

ENGLAND AND WALES / JUDGMENT

M5 Associates Limited v Simon Nevill Wetton & Anor

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COMMERCIAL COURT BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES Case No:
CC-2024-CDF-000010 Cardiff Civil and Family Justice Centre 2 Park Street, Cardiff, CF10 1ET Date:
17/10/2025 Before : HIS HONOUR JUDGE JARMAN KC Sitting as a judge of the High Court
Between : M5 ASSOCIATES LIMITED

- and -

(1) SIMON NEVILL WETTON

(2) PHILLIP BADEN WATKINS

- -----

- ----- Claimant Defendants Mr Mark Stephens (instructed by RDP Law Ltd) for the claimant The first defendant appeared in person Mr Nicholas Cobill (instructed by Huttons Law) for the second defendant Hearing dates: 6 October 2025

- ----- Approved Judgment This judgment was handed down remotely at 10.00am on 17 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. HIS HONOUR JUDGE JARMAN KC
HIS HONOUR JUDGE JARMAN KC Approved Judgment HHJ JARMAN KC: M5 Associates Ltd v Wetton & Watkins 1. 2. 3. 4. 5. 6. This is the judgment on a review hearing of findings I made after a three day hearing in October 2024 on the claimant's claim for monies due under personal guarantees given by each of the defendants. I granted such a review on the claimant's application. The review hearing took place on 6 October 2025, when the second defendant, Mr Watkins, gave further written and oral evidence. The claimant was represented by counsel Mr Stephens, as it was in the original hearing, and Mr Watkins was represented by counsel Mr Cobill. Other counsel represented Mr Watkins at the original hearing. The first defendant Mr Wetton was present, but as it was a review of Mr Watkin's evidence, took no part in the review hearing. Transcripts of the evidence at the original hearing were obtained and available. A transcript of my judgment was not in the review hearing bundle, even though I had ordered the claimant to obtain one and had approved a draft. It will not be necessary for present purposes to recap on all of the matters dealt with in that judgment, but only those relevant to the review. By way of background, the claimant

is a commercial lender and by a facility agreement dated 4 August 2017 granted a loan facility to Savernake Homes Limited, of which the defendants are directors, to fund the construction of two dwellings. By a deed of the same date the defendants each gave a personal guarantee in respect of sums loaned under the facility, and by clause 2.2 such liability was limited to £250,000 unless it arose directly or indirectly from any fraud, negligence or misconduct on the part of either defendant. Construction of the dwellings was completed, and the loan eventually repaid, but default interest exceeds that limit and the claimant commenced proceedings claiming that such interest arose because of the fraud negligence or misconduct of the second defendant, Mr Watkins. The claim, as ultimately calculated, is for over £1 million. In the original judgment I found that the claimant had not succeeded in proving such fraud negligence or misconduct on the part of Mr Watkins. Such finding was based in part on an acceptance of his oral evidence that he had not fulfilled a written promise to the claimant dated 4 March 2021 to pay £75,000 by the end of the month because unexpectedly solicitors acting for him in the sale by him of property to Lidl Great Britain Limited had deducted fees exceeding that amount. He produced a completion statement in respect of that sale which he relied on in giving that evidence. He now accepts that that evidence was wrong, and that the deduction was in fact made to pay his mortgagees of his family home, Amicus Mortgages Limited. Each of the defendants has acknowledged from the outset that he is liable under that clause to pay £250,000 and judgment has been entered against each of them in that sum and charging orders have been made in respect of assets. Each of the defendants have and had different business interests through other companies. They had worked on one project together before Savernake. The latter project did not proceed according to plan. It was envisaged that the dwellings would take about a year to complete and would be sold for about £1million each. In the event, they were not completed and sold until 2023 for just over £800,000 each. There were various reasons for this, in particular difficulties in finding contractors and materials during lockdown as a result of the Covid pandemic in 2020. However by HIS HONOUR JUDGE JARMAN KC Approved Judgment M5 Associates Ltd v Wetton & Watkins 7. 8. 9. 10. then the construction was well behind schedule, resulting in Savernake failing to meet its repayment obligations under the original facility agreement and incurring liability for very substantial default interest. A further agreement was then entered into between Savernake and the claimant dated 4 March 2021. It is headed "Amendment and Restatement Deed" (ARA) and was signed by Mr Wetton only as a director of Savernake. The agreement restructures the borrowing in a way so as to avoid further default interest of some 1.5% per month from continuing to accrue. Certain conditions precedent are set out in that agreement. It was conditional upon the claimant receiving documents and evidence in schedule 1 and informing the borrower that these conditions had been satisfied. Conditions subsequent are set out in clause 3, namely that Savernake would procure that Mr Wetton would by 30 April 2021 remit £50,000 within one business day of receipt by him to the nominated account of the claimant and that Mr Watkins would remit £75,000 and £10,00 by 31 March 2021 and 30 April 2021 respectively within one business day of receipt by him to the nominated account of the claimant. There was a further letter dated 4 March 2021 from Mr Watkins promising to pay £75,000 and

£10,000. There was no such letter from Mr Wetton. It is not in dispute that although it was envisaged at the time that Mr Watkins would make those payments from the Lidl proceeds, there was no obligation on him to use those proceeds and it was open to him to use other funds. None of those payments was made on time, or indeed at all. That failure remains the basis of claimant's case that the proviso in clause 2.2 of the deed of guarantee has been met in this case. In the original hearing, both defendants said that at some stage it became apparent to them that Savernake would not profit from the project and each said in evidence that he realised that any further payments into the project would be a waste, in the words of Mr Watkins. He said that they could easily have given the keys to the claimant and walked away. But they were concerned to finish the project and minimise the liability to the claimant under the guarantees. I accepted that evidence. Mr Watkins repeated that evidence in the review hearing, and it was not challenged. Indeed Mr Stephens put to him that that realisation was part of the reason why he did not pay any monies to the claimant under the promises, something which he denied. Mr Watkins also stated that he and Mr Wetton put some £163,000 of their own money into Savernake from March 2021 to 2023 to keep the project going, and he was not challenged on that. The reason Mr. Watkins gave at the original hearing for not complying with his promise was that his solicitors had deducted fees from the Lidl sale proceeds even though he had tried to persuade them not to do so. However the documents since disclosed showed that the solicitors did agree not to deduct fees, and that he instructed them to retain £78,000 from the proceeds to make a payment for him and to issue a second completion statement that did not include that sum. These instructions were accepted as was made clear in the covering letter to that completion statement. This they did, and it was the second completion statement that he produced at the original hearing. In the review hearing, he accepted that that completion statement showed the retained monies with the Amicus reference number, although not the name. He said that he didn't remember in the original hearing what the reference number related to.

HIS HONOUR JUDGE JARMAN KC Approved Judgment M5 Associates Ltd v Wetton & Watkins 11. By a further statement served in June 2025 in the review proceedings, Mr. Watkins accepted that that evidence was wrong and put forward another reason as follows: "... in March 2021, I was served with possession proceedings over my property (Claim No: H00GL127) where I live with my wife and our children. These proceedings were completely unexpected and whilst I was aware of the legal charge dated in around January 2020, I had not heard anything about the matter since 2020 and thought that the creditor was not proposing to take any further enforcement action." 12. Under cross-examination in the review hearing, Mr Watkins accepted that to say that these proceedings were "completely" unexpected was an exaggeration and that Amicus had been chasing him for payments since the summer of 2020, as the documents now disclosed show. There were attempts to settle and Mr Watkins made offers, but these were rejected. This exchange ended in the autumn of that year, with an indication through solicitors that possession proceedings would be issued. At that time there was a moratorium on eviction, but not the issue of proceedings, as a result of the Covid pandemic which moratorium was still on going by the time he made his promises on 4 March 2021. But he had no further communication from Amicus in the

meantime. It was not until 8 March 2021 that, without further warning, he was served with possession proceedings. He says that despite the moratorium, and he didn't then know when it might end, he panicked, and decided to pay that part of the Lidl sale proceeds which he had earmarked to fulfil the promise he had made to the claimant just days before, to Amicus to stave off the threat of eviction from the family home. As it happened, the moratorium was due to end at the end of March, but was extended by a couple of months. Mr Stephens submits that if this is true, then it is likely that Mr Watkins would have remembered this at the original hearing.

13. Mr Watkins maintains that at the time that he made the promises to the claimant on 4 March 2021, his mindset was that the Amicus debt was not pressing and that it was better to pay some of the Lidl proceeds to the claimant in order to contain the mounting debt and to keep the project going. That changed when he was served with possession proceedings in respect of his home a few days later. The claimant in various emails to him in April 2021 asked why payment was not forthcoming, to which there was no response. Mr Watkins says he was silent as he was thinking what to do. 14. There is no direct evidence to contradict his evidence at the review hearing as summarised above. However, his changing evidence causes me to be very cautious about now accepting his evidence at face value. I acknowledge, as Mr Cobill reminds me, the frailties of human memory (see, for example, *Kogan v Martin* [2019] EWCA 1645). This is particularly so where, as here, Mr Watkins was being cross examined in detail about his complex financial situation some three or four years previously. It is clear from the contemporaneous documents that he had several pressing creditors, which he was, in his word, "firefighting." That is, he was trying to pay something to creditors in the short term with a view to settling in due course. The only creditor paid in full at this time was the utility provider to the dwellings under construction, who was threatening to cut power, which would have impacted adversely on the completion of the project. Most creditors were paid in full in due course, the notable exception being the claimant. HIS HONOUR JUDGE JARMAN KC Approved Judgment *M5 Associates Ltd v Wetton & Watkins* 15. 16. 17. 18. However, it is not just the changing evidence which causes me to be so cautious. It is also the assuredness with which Mr Watkins gave his explanation at the original hearing, his failure to give full disclosure before the original hearing of documentation relevant to the Lidl sale proceeds and the possession proceedings, his subsequent resistance to further disclosure, and his exaggerated (if not misleading) evidence in his June 2025 statement that the possession proceedings were completely unexpected. Consequently the contemporaneous documentation, now that there has been fuller disclosure, become very important, as do inherent likelihoods. It remains for the claimant to prove that liability under the deed of guaranteed beyond the cap of £250,000 arises because of the fraud, negligence or misconduct of Mr Watkins. Mr Stephens submits that the evidence now available shows Mr. Watkins did not honestly intend to honour the promise to pay the claimant, because he had promised to pay the same sum to a secured creditor. The misconduct was the making of a false promise or deliberately dishonouring his promise to pay which increased the company's liability because default interest began to

accrue. As Mr Stephens accepted, the only pleaded particular of negligence is failure to honour the promise. There was some discussion during submissions of the meaning of the word misconduct in this context. There are many authorities dealing with this word, particularly in disciplinary or criminal contexts. Upon my enquiry, neither counsel relied on any particular authority and I invited them to attempt to agree a definition for present purposes. This was not initially successful, but Mr Stephens put forward one possibility as something more than negligence, which Mr Cobill was content to adopt. I am not satisfied that the contemporaneous documentation, as now available, does show that Mr Watkins did not intend to keep the promise to the claimant at the time he made it on 4 March 2021. It is a question whether that is a safe and proper inference to draw. In my judgment it is not. Whilst the possession proceedings were not “completely” unexpected, there had been no further steps taken by Amicus for some four months to carry out its threat to commence proceedings. That is not altogether surprising in the context that the moratorium continued in force, at least for the time being. When proceedings were commenced, some months later, whilst the moratorium was still then in force, it is likely that its duration then seemed short lived. As for likelihoods, if anything these support Mr Watkins’ evidence. He was at the time showing some dexterity in juggling his various creditors in his various commercial activities. In my judgment, it is unlikely that in this situation he would deliberately make a promise not intending to keep it and run the risk that within a few weeks the claimant would withdraw funding and seek to raise the cap on his personal guarantee. In the event, the claimant did continue to allow drawdowns on the facility despite default, until the dwellings were completed and sold. That is when is sought to raise the cap on the personal guarantees. Mr Cobill submits that this shows that any liability above £250,000 was caused not by any fraud negligence or misconduct on the part of Mr Watkins but because the claimant was content to continue to allow drawdown despite default. 19. For similar reasons I am not satisfied that it was negligent of Mr Watkins, or that it amounted to misconduct on his part, to choose to pay the secured creditor on his home rather than to keep his promise to the claimant, in circumstances where possession HIS HONOUR JUDGE JARMAN KC Approved Judgment M5 Associates Ltd v Wetton & Watkins proceedings had been instituted and the duration of the moratorium looked increasingly short lived. Accordingly, despite the highly unsatisfactory way in which the evidence has unfolded, which I take fully into account, I am not satisfied having reviewed the evidence now before me that the claimant has proved its case against Mr Watkins. Accordingly the cap on his personal guarantee, and consequently that of Mr Wetton, remains at £250,000. 20. 21.

22. Mr Stephens also sought to enforce the promises made by the defendants (giving credit for £20,000 in respect of Mr Watkins) against them. These sums were sought in the prayer of the particulars of claim, but it was not clear in the claimant’s pleading what the basis was for seeking these sums from the defendants personally, over and above their guarantees as limited. It is pleaded that on the basis of these promises the claimant entered into the ARA. It is also pleaded that the promises were made fraudulently, negligently or as a result of misconduct. I have found that they were not. This part of the claim did not figure largely in

the skeleton arguments, evidence or submissions in either the original or the review hearings. I am not persuaded that it is made out. 23. The parties should file a draft order agreed as far as possible within 14 days of hand down of judgment, together with written submissions on any consequential matters which cannot be agreed.

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Prepared on 23 October 2026 · Esheria