

All England Reporter/2009/August/Mentmore International Ltd and others v Abbey Healthcare (Festival) Ltd and another - [2009] All ER (D) 175 (Aug)

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## **Mentmore International Ltd and others v Abbey Healthcare (Festival) Ltd and another**

[2009] EWHC 2109 (Ch)

### **Chancery Division**

**Michael Furness QC sitting as a deputy judge of the High Court**

**14 August 2009**

*Practice - Summary judgment - Entitlement to summary judgment - Claimants and defendants parties to sale and purchase agreement - Claimants complaining that defendants failing to use best endeavours to procure a release of guarantors' personal guarantees as stipulated by sale and purchase agreement - Claimants seeking judgment on part of claim - Whether defendants having reasonable prospect of defending claims of failing to use best endeavours to procure release of the guarantors' personal guarantees.*

### **Abstract**

*Practice - Summary judgment. Chancery Division: On the evidence, the first defendant had no realistic chance of defending against the claimants' contentions that it had failed to use its best endeavours to secure the release of the guarantors as required by a sale and purchase agreement concluded between the parties.*

### **Digest**

The judgment is available at: [2009] EWHC 2109 (Ch)

The first claimant was the seller, under a sale and purchase agreement, of the entire issued share capital in six companies. The first defendant was the buyer under the contract. The second defendant was the first defendant's sole director. The second to fourth claimants all claimed to be entitled to the benefit of obligations undertaken by the first defendant in the sale and purchase agreement in respect of certain bank guarantees which they had given in respect of the companies, and they sought the specific performance of those obligations. Pursuant to the sale and purchase agreement, cl 5.4 provided, inter alia, that the first defendant should undertake to procure the release of the guarantors from guarantees made on behalf of the companies and, pending such a release, undertake to indemnify the guarantors for any amounts paid by them. The claimants then issued proceedings for summary judgment on certain aspects of its claim.

The key issue for the court's determination was whether the first defendant had a realistic prospect of defending the claimants' complaint that it had failed to use its best endeavours to procure a release of the guarantors' personal guarantees.

The court ruled:

A party with an obligation to use best endeavours had to take all the steps in its power which were capable of producing the desired result which a prudent determined and reasonable person, acting in his own interests and desiring to achieve that result would take (see [25] of the judgment).

On the evidence, the first defendant had no realistic chance of defending against the claimants' contentions that it had failed to use its best endeavours to secure the release of the guarantors (see [36] and [37] of the judgment).

*IBM United Kingdom Ltd v Rockware Glass Ltd* [1980] FSR 335 considered.

Hashim Reza (instructed by TLT Solicitors) for the claimants.

Lawrence Jacobson (instructed by Nockolds) for the defendants.

Gareth Williams Barrister.