

Case Note - Tomlinson v Tomlinson [2023] EWHC 2083 (Ch).

Mark Harper KC (instructed by Paul Humphreys of LLM Solicitors) was successful in acting for the Applicants in obtaining specific performance of a settlement agreement that had compromised a long running farming partnership dispute and in having dismissed a counter application by the Respondent for judgment for the total settlement sum.

The agreement obliged the Respondent, upon completion, to “*transfer and relinquish any interest which he has in [a number of pieces of land] to [the Applicants]*”. Further, the Respondent “*confirms and declares that from the Completion Date he holds the Land on trust for [the Applicants]*”. The Respondent had not complied with that obligation, so the Applicants applied for specific performance.

The agreement further set out the settlement payments to be paid by the Applicants to the Respondent, a total of £1,100,00.00. The first payment was payable on completion and payments of £250,000, 3 months after completion and a payment of £120,000 on a date, 15, 27, 39, 51 and 63 months after completion. In default of payment there was an acceleration clause.

At the date of the Application, £500,000 had been paid. The Applicants, because of the failure by the Respondent to transfer the Land, did not pay the £120,000 that fell due for payment on 16 March 2023 but deposited this sum with their solicitors in anticipation of the Respondent’s compliance. The Respondent, based on the failure to make this payment, counter-applied for judgment for the balance of the settlement sum.

As the agreement had proceeded on the basis that the Respondent would have transferred the land at the date of completion, the agreement had not anticipated or provided for the situation that had arisen namely the entitlement to the settlement sum when the land had yet to be transferred.

The Court granted the Applicants specific performance and dismissed the Respondent’s application. In doing so it found that the obligation of the Applicants to pay the settlement sum was dependent on the Respondent’s performance of the obligation to transfer his interest in the land to the Applicants.

The judgment is essential reading for those drafting settlement agreements or considering the enforcement of the same as it construed and interpreted the agreement to ascertain whether the relevant obligations were dependent or independent and in doing so considered the decisions in Doherty v Fannigan Holdings Ltd [2018] EWCA Civ 1615 and Mulville v Sandelson [2019] EWHC 3287, distinguishing the decision in Mulville.

The Court also found, in a judgment yet to be reported, that the conduct of the Respondent in refusing to comply with his obligations under the settlement agreement for various changing and invalid reasons such that the Applicants, who had compromised litigation, were forced to come back to the Court, was conduct that was “out of the norm” such as to justify an award of indemnity costs on the specific performance application.