



Neutral Citation Number **[2023] EWHC 3118 (Ch)**

Case No: BL 2018 001790

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 5 December 2023

Before:

CHIEF MASTER SHUMAN

Between :

ULRICH RUED

- and -

(1) LLOYD DORMER

(2) GABRIELLA DORMER

Claimant

Defendant

ALI REZA SINAI (instructed by **BBS Law incorporating OGR STOCK DENTON LLP**)
for the Claimant

MARK GALTREY (instructed by **CLARK WILMOTT LLP**) for the First Defendant

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF MASTER SHUMAN

CHIEF MASTER SHUMAN:

1. Mr Rued and Mr Dormer agreed in the second half of 1997 to go into partnership together, developing land. The business commenced trading on 1 December 1997. Mr Dormer identified and purchased two parcels of land in Somerset, known as Wellington and Hill farm. Mr Rued provided the cash funding and Mr Dormer developed residential houses on the two parcels of land. The funding was by way of loans which would be repaid with interest and after repayment of the loans and interest the parties would share the profits equally.
2. I have already determined the liability part of the claim. This is judgment on the account part of the claim and the background facts and my findings from the liability judgment form part of this judgment.
3. There are two discrete strands to this account, what expenses Mr Dormer is able to deduct from the business by way of wages, overtime and commission pre and post 30 November 2016, what adjustments, if any, need to be made to the accounts prepared by the single joint expert and specifically in respect of Plot 9¹, the build costs and whether the business bore those costs. For ease of reference, I set out the scope of the account from the order of 9 September 2021 below:

“3. The First Defendant shall account for the income, expenses and profits of the partnership to date on the basis that:”

(i) the First Defendant was entitled to bill and withdraw £100 per day from the business for his work in the business from 1997 to 22 November 2000;”

(ii) the First Defendant was entitled to bill and withdraw £1,000 per week from the business for his work in the business from 23 November 2000 to 4 September 2005;

¹ Known as The Chambers, 9 Kingston Court.

(iii) the First Defendant was entitled to a salary of £5,000 per month from the business from 5 September 2005 to 30 November 2016 for his work in the business;

(iv) the First Defendant was in addition entitled to overtime from 29 January 2000 for any work carried out at the weekend on an hourly rate pro rata to the weekly or monthly rate applicable at the material time;

(v) the First Defendant was entitled to commission for his sole benefit all materials acquired and used in the business (but not labour nor any associated costs) at 10% from 5 September 2005;

(vi) as at 31 March 2003, there were no wages (including any overtime) due to the First Defendant following his purchase of Kingston Hall from the partnership;

(vii) the First Defendant has received his wages, overtime and commission up to 2006 but there may be such sums due to him from 2008 up to 30 November 2016. The First Defendant will give credit in the account for any sums received by him as wages, overtime and commission him from 2008 up to 30 November 2016;

(viii) the First Defendant is given credit in relation to any capital sums introduced by him into the business

(ix) The First Defendant is given credit for any sums expended by him personally in relation to work carried out for the Partnership from 1 December 2016 to date, provided that such sums have not been demanded or recovered from the owners of the sold plots and/or any other third parties. The First Defendant shall give disclosure in this respect. If the First Defendant establishes by evidence that he has worked in the business after 1 December 2016, he will be given credit at the account hearing.

4. The Defendants shall account to the Claimant and First Defendant as partners in the partnership for the value of Plot 9 (as built) on the basis that:

(i) the value of Plot 9 is £850,000 as at 18 July 2019;

(ii) Plot 9 was developed to damp proof course level by 31 March 2014 with substructure costs of £55,805. The account will determine the build cost of Plot 9 and whether the business bore those costs.

EVIDENCE

4. The trial bundles comprised 4 bundles, a supplementary bundle and a colour coded spreadsheet running to some 106 pages. The latter is a chronological analysis of Mr Dormer's exhibit LSD4 inserting in when plots were sold. It is limited in that it does not contain all of the invoices in this case. That is not a criticism as otherwise this exercise would be more akin to a loss and expense claim than that of an account, but I must be cautious in how I approach the evidence contained therein. In addition, several other documents were handed up during the course of the trial. Mr Sinai, counsel for Mr Rued, also sought to rely on data produced from a Building Cost Information Service data tool and a table using extrapolated data from that source, which were not admitted into evidence and therefore forms no part of this judgment.
5. Mr Dormer relied on his witness statement dated 29 October 2021 which exhibited a schedule of work titled 'Materials Subcontract Labour and Other Direct Costs' January 2008 to November 2016 totalling £1,486,624.45, completion statements of sales, sales particulars, costs of materials from January 2008 to November 2016 totalling £846,922.26, and a schedule of work entitled again 'Materials Subcontract Labour and Other Direct Costs' but for the period December 2016 to October 2021. In addition, Mr Dormer exhibited calendar sheets from January 2008 with manuscript notes said to contain the work carried out and supported by pages of invoices, collection and delivery notes, which in total ran to 2,632 pages.
6. Mr Dormer was cross examined extensively.

7. Mr Dormer's perception of the business, which was not accepted at the liability trial, was that it ended on 31 March 2003. Thereafter he believed that he was solely developing Hill farm. I do not consider, nor was it ultimately pursued by Mr Sinai despite some of the lines of his cross-examination, that Mr Dormer was trying to mislead the court in his evidence given during the account trial. What came across in his evidence was that he had a somewhat inflexible view as to what he was entitled to, that he managed and determined what happened on the developments. That he viewed Mr Rued's role as comparable to that of a banker: entitled to the interest on his loan payments, but only for a certain period and at a certain rate. I do consider that Mr Dormer's perception has permeated how he has tried to piece together what he did on the development, and therefore what he is entitled to deduct by way of work, overtime and commission on materials. I have no doubt that Mr Dormer has tried to recreate a calendar schedule of what work he was doing from the significant amount of source material he retained, but through the lens of what he considered he should be entitled to. However, this sense of being right and his entitlement continued from the liability trial where Mr Dormer was adamant about events, notwithstanding contemporaneous records, demonstrating otherwise, albeit prepared by Mr Rued but shown to him, and that he simply decided to transfer plot 9 over to the ownership of himself and Mrs Dormer.
8. Mr Sinai referred to Mr Dormer's sense of grievance and illustrated it with two examples. Mr Dormer repeating in the account trial that he had had to invest his own capital into the business in 2004, albeit that he had withdrawn it by 2008. By 2004 Mr Rued had injected some £638,000 of capital into the business and Mr Dormer stopped paying him interest on 1 July 2002. He also suggested that the periodic lack of funding led to delays with the developments, yet this is not necessarily supported by Mr Dodge's analysis of the account and that there was liquidity and working capital available². Furthermore, the developments were supposed to be self-funding albeit problems with the land in Wellington meant that Mr Rued had to invest further funds to enable the development at Hill farm to proceed. Mr Sinai also submitted that Mr Dormer had an issue with paying interest, indeed part of the liability trial was concerned with whether Mr Dormer had to pay interest from 2015 and how much was due. I think those are fair

² Mr Sinai's analysis taken from Mr Dodge's P&L, balance sheets and summary of profits.

observations and taken with the other points I have raised mean that I should be cautious in how I approach Mr Dormer's evidence.

9. Mr Rued was not called to give evidence. It was clear from the liability trial that he was resident in Switzerland throughout and was reliant on information provided to him by Mr Dormer who had day to day control and worked on the sites, or Ray Dormer, who dealt with Mr Dormer's accounts.
10. Mr Jonathan Dodge FCA CF, a partner at FRP Advisory Trading Limited, a forensic accountant has provided a single joint expert report dated 28 April 2022, supported by extensive and extremely helpful schedules. He has prepared accounts for each of the partnership trading periods from 1998 to 31 December 2021, and also summarised the trading results and movements of each of the partner's capital and current accounts over the same period. Mr Dodge has extensive experience in providing such reports to the court.
11. In addition, he has responded to questions and concerns raised by the parties in a detailed second report by way of a letter dated 25 May 2022, signed with a statement of truth. He also provided a short third report, again by way of letter dated 1 June 2022, signed with a statement of truth. That report factored in the independent valuation report provided by Mr Forbes, updating appendices 1.1 to 1.4. In broad terms Mr Dodge's analysis is that Mr Dormer is owed £1,715,833 and Mr Rued £588,560, although of course those figures may change subject to the findings of the court which will impact on the figures to be inputted into this calculation. Neither party sought to orally examine Mr Dodge.
12. Mr Andrew Forbes BSc FRICS has provided a single joint expert valuation report in respect of plot 9 dated 25 May 2022. He set up his independent valuation consultancy in 1995 but has worked as a chartered surveyor in the Southwest of England and Wales throughout his long career. He has provided a single joint expert valuation report dated 25 May 2022. Mr Rued's solicitors raised questions and concerns about the report on 1 June 2022. Neither party sought to orally examine Mr Forbes.

THE ISSUES

13. The duties owed by a partner are uncontroversial. A partner is under a duty to act in good faith. As Lindley & Banks on Partnership, 20th Ed, describes it at 16-01,

“Perhaps the most fundamental obligation which the law imposes on a partner is the duty to display complete good faith towards his co-partners in all partnership dealings and transactions, even if its precise content may be somewhat elusive.”

14. This is reflected in section 28 of the Partnership Act 1890,

“Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.”

15. The duty is fiduciary in nature. As stated by Vice-Chancellor Bacon in Helmore v Smith (1886) 35 Ch D 436, at 444,

“If fiduciary relation means anything I cannot conceive a stronger case of fiduciary relation than that which exists between partners. Their mutual confidence is the life blood of the concern. It is because they trust one another that they are partners in the first instance; it is because they continue to trust each other that the business goes on.”

16. The present case where Mr Rued was resident in Switzerland and Mr Dormer was managing the business and carrying out part of the development work himself, puts the duty into sharp relief. As summarised in Lindley & Banks at 16-13,

“Where a discretion is conferred on the management of the firm or on a majority of partners, a partner will normally be entitled to expect that it will be exercised rationally and in good faith and not arbitrarily or capriciously or, indeed, irrationally. ... Equally, if the discretion is genuinely exercised in good faith and in the best interests of the firm, the fact that it may disadvantage a minority of the partners is not per se objectionable. Similarly, if the exercise of the discretion results in an incidental benefit to one or more of the other partners, although in such a case the court is likely to scrutinise the circumstances with care. The position will, naturally, be otherwise where the decision is proved to be motivated by a collateral and improper purpose.”

17. However, not all conduct will constitute a breach of the duty of good faith. In Lindley & Banks at 16-11 the author suggests there are limits,

“In other contexts, the courts have recognised that breach of a duty of good faith connotes an intentional act, borne out of dishonesty or some other improper motive and that, whilst recklessness may be the equivalent of intent, mere negligence is not sufficient. The current editor considers that this approach is equally applicable to partnerships and is, indeed, consistent with the scope of a partner’s implied duty not to expose his firm to avoidable risks. ... Suffice it to say that any conduct which is motivated by a desire to damage the firm or the other partners’ interests therein must necessarily involve such a breach.”

18. This accords with Sir Richard Scott VC’s statement of the principles in Medforth v Blake [2000] Ch 86, a case involving a pig-farming business where receivers had been appointed and it was suggested that a failure to request and obtain discounts when purchasing pig feed constituted a breach of the duty of good faith. At page 103B-D,

“I do not think that the concept of good faith should be diluted by treating it as capable of being breached by conduct that is not

dishonest or otherwise tainted by bad faith. It is sometimes said that recklessness is equivalent to intent. Shutting one's eyes deliberately to the consequences of what one is doing may make it impossible to deny an intention to bring about those consequences. Thereapart, however, the concepts of negligence on the one hand and fraud or bad faith on the other ought, in my view, to be kept strictly apart. Equity has not always done so. The equitable doctrine of "fraud on a power" has little, if anything, to do with fraud. Lord Herschell in *Kennedy v. De Trafford* [1897] A.C. 180 gave an explanation of a lack of good faith that would have allowed conduct that was grossly negligent to have qualified notwithstanding that the consequences of the conduct were not intended. In my judgment, the breach of a duty of good faith should, in this area as in all others, require some dishonesty or improper motive, some element of bad faith, to be established."

19. Mr Galtrey also emphasised the other limit on Mr Dormer, not to act irrationally, and that the court is concerned with scrutinising his mental processes, not evaluating the outcome of those decisions. I was referred to lengthy dicta from the speech of Baroness Hale in *Briganza v BP Shipping Ltd* [2015] UKSC 17, albeit in the context of a contract of employment and the duty on an employer to form an opinion on whether a death in service benefit was to be paid. He referred in particular to the analysis of authorities at paragraphs 22 to 23, although this was an extract from a longer consideration of whether a term to be implied into a contract included both limbs of the *Wednesbury* reasonableness principle. Lady Hale formed the view that contractual implied terms were drawing closer to the principles applicable in judicial review but went on to conclude that it was unnecessary to reach a conclusion.
20. In terms of understanding the factual matrix and how the claim for monies corresponds with activity on the sites I set out the following chronology which comprises findings that I have made, or the agreed positions of the parties.

- End 1997 Mr Rued and Mr Dormer enter into business together, trading commenced 1.12.97.
- 1997-2000 Mr Dormer was entitled to withdraw £100 per day for his work in the business.
- 1.98 Contracts exchanged for the purchase of Hill farm.
- 24.3.98 Completion of purchase of Hill farm comprising a farmhouse, Kingston Hall, and two listed barns sited on 3.8 acres of land at Kingston St Mary, near Taunton.
- 5.98 Contracts exchanged for the purchase of Wellington.
- 7.98 Completion of purchase of Wellington, also situated near Taunton.
- 26.11.98 Conditional planning approval to convert the outbuilding at Hill farm to form a single dwelling plot.
- 27.8.99 Planning approval granted for 12 dwellings on the Wellington land.
- 23.12.99 First developed plot in Wellington sold, plot 3.
- From 29.1.00 Mr Dormer could additionally bill the business for work that he carried out at weekends, this was the only overtime agreed by the parties to be paid. The rate due is an hourly rate pro rata to the weekly or monthly rate applicable at the material time.

- 18.7.00 and 14.11.00 Conditional planning approved for changes to Wellington development.
- 23.11.00 Mr Dormer was entitled to a salary of £1,000 per week, for his work in the business.
-4.9.05
- 23.11.01 Last developed plot in Wellington sold, plot 12.
- 31.3.03 No outstanding wages including any overtime due to Mr Dormer.

Kingston Hall and 2 listed barns on Hill farm sold to Mr Dormer for the price of £188,000.

Mr Dormer erroneously considered that the business ended and that thereafter he worked as a self-employed contractor.
- Sometime 2003 Ray Dormer stopped working for the business, but thereafter prepared accounts for Mr Dormer on the basis that he was self-employed.
- 1.8.03 Mr Dormer sold the barn at Hill farm for £190,000.

The net proceeds were used to restore Kingston Hall where Mr Dormer and his family lived.
- 3.3.05 Planning permission granted for the Hill farm development.
- 5.9.05-30.11.16 Mr Dormer entitled to a salary of £5,000 per month for his work in the business.

- Mr Dormer entitled to commission on all materials acquired and used in the business, but this did not include labour or any associated costs.
- 8.12.06 First sale of a development in Hill farm, 1 Kingston Court.
- 2.5.07 Second sale of a development in Hill farm, 2 Kingston Court.
- As at 1.1.08 No outstanding wages, overtime or commission due to Mr Dormer
- 2008- Mr Dormer seeks sums due but must give credit for wages,
30.11.16 overtime and commission paid during this period.
- 4.08 Mrs Dormer carries out internal bookkeeping for Mr Dormer.

Amherst and Shapland (Mark Sanders) carried out external accounting.
- 31.3.14 Mr Dormer transferred Plot 9 into the names of Mr Dormer and Mrs Dormer.

Conditional planning permission granted to alter the layouts of plots 8 and 9.
- 1.6.15 Business bank account payment out to Mr Dormer £177,624.67.
- 1.12.16 – Mr Dormer seeks sums expended by him personally in respect of
date his work for the business.
- 2016/2017 Mr Dormer and his family move to the property built on Plot 9.

- 30.9.17 Mr Dormer invoiced himself and Mrs Dormer for the construction of the house at plot 9 £264,450 plus 10% margin of build costs amounting to £290,895.
21. Mr Dodge sets out the scope of his instructions as follows:
- i) To prepare up to date business accounts for the land and developments that were undertaken by the Claimant and the First Defendant between 1997 and 31 December 2021.
 - ii) To determine the build cost of Plot 9 and whether the business bore those costs.
 - iii) Pursuant to the instructions detailed above, to assess the final profits and/or losses of the land developments undertaken for the period between December 1997 and 31 March 2021. The final amounts owing to/from each party has been determined as at 31 December 2021, subject to several issues to be determined by the Court.
22. No annual partnership accounts were produced or professionally verified as such³. Ray Dormer, and then Mrs Dormer, maintained accounting records, for which they were paid. Partnership tax returns were completed from 1997 to 2003, containing only a supporting profit and loss account. Thereafter nil returns were submitted.
23. Mr Sinai opened by submitting that Mr Dormer is seeking to achieve through his claim for wages to withdraw more profits before distribution of profits. He repeated this in closing suggesting that Mr Dormer's aim was to drive down the profit of the development of Wellington and Hill farm into an overall loss (ignoring the values of plot 9 and the undeveloped land).
24. As Lindley & Banks explains at 16-17 the obligation of partners not to benefit themselves at the expense of their co-partners is simply a branch of the duty to act in good faith.

³ Although Mark Sanders at Amherst and Shapland carried out some external accounting work.

““Good faith requires that a partner shall not obtain a private advantage at the expense of the firm. He is bound in all transactions affecting the partnership, to do his best for the common body, and to share with his co-partners any benefit which he may have been able to obtain from other people, and in which the firm is in honour and conscience entitled to participate; *Semper enim non id quod privatim interest unius ex sociis servari solet, sed quod societati expedit.*”

The passage from the Digest which Lord Lindley quoted may be translated as follows: “The invariable practice being not to have regard to the private interest of one of the partners but to the advantage of the firm.”

25. However, if the court finds, on the balance of probabilities, that Mr Dormer has carried out the work then he was entitled to take the sums as drawings from the business, even if the ultimate consequence has a negative impact on the profitability of the business. A point that was emphasised by Mr Galtrey who referred to the judgment of Stephen Furst QC sitting as a Deputy High Court Judge in Gold Group Properties Ltd v BDW Trading Ltd [2010] EWHC 1632,

“90. There is considerable Australian authority on the meaning of good faith in this context. In particular there is a helpful review of authority in *Automasters Australia Pty Ltd v Bruness Pty Ltd* [2002] WASC 286. In that case Hasluck J cites the observation of Barrett J in *Overlook v Foxtel* (2002) Aust Contract R 90-143 at [65 -67]:

“It must be accepted that the party subject to the obligation is not required to subordinate the party's own interests, so long as pursuit of those interests does not entail unreasonable interference with the enjoyment of a benefit conferred by the express contractual terms so that the enjoyment becomes (or could become) ... ‘nugatory, worthless or, perhaps, seriously

undermined' ... the implied obligation of good faith underwrites the spirit of the contract and supports the integrity of its character. A party is precluded from cynical resort to the black letter. But no party is fixed with the duty to subordinate self-interest entirely which is the lot of the fiduciary ... The duty is not a duty to prefer the interests of the other contracting party. It is, rather, a duty to recognise and to have due regard to the legitimate interests of both the parties in the enjoyment of the fruits of the contract as delineated by its terms.”

91. Thus good faith, whilst requiring the parties to act in a way that will allow both parties to enjoy the anticipated benefits of the contract, does not require either party to give up a freely negotiated financial advantage clearly embedded in the contract.”

26. It does not seem to me that this principle is at odds with the obligation of partners not to benefit themselves at the expense of their co-partners. It was a fundamental part of the partnership that Mr Dormer would not only manage but also carry out some of the work himself, hence the agreements from time to time as to what he was entitled to deduct from the business as wages, overtime and commission on materials.

Recoverable expenses up to 30 November 2016

27. Mr Dormer clearly takes a great deal of pride in his work, which can be seen in the amount of time he has devoted to any snagging issues and to maintain the common parts on Hill farm. The evidence is, and I accept, that he is a skilled builder, able to turn his hand to many other trades. When he was asked in cross-examination about his training and trades, he replied, “It is easier to say what I do not do, which is installing boilers and electricals.” I also accept his evidence that the developments were ‘high end’ and “more pounds per square metre than any other development in the local area”.
28. Mr Dormer’s case is that he worked continuously in the business between 1 January 2008 to 30 November 2016. It is his evidence that he is entitled to £5,000 per month

for a total of 107 months, totalling £535,000. In addition, he says that he worked 4,154 hours at weekends, which at the pro rata rate of £28.85 per hour equals to £119,843. As he spent £846,922.26, he also claims 10% of that figure amounting to £84,692.23. So, the total claimed is £739,535.23.

29. Mr Dormer has very frankly accepted in his evidence that exhibit LSD5, which contains 108 pages of calendar sheets with manuscript notes on each page was prepared in 2021, for the purposes of the account hearing and therefore does not constitute a contemporaneous record of work carried out on the development. However, his evidence is that he constructed these calendar sheets over a 6 to 7 week period, with initial assistance from Mrs Dormer, and by reference to “contemporary materials collection and delivery receipts”.
30. During this period his evidence is that he worked on the construction of plots 3 to 8, 10 and 11, worked on the construction of plot 9 to pre-second fix stage and generally maintained the Hill farm site.
31. It was suggested in cross-examination that Mr Dormer was effectively running a side business, that he was making a profit from the development. Mr Dormer’s response was to state that he took what he was entitled to take, that he left money in the accounts so that Mr Rued could be repaid. Reference was made to Mr Dormer’s personal tax returns to support this contention. However, as Mr Dormer explained, which I accept, he considered that he was obliged to pay tax on the best estimate of the profit made by the partnership business and that was the basis on which his tax returns were filed. The fact that they differed from the profit figures calculated latterly by Mr Dodge having forensically examined the business at some length is not inconsistent with that. Indeed, when turnover from Mr Dormer’s tax returns⁴ is compared with sales from the houses there is very little difference between the figures, save for 2014. The only material difference is the sale of plot 9 that Mr Dormer recorded as agreed at £180,000, but which the court found was not agreed and moreover is an asset the value of which is to be factored back into the accounts.

⁴ Appendix 7.1, table 1, 14th line.

32. Mr Dormer was also referred to work being carried out to the properties after sale, I will deal with those below.
33. I am satisfied that Mr Dormer has not been operating another business, or working on any other projects, his work during this period was in the business alone.
34. Between 1 October 2008 and 30 June 2011 Mr Dormer says that he worked on the site mainly by himself, as a consequence of the economic crisis in 2008/9. I can take judicial notice of historical facts at that time, Northern Rock collapsed into administration in September 2007, Fannie Mae and Freddie Mac were bailed out in the United States and the Lehman Brothers bank collapsed in September 2008. Whether that had the impact on the development as Mr Dormer suggests is another matter.
35. Mr Dormer's evidence is that he had to carry on working on the site because three properties had been sold and were being lived in, but the roads and entrance way had not been completed. As a result of not bringing in sub-contractors Mr Dormer says he worked at weekends. His case is that he worked 8 hours on 404 Saturdays and 9 Sundays. In addition, he spent 2 hours on 425 Sundays going through the previous week's work and invoices with Mrs Dormer. This was of course on the basis that he believed he was no longer in business with Mr Rued and took drawings rather than a salary.
36. Mr Dormer's emphatic evidence was that 'you do not sell houses in a recession, you might manage to, but it would be very difficult to achieve the price, that Somerset was in a very serious recession and there were not the willing buyers.' Later in evidence he said, "I thought I was being careful, prudent and not rash".
37. He gave an example of plot 3 taking 8 to 10/12 months to sell, and the price was also reduced. From the summary of profits, it can be seen that there was 48% on plot 1, 51% on plot 2 but only 19% on plot 3. Mr Dormer attributes this to the lower sale price. He further said in evidence that had he completed the properties to a habitable state then "the community charge kicks in." Mr Sinai criticised the fact that there was no evidence before the court to support this. I note that plot 2 sold on 4 May 2007, then there was a gap before plot 3 sold on 25 August 2009, plot 4 on 15 April 2010 and plot 5 on 30

August 2011. LSD4⁵ also records that council tax was paid in respect of 4, 6, 7 and 10 Kingston Court. Certainly, the expenditure on subcontractors and material reduced over the period, then tripled in respect of materials in 2011 and doubled in respect of subcontractors. Going back to a spend in 2012 of £127,980 on materials and £70,732 on subcontractors.

38. I accept Mr Dormer's evidence that work had slowed down on the development and that not wishing to have exposure to additional charges may have been a contributing factor.
39. Mr Sinai argued that the funding was in place, Mr Dormer agreed with him that there were more tradespeople, so on his analysis this excuse for delay to the development makes no sense. I do not agree with that statement, there was no way of knowing, when the recession struck, how long and how deep it would go. There is some force in Mr Dormer's evidence that he wanted to slow down the works, effectively riding out the recession. Although that also rather contradicts Mr Dormer's own evidence that he was working longer hours in the business. I ask rhetorically why was he not scaling his own work back, as he had with the sub-contractors. Why did he consider it necessary, on his evidence, to work longer hours.
40. Further if that were the case, I would have expected to see a spike in his overtime in particular between 2008 and 2011, but his wages and overtime stayed at similar levels throughout this period⁶. Whilst there was a significant reduction in subcontractors wages, and also the spend on building materials for a 4-year period, the amounts paid to Mrs Dormer who was acting as bookkeeper also stayed fairly static.
41. There is a disconnect between what was said to be happening on the development, Mr Dormer's evidence that he was carrying out more work and the figures prepared by Mr Dodge. Mr Dormer's evidence about this period does not quite add up.
42. I accept Mr Dormer continued to work in the business between 1 October 2008 and 30 June 2011, and is therefore entitled to draw his agreed monthly wage. However, I am

⁵ Page 40

⁶ 2008 £69,634, 2009 £68,482, 2010 £69,982, 2011 £69,808: table B.

not satisfied on the evidence before me that Mr Dormer was entitled to claim overtime between 1 October 2008 and 30 June 2011. Therefore, the accounts should be adjusted.

43. Mr Dormer also claims that he spent 2 hours on 425 Sundays going through the previous week's work with Mrs Dormer, who was then acting as his internal bookkeeper. However, the appendices to Mr Dodge's report reveal that in 2008 £176,505 was spent on materials but this dropped to £45,336 in 2009 and £17,575 in 2010. Similarly, subcontractor's costs went from £126,864 in 2008 to £25,482 in 2009 and £10,829 in 2010. There is no commensurate reduction in the bookkeeping work and the hours claimed by Mr Dormer. That is inconsistent. I am also unclear why if Mrs Dormer is being paid for example £25,473 in 2008, £21,000 in 2009 and 2010 in £16,400, particularly at a time when there must be less work to do, why it is necessary for Mr Dormer to spend 2 hours going through this work with Mrs Dormer. Mr Dormer was adamant in his evidence that he was not charging 2 hours for administrative work on a Sunday. However, paragraph 41 of his witness statement specifically seeks this and moreover the calendar sheets refer to that work on a Sunday. On balance I am not satisfied on the evidence that Mr Dormer is entitled to claim for 2 hours on a Sunday over 425 Sundays and there needs to be an adjustment.
44. Mr Sinai pursued some detailed lines of cross examination of Mr Dormer over entries in the calendar sheets and corresponding invoices or statements to undermine the claim for wages. For example, that there was a MasterCard payment on Saturday 19 April 2008 at a petrol station in Hazlemere. Mr Dormer's response was to say that this related to general site work, preparing for the following week. I am not sure why that offers an explanation for being some 3 hours drive away from the development, but I do note that Mr Toomer was charging for plot 5 second fix on 18 April 2008 and Mr Wright for 5 days work on 21 April 2008 so undoubtedly there was activity on the development at this time. Mr Dormer's evidence was "I do not know what was picked up on that day". A similar point was made in respect of a MasterCard entry on 6 August 2008 near Bristol when the calendar sheet suggests he was carrying out preparatory work. Mr Dormer said, "general site work is general site work." It was also put to Mr Dormer that his calendar entries cannot be accurate by reference to a trip to Paris on 20 to 23 March 2013. He readily admitted that this must have been put in for the wrong dates and should have been in the schedule 2 weeks earlier. Given the sheer number of entries in the

calendar sheets, and the limited points taken on them, these points do not undermine Mr Dormer's evidence in the way suggested by Mr Sinai.

45. There was also cross examination about materials. For example, on 26 October 2008 and 29 October 2008 there were references to purchases from Wickes for the development. It was put to Mr Dormer that there were no corresponding purchases to be found in the spreadsheets that had been derived from LSD4. However, as Mr Dormer explained LSD4 only contains invoices where he has specifically signed for the materials and there are another 15,000 invoices that were not signed for. I am satisfied with that explanation and note these were likely to have been included in the invoices contained in the list of documents, and inspection of those was not sought. More significantly they were made available to Mr Dodge, and he has carried out a sampling exercise. Mr Dormer's evidence was that when materials needed to be collected from builder's merchants, he would usually collect them. When materials were delivered to the site, he would usually sign for them. Mr Dormer estimated that he had 98% of the hard copy invoices for materials purchased. That accords with Mr Dodge's sampling.
46. Criticism was made about how Mr Dormer has approached work on the development. For, example, he was cross examined at some length about the fact that he went to Denham's electricals on 13, 19, 20, 23 and 27 February 2009 picking up materials with a total value of £499.30. As Mr Dormer explained he was working mainly by himself at this stage, that he simply purchased what he needed for a job, "that the branch was my side of Taunton across a roundabout and two stop lights". It was also implied that if he, for example, had a puncture repaired on 12 September 2009 and had purchased OsmaDrains and kerbing that he was doing not other work that day. Mr Dormer explained that the telehandler needed a gaiter fitted tyre and gave evidence that he was carrying out pipework and ground water work at this time. No doubt some of the way in which Mr Dormer worked could have been done more efficiently, but that does not mean that he was not working in the business and nor does it mean that he was acting irrationally. To an extent it is a symptom of family members working together in a business, even if they are family members by marriage only. Also, as Mr Dormer said in evidence, he never worked an 8-hour day, he always worked more. This is not a loss and expense claim but an account.

47. As to the work carried out by Mr Dormer after 1 January 2008 to 30 November 2016, I have already concluded that Mr Dormer was working in the business during the period 1 October 2008 and 30 June 2011. I am also satisfied on the evidence that he was working in the business for the whole period 1 January 2008 to 30 November 2016. That is supported by the forensic examination of the records by Mr Dodge. I note that at paragraphs 4.6 to 4.12 of his first report he sets out the sampling exercise carried out on the records to 31 March 2003, concluded there were only 24 entries that did not have matching invoices and that the accounting records appear to provide an accurate reflection of the business costs involved.
48. The agreement was that Mr Dormer was entitled to draw an agreed wage of £5,000 per calendar month. Mr Dodge having analysed Mr Dormer's diaries has discerned that Mr Dormer took on average about 3 weeks leave a year, some years slightly more and some years slightly less. That is a reasonable adjustment, and the calculation should therefore be £56,538 per annum, on the basis that Mr Dormer took unpaid leave for 3 weeks per annum.
49. Mr Sinai pursued several lines in cross examination that potentially went to the duty of good faith and irrationality. There was a great deal of criticism about the delays on the development, especially during 2008 to 2011. I have already considered those. It is also consistent with Mr Dormer's evidence that in 2011 spending on materials tripled, and sub-contractors doubled. Mr Dormer was criticised for "monopolising" the work on the development when it was said he should have been employing more sub-contractors. However, Mr Dormer was a highly skilled builder able to carry out most work associated with the development and the evidence is that the finished properties are of a high standard. His evidence was also that he charged less than a skilled tradesperson might do. I am satisfied that Mr Dormer thought that he was minimising costs to maximise future revenue. Whether with the benefit of hindsight those decisions were the most time and cost-effective ones does not mean that they were irrational, nor that he acted in breach of his duty of good faith.
50. However, Mr Dormer goes further and suggests that he was also working whilst he was out of the jurisdiction. Those are set out in Appendix 3.11.2 of Mr Dodge's first report. Whilst I accept that Mr Dormer did not have to be on site to work it is implausible that he spent the amount of time that he said he did working on the development. For

example, in July 2008, whilst he was in South Africa, he seeks to claim that he worked for 10 days. In June 2013 he says that he worked 11 days whilst on holiday in Sri Lanka. That would mean that he was working 8 hours per day on the development. It is difficult to see what work was required during these periods that caused him to need to manage it whilst away in different jurisdictions, on holiday. In so far as Mr Dormer has claimed wages for these days, I do not accept that he is entitled to have made these deductions and there should be an adjustment.

51. Mr Dodge also sets out at paragraph 4.13 of his first report adjustments that he has made to the accounts adding back in certain costs that are private expenditure and should not be deducted from the accounts as Mr Dormer's expense. There was no suggestion before me that those adjustments were incorrect. In addition, there are sums totalling £7,209, appendix 8.2.2, which have been identified as potentially private but not subject to an adjustment at present. Mr Galtrey indicated that four issues had been agreed by the parties for the purpose of the account trial, the third was whether any adjustment needed to be made to the accounts prepared by Mr Dodge. Given that Mr Dodge has identified these, and Mr Dormer has not sought to argue that they should be included as part of the business expenses these sums should be adjusted and do not form part of the business expenses.
52. Mr Dormer was also questioned about the role of his family in the business. Issue was taken with the payments made to Mrs Dormer, but not to other family members. Mrs Dormer acted primarily as bookkeeper but also prepared careful plans for kitchen and utility rooms. That point was taken rather late, not least when Mrs Dormer has not played any role in these proceedings, other than the fact that plot 9 was transferred into the joint names of her and Mr Dormer. She has not had the opportunity to give evidence. It was suggested that payments to her were indirect payments to Mr Dormer. Although it is her records from 2008 and those of Ray Dormer before her that have assisted Mr Dodge to prepare such a full and detailed forensic examination of the business, and to be able for the vast majority of the figures to cross reference to the source documentation. Mr Dormer was questioned about Mrs Dormer's role in respect of the designing of the kitchens. However, it was possible to trace through the evidence so that plans prepared by Mrs Dormer in December 2006, relate to delivery notes for appliances signed by her and emails with the suppliers show these relate to plot 1 and

plot 2. Furthermore, Mr Rued was aware that Mrs Dormer worked in the business and had not challenged this before. Even if it was open to Mr Sinai to challenge Mrs Dormer's wages, I am satisfied on the evidence that Mrs Dormer carried out work in the business for which she was entitled to be paid.

53. Mr and Mrs Dormer's son, daughter and son-in-law worked from time to time although their earnings were relatively modest in comparison to that of Mrs Dormer. As Mr Dormer observed in his evidence it was a family business, or certainly that was his perception from 2003. Some of the cross-examination time was taken up with questioning Mr Dormer on the initials used. I am satisfied that there was some confusion with Steven Riches and Spencer Dormer. I accept Mr Dormer's evidence that family members worked on the development, that they carried out this work and that there should be no adjustment for their time.
54. I have already found that the agreement between the parties included that Mr Dormer could charge 10% commission on materials acquired and used in the business, but not labour or any associated costs. Mr Dodge has reviewed the source documentation and is satisfied that there is an extremely high level of accuracy. So long as £846,922.26 does not include any sums that relate to private expenses, as referred to in paragraphs 4.13 of Mr Dodge's report and Mr Dodge should verify this figure then Mr Dormer is entitled to have deducted £84,692.23.
55. Mr Dormer's case is that he introduced capital sums from 2003, believing that he was a sole trader. Mr Dodge has confirmed that Mr Dormer has received these capital payments back.

Recoverable expenses after 30 November 2016, Plot 9 and the undeveloped land

56. The development of Hill farm was split into two phases, the first part started in 2005 and completed on 8 December 2016. The second part of the development, plots 12 to 23, has not been completed. Mr Forbes' report records the work that has been carried out on this undeveloped land.
57. Hill farm was designed as a gated community with common grassed areas, an estate access road, mains drainage and sewers. Mr Dormer explains that the development is not completed, and unlikely to be. Whilst the intention was to complete the

development and transfer the common areas to a residents' company that has not therefore happened, and the business continues to maintain the areas, through Mr Dormer. He has also carried out preparatory work with a view to the remaining site to be sold.

58. Mr Forbes has valued plot 9 together with the paddock, a roughly level field laid to grass along its western boundary, at £975,000. He was not called to give evidence and I accept his valuation.
59. In respect of the undeveloped land Mr Forbes has assessed the residual value of that land by deducting the likely costs of developing out that site from the anticipated sale prices for those properties. He has used, where he can, comparables to conclude that the overall gross development value of building out properties 12 to 23 total £5,130,000. In order to assess the likely costs of developing those properties he has used the RICS Building Cost Information Service data, as updated by inflation, to give a core value of £2,121,520⁷. At page 23 of his report, he has set out a detailed analysis of what other development costs should be factored in. His conclusion is that the value of the undeveloped land is £1,000,000. Again, this was not challenged, and I accept both the analysis and the value.
60. Mr Dormer's case is that he worked a further 677 days in the business and pro rata at £203.77 per day that amounts to £156,230.77. He says that he spent £156,791.08 from his personal funds on materials, subcontractor labour costs and other direct costs relating to the build out of plot 9. In addition, he claims 10% commission on material costs of £120,163.09, amounting to £12,016.31. In total Mr Dormer claims £325,038.16. At first blush it is understandable that Mr Rued has questioned these amounts, these seem rather high in respect of the second phase of the development which remains undeveloped and plot 9. Mr Dodge has calculated the build cost of plot 9 at £460,270, appendix 6.2, which I also accept.
61. In his evidence Mr Dormer has set out the work that he carried out after 30 November 2016. He identified four parts to this: plot 9, maintenance on sold plots, maintenance on common parts; and administration work.

⁷ The construction of the dwellings alone, so not including the construction of garages, external works and professional fees.

62. It was put to Mr Dormer in evidence that the construction of plot 9 was completed in 2017. Although invoices reveal work was being carried out in respect of guttering, windows, driveway, garage and patio after this time. The final invoice for the kitchen was not rendered until 11 September 2018. However, I also note that Mr and Mrs Dormer moved into the property in 2016/2017 so that it must have been in a habitable state by then, certainly it was mortgaged on 26 May 2017. However, on the evidence before me I am satisfied that the construction of plot 9 was completed on 12 October 2018, accordingly there was work carried out in respect of plot 9 until this time.
63. Mr Dormer's evidence is also that from 1 December 2016 to 12 October 2018 he carried out 262.5 days' work on plot 9. After this time, he spent 136 days carrying out snagging works and completing work that had not been finished. Mr Dormer partly seeks to explain this length of time because he was living in the property with Mrs Dormer. That of course was his choice. He considers that plot 9 remains unfinished. Again, Mr Dormer has exhibited calendar sheets of the work that he says was carried out, these have been prepared for the purposes of the account. They are not contemporaneous records although Mr Dormer says that they were compiled from historical invoices, collection and delivery receipts.
64. He says he has funded these personally or from his sole trader business account. Mr Dodge's report has concluded that the business had born the build costs of plot 9, including internal features that would benefit the owners of the property. I accept that evidence. I also conclude that the valuation of plot 9 includes these internal features.
65. The difficulty with plot 9 is that this is Mr and Mrs Dormer's home. Mr Dormer elected without the consent of Mr Rued to transfer this property into his and Mrs Dormer's name for the price of £180,000. Mr Sinai invites me to disallow Mr Dormer any wages in respect of plot 9 after November 2016, but I have accepted that work was carried out until 12 October 2018. The value of plot 9 must be adjusted back into the accounts. I conclude that the correct approach is to permit Mr Dormer to recover wages for the 262.5 days worked until 12 October 2018, but those days include any other work carried out on the second phase of the development.
66. It is also highly probable that there was snagging works post completion, however 136 days in respect of plot 9 seems disproportionately high. Mr Dormer's justification is

that the extra time was caused because he was living in the property with Mrs Dormer but that is not an expense that should be borne by the business. The calendar sheets for this period provide scant detail. It is for Mr Dormer to prove that he has carried out 136 days of work post completion and I am not satisfied that he has done so on the evidence. Whilst this may appear harsh to Mr Dormer, he has been allowed to claim the full 262.5 days prior to this date in respect of plot 9 and the development.

67. All plots were sold with the required new build 10-year guarantee. Mr Dormer has set out in his evidence the work that he carried out on the properties, which included 25 days of roof repairs to plot 8, roof tile and decking repairs to plot 5 and 2 days roof repairs to plots 1, 5 and 10. If any of those works were carried out after 12 October 2018, he is permitted to recover these sums on a day rate.
68. Mr Dormer states that he has spent 12 hours going through invoices with Mrs Dormer so that the bookkeeping records are maintained. Mrs Dormer has already been adequately compensated in wages for the work done in respect of this work and the 12 hours is not a further expense that the business should bear.
69. In accordance with the agreement of 5 September 2005 Mr Dormer was only entitled to charge commission on materials acquired and used in the construction of plot 9. He has calculated that to be £12,016.31 and I allow that sum.

Other issues

70. In opening Mr Sinai questioned the amount of the retention. Mr Dormer considers that £100,000 is necessary to make sufficient provision for future expenses. Without cogent evidence as to why such a high sum is required, particularly when the plots have been sold over such a long-protracted period, I am not convinced that this is an appropriate level of retention. I propose that £50,000 be retained and that be over a fixed period. Ultimately if that sum is not used it will be divided between the parties. If necessary, I will hear argument about the retention at the consequential hearing.
71. Mr Rued's solicitors in correspondence with Mr Dodge, and repeated, in court have sought to raise an issue about the occupation rent of plot 9. However, such an issue would have required expert evidence, and no direction has been made directing the expert to give an opinion on this. It does not fall within the scope of this hearing, and

certainly not without any expert evidence, to determine whether and if so, how much should be allowed for occupational rent.

Next Steps

72. The logical next step should be for Mr Dodge to prepare updated accounts making the necessary adjustments in accordance with this judgment.
73. As to plot 9, it is the home of Mr and Mrs Dormer. If at all possible, I would anticipate that Mr Dormer should be permitted to “buy out” Mr Rued’s interest within a reasonable period of time. I will of course hear submission on this at the consequentials, if the parties are unable to agree the terms of an order. That order will also have to deal with whether the undeveloped land should be sold now, or Mr Rued or Mr Dormer permitted to buy out the other’s interest in the same. Although I rather anticipate that it is more likely that Mr Dormer would wish to do so, should he have sufficient assets or funding available.