



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS AT BIRMINGHAM

BL-2022-BHM-000035

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Before His Honour Judge Rawlings sitting at the Birmingham Civil Justice Centre

On 31st May 2022

B E T W E E N:-

MR MARTIN ANTHONY FELL

Claimant

- and -

(1) MR CHRISTOPHER JOHN WILLIAM FELL

(2) MR TIMOTHY DENNIS STEPHEN FELL

(Both sued as the Executors of the Estate of Dennis William Spiers Fell, deceased, as the Trustees of the Dennis William Spiers Fell Settlement & the Martin Anthony Fell Settlement and as the Directors and Shareholders of the Fourth to Eighth Defendants)

(3) MR JONATHAN PAUL QUENTIN FELL

(4) DENNIS FELL PROPERTIES LIMITED (Company Number 00742369)

(5) HERONFIELD DEVELOPMENTS LIMITED (Company Number 00909341)

(6) MARTINVALLE DEVELOPMENTS LIMITED (Company Number 00906443)

(7) SPEEDWELL ESTATES LIMITED (Company Number 00392284)

(8) CRESSINGHAM PROPERTIES LIMITED (Company Number 00480134)

(9) MRS ANNA MARIE FELL (NEE CABALE)

Defendants

ORDER

PENAL NOTICE

IF YOU CHRISTOPHER FELL DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED, OR HAVE THEIR ASSETS SEIZED.

UPON the Claimant's Application for Summary Judgment dated 20th April 2022

AND UPON the return date of the Claimant's Application for a Freezing Injunction dated 10th May 2022

AND UPON hearing Counsel, David Mitchell, for the Claimant, the First and Ninth Defendants not attending, the Second Defendant in person and as a Director of the Fourth to Eighth Defendants and the Third Defendant in person

AND UPON the Court finding that the Defendants have no reasonable prospect of successfully defending the claim for Specific Performance and that there is no other compelling reason why the case should be disposed of at trial

AND UPON only the Third Defendant formally Acknowledging Service, although the First Defendant has corresponded with the Court concerning the proceedings and the Second Defendant having attended the hearing on 6th May 2022 does not oppose the granting of summary judgment

AND UPON the Court finding that the First Defendant is aware of the Applications and Orders made to date in these proceedings

AND UPON the Court considering the valuation evidence contained in the Claimant's Witness Statement, dated 26th May 2022

AND UPON the Second Defendant indicating that he accepts the net global value of the Dennis Fell Companies of £456,118.39 contained in the Claimant's Witness Statement dated 26th May 2022 ("the Valuation")

AND UPON the Court indicating (for the benefit of the First Defendant) that if he does not comply with paragraph 2(b) of the Order below, on the hearing of 20th June 2022 the Court is likely to Order that:-

(a) The First and Second Defendants shall forthwith execute the Stock Transfer forms to transfer all their interest in HDL (the Fifth Defendant) and its subsidiaries to the Claimant and the Third Defendant and deliver the same to the Claimant's Solicitors; and

(b) There be Judgment for the Claimant (for the benefit of himself and the Third Defendant jointly) against the First and Second Defendants on the basis of the shortfall on the Valuation in the sum of £243,8881.61 (£700,000 less £456,118.39)

IT IS ORDERED that:-

1. There be Specific Performance of the Settlement Agreement, dated 3rd February 2022;
2. The following Orders are made to give effect to that Order for Specific Performance:-

- (a) The First and Second Defendants shall forthwith execute the Stock Transfer forms (in the form at annex MA9 to Mr Abrol's first witness statement) to transfer all their interest in CPL and DFL (the Fourth and Eighth Defendants) to the Claimant and the Third Defendant and deliver the same to the Claimant's Solicitors;
 - (b) The First Defendant shall forthwith join with the Claimant and the Second and Third Defendants in appointing an Expert in accordance paragraph 16 of the Settlement agreement (and based upon the draft Letter of Instruction found at page 17 of MA9) to value CPL, DFL and HDL and its subsidiaries (including the assets of HDL and its subsidiaries) as at the date of this Order. To facilitate that instruction, the First Defendant must by 4pm on 10th June 2022:-
 - (i) Pay the sum of £5,000 (inclusive) to the Claimant's Solicitors, to be held by them on account of the one-half of the Expert's fees;
 - (ii) To either approve the Letter of Instructions (found at page 17 of MA9) or to provide his own additional Instructions to the expert (by sending a copy of the additional Instructions to the Claimant's Solicitors); and
 - (iii) Inform the Claimant's Solicitors of which of (a) Jones Lang LaSalle (b) Gerald Eve (c) Knight Frank and (d) Lambert Smith Hampton, he nominates to be appointed as the RICS Expert to value CPL, DFL and HDL
3. (Given the First Defendant's failure to take part in these proceedings) Pursuant to s. 39 of the Senior Courts Act 1981 HHJ Rawlings is nominated to sign the Stock Transfer

forms (referred to at paragraphs (a) in the recital above and in 2(a)) on behalf of the First Defendant.

4. The Interim Injunction made on 6th May 2022 against the First and Fourth to Eight Defendants is continued until Further Order and is further extended to include the restraining of any transfer by the First Defendant of his shares in the Fourth to Eighth Defendants (save as expressly permitted by this Order). It further expressly being permitted that the Claimant can seek its discharge by filing an Order consenting to the same.
5. The Freezing Injunction made on 10th May 2022 against the First and Ninth Defendants is continued until Further Order.
6. The matter be listed for a further (in person) hearing before HHJ Rawlings on 20th June 2022 at 2pm at the Birmingham Civil Justice Centre.
7. The First Defendant will pay the Claimant's costs of the proceedings, including of the Applications dated 20th April, 25th April and 10th May 2022, on the indemnity basis to be subject to detailed assessment, with the following Interim Payments to be made by 4pm on 14th June 2022:-
 - (a) As to the proceedings themselves (including the Summary Judgment Application dated 20th April 2022), the sum of £40,000;
 - (b) As to the on-notice Interim Injunction Application, dated 25th April 2022, the sum of £10,500; and
 - (c) As to the Freezing Injunction Application, dated 10 May 2022, the sum of

£8,500.

Insofar as such costs are not recovered from the First Defendant (as to the costs of the proceedings themselves including the Summary Judgment Application dated 20th April 2022), the Claimant has liberty to apply for an Order that such part of the costs which are not recovered are payable by the Second Defendant and (for the avoidance of doubt) the Court will upon such application re-consider whether such costs should be paid on the standard , as opposed to the indemnity basis, as against the Second Defendant.

DATED:- 31st May 2022

Claim No. PT-2022-BHM--000035

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

B E T W E E N:-

MR MARTIN ANTHONY FELL

Claimant

- and -

- (1) **MR CHRISTOPHER JOHN WILLIAM FELL**
- (2) **MR TIMOTHY DENNIS STEPHEN FELL**
(Both sued as the Executors of the Estate of Dennis William Spiers Fell, deceased, as the Trustees of the Dennis William Spiers Fell Settlement & the Martin Anthony Fell Settlement and as the Directors and Shareholders of the Fourth to Eighth Defendants)
- (3) **MR JONATHAN PAUL QUENTIN FELL**
- (4) **DENNIS FELL PROPERTIES LIMITED**
(Company Number 00742369)
- (5) **HERONFIELD DEVELOPMENTS LIMITED**
(Company Number 00909341)
- (6) **MARTINVALE DEVELOPMENTS LIMITED**
(Company Number 00906443)
- (7) **SPEEDWELL ESTATES LIMITED** (Company Number 00392284)
- (8) **CRESSINGHAM PROPERTIES LIMITED**
(Company Number 00480134)
- (9) **MRS ANNA MARIE FELL (NEE CABALE)**
Defendants

ORDER

Meridian Private Client LLP
Ref: MXA/FEL4.3