



Neutral Citation Number: [2021] EWHC 1467 (Ch)

Case No: BL-2020-000731

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

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

Date: 4/6/2021

Before:

MASTER CLARK

Between:

(1) NIGEL THOMAS DAVEY
(2) JILL AUDREY KATHLEEN DAVEY

Claimants

- and -

(1) TREVOR MARK COAKER DAVEY
(2) FIONA CLARE DAVEY

Defendants

Paul Emerson (instructed by **McTaggart Solicitors**) for the **Claimants**
Malcom D Warner (instructed by **Stephens Scown LLP**) for the **Defendants**

Hearing date: 11 & 12 February 2021

Approved Judgment

I direct that this approved judgment, sent to the parties by email on 4 June 2021, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

.....

Master Clark:

Application

1. This is my judgment on the defendants' application dated 20 July 2020 for summary judgment on the issue as to whether the first claimant Nigel Davey ("Nigel"), has been expelled from the partnership between him and the first defendant, Trevor Davey ("Trevor"), known as E.S. Coaker & Company ("the partnership").

Evidence

2. The evidence consisted of the following witness statements (parts of which were also directed to an application by Nigel to strike out part of the Counterclaim)
 - (1) the 1st witness statement dated 20 July 2020 of Trevor's solicitor, Richard Bagwell – this consisted of argument and commentary on correspondence and events;
 - (2) Trevor's 1st witness statement dated 20 July 2020 ("Trevor 1st");
 - (3) Nigel's 1st witness statement dated 20 August 2020 ("Nigel 1st");
 - (4) Nigel's 2nd witness statement dated 20 August 2020 ("Nigel 2nd");
 - (5) the 1st witness statement dated 30 September 2020 of Trevor's solicitor, Richard Slater;
 - (6) Trevor's 2nd witness statement dated 2 October 2020 ("Trevor 2nd");
 - (7) Nigel's 3rd witness statement dated 26 October 2020 ("Nigel 3rd");
 - (8) Nigel's 4th witness statement dated 1 February 2020 ("Nigel 4th");
3. The evidence included a large amount of material relating to the reasons for breakdown of the relationship between the parties, particularly as to the merits of whether certain land (the Red Rocks land) is a partnership asset. Most, if not all, of this is irrelevant to the issues to be determined.

Parties and the background to the claim

4. Nigel and Trevor are brothers, and the only two partners in the partnership. The second claimant, Jill Davey and the second defendant, Fiona Davey, are their respective wives. They are not partners; they have very limited interests in the claim, and no direct interest in the matters arising in the application. For present purposes, I refer to Nigel and Trevor as "the parties".
5. The business of the partnership consists of farming and operating a caravan site at Wear Farm, Bishopsteignton, Teignmouth, Devon ("Wear Farm"). Various members of the family (including the parties' parents and uncle) have traded at Wear Farm for many years. The most recent formal document in relation to the partnership is a partnership deed dated 9 May 2003 ("the Deed"), between Nigel, Trevor and their mother, Marion Davey ("Mrs Davey"). As will be seen, there is an issue between the parties as to the extent to which the Deed continues to govern the relationship between them.
6. Mrs Davey died on 22 March 2013. Nigel and Trevor are the executors of her will. The Deed contains (in cl. 17) provisions which give an option to the continuing partners to purchase her share by a notice in writing; and for her share of profits, capital, goodwill assets etc. to be ascertained and paid to her estate within 2 years. The persons entitled to Mrs Davey's share are her other two children, Andrew

Davey (“Andrew”) and Priscilla Harris (“Priscilla”). No steps have been taken in accordance with these provisions. The parties have, however, conducted negotiations with their two siblings as to the sum to be paid by them for Mrs Davey’s share.

7. The Deed contains the following relevant provisions:

“5 Management

5.1 Except where otherwise provided all matters relating to the management and conduct of the affairs of the Partnership shall be decided by a majority decision of the Partners excepting all matters contained or referred to in Paragraph 12 herein which shall be by the unanimous resolution of the Partners only.

7 Banking

7.1 All monies and securities belonging to the Partnership shall be paid into the Partnership Bank Account or deposited for safe custody with the Partnership Bank

[“Partnership Bank” is defined as National Westminster Bank Plc or such other bank as the Partners may choose from time to time]

11 Partners’ duties

Each Partner shall

11.1 Be just and faithful to the other Partners and at all times give to the other Partners full information and explanations of all matters relating to the affairs of the Partnership.

...

12 Limits of authority

Except where otherwise provided for below no Partner shall without the consent of the other Partners:

...

12.7 Expend a sum of over Ten Thousand pounds (£10,000) in any one transaction without the consent of all the Partners

12.8 Draw not more than the equal sums paid to the Partners personal Bank Accounts by Direct Debit payments established by the Partners on account of share of profits.

14 Termination

The partnership may be terminated by any Partner giving to the other not less than Six Months written notice expiring on any anniversary of the Financial Year end of the Partnership and at the end of that Notice the Partnership shall terminate.

16 Expulsion

If any Partner:

16.1 Shall commit any grave breach of this Agreement ...

Then the other Partners shall forthwith be entitled by notice in writing given to him to expel him from the Partnership.

8. Trevor's position is set out in para 29 of Trevor 1st:

“By implication, Nigel and I have agreed by our conduct since 2013 to continue as though nothing had happened to bring the Deed's operation to an end and the terms of the Deed have continued to apply save insofar as was necessary to take account of [Mrs Davey] having ceased to be a partner”
9. Nigel (in Nigel 1st, para 32, 34) disagrees that the parties behaved as if the Deed regulated their business relationship. He says that in relation to virtually every positive obligation contained in the Deed, there are numerous examples of situations where the parties acted expressly contrary to its express provisions. Curiously, however, the particulars of claim (at paras 6 to 10) sets out the Deed, and the remainder of the particulars of claim is premised on the Deed governing the parties' relations. However, the Reply and Nigel's evidence make his position clear.
10. The examples Nigel gives of conduct not in accordance with the Deed fall into 3 categories:
 - (1) sums over £10,000 being paid by Trevor without reference to Nigel;
 - (2) personal expenditure of Trevor (and Fiona) being paid from the partnership bank account, and later allocated to Trevor's drawings when accounts were prepared;
 - (3) personal expenditure of both parties being paid by the partnership – the primary example of this is both parties' vets' fees, though Trevor and Fiona's expenditure on vets was far higher than that of Nigel and Jill.
11. One of the occupants of the caravan site was a Mrs Brenda Badger, who owned a caravan at 25 Orchard View (“the Caravan”). Mrs Badger died on 3 July 2017. By her will dated 27 January 2017, she appointed Nigel and Jill as her executors, and gave them the Caravan. They sold it on 1 June 2018 for £105,000. Both sides appear to have believed that this entitled the partnership to require Nigel and Jill (as sellers) to pay it 10% of the purchase price by way of commission. As will be seen, this was wrong, and the commission was payable by the buyer. In any event, no commission was paid.
12. The events directly leading to the claim commence with a letter dated 26 February 2020 from Trevor's solicitors, Stephens Scown (“SS”) to Nigel's solicitors, McTaggart (“MT”). This sets out that commission was due from Nigel and Jill in respect of the sale of the Caravan and that, since it had not been paid, Nigel was in breach of clause 11 of the Deed. There is an issue as to whether this letter was ever received by McTaggart (it was wrongly addressed), which Trevor accepts cannot be resolved on a summary judgment application.
13. On 4 April 2020, there was an incident resulting in serious physical fight between Nigel and Trevor.
14. On 20 April 2020, MT wrote to SS informing them that they had prepared a draft notice of dissolution, and asking whether they had instructions to accept service.

15. In response to this letter, on the same day, SS served by hand on Nigel a letter giving notice on Trevor's behalf that he was expelling Nigel from the partnership ("the 1st notice"). The relevant part of the notice set out clause 11.1, and continued:
 - “2. By our letter dated 26 February 2020 to your solicitors you were required to account for commission in the expected sum of £10,500 arising on the sale of a caravan previously belonging to the late Mrs Badger ...
 3. You have failed to account for ... the commission ... in breach of clause 11.1”
16. In late April 2020, there were a number of transfers and attempted transfers by both sides in and out of the following partnership accounts:
 - (1) the Santander savings account
 - (2) the Santander current account
 - (3) the NatWest Business account (“the NatWest account”)
 - (4) the Nationwide Investor account (“the Nationwide account”)
17. On 29 April 2020 Nigel transferred £200,000 from the Santander current account to the NatWest account.
18. On 30 April 2020, Trevor made a payment of £4,608 from the NatWest account to SS in payment of their fees for acting for him.
19. On 1 May 2020, MT served a “notice of termination” (“the termination notice”) stated to be under clause 14 of the Deed. The effect of this notice, if valid, is that the partnership will have ended on 30 April 2021.
20. On 5 May 2020, Nigel made the following transfers:
 - (1) £22,100 from the Santander current account to MT;
 - (2) £100,000 from the NatWest account to his personal account.
21. This was followed on 6 May 2020 by the following by Nigel :
 - (1) a transfer of a total of £160,000 from 3 partnership accounts to his personal account – this brought the total sum transferred to Nigel's personal account to £260,000;
 - (2) a cheque for £200,000 drawn on the NatWest account was paid in to the Nationwide account – Trevor transferred funds out of the NatWest account into the partnership's Santander savings account, so that the cheque could not be met, and then cancelled it;
 - (3) a cheque for £200,000 drawn on the Santander current account was paid in to the Nationwide account – again, Trevor transferred funds (out of the Santander current account into the Santander savings account) so the cheque could not be met, and then cancelled it;
 - (4) a transfer of £300,000 from the Santander savings account to the Santander current account – this was reversed by Trevor using online banking.I refer to all the transactions carried out by Nigel on 5 and 6 May 2020 as “the Transactions”.

22. On the same day, Trevor transferred £50,000 from a partnership Santander account to his personal account. His solicitors described this, in their letter dated 14 May 2020 as “a pre-emptive measure to ensure that there is available funding to protect the business”.
23. Also on that day, 6 May 2020, SS served by hand another notice of expulsion (“the 2nd Notice”) setting out clauses 5.1., 7.1, 11.1, 12.7 and 12.8 of the Deed; and alleging that the Transactions were in breach of those clauses.
24. The claim was issued by Nigel on 12 May 2020. It seeks, amongst other things, declarations as to the invalidity of the 1st and 2nd Notices and as to the validity of the termination notice. The Defence and Counterclaim seek declarations that Nigel has been expelled from the partnership and that the termination notice is invalid, together with relief consequential upon Nigel no longer being a partner.

Summary judgment – the legal principles

25. CPR 24.2 provides, so far as relevant:

“The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –

(a) it considers that –

...

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

26. The principles to be applied on applications for summary judgment are well established. They were summarised by Lewison J, as he then was, in *Easyair Ltd v Opal Telecom Limited* [2009] EWHC 339 (Ch), in a formulation approved in a number of subsequent cases at appellate level, including *AC Ward & Sons v Catlin (Five) Limited* [2009] EWCA Civ 1098 and *Mellor v Partridge* [2013] EWCA Civ 477. It is unnecessary to set them out here. The burden of proof is on the applicant to show that the conditions in CPR 24.2 are satisfied.
27. In *Iliffe v Feltham Construction* [2015] CP Rep 41, Jackson LJ considered that the fact of a trial come what may would constitute a ‘compelling reason’ not to enter summary judgment within the meaning of CPR r. 24.2(b). As set out at [73]:

“A further significant feature is that summary judgment in this case achieves much less in terms of saving costs and court time than is normal. There is going to be a trial anyway at which extensive factual and expert evidence will be called in order to establish (a) what caused the fire, (b) who is responsible. The claimants will have to participate in the trial, because they need to prove the quantum of their damages.”

Issues in the application

28. The following issues arise in the summary judgment application:
 - (1) the validity of the 1st Notice:

- (i) whether Nigel was required to account to the partnership for commission of £10,500 on the sale of the Caravan;
 - (ii) if so, whether his failure to account was a breach of his duties in clause 11.1 of Deed;
 - (iii) if so, whether it was a “grave” breach.
- (2) the validity of the 2nd Notice:
- (i) whether Nigel’s conduct in moving funds from one partnership account to another was in breach of the Deed;
 - (ii) whether Nigel’s conduct in moving funds from a partnership account to his personal account was a breach of the Deed;
 - (iii) if so, were either of them a grave breach.

Validity of the 1st Notice

Whether commission due

29. This claim is pleaded in the Defence as follows:

“The contractual arrangements with persons occupying pitches provides that on the sale of a mobile home on a pitch the partnership is entitled to and does charge 10% of the purchase consideration by way of commission, payable at point of sale.”

30. It then sets out the sale of the Caravan by Nigel and Jill, and the price of £105,000 received. Para 26 states:

“Consequently, the Partnership should have received £10,500 in respect of this transaction ... and Nigel was bound by his fiduciary duties to the Partnership to ensure that such sum was accounted for to the Partnership. No such sum was received by the Partnership.”

31. Although this is not clear from either side’s statements of case or skeleton arguments, agreements for the occupation of mobile home pitches are governed by the Mobile Homes Act 1983 (“the 1983 Act”), which implies certain terms into those agreements, including those as to the payment of commission on sale.

32. When asked to refer me to the relevant provisions, Trevor’s counsel referred me to para 8 of the 1983 Act in the version before its amendment by the Mobile Homes Act 2013. Under these provisions, the seller is liable to pay commission to the site owner. This understanding is reflected in Bagwell 1st at para 22, where he says:

“The only rational explanation for Nigel’s unilateral decision not to charge commission on the sale of 25 Orchard View was so that he and Jill kept the whole sale price of £105,000. This shows a failure of good faith and a failure to give Trevor full information and explanations of all matters relating to the affairs of the partnership, which is a breach of clause 11.1 of the Deed.”

33. In fact, since 26 May 2013 (the commencement date of the amendments) the person who is required to pay commission is the new occupier: see the 1983 Act, Sch 1, Pt 1, Ch 2, para 7A. Para 7A(5) provides that the rate must not be higher 10%, which is the rate prescribed by reg. 10 of the Mobile Homes (Selling and Gifting) (England) Regulations 2013/981.

34. The Defence is therefore wrong to state that the partnership was entitled to 10% of the sale price, as this was only the maximum it was entitled to charge. The 2013 Regulations set out a detailed framework of notices to be served by the seller (occupier) and buyer (proposed occupier). The liability to pay the commission only arises once the site owner has sent the buyer their bank details: see reg 10 of the 2013 regulations.
35. It is thus far from clear on the basis of the matters pleaded by Trevor that any commission had in fact become payable. It is also unclear why Trevor could not have taken steps to recover commission from the buyer. Furthermore, since the commission was payable by the buyer, the non-payment of commission did not personally benefit Nigel, and, contrary to Trevor's counsel's submissions, was not therefore in breach of his duty not to put his private interests before those of the partnership.
36. As to whether Nigel failed to give Trevor full information and explanation of the sale of the Caravan, Nigel's case, as set out in paras 21 to 26 of the Reply can be summarised as follows:
- (1) Trevor knew that the Caravan was being marketed, and knew when it was sold in June 2018;
 - (2) The partnership had a discretion as to the rate of commission to be charged by it – this is correct as a matter of law;
 - (3) Trevor did not at any time before November 2019 suggest that commission should have been paid, or the rate at which it should have been paid;
 - (4) The practice of the partnership was that after the draft annual accounts had been prepared the parties met with their accountants to discuss the accounts;
 - (5) At these meetings,
 - (i) the parties decided whether sums paid by the partnership were
 - (a) proper partnership expenses, or
 - (b) personal expenses to be accounted for by way of income,
 - (ii) each partner looked at his and the other partner's drawings, they discussed them and agreed adjustments either directly or through the accountants.
 - (6) The first occasion on which Trevor raised the question of commission was at a chance meeting in November 2019, when both parties seem to have assumed that it was a liability of Nigel; and, if not paid, could in principle be treated as a drawing. Nigel objected to this on the ground that the partnership paid for the vet's bills for Fiona's dogs;
 - (7) If there was an issue as to whether the commission was payable, that was a matter for resolution at the accounts meetings, and did not therefore give rise to a breach of fiduciary duty;
 - (8) Trevor was well aware of this: he served the 1st notice knowing that Nigel was not in breach of any fiduciary duty to the partnership, and in order to pre-empt the notice of dissolution which he knew was about to be served.
37. It is clear from the above that there are a number of factual issues arising in relation to Nigel's alleged failure to account for commission. These are wholly unsuitable for summary determination, and in my judgement, Nigel has a real prospect of success in showing that the 1st Notice was invalid.

Validity of the 2nd Notice

38. As noted, the 2nd Notice sets out that the Transactions were in breach of clauses 5.1., 7.1, 11.1, 12.7 and 12.8 of the Deed. However, the primary basis on which Trevor relied as justifying the 2nd Notice was that it was in breach of clause 11.1 of the Deed, namely the duty to be just and faithful to the other partner. I consider that first.

Clause 11.1

39. If the 1st Notice was invalid, then Nigel remained a partner, equally entitled to access the partnership funds and to use them for partnership purposes as his brother. He was, however, faced with a situation where Trevor was asserting that he was no longer a partner and no longer therefore entitled to such access.
40. Nigel's evidence is that he was concerned Trevor would take steps to exclude him from the partnership's bank accounts, and that this would undermine the partnership's ability to trade. He was also concerned that if the dispute between the partners meant that all accounts were frozen, the impact on the partnership and its ability to trade would be catastrophic.
41. In Nigel 1st, he explains it as follows at [81]:

“The facts specifically relied on [by] Trevor as constituting breaches of Clause 5.1 were the various bank transfers to which I referred earlier though I have already explained, the only step I had intended was to transfer money from one partnership bank account to another with a view to ensuring partnership funds *were kept safe.*”
(emphasis added)

42. Nigel's evidence (Nigel 4th, para 32) is that Trevor did in fact attempt to remove him as account holder and signatory on the two Santander accounts, which caused them to be frozen by the bank. In addition, as noted, Trevor removed partnership funds to his own bank account, and so prevented Nigel from accessing them.
43. Trevor's counsel submitted that the service of the 1st Notice, even if wrongly served, did not show that the partnership assets were at risk. Nigel's evidence, however, was that his concern was that the assets would not be available to him to pay the trading expenses of the partnership, including his and Jill's wages, an interim payment of £17,000 due for a tractor, VAT, and general outgoings. He has a real prospect of showing that this concern was justified, because Trevor did in fact attempt to exclude him from authority over the Santander accounts, transferred partnership funds to his personal account, and used partnership funds to pay his own solicitors.

Attempted transfers to the Nationwide account

44. Trevor relies upon Nigel's attempt to move £400,000 (by writing 2 cheques of £200,000 each on respectively the Santander current account and the NatWest account) into the Nationwide account. As noted, Trevor prevented these cheques from being met by moving funds out of the paying accounts, so that there were insufficient funds to meet them, and then cancelled them.

45. Trevor alleges that he had limited access to the Nationwide account (no chequebook, no access to bank statements and no online banking facility), and that the purpose of those transfers was to allow Nigel to deal with the monies in that account in secret: para 32.2 of the Defence. The 11 May 2020 letter confirms that there is no online access to the account, but, unsurprisingly, that Trevor was on the current mandate and had access to the account. Trevor's evidence (Trevor 1st, para 62) is that he was able to make inquiries in relation to that account by telephone, and that a chequebook had been ordered for the account. Nigel's evidence is that he ordered the chequebook for Trevor, so that he could write cheques on the account. Nigel's position (again as set out in the 11 May 2020 letter) is that his sole motivation was to place the funds into an account which would have restricted both partners in the use of that account, to the same extent, and not to put the funds beyond Trevor's reach. This would appear to be the factual position (i.e. Trevor was able to access the funds), and it cannot be said that Nigel has no real prospect of showing it to be true.

Transfers to Nigel's personal account

46. Nigel's position is that it was only when Trevor thwarted his attempts to transfer funds into the Nationwide account that he then made transfers into his personal account.
47. Nigel has in my judgement, a real prospect of success, in showing that these transfers were made to ensure that partnership funds were available to pay partnership liabilities, and, as MT put in (in the 11 May 2020 letter), "to protect himself from unlawful exclusion from the partnership".
48. Trevor's counsel submitted that Nigel had improperly taken the partnership assets under his control (if so, then Trevor acted equally improperly by transferring partnership monies to his account). The proper course to have taken, Trevor's counsel submitted, was to put the monies into a solicitors' joint account, or to have applied to appoint a receiver. Whilst these are courses which would have been open to Nigel, I do not accept that his failure to follow them was a breach of his duty of good faith.
49. Nigel's evidence is that he intended to apply the monies for partnership purposes. Although Trevor's counsel submitted that the amount transferred showed that the monies were taken for Nigel's own purposes, this is a factual issue which is wholly unsuitable for summary determination. Similarly, Nigel's evidence is that the sums withdrawn by him did not deplete the partnership resources to the extent that it could not continue to trade. This is supported by the partnership accounts, which show that after the transfers made by Nigel just under £400,000 remained in the partnership bank accounts. However, again, this is not suitable for summary determination.
50. In addition, if the 1st Notice is invalid, then its service in the circumstances alleged by Nigel was itself a breach of Trevor's duty of good faith: *Mullins v Laughton* [2003] Ch. 250. Similarly, the assertions in SS's correspondence that Nigel was no longer a partner, and no longer had authority to make transfers of partnership funds were in breach of Trevor's duty of good faith.

51. Trevor's counsel submitted that even if Trevor had acted in bad faith, the partnership continued and with it, Nigel's obligations under the Deed, so that Nigel remained bound to be just and faithful to Trevor, notwithstanding Trevor's own conduct. As to this, I accept that Nigel did not treat Trevor's conduct as repudiating the partnership¹, or purport to accept a repudiation; he continued to treat the partnership as subsisting. However, the question of the content of the duty to be just and faithful in the face of a partner who is failing to be just and faithful is, in my judgment, far from straightforward. In particular, if as I have held, Nigel has a real prospect of showing that his actions were taken to prevent himself from being excluded from the partnership business and for its benefit, then it is not clear to me that he was in breach of his duty to be just and faithful to Trevor. That duty could not, in my judgement, require him to acquiesce in his exclusion, or to be faithful to Trevor when he is not acting in good faith. It is at the very least arguable that the duty of good faith is owed to the partner only insofar as that partner is himself acting in good faith.
52. I therefore conclude that Nigel has a real prospect of success in showing that he was not in breach of his duty under clause 11.1 of the Deed.

Clauses 5.1, 7.1, 12.7 and 12.8

53. Nigel's broad case is that the strict provisions of the Deed have not been observed by the parties for many years, following Mrs Davey's death. The facts relied upon by him are capable of constituting an agreement by conduct, and clearly give rise to issues which should go to trial.

Clause 5.1

54. Nigel's evidence is that the parties' practice has not been to make decisions unanimously, and he gives a number of examples. These factual matters are unsuitable for summary determination.

Clause 7.1

55. The breaches relied upon are transfers from partnership accounts into Nigel's personal account, albeit Trevor did the same.
56. As to this, Nigel's response is that the sums transferred to his personal account (or paid to his solicitors) were sums to which he was entitled as partners' capital or due to him in his partners' current account. Trevor's counsel submitted that this position overlooked the effect of s.44 of the Partnership Act 1890, which provides the partnership's debts and liabilities are to be paid before partners' entitlement. He did not, however, seek to show by reference to the partnership accounts that Nigel was not entitled to these sums. Looking at the draft 2020 accounts, and in particular the draft balance sheet as at April 2020, the net current assets are £1,633,934 and the net assets £1,384,108 – represented by partners' capital of £12,000 and partners' current accounts totalling £1,372,108. The balance on Nigel's current account is £655,591. It is thus far from clear that Nigel was not entitled to withdraw the sums

¹ Whether the doctrine of repudiation applies to partnerships is in any event unclear: see *Partnership Law* (5th edn), Blackett-Ord and Haren, paras 14-11 to 14-16; *Lindley & Banks on Partnership* (20th edn), L'Anson Banks, paras 10-151, 24-10.

he did from the partnership. Trevor has not in my judgement shown that Nigel has no real prospect of success on this issue.

Clause 12.7

57. Nigel's position is that this is not a provision to which either partner has had regard at any time. Nigel 1st gives multiple examples, including that by the time the 2nd Notice was served, Trevor had paid a total of £49,728 to his solicitors from the partnership bank account, whereas Nigel had paid £38,106. Plainly, Nigel has a real prospect of success on this factual issue.

Clause 12.8

58. Similarly, Nigel's position is that this clause was not adhered to by the parties. He gives an example arising from the 2018 accounts, which showed a profit of £220,000, to be divided equally among the partners. Of this Trevor took £91,000 in drawings and Nigel only £82,000.

59. The defendants have not therefore shown in my judgment that Nigel has no real prospect of establishing that the 2nd Notice was invalid.

Trial inevitable

60. Finally, I take into account that the issue in respect of which summary judgment was sought is a preliminary issue. Regrettably, this claim is likely to proceed to a trial in any event on the multiple remaining issues between the parties, in which there will be extensive evidence from both sides. This is a further reason for declining summary judgment.

Conclusion

61. For the reasons set out above, therefore, I dismiss the defendants' application.