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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No. HC13F02624

MR JUSTICE ROTH
17 JULY 2013



BETWEEN

THE FINANCIAL CONDUCT AUTHORITY
(A Company Limited by Guarantee)

Applicant

and

- (1) CAPITAL ALTERNATIVES LIMITED
- (2) CAPITAL SECRETARIAL LIMITED
- (3) CAPITAL ORGANISATION LIMITED
- (4) CAPITAL ADMINISTRATION SERVICES LIMITED
 - (5) MH TRUSTEES LIMITED
 - (6) MARCIA DOMINIQUE HARGOUS
 - (7) RENWICK ROBERT HADDOW
 - (8) RICHARD JOHN LYON HENSTOCK
 - (9) AFRICAN LAND LIMITED
 - (10) ROBERT JOHN MCKENDRICK
 - (11) ALAN HOWARD MEADOWCROFT
 - (12) REGENCY CAPITAL LIMITED
 - (13) REFORESTATION PROJECTS LIMITED
- (14) MARK ANDREW AYRES (also known as MARK ANDREW EYRES)
- (15) MARK DAVID GIBBS

Respondents

INJUNCTION AND FREEZING ORDER

IF YOU, THE WITHIN-NAMED ROBERT JOHN MCKENDRICK DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS ANY OF THE RESPONDENTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

Names and addresses of the Respondent:

Robert John McKendrick

Stone House
Davey Lane
Alderley Edge
SK9 7NZ

THIS ORDER

UPON hearing counsel for the Applicant and for Robert John McKendrick

AND UPON reading the evidence set out in Schedule A to this Order

AND UPON reading the witness statement of Robert John McKendrick dated 15 July 2013

IT IS ORDERED AS FOLLOWS

1. This is an Injunction against the Respondent Robert John McKendrick on 17 July 2013 by the Honourable Mr Justice Roth on the application of the Financial Conduct Authority (“the Applicant”).
2. The Judge read the evidence listed in **Schedule A** and accepted the undertakings set out in **Schedule B** at the end of this Order.
3. This Order was made at a hearing on notice to Robert John McKendrick.
4. Robert John McKendrick has the right to apply to the Court to vary or discharge this Order – see paragraph 17 below.
5. In this Order reference is made to a number of investment schemes, as follows:
 - a. the investment scheme or schemes described in the brochures attached at Tab A and referred to as “Agri Capital” or “African Land”; and
 - b. the investment scheme or schemes described in the brochures attached at Tab B and referred to as “Capital Carbon Credits” or “Reforestation Projects.”(together referred to in this Order as “the Schemes”).
6. In this Order reference is made to the trial of the Preliminary Issue in this claim, as ordered by the Honourable Mr Justice Roth on 17 July 2013.
7. Until the giving of judgment at the trial of the Preliminary Issue in this claim or further order of the court, Robert John McKendrick must not
 - (1) remove from England and Wales any of his assets which are in England and Wales up to the value of £16.5 million; or
 - (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

8. Paragraph 7 applies to all of Robert John McKendrick's assets whether or not they are in his own name, and whether they are solely or jointly owned. For the purpose of this order Robert John McKendrick's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. Robert John McKendrick is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
9. If
 - (1) the total value free of charges or other securities ("unencumbered value") of Robert John McKendrick's assets in England and Wales exceeds the sum set out in paragraph 7 he may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of his assets still in England and Wales remains above that sum;
 - (2) the total unencumbered value of Robert John McKendrick's assets in England and Wales does not exceed that sum, he must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If Robert John McKendrick has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above that sum.
10. This order does not prohibit
 - (1) Robert John McKendrick from spending £32,000 a month towards his ordinary living expenses and payments on buy-to-let mortgages and also a reasonable sum on legal advice and representation. But before spending any money Robert John McKendrick must tell the Applicant's legal representatives where the money is to come from.
 - (2) Robert John McKendrick from dealing with or disposing of any of his assets in the ordinary and proper course of business PROVIDED THAT no such dealings or disposals in a sum or value in excess of £1,000 shall be permitted without the prior written consent of the Applicant.

11. Robert John McKendrick may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any such agreement must be in writing.
12. Paragraph 7 of this Order will cease to have effect in relation to Robert John McKendrick if Robert John McKendrick —
 - (1) provides security by paying the sum set out at paragraph 7 into court, to be held to the order of the court; or
 - (2) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.
13. Unless paragraph 15 applies, Robert John McKendrick must not later than 24 July 2013 inform the Applicant's legal representatives to the best of his ability of:
 - (1) all his assets above £30,000 in value,
 - (2) all his real property (land) of any value, and
 - (3) the account number, sort code and address of all bank or building society accounts (with a balance of any amount);whether inside or outside of England and Wales whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets (including, in the case of a bank or building society account, the sort code and account number and the value standing to the credit of such account, if any).
14. By 29 July 2013 Robert John McKendrick must swear and serve on the Applicant's legal representatives an affidavit setting out the above information required under paragraph 13 above and verifying that he has complied with paragraph 13 above.
15. If the provision of this information is likely to incriminate Robert John McKendrick, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court.

COSTS

16. The costs of this application are reserved to the judge hearing the trial of this claim.

VARIATION OR DISCHARGE OF THIS ORDER

17. Robert John McKendrick has permission to apply to vary this Order upon giving 48 hours' notice to the Applicant. This permission is not limited to changes of circumstances, and Robert John McKendrick has liberty to adduce and rely upon further evidence on issues already before the court.
18. Subject only to paragraph 17 above, anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

19. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
20. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENTS

21. **Effect of this order**

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

22. **Set off by banks**

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

23. Withdrawals by the Respondent

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

24. Persons outside England and Wales

(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court—

(a) the Respondent or his officer or agent appointed by power of attorney;

(b) any person who—

(i) is subject to the jurisdiction of this court;

(ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

25. Assets located outside England and Wales

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with—

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Corporate Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

26. **Communications with the Court**

All communications to the court about this order should be sent to Chancery Associates, The Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL quoting the case number. The telephone number is 020 7947 6322.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

1. The Applicant relied on the following evidence:
 - 1.1 the affidavit of Josie Durham dated 27 June 2013;
 - 1.2 the affidavit of John Thorp dated 2 July 2013; and
 - 1.3 the affidavit of John Edwards dated 4 July 2013.

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

1. Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.
2. The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred in the course of complying with the terms of this order including the costs of finding out whether that person holds any of the Respondent's assets.
3. If this order ceases to have effect (for example, if the Respondent provides security) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
4. The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.
5. The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the Respondents or the Respondents' assets.