

ENGLAND AND WALES / JUDGMENT

Melanie Jane Wheatland & Anor v CL SPV 1 Ltd

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Neutral Citation Number: [2025] EWHC 3092 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST (ChD) Case No: PT-2024-000735 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 27 November 2025 Before : MASTER BRIGHTWELL

- ----- Between :

(1) MELANIE JANE WHEATLAND

(2) JEREMY PAUL WHEATLAND

- and - CL SPV 1 LTD Claimants Defendant

- -----

- ----- Edward Blakeney (instructed by Blaser Mills Law) for the Claimants Timothy Clarke (instructed by Hunters Solicitors LLP) for the Defendant Hearing date: 20 October 2025

- ----- Approved Judgment Crown Copyright © This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on Thursday 27 November 2025. Master Brightwell Approved Judgment Master Brightwell: Wheatland v CL SPV 1 Ltd 1. 2. 3. 4. In this Part 8 claim, the claimants seek an order for the specific performance of a contract in writing and dated 1 December 2023 and made between the claimants as sellers and the defendant as purchaser of the freehold property known as The Cherubs, Parsonage Lane, Farnham Common SL2 ('the Property') for the agreed price of £2,800,000 ('the Contract'). The Contract specified 23 February 2024 as the Completion Date. The defendant failed to complete on the Completion Date or thereafter, citing doubt as to the claimants' ability to comply with a condition subsequent in clause 10.4 of the Contract concerning a deed of variation to be executed by Buckinghamshire County Council. That deed concerned extant planning permission which had been granted by the planning authority in 1986 and subject to which the Contract had been made. The claimants also seek an order for damages they claim to have suffered as a result of the defendant's failure to complete the Contract. The claim previously came on for a disposal hearing on 4 April 2025, at which both sides were represented by different counsel. After indicating in the claimants'

skeleton argument that an order for specific performance was no longer sought because the (amended) planning permission granted in relation to the Property had lapsed, at the hearing counsel asked for an adjournment to enable a new planning application to proceed (together with a new s 106 agreement) such that the claim to specific performance was maintained. The defendant did not oppose an adjournment for this purpose and I granted it accordingly. The defendant did then object to the claimants' use of the Part 8 procedure to pursue a claim for damages. A transcript for that hearing is available and shows that counsel for the claimants on that occasion accepted that the claim for damages could not be dealt with at a disposal hearing on a Part 8 claim and 'would go off or be turned into a Part 7 claim'. The Contract 5. The provision of the Contract which was considered in some detail at the hearing was clause 10, which includes a condition subsequent relating to planning matters at clause 10.4.1. Clause 10 provides as follows: '10 Completion 10.1 Completion must take place on the Completion Date. 10.2 On the Completion Date, the Buyer will pay the Buyer's Contribution to the Seller in accordance with this clause 10. Page 2 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd 10.3 Monies due on completion (including any VAT on the Purchase Price) must be paid by CHAPS from an account held in the name of a conveyancer at a UK clearing bank to the Seller's Solicitors' client account. 10.4 On the Completion Date, the Buyer's Solicitor is to send to the Seller's Solicitor in advance the Purchase Price (less any Deposit (if paid)), together with the Buyer's Contribution, ('the Completion Funds') both of which are to be held to order pending the following occurring simultaneously on the Completion Date:- 10.4.1 The Seller (at the Seller's own cost) shall simultaneously enter into and complete the Deed of Variation with the Buckinghamshire Council ('the Council'), and to obtain from the Council's Planning Case Officer/Planning Agent ('the Planning Officer') the decision notice in respect of the Deed of Variation ('the Decision Notice'); 10.4.2 The Seller's Solicitor upon receipt of a pdf scanned copy of the Council's signed and dated Deed of Variation, and a pdf scanned copy of the Decision Notice is to immediately forward copies of the same by email to the Buyer's Solicitor, upon which the Completion Funds are automatically and unconditionally released to the Seller and/or Seller's Solicitor. The Seller's Solicitor is to send the original signed Deed of Variation to the Buyer's Solicitor within 5 working days of receipt of the same from the Council.' 6. 7. 8. The deed of variation referred to in clause 10.4 is a (draft) deed made pursuant to section 12 of the Buckinghamshire County Council Act 1957 and relating to the Property, varying an earlier deed made on 8 December 1986. It is stated to be a planning obligation made pursuant to s 106 of the Town and Country Planning Act 1990 (as amended). The Buyer's Contribution mentioned in clause 10.4 is defined as 'the sum of [£7,016.61], in respect of the Buyer's Contribution to the Burnham Beeches SAC Contribution (£6,071.61) and the Council's Monitoring Fee (£545) as defined and set out in the S.106 Agreement, and to be paid in accordance with clause 10'. The 'S.106 Agreement' is defined as 'the Section 106 Agreement dated 10th January 2022 and made between the Sellers (1) and Buckinghamshire County Council, a copy of which is attached at Appendix 2'. The Burnham Beeches SAC Contribution is a sum payable under the Council's strategic access management and monitoring strategy for a local designated Special Area of Conservation. Mr Blakeney pointed out that under the

currently applicable s 106 obligations the SAC Contribution is unchanged and the Monitoring Fee has increased from £545 to £612.50. Page 3 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd 9. 10. 11. 12. On 18 August 2025, and as just mentioned, a new s 106 agreement was completed. Then, on 21 August 2025, Buckinghamshire County Council granted planning permission for the erection of four detached dwellings following demolition of the existing house and outbuildings, thus renewing consent previously granted and which had been in place as at the date of the Contract. In the course of the proceedings, the defendant has raised a number of objections to the claim for specific performance. Mr Clarke, appearing for the defendant, indicated that the defendant pursued only those objections which were set out in his skeleton argument and as argued and developed by him at the hearing. I will accordingly deal only with those objections in this ruling. A procedural point taken by him was that the claim was not suitable at all for the Part 8 procedure and should be transferred to Part 7, with directions for points of claim and points of defence. This was because it was inappropriate to bring a claim for damages under Part 8. The defendant filed an application notice seeking the transfer of the proceedings to Part 7 with directions, and a separate application seeking an extension of time from that ordered at the April 2025 hearing for making any such application. Unless an enactment, rule or Practice Direction requires a claim to be brought using a particular procedure, the key consideration in determining whether a claim may be brought under Part 8 is whether it is unlikely to involve a substantial dispute of fact: see CPR r 8.1(2). I do not consider that a claim for specific performance of a contract for the sale of land is inherently unsuitable for this procedure. CPR r 24.4(3) permits generally a claimant's application for summary judgment to be made in such a case at any time after the claim form has been served, but this applies to both Part 7 and Part 8 claims (see White Book, 2025, at 24.4.6).

13. Mr Clarke did not suggest that the points taken by the defendant in relation to the availability of specific performance required to be pleaded, or that they required orders for disclosure. This was consistent with the position adopted on behalf of the defendant at the previous hearing. They were argued with reference to the evidence before the court and they are capable of being determined now at a disposal hearing on the written evidence. I will consider the claim to damages further at the conclusion of this ruling. 14. The objections taken on behalf of the defendant are as follows: i) The claimants were not ready, able and willing to complete as at 23 February 2024 because they required the involvement of a third party (i.e. the local authority). As at 23 February 2024, the defendant buyer could not be satisfied that clause 10.4 would be satisfied by the deed of variation being executed and a decision notice being issued by Buckinghamshire County Council. Page 4 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd ii) iii) iv) v) The first point leads to a secondary point taken at the hearing, that it would not have been appropriate to permit the sum to be borrowed on mortgage to be paid over to the sellers' solicitors before completion. It is said that the claimants are not ready, able and willing to complete the purchase pursuant to the Contract as at the date of the hearing, because the Contract requires to be varied or rectified in order to reflect the reissued planning permission and the new s 106

agreement, mentioned above. Connected to the third objection, the defendant contends that the cost to it of complying with the obligations under the revised planning permission are greater than they would have been. The defendant has suggested that an additional £40,000 might be incurred in doing so, over the sum that would have been incurred if the purchase had completed in February 2024, or at any rate before the previous planning permission expired. Finally, it is argued that specific performance is not available now, or ought to be refused, because even if the claimants are ready, able and willing to complete the purchase now, they have not been so ready at all times since the date fixed for completion. 15. Specific performance is an equitable remedy. Whilst the remedy is generally available only where damages would not be adequate and is discretionary, it will normally be ordered where the relevant contract is for the grant of an interest in land: *AMEC Properties Ltd v Planning Research & Systems plc* [1992] 1 EGLR 70 at 72, Mann LJ. The claimant who seeks specific performance must have been and remain ready, able and willing to complete by complying with all her own obligations under the contract. This general proposition is not in dispute, but the defendant argues that the claimants in this case do not comply with it because of the objections summarised above. Discussion of the defendant's objections 16. As I explain below, I do not consider that any of the defendant's objections to an order for specific performance are sustainable. The position as at 23 February 2024 17. 18. The first argument, that the claimants were unable to complete on 23 February 2024 because of the claimants' inability to comply with clause 10.4 of the Contract by procuring execution of the deed of variation and obtaining a decision notice from the Council, is unsupported by the documentary evidence. On 15 February 2024, a solicitor for the local authority confirmed to the solicitors then acting for the claimants, Lennons, that they would be able simultaneously to complete the agreement (meaning the deed of variation) and to grant the planning Page 5 Master Brightwell Approved Judgment *Wheatland v CL SPV 1 Ltd* 19. 20. 21. permission on 23 February 2024. They said they would send the agreement on the same day. Whilst the email did not state in terms that they would send the decision notice as well, I consider that to be implicit in the confirmation that planning permission would be granted. On 20 February 2024, the defendant's solicitors, Batemans, sought confirmation from the local authority in writing that it would be signing the deed of variation on the completion date. Ms Hannah Birtles of Lennons replied 20 minutes later to confirm (correctly) that such written confirmation had been received. Emails sent from Batemans were sent from a generic email address and signed, 'Batemans', it thus being unclear who was considering the matter and writing the messages. On 22 February 2024, Batemans asked separately whether the decision notice would be issued at the same time, saying that it was 'not clear what the local authority is issuing'. Ms Birtles replied, again within around 20 minutes, to confirm that all relevant steps would be carried out, and seeking confirmation that funds would be available for completion on the following day. On 23 February 2024, the contractual date for completion, Batemans wrote to Ms Birtles, saying 'Completion will not be possible today unfortunately due to the issue and confusion which arise, together with the uncertainty as to whether the conditionality and indeed the undertaking can be delivered'. Ms Birtles responded within minutes, noting that completion could not take place that day and pointing out, in my view

correctly, that there was never a question mark over the condition subsequent in the Contract being met. 22. Accordingly, the claimants were ready, able and willing to complete on 23 February 2024, and the defendant was in breach of the Contract in not completing. This breach could have been remedied within days, but that is not what happened. The issue raised on 4 March 2024

23. Ms Birtles subsequently confirmed later that day that the local authority were available to complete over the whole of the following week. The Council's legal department confirmed on 29 February 2024, at the request of Lennons, that they would issue both the deed of variation and the decision notice on the day of completion. 24. The leads to the next objection raised by Mr Clarke. In response to this confirmation, Batemans replied on 4 March 2024. They repeated the suggestion that there was doubt as to the ability of the claimants to comply with clause 10.4, which issue I have already addressed. They went on to say the following: '8. We did not previously did not [sic] understand or perhaps appreciate that your clients were intending on using or relying upon our client's funds to discharge the mortgage and entering into the deed and although that should in Page 6 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd theory be no problem, the funds could not be released for that purpose without clear undertakings from the council (or your firm) in place.'
25. Mr Clarke addressed me on this paragraph at the hearing, indicating frankly that he did not fully understand the point that was being made. Nonetheless, he submitted that the sellers' solicitors did not understand or respond to the issue raised and that this caused or contributed to the failure of the defendant to complete the purchase of the Property. 26. 27. There is nothing in this point. The defendant had agreed in the Contract to send to the Seller's Solicitor in advance the Purchase Price (less any Deposit (if paid)), together with the Buyer's Contribution, both of which were to be held to order pending compliance with the requirements of clause 10.4.1 and 10.4.2. It may well be that it is unusual as a matter of conveyancing practice for a buyer's solicitors to send funds to the seller's solicitor before completion. That is, however, what the defendant had contractually agreed to do, with the funds to be held to order pending completion. It was not suggested to me that the clause was one which could not be entered into as a matter of law or which was otherwise impossible to comply with. This issue discloses no reason why the claimants were not ready, able and willing to complete or why the defendant was entitled to refuse to complete. Furthermore, and in any event, if the issue raised in paragraph 8 of Batemans' letter had been the real sticking point from the perspective of the defendant, there would have been no reason for the claimants' solicitors not to offer an appropriate solicitors' undertaking. It is clear, however, that Ms Birtles' attempts to contact Batemans over the following fortnight or so were unsuccessful. None of the witness statements filed on behalf of the defendant make any attempt to deal with what happened in this period. The claimants were demonstrably seeking to complete the sale of the Property; the defendant has provided no evidence that he was seeking to do likewise. Does the Contract require to be rectified or varied? 28. 29. The defendant's contention in this regard is twofold and constituted its third and fourth

objections, which I consider to be connected. First, the Contract defines the 'Buyer's Contribution' with reference to the s 106 agreement dated 10 January 2022 (see the definition at [7] above). That was the agreement in force as at 23 February 2024. The current agreement is dated 18 August

2025. Mr Clarke submitted that the Contract requires rectification or variation to amend the definition of the s 106 agreement for the purposes of ascertaining the Buyer's Contribution. Page 7 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd
30. Mr Blakeney responds by submitting that the reference to the s 106 agreement is parenthetic, and inserted only for the purpose of identifying where the sum of £7,061.61 is derived from. That sum remains the same now and is part of the contractual sum of which enforcement is sought by an order for specific performance. The Burnham Beeches SAC Contribution is in any event unchanged and, even though the Council's Monitoring Fee has increased from £545 to £612.50, this does not affect the total sum payable. I was not referred to any evidence explaining how the total Buyer's Contribution had in fact been calculated given that the total is greater than the two identified elements, but neither party suggested to me that this itself created any difficulty for the purposes of this claim. 31. 32. 33. I agree with Mr Blakeney that the contractual obligation comprising payment of the 'Buyer's Contribution' requires only payment of the sum of £7,016.61 and that one does not need to look beyond that obligation to give effect to the Contract. The other words in the contractual definition are not purporting to state what the obligation is, but to provide an explanation why the sum is what it is. The claimants seek an order to give effect to precisely the agreement that the parties reached. In the context of the definition of the Buyer's Contribution I consider the reference to the s 106 agreement to be verbiage as it is not essential to an understanding of the buyer's obligation, which in this regard is to pay the sum of £7,016.61. In any event, Mr Clarke asserted that specific performance could or should not be ordered because of the fact that the s 106 agreement in force as at the date fixed for completion had now been superseded, but he did not explain why. The purpose of an order is to give effect to the parties' agreement and that agreement required completion at a date when the s 106 agreement referred to in the Contract was in force. When determining whether to make an order for specific performance, and if so what its terms should be, the court is not concerned with how the price came to be calculated. There is in any event no rule that changes of circumstance of this kind preclude an order for specific performance. Even if the circumstances were different and the claimants were unable fully to comply with the Contract, this would not necessarily be a bar to an order. As the editors of Megarry and Wade, *The Law of Real Property*, 10th edn, put it at 14-117, 'a vendor who can comply substantially with the agreement may seek specific performance, subject to an abatement of the price "for any small and immaterial deficiency"'. The fact that the Buyer's Contribution is now to be payable by reference to a renewed s 106 agreement is neither here nor there from the perspective of a court of equity. Nothing relied on by the defendant can render specific performance unfair to it. The fault for the delay and thus the need for a revised s 106 agreement lies with the defendant and, fortuitously, the amount of the Buyer's Contribution

is unchanged. The court is asked to make an order requiring payment of the agreed price. It can do so without needing to take any account of the Page 8 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd 34. 35. 36. way in which the price happened to be calculated. Because the Buyer's Contribution is unchanged, no question of abatement of the price in that respect arises. The other related objection pursued by the defendant is that the cost to it of complying with the revised planning permission is now likely to be higher than it would have been if the purchase had completed in February 2024. The third witness statement dated 2 October 2025 of Mr Dean McGuinness, the defendant's director, suggests that the more extensive requirements of the current permission carry much higher costs, 'possibly around £40,000'. He goes on to say that these costs 'could constitute a counterclaim which cannot be brought under Part 8'. It is relevant that Mr McGuinness does not suggest that the cause of the more extensive requirements in the current planning permission has been anything other than delay (i.e. the fact that the previous granted permission expired after the defendant failed to complete in accordance with the Contract). In those circumstances, and when the court is considering whether to award specific performance and, if so, on what terms, there can be no basis either for refusing the order entirely, or for making any abatement. As the defendant was responsible for the delay, the order for specific performance cannot be unfair to the defendant. Furthermore, any abatement would be circular. If the sale price were reduced, the claimants would then have a concomitant claim for damages as the reduction would have been caused by the delay which was the defendant's responsibility. I can see that in theory the defendant may have a counterclaim to the claimants' damages claim in the event that it could argue that the claimants breached some duty to it in relation to the way in which conditions attaching to the revised planning permission came to be imposed by the planning authority. The evidence before the court relied on by the defendant discloses nothing close to an arguable case in such regard. Time when claimants able to complete 37. 38. The defendant's final objection is that the claimants have not been ready, able and willing to complete at all times since 23 February 2024, as shown by the adjournment of the previous hearing, to enable the application for planning permission to be renewed. This point can be disposed of shortly. I consider it to be established that the claimant who seeks specific performance must be ready and willing to complete at the date of the order for specific performance. See *Aymes International Ltd v Nutrition 4U BV*

[2023] EWHC 1452 (Ch) at [137]-[138], citing *Snell's Equity*, 34th edn at 17-038, and *Davis v Spalding* (1974) 231 EG 373. In the latter case Walton J said that the buyers who sought specific performance did not need to show that they would have been able to raise the money needed at all times as this would be an unnecessary burden on them. I consider that it would be wholly inequitable to deprive the claimants in this Page 9 Master Brightwell Approved Judgment Wheatland v CL SPV 1 Ltd case of the remedy where the delay was not their fault, but that of the defendant. See too the decision of the Privy Council in *E Johnson Co (Barbados) Ltd v NSR Ltd*

[1997] AC 400 at 410-411, citing *Price v Strange* [1978] Ch 337, which was discussed at the hearing. 39. For the avoidance of any doubt, the claimants are in a position to complete now. The council has given confirmation (as it did in February 2024) that it will co-operate in ensuring compliance with clause 10.4 of the Contract. Conclusion and damages claim 40. 41. 42. For the reasons set out above, I consider that the claimants were ready, able and willing to complete the sale of the Property as at 23 February 2024 and that the defendant was accordingly in breach of the Contract in failing to complete. The claimants remain ready and willing to complete now and none of the objections relied on by the defendant would justify the court in not making an order for specific performance. I will therefore make such an order. I have not yet been addressed on the terms of the order required to give effect to this conclusion. The working out of the order, and the machinery to be employed, is a matter for the court: *Singh v Nazeer* [1979] Ch 474 at 481. That will be resolved as a consequential matter in the absence of agreement between the parties. The claimants are in principle entitled to damages for the loss suffered by the delay in the defendant's not completing on 23 February 2024. Consistent with the discussion at the April 2025 hearing, I agree with Mr Clarke that the damages element of the claim is unsuitable for determination at a Part 8 disposal hearing and that directions should be given for the resolution of that issue. That could either involve a direction for filing of points of claim and points of dispute or, as was ordered in *Oakacre Ltd v Claire Cleaners (Holdings) Ltd* [1982] Ch 197, an inquiry as to damages. I will hear further from the parties as to the appropriate form of direction. Mr Blakeney points out that some of the items set out in the evidence of the second claimant are properly to be viewed as costs of the proceedings, but that is not so for all of these items. Mr Clarke indicated that the defendant would, among other things, wish to raise the question whether the claimants had reasonably mitigated their losses. The defendant is entitled to do this. The claim for such other alleged losses appears to stand at around £190,000 (plus interest). I consider that the proceedings should be transferred to the county court for the resolution of the claim for damages. Page 10

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