLP**

Enc.

Your Reference: ~~MXA/EJB/FEL4.1~~  
Our Reference: 1005/9428/052162.00004

WRIGHT | HASSALL

23 April 2021

Meridian Private Client LLP  
Wood Rydings Court  
Packington Lane  
Little Packington  
Warwickshire  
CV7 7HN

Wright Hassall  
Olympus Avenue,  
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T 01926 886688  
F 01926 885588  
E enquiries@wrighthassall.co.uk  
DX 742180 Leamington Spa 6  
W www.wrighthassall.co.uk

**BY EMAIL ONLY:** [Edward.Bull@meridianpc.co.uk](mailto:Edward.Bull@meridianpc.co.uk)  
[Mark.Abrol@meridianpc.co.uk](mailto:Mark.Abrol@meridianpc.co.uk)

Dear Sirs

**The Estate of Laurence Fell (Deceased)**  
**Our Client: Martin Fell**  
**Your Client: Christopher Fell**

We write in response to your letter dated 13 April 2021.

It has been noted that you are now raising issues regarding shares held by Cressingham Properties Limited and the transfer of these shares. Clearly this is a matter for Cressingham Properties Limited to respond to and as we have made clear on numerous occasions if you wish to raise issues concerning the various companies, you will need to contact them directly. Further, these companies will need to take their own independent legal advice.

In relation to the Dennis Fell estate, as you are fully aware our client has instructed Sydney Mitchell to advise him upon that matter. We have noted the reference to the draft estate account being provided on or by 1 May 2021 and that you "*believe that the accounts **may** [emphasis add] alter the position in respect of Laurence's estate.*" As we have made clear on numerous occasions, the pleaded case deals with several very narrow issues in which the parties have already provided their evidence. It is not appropriate, some four weeks before a trial to seek an adjournment on matters which are simply not relevant. In those circumstances if your client makes an application seeking an adjournment, our client will defend the same.

Yours faithfully



**WRIGHT HASSALL LLP**

**Direct Tel** 01926 880751  
**E-mail** martin.oliver@wrighthassall.co.uk



Claim no.	
-----------	--

### Details of claim *(continued)*

(d) (in so far as is necessary) An Order removing the First & Second Defendants as Executors of the estate of Dennis William Spiers Fell, deceased, and their replacement with suitable independent Personal Representation(s);

(e) An Order that the First & Second Defendants pay the costs of this application.

(f) Such further or other Orders as may be just.

3. The Third Defendant is the other living beneficiary of the deceased's estate and is joined to the proceedings so that he is bound by the Court's findings. It is understood that he is supportive of the Claimant's claim, and, in particular, he also seeks the assent to him of shares in Cressingham Properties Limited.

4. This claim is made under section 50 of the Administration on Justice Act 1985.

5. The Claimant relies on his witness statement dated 19 January 2021, copies of which are served herewith.

The First & Second Defendants are sued as the Executors of the estate of Dennis William Spiers Fell, deceased.

### Statement of Truth

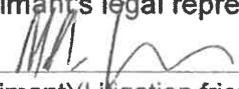
**\*I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.**

**\*(I believe)(The claimant believes) that the facts stated in these particulars of claim are true.**

~~\*I am duly authorised by the claimant to sign this statement\*~~

Full name Martin Anthony Fell

Name of claimant's legal representative's firm Meridian Private Client LLP

signed 

~~\*(Claimant)(Litigation friend)~~  
~~(legal representative)~~

position or office held \_\_\_\_\_

(if signing on behalf of firm or company)

*\*delete as appropriate*

Meridian Private Client LLP  
Wood Rydings Court, Packington Lane  
Little Packington  
Warwickshire CV7 7HN  
MXA/FEL4.3  
01675 443465

**Claimant's or claimant's legal representative's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.**

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

## Notes for claimant on completing a Part 8 claim form

- Please read all of these guidance notes before you begin completing the claim form. The notes follow the order in which information is required on the form.
- Court staff can help you fill in the claim form and give information about procedure once it has been issued. But they cannot give legal advice. If you need legal advice, for example, about the likely success of your claim or the evidence you need to prove it, you should contact a legal representative or a Citizens Advice Bureau.
- If you are filling in the claim form by hand, please use black ink and write in block capitals.
- You must file any written evidence to support your claim either in or with the claim form. Your written evidence must be verified by a statement of truth.
- Copy the completed claim form, the defendant's notes for guidance and your written evidence so that you have one copy for yourself, one copy for the court and one copy for each defendant. Send or take the forms and evidence to the court office with the appropriate fee. The court will tell you how much this is.

## Notes on completing the claim form

### Heading

You must fill in the heading of the form to indicate whether you want the claim to be issued in a county court or in the High Court (The High Court means either a District Registry (attached to a county court) or the Royal Courts of Justice in London).

Use whichever of the following is appropriate:

'In the County Court at.....'

(inserting the name of the court)

**or**

'In the High Court of Justice.....Division'

(inserting eg. 'Queen's Bench' or 'Chancery' as appropriate)

.....District Registry'

(inserting the name of the District Registry)

**or**

'In the High Court of Justice.....Division,

(inserting eg. 'Queen's Bench' or 'Chancery' as appropriate)

Royal Courts of Justice'

### Claimant and defendant details

As the person issuing the claim, you are called the 'claimant'; the person you are suing is called the 'defendant'. Claimants who are under 18 years old (unless otherwise permitted by the court) and patients within the meaning of the Mental Health Act 1983 must have a litigation friend to issue and conduct court proceedings on their behalf. Court staff will tell you more about what you need to do if this applies to you.

You must provide the following information about yourself and the defendant according to the capacity in which you are suing and in which the defendant is being sued.

When suing or being sued as:-

#### an individual:

All known forenames and surname, whether Mr, Mrs, Miss, Ms or Other (e.g. Dr) and residential address (including postcode and telephone and any fax or e-mail number) within the United Kingdom or in any other European Economic Area (EEA) state. Where the defendant is a proprietor of a business, a partner in a firm or an individual sued in the name of a club or other unincorporated association, the address for service should be the usual or last known place of residence or principal place of business of the company, firm or club or other unincorporated association.

#### Where the individual is:

**under 18** write '(a child by Mr Joe Bloggs his litigation friend)' after the child's name.

**a patient within the meaning of the Mental Health Act 1983** write '(by Mr Joe Bloggs his litigation friend)' after the patient's name.

#### trading under another name

you must add the words 'trading as' and the trading name e.g. 'Mr John Smith trading as Smith's Groceries'.

#### suing or being sued in a representative capacity

you must say what that capacity is e.g. 'Mr Joe Bloggs as the representative of Mrs Sharon Bloggs (deceased)'.

#### suing or being sued in the name of a club or other unincorporated association

add the words 'suing/sued on behalf of' followed by the name of the club or other unincorporated association.

#### a firm

enter the name of the firm followed by the words 'a firm' e.g. 'Bandbox - a firm' and an address for service which is either a partner's residential address or the principal or last known place of business.

#### a corporation (other than a company)

enter the full name of the corporation and the address which is either its principal office or any other place where the corporation carries on activities and which has a real connection with the claim.

#### a company registered in England and Wales

enter the name of the company and an address which is either the company's registered office or any place of business that has a real, or the most, connection with the claim e.g. the shop where the goods were bought.

#### an overseas company (defined by s744 of the Companies Act 1985)

enter the name of the company and either the address registered under s691 of the Act or the address of the place of business having a real, or the most, connection with the claim.

## Details of claim

Under this heading you must set out either

- the question(s) you wish the court to decide; or
- the remedy you are seeking and the legal basis for your claim; and
- if your claim is being made under a specific CPR Part or practice direction, you must state which.

## Defendant's name and address

Enter in this box the full name and address of the defendant to be served with the claim form (i.e. one claim form for each defendant). If the defendant is to be served outside the European Economic Area, you may need to obtain the court's permission.

## Address for documents

Insert in this box the address at which you wish to receive documents, if different from the address you have already given under the heading 'Claimant'. The address you give must be either the business address of your legal representative or European Lawyer or your own residential or business address within the UK or in any other EEA state.

## Statement of truth

This must be signed by you, by your legal representative or your litigation friend, as appropriate.

Where the claimant is a registered company or a corporation the claim must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

## Notes for defendant (Part 8 claim form)

**Please read these notes carefully - they will help you to decide what to do about this claim.**

- You have 14 days\* from the date on which you were served with the claim form to respond to the claim
- If you **do not return** the acknowledgment of service, you will be allowed to attend any hearing of this claim but you will **not** be allowed to take part in the hearing unless the court gives you permission to do so
- Court staff can tell you about procedures but they cannot give legal advice. If you need legal advice, you should contact a solicitor or Citizens Advice Bureau immediately

### Time for responding

The completed acknowledgment of service must be returned to the court office within \*(14 days)( ) of the date on which the claim form was served on you. If the claim form was:

- sent by post, the \*(14 days) ( ) begins 2 business days from the date of the postmark on the envelope.
- delivered or left at your address, the \*(14 days) ( ) begins the second business day after it was delivered.
- handed to you personally, the \*(14 days) ( ) begins on the second business day it was given to you.

### Completing the acknowledgment of service

You should complete sections A - E as appropriate. In all cases you must complete sections F and G.

#### Section A - not contesting the claim

If you do **not** wish to contest the remedy sought by the claimant in the claim form, you should complete section A. In some cases the claimant may only be seeking the court's directions as to how to act, rather than seeking a specific order. In these circumstances, if you wish the court to direct the claimant to act in a certain way, give brief details.

#### Section B - contesting the claim

If you do wish to contest the remedy sought by the claimant in the claim form, you should complete section B. If you seek a remedy different from that sought by the claimant, you should give brief details in the space provided.

#### Section C - disputing the court's jurisdiction

You should indicate your intention by completing section C and filing an application disputing the court's jurisdiction within 14 days of filing your acknowledgment of service at the court. The court will arrange a hearing date for the application and tell you and the claimant when and where to attend.

#### Section D - objecting to use of procedure

If you believe that the claimant should not have issued the claim under Part 8 because:

- there is a substantial dispute of fact involved; and
  - you do not agree that the rule or practice direction stated does provide for the claimant to use this procedure
- you should complete section D setting out your reasons in the space provided.

#### Section E - written evidence

Complete this section if you wish to rely on written evidence. You must send your written evidence to the court with your acknowledgment of service. It must be verified by a statement of truth or the court may disallow it. If you have agreed with the other party(ies)

an extension of time for filing your written evidence, a copy of your written agreement must be filed with your acknowledgment of service. Please note that the agreement can only extend time by 14 days from the date you file your acknowledgment of service.

### Claims under section 1 of the Inheritance (Provision for Family and Dependents) Act 1975

A defendant who is a personal representative of the deceased must file and serve written evidence which must state to the best of that person's ability:

- full details of the value of the deceased's net estate, as defined in section 25 of the Act;
- the person or classes of person beneficially interested in the estate, and
  - the names and (unless they are parties to the claim) addresses of all living beneficiaries; and
  - the value of their interests in the estate so far as they are known;
- whether any living beneficiary (and if so, naming him) is a child or protected party within the meaning of Rule 21.1(2); and
- any facts which might affect the exercise of the court's powers under the Act.

### Section F - name of defendant

Print your full name, or the full name of the defendant on whose behalf you are completing this form.

### Serving other parties

You must send to any other party named on the claim form, copies of both the acknowledgment of service and any written evidence, at the same time as you file them with the court.

### What happens next

The claimant may, within 14 days of receiving any written evidence from you, file further evidence in reply. On receipt of your acknowledgment of service, the court file will be referred to the judge for directions for the disposal of the claim. The court will contact you and tell you what to do next.

### Statement of truth

This must be signed by you, by your solicitor or your litigation friend, as appropriate.

Where the defendant is a registered company or a corporation the statement must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

*\*For claims under the Inheritance (Provision for Family and Dependents) Act 1975 the period is 21 days.*

----- Original Message -----

From: "Chris Fell" <cjwfell@gmail.com>

To: "GTB Roddy Devlin" <jrd@gtb-solicitors.com>; "Jonathan FELL" <jpqf@btinternet.com>

Sent: Friday, 10 Feb, 17 At 15:34

Subject: Re: Skere Walk

Hi Roddy,

I hope you are keeping well.

I had an inquiry on Sker Walk yesterday. Timothy has found out that there have been a number of sales since father passed away. I have found out only today there have been at least five sales since 2006 but no money has been accounted to Cressingham or ourselves on four of these sales. Tim understands Martin did pay him a small amount for his share on one sale. No money was paid or has been paid to either myself Jon or Laurence. Please note Jon and I have power of attorney for Laurence. Jon on his own has been looking after Laurence in Prestayn since 2006. Laurence condition is of course a life long one and is about the same as it was in 2005 and he cannot be left on his own and neither are working. Any additional monies are appreciated.

The letter on file dated 8 January 2004 you sent father direct 25% of the proceeds of sale £987.50 on 17 Sker Walk ( JRD/KBH/Coo30-26) - Coolrace. Ltd. I therefor take it you have knowledge of this arrangement? I have a letter from Coolrace (David S.) confirming the same. In addition 25% of the purchase price did come from Cressingham Properties (shareholder's me, Tim, and 50% Laurence Trust.). I note that the funds for purchase were posted to fathers loan account at the time i.e. it was father's personally as confirmed by your letter attached. I further note

that the 25% was also marked on the Coolrace stock record originally from David's letter. I have already written to David to reconfirm these arrangements. I take it all monies were accounted to Coolrace and we were cut out of the loop as an oversight?

Can you confirm these arrangement and in future send Timothy or Cressingham the 25% for distribution to ensure we all get a fair share in future.

Regards,

Chris

-

**Christopher Fell**  
[cjwfell@gmail.com](mailto:cjwfell@gmail.com)

**Property/Ground Rents**  
Dennis Fell Property Companies  
Tel:0156479-4177 Fax:0156479-4746