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15 MAY 2015

* handed in too licensing from
Mr Nelson regarding Andrew
Aireys solicitors letter suggesting
13th May 2015
that there is a covenant
over 168-170 Ashfield when
this is indeed not the case
and Andrew Airey is simply trying
to put the frighteners onto
any person wanting to get
a licence at this
address as Mr Airey doesn't
want it too impact on the
off licence
Block of shops

Mr C Marquis-Carr
Roland Robinsons & Fentons
17039 BLACKPOOL 1

Our Ref: GGO/GGO/001112-13-0/2916

Your Ref: CSMC makj 60014/64 Craggy Ltd

Dear Sirs

168 – 170 Ashfield Road Blackpool
Our client Mr Russell Neve; Your client Craggy Ltd

We are instructed by Mr Neve the owner of the above property. He has passed to us your letter of 12th March 2015 addressed to Mr Vipudshan the current occupier of the property.

The purpose of this letter is to advise you that Mr Neve does not accept that your client has any valid grounds to object as you say and to explain the reasoning behind his rejection in accordance with the Civil Procedure Rules Practice Direction on Pre-Action Conduct.

You will appreciate that there is no specific protocol in place in relation to disputes such as these but the purpose of this letter is to clarify our client's position and to give you the opportunity to respond.

We would be obliged if you could respond within 14 days of the date of this letter.

We shall deal with the matters in the order in which you deal with them in your letter for ease of reference.

1. The covenant in the conveyance of 31 March 1964 ("the Fieldings Covenant")

1.1. For the reasons set out here we do not believe the covenant is binding in any event and the comments we make below are made without prejudice to that contention.

1.2. You do not state that your client has the benefit of the covenant or give any explanation as to how it might have become entitled to the rights of R Fielding and Son (Builders) Ltd.

1.3. We are not aware that your client has obtained such rights. In any event that company was acquired by Costain in or about 1969 and no longer appears on any documents at Companies House. It has presumably been dissolved. Your client would have to demonstrate a separate acquisition of those rights.

1.4. Unless it can do so, under the rules as to privity of contract your client cannot enforce the covenant so whether or not your objections previously were successful we consider that your client has no right so to do.

Geoffrey Ormrod BA (Hons), *Michael Penny LLB (Hons)
Directors

**Richard Darby LLB (Hons)
Associate Solicitor
Ron Railton
Conveyancer

*Solicitor Advocate & Member of Resolution
**Member of Apil

2. "This covenant [i.e. the Fielding's Covenant] does not permit the sale of intoxicants." That is incorrect.
 - 2.1. The covenant actually says that the property will be used "..... for the business of Grocers and Provision Merchants"
 - 2.2. The rule of construction of contra proferentem would apply here and a restrictive construction of the provision would undoubtedly be applied.
 - 2.3. If the person framing the covenant had wanted to exclude the sale of alcohol it could easily have been inserted. It has not been so inserted and would not be implied.
 - 2.4. You appear to have overlooked that Sainsbury's, Tesco, Asda, Waitrose, Morrisons, Aldi and Lidl all describe themselves as "grocers" yet they sell enormous amounts of alcohol. Indeed we understand that Tesco sells more wine than any other retailer in the UK.
 - 2.5. To suggest therefore that the description of a business as "grocers" precludes sale of alcohol is simply unrealistic.
3. "The covenants in 1964 were imposed for the mutual benefit of the covenantors"
 - 3.1. This might be the case in relation to the conveyance to your client where there is a non-competition scheme.
 - 3.2. That does not apply in the Fieldings Covenant. There is simply nothing to support your assertion of mutual benefit and indeed the absence of those provisions make it all the more probable that there is no reason for there to be any restriction on the use of our client's property.
4. You appear to have overlooked the provisions of the Competition Act which came into force on 6th April 2011 and has retrospective effect.
 - 4.1. This Act outlaws restrictions or restrictive covenants limiting the type of commercial activity which a tenant or occupier may undertake particularly where it is intended to protect the landlord or other tenants from competition.
 - 4.2. Accordingly, even if we are completely mistaken in our analysis of the position as set out above (which we do not accept) the provisions of the Competition Act apply.
 - 4.3. Any form of arrangement particularly that set out in your clients conveyance are rendered null and void by the Competition Act and the proposition you put forward is equally and thoroughly defeated in the same fashion.

In summary therefore we cannot see that your client has any standing to object to the grant of a licence to our clients or others.

Even if it does have standing then the Competition Act precludes any objection.

Any attempt to so object could well be unreasonable interference in our client's right to trade and an attempt to circumvent the Competition Act.

We require that your client either:-

1. confirms that it will not pursue any objection either to the local authority or otherwise should an application for alcohol licence be made in relation to these premises or

2. alternatively that you respond in detail to deal with these arguments so that the issues may be clarified and narrowed.

As indicated above please could you respond within 14 days of the date of this letter or in any event no later than 4 p.m. on Friday 29th May 2015.

In the absence of response we have advised our client to issue an application pursuant to CPR 40.20 for a declaratory judgement.

This is obviously going to incur costs but our client cannot continue with the threat of proceedings from your client hanging over his head and the issue must be dealt with once and for all.

We invite you to avoid this by confirming that you accept the position as we lay it out here and that your client will not seek to object either to the local authority or through the courts.

We look forward to receiving confirmation by the time mentioned above. In the absence of a response proceedings will be issued without further notice. This correspondence will be relied upon in any application for costs.

Yours faithfully

A handwritten signature in black ink, appearing to be a stylized name, possibly 'J. O.', written over a horizontal line.

Ormonds Solicitors & Advocates Ltd