

Claimants
J Pitt
First
11 October 2023

Claim No. BL-2020-001343

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD) AND INSOLVENCY AND COMPANIES LIST (ChD)

B E T W E E N:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
- (2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS,
COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT
ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN
ADMINISTRATION))
- (3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
- (4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN
AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL
& GAS LIMITED (IN ADMINISTRATION))

Claimants

and

- (1) MICHAEL ANDREW THOMSON
- (2) SIMON HUME-KENDALL
- (3) ELTEN BARKER
- (4) SPENCER GOLDING
- (5) PAUL CARELESS
- (6) SURGE FINANCIAL LIMITED
- (7) JOHN RUSSELL-MURPHY
- (8) ROBERT SEDGWICK
- (9) GROSVENOR PARK INTELLIGENT INVESTMENT LIMITED
- (10) HELEN HUME-KENDALL
- ~~(11) FRANCIS MICHAEL WILLIAM STARKIE~~
- ~~(12) MARTIN STEPHEN RUSCOE~~
- ~~(13) ERIC BOSSHARD~~
- ~~(14) ROGER STEPHEN FILTNESS (REPRESENTATIVE OF THE
ESTATE OF ROBIN HUDSON)~~
- ~~(15) CHARLES HENDRY~~

Defendants

WITNESS STATEMENT OF JOSEPH ANTHONY PITT

I, **JOSEPH ANTHONY PITT**, of FRASER CRE LIMITED (trading as Fraser Real Estate of 32-33 Cowcross Street, London EC1M 6DF) **WILL STATE** as follows:

1. I am a Chartered Surveyor and a Senior Director at Fraser CRE Limited, trading as **Fraser Real Estate**.
2. I make this statement in support of the Claimants' claim against the Defendants. I am duly authorised to make this witness statement on behalf of the administrators of London Capital & Finance plc (**LCF**) and London Oil & Gas Limited (**LOG**). The facts and matters set out in this statement are within my own knowledge and they are true to the best of my knowledge and belief.
3. This statement has been prepared following discussions with the solicitors appointed by the Claimants, Mishcon de Reya LLP (**Mishcon**), over a video call. Unless specified otherwise below, I have a good recollection of the facts addressed in this witness statement as I provided advice to the administrators regarding the sale of the Lakeview Resort in Cornwall, located at Waterside Cornwall, Old Coach Road, Lanivet, Cornwall PL30 5JJ. I have always referred to the Lakeview Resort as "**Waterside**", and, whilst I understand that in the proceedings the property is defined as "Lakeview", I will refer to the property as "Waterside" in this statement.
4. When I refer to a document in this statement that has been disclosed, I refer to its electronic number by reference to the lists of disclosure exchanged between the parties. Where a document has not been disclosed in the proceedings, but I nevertheless am referring to it, I have exhibited these documents in Exhibit JAPI. I have refreshed my memory by looking at the documents referred to in this statement and exhibited, as well as notes from my daybook.
5. The purpose of this statement is to provide further information relating to the planning permission at Waterside referenced by the Second Defendant in the Addendum to his Defence dated 31 July 2023 (the **D2 Addendum**).

My background

6. I am a Chartered Surveyor with over 30 years' experience advising stakeholders (principally lenders and their advisors) in respect of defaulted real estate loans secured over property and the property aspects arising out of corporate default.

My role assisting the Joint Administrators of LCF

7. Fraser Real Estate was engaged by the Joint Administrators of LCF in March 2019 shortly after their appointment as administrators. Fraser Real Estate was engaged to provide consultancy services in respect of multiple property aspects in the administration arising out of loans made by LCF which touched on property interests or security, including relating to Waterside. This engagement is ongoing.
8. When the decision was taken to start the sale process of Waterside in July 2021, Fraser Real Estate was engaged by the Joint Administrators of LCF to manage the marketing and disposal process. Miller Commercial was in turn selected as lead agent, both due to its experience in the Cornwall leisure market and the familiarity it had acquired having provided input to both Fraser Real Estate and the Administrators of LCF prior to the commencement of marketing.

Planning permission

9. The planning permission referred to in the D2 Addendum is a reference to Application PA18/08550 (the **Planning Permission**). A copy of the Planning Permission is exhibited (**see JAPI/2-17 [MDR_POST_00002569]**). The Planning Permission covered most of the site at Waterside which was comprised of 8 different freehold titles. A plan showing how the development envisaged by the Planning Permission relates to these 8 freehold titles is exhibited (**see JAPI/18 [MDR_POST_00002570]**).
10. The Planning Permission was for the replacement as well as the improvement of existing “central facilities” as well as the development of 118 additional holiday lodges. It was prior to my involvement, but I can see that the Planning Permission was granted on 19 December 2018. In accordance with the relevant statutory provisions, the Planning Permission had to be implemented before the expiration of three years from that date i.e., by 18 December 2021.
11. As set out below, careful consideration was given to the steps required in order to preserve the Planning Permission, but ultimately these were not viable or achievable.
12. In order to preserve the Planning Permission, the works permitted under the permission had to be implemented. At the time, it was not possible to obtain an extension of time within which to implement the works (the planning laws at that

time were in effect – use it or lose it). If works were not commenced then the whole process would start from the beginning – i.e. – with a new application for planning permission).

13. At beginning of 2021, Fraser Real Estate commenced a feasibility review to ascertain what actions were required in order to "lawfully implement" the Planning Permission.
14. Lawful implementation constitutes two parts. The first is that sufficient material operations have been undertaken which amount to the implementation of the planning permission and, second, that such material operations were undertaken lawfully – i.e. in accordance with the relevant conditions set out in the planning permission.
15. The Planning Permission was complex and there were a number of pre-commencement conditions (**PCCs**) which had to be satisfied before material operations could be lawfully undertaken.
16. Fraser Real Estate set about reviewing the ability to discharge the appropriate PCCs and sought input from Peregrine Mears (the architects that advised Prime Resort Development Limited in respect of the application for the Planning Permission in September 2018) in this respect.
17. On 17 March 2021, Peregrine Mears provided a summary of the planning conditions and the status of each PCC. A copy is exhibited (**see JAPI/19-23 [MDR_POST_00002581]**).
18. Peregrine Mears subsequently provided a plan and programme for activities required in order to discharge the PCCs, including input from consultants and engineers. This included the preparation of indicative cost and timelines for undertaking these steps and Peregrine Mears provided me with a costed budget for dealing with PCCs on 11 May 2021 (**see JAPI/24-26 [MDR_POST_00002582]**). This budget came to circa £80,000 plus VAT and was the aggregate costs of a number of consultants in order to deal with the relevant PCCs before a material operation could be undertaken in order to implement. It did not include Fraser Real Estate's fees, the Administrators' fees or any legal fees.

19. The plan included a need for (*inter alia*) gas monitoring to be undertaken as part of the satisfaction of condition 7 (Contaminated Land – Risk Assessment) which required 3 to 6 months of monitoring before this condition could be discharged.
20. On receipt of the costed budget, Peregrine Mears commented that re-submission of the planning application was a possible option to extend its life by a further 3 years. The indicative cost of this was not dissimilar to that for implementation so implementation remained the focus.
21. However, we did ask Peregrine Mears to inquire of Cornwall Council as to the ability to seek variation of the PCCs alongside their satisfaction with a view to reducing cost/decreasing the time risk. Whilst Cornwall Council indicated that it was prepared to consider such variation, Peregrine Mears was informed by Cornwall Council in June 2021 that it had paused all decisions upon development in the River Camel Special Area of Conservation (within the boundary of which Waterside is located) due to concerns over phosphate levels which had been identified in the River Camel and its tributaries. A map showing Waterside's location within the River Camel catchment area is exhibited (**see JAPI/45 [MDR_POST_00002583]**).
22. This “pause” applied to both new applications and applications to discharge and vary conditions and had no definite timeline in terms of its application in 2021.
23. This meant that if the Joint Administrators had instructed Fraser Real Estate, Peregrine Mears and the sub-consultant team to embark on the investigations and reports necessary in order to apply for either or both of the variation or the discharge of the relevant PCC, Cornwall Council would simply have “parked” such applications; meaning that they would not be considered prior to the expiry of the planning permission.
24. Despite the 'pause', Fraser Real Estate asked Peregrine Mears to investigate potential solutions to overcome the phosphate concerns in respect of this particular proposed development, but despite consultation with the engineers (Hydrok) none of these were viable at the time.
25. The decision was therefore taken by the Joint Administrators to abandon the efforts to seek to discharge the PCCs in order to enable the lawful implementation of the planning permission, based on the additional cost that would be incurred with no assurance that this would enable lawful implementation in time.

26. Miller Commercial formally launched the Waterside sale in September 2021. A copy of the Planning Permission was made available in the data room which Miller Commercial had set up for interested parties to conduct their due diligence and to help inform their bids for purchase of Waterside. The Planning Permission also featured prominently in the marketing brochure prepared by Miller Commercial¹. The brochure specified that the Planning Permission was obtained in December 2018 and any credible buyer would have known planning permissions lapse after three years. Interested parties would have formed their own conclusions as to the probability of preserving the Planning Permission. In any event, the Planning Permission was in the public domain – anybody could have accessed it via a link on the local Cornwall council website.
27. Park Holiday's offer was accepted on 15 December 2021 and heads of terms were agreed on 24 December 2021, i.e. after the Planning Permission had expired on 19 December 2021.
28. Ultimately, I do not believe that the price achieved for the property was materially impacted by the Planning Permission having expired. It did not appear probable that Waterside would be developed in the manner envisaged by the Planning Permission but rather, was more likely to be expanded by the addition of lodges. The planning history associated with the property (including the Planning Permission itself and the leverage generated in this respect by an extant consent for the addition of a hotel and 36 lodges under application reference PA13/09946) gave prospective buyers confidence that planning for expansion of the park would likely be achievable once a path to resolve the phosphate issues had been identified. Hence, I believe that this was reflected in the price achieved through thorough and open marketing.

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

¹ MDR_POST_00001816

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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: 

Joe Pitt
Name:

¹ MDR_POST_00001816

11 October 2023
Date:

WITNESS CONFIRMATION OF COMPLIANCE

I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.

I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.

This witness statement sets out only my personal knowledge and recollection, in my own words.

On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.

I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.

Signed: 

Joe Pitt
Name:

11 October 2023
Date:


LEGAL REPRESENTATIVE CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.
2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation

required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Joe Pitt.

3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

Signed: 

Barry Coffey

Name:

Position: Partner

11 october 2023

Date:

Claimants
J Pitt
First
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(REPRESENTATIVE OF THE ESTATE OF

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~~(15) CHARLES HENDRY~~

Defendants

**WITNESS STATEMENT OF JOSEPH ANTHONY
PITT**

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