



CABINET REPORT

Report Title	Sixfields – Enforcement Strategy - update
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AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	16 th October 2019
Key Decision:	NO
Within Policy:	YES
Policy Document:	NO
Service Area:	Borough Secretary
Accountable Cabinet Member:	LEADER OF THE COUNCIL
Ward(s)	ALL

1. Purpose

To update Cabinet on the enforcement actions following the successful Court Judgment relating to the case of NBC –v- Anthony Cardoza, David Cardoza and Christina Cardoza.

2. Recommendations

Cabinet is asked to note the actions that are being undertaken to recover the judgement debt and in particular to note that:

- 2.1 The Council is in the process of agreeing transfers to it of residential properties from Artefact Investments Limited.
- 2.2 That the Council has commenced possession proceedings for Christina and David Cardoza’s property outside Northampton.
- 2.3 That FRP Advisory Insolvency Practitioners LLP (Paul Allen) has been appointed as the Trustee in Bankruptcy for Anthony Cardoza.

- 2.4 That discussions are ongoing with Deloitte about the recovery of monies for NBC as major creditor through the First Land Limited liquidation.
- 2.5 That of the £200k maximum legal costs spend agreed by Cabinet at its meeting on 3rd April 2019 £141,564 has been spent

3. Issues and Choices

3.1 Report Background

- 3.1.1 Cabinet received reports at its meetings on 28th April 2018, 9th May 2018, 13th March 2019 and 3rd April 2019 relating to the key actions the Council were taking to recover lost loan monies through the High Court and through liquidation processes.
- 3.1.2 The Council secured judgment in its High Court claim against Anthony Cardoza; David Cardoza and Christina Cardoza held in the Birmingham registry of the High Court between 2-6th July and 9-13 July 2018. The Cardozas did by formal application seek to appeal the High Court's judgment, but that application was firmly rejected by the Court of Appeal. The judgment debt is therefore secure in terms of liability and the main focus is now on enforcing the judgment debt.

3.2 Issues

Court Judgment

- 3.2.1 Cabinet will recall that the Council obtained a debt assignment from Northampton Town Football Club ("NTFC") which assigned the right for NBC to pursue claims on behalf of the football club as one avenue of loan recovery.
- 3.2.2 The Court ruled that Anthony and David Cardoza were in breach of their fiduciary duties as directors of NTFC and as a consequence are obliged to compensate Northampton Borough Council for sums outlined further below.
- 3.2.3 The Court, in its judgment declared that: Anthony and David Cardoza were in breach of their fiduciary duties to NTFC by causing the total sum of £2,050,000 and the sums of £140,000 and £600,000 to be paid to or for the benefit of Anthony Cardoza. The Court also ruled that the transfer of his half of a jointly owned property ("Cheriton") by David Cardoza to Christina Cardoza was a transaction defrauding creditors. Accordingly, the Court ruled that Christina Cardoza must pay the sum of £365,975.97 to the Council, which represented the benefit received by her from David Cardoza as a result of the transfer referred to above.
- 3.2.4 The Court also ruled that Anthony and David Cardoza were entitled to some credit in relation to the £2,790,000 paid out to them, in the amount totalling £774,975, which represented sums paid back into NTFC by them during the relevant period. This resulted in a net loss figure of £2,168,025. On top of that figure, interest is to be added which forms a judgment debt of £2,168,025 and interest of £229,810.14, bringing this to a total of £2,397,835.14 which Anthony and David Cardoza are liable to pay in compensation to NBC. NBC is also entitled to recover its legal costs, such amount to be determined by agreement

or assessed by the court if agreement is not reached, although NBC has been awarded an interim payment on account of its costs totalling £496,000.

Enforcement Action

- 3.2.5 There were a number of other orders sought by the Council to enable it to trace and follow the trail of money from NTFC in order to help the Council to enforce the judgment debt. The Court Order provides for an Inquiry into payments made by Anthony Cardoza to a variety of known and unknown parties (“payment Inquiry”). One line of inquiry from the Council’s perspective was that NBC loan monies were used to purchase properties by a company called Artefact Property Investments Limited (“Artefact”). The Order also granted the Council permission to join Artefact to any claim, this being a company that is now owned by parties related to Anthony Cardoza. The two properties are located in Milton Keynes. Artefact were formally joined to the legal action and have now agreed to transfer the two properties into the Council’s ownership. An informal valuation suggests that the two properties are worth in the region of £680K. Action is being taken to secure the maximum recoverable equity in the two properties referred to above.
- 3.2.6 As set out above, a further claim by the Council related to the transfer by David Cardoza to Christina Cardoza his interest in Cheriton, a residential property in Northampton that was held initially in both their names and which has now been sold (“the section 423 claim”). The Council has protected the £365,975.97 by formal legal charge in relation to the new residential home of David and Christina Cardoza. For security reasons raised by the Cardozas it had originally been agreed by the Court that the identity and address of David and Christina’s family home be kept confidential and that confidentiality has been respected in this report.
- 3.2.7 The Council has now initiated court proceedings for the sale of the Cardoza’s property in order to recover the charged amount. As matters currently stand Christina Cardoza is seeking to defend these proceedings. Ultimately, the Council’s charge in the property is safe but it will be unable to obtain access to the funds without an order for sale of the property and this is being progressed vigorously.

Bankruptcy Action

- 3.2.8 It has been the Council’s intention to commence Bankruptcy Proceedings to enforce the judgment debt. A formal statutory demand for payment was made to Anthony Cardoza. He has, of his own volition, formally declared himself bankrupt. These proceedings are a form of insolvency proceedings. Following various discussions with the Insolvency Service (on behalf of the Official Receiver) the Council has supported the appointment of FRP Advisory LLP as trustee in bankruptcy and this appointment has been confirmed. It is important to note that the Trustee is acting independently of the Council. Trustees in bankruptcy have extensive and intrusive powers to conduct inquiries into the Bankrupt’s assets and estate with a view to realising these assets and distributing them to creditors. We understand that NBC’s judgment debt against

Anthony Cardoza makes it the major creditor in his estate. As far as the Council is aware the Trustee is actively undertaking inquiries.

- 3.2.9 It is also worth noting that the Council still has the ability to issue bankruptcy proceedings against David Cardoza. However, this is not yet being pursued but shall be kept under review.

Liquidation 1st Land Limited

- 3.2.10 This work stream considers the recovery of loan monies from 1st Land Limited (in Liquidation). This latter company received circa £7million from Northampton Town Football Club (“NTFC”) in order to develop the East Stand at Sixfields. However, 1st Land Limited was put into liquidation by a third party.

- 3.2.11 The Council is, through NTFC, the largest creditor of 1st Land Limited. Deloitte have been formally appointed as Liquidators of 1st Land Limited. As “Office Holders” the liquidators do not work directly to the Council but it’s interests are aligned in that any recovery of monies improperly used by individuals or companies would, after the removal of certain costs be paid to the Council as major creditor.

- 3.2.12 1st Land Limited as an entity does not have any discernible assets. Consequently, the liquidator would not independently act without financial support for the liquidation process. The liquidator has been in discussions with external “no win no fee” lawyers under a conditional fee arrangement (CFA) and with the Council to provide a funding agreement for them to pursue individuals/companies for monies that were dissipated from 1st Land. The proposed funding agreement requires the Council to fund the liquidator and consequently, dependent on the final agreement, outlines how recovered monies will be shared between the liquidator, the Council as funder, creditor and CFA lawyers.

- 3.2.13 The Council had agreed a payments waterfall, which was reported to Cabinet at its meetings on 25th April 2018 and 9th May 2018. This was the position agreed by Deloitte. However following a change of lawyers, Deloitte have changed their position and proposed a different payments waterfall which would disadvantage the Council substantially. In order to find a compromise, the Council has suggested a compromise position.

Funding Agreement and liability Issues

- 3.2.14 The liquidator is entitled as part of the office they hold to seek external funding to seek to obtain monies dissipated from 1st Land Limited. They could seek this funding from other commercial funders, of which there is an established market. These funders would, like the Council seek to have their funding paid early in any waterfall and would want a success fee. The Council as creditor would always be entitled to receive surplus funds.

- 3.2.15 The issue between the Council remains that it should only agree to fund the liquidation if the benefits outweigh the costs.
- 3.2.16 Currently, from the information the Council has from the liquidators, the cases they are ready to proceed against appears to amount to circa £380K and the Council is seeking clarity on this.

Next Steps

- 3.2.17 The Council's external Solicitors are in the process of arranging a meeting with Deloitte to discuss the proposed compromise waterfall and they have been asked to expedite this meeting. The plan is to bring a report to Cabinet at the next available meeting seeking authority to enter into the Funding Agreement, the associated costs and any other ancillary matters.

3.3 Choices (Options)

- 3.3.1 Do nothing. There is no strict legal requirement to pursue enforcement action. However, the Council does have fiduciary duties to recover public monies and in this case the Council does have a judgement in its favour for the substantial amounts outlined in this report. This is not recommended.
- 3.3.2 To continue along the enforcement path already set out in this report. This is recommended.

4. Implications (including financial implications)

4.1 Policy

None directly arising from this report.

4.2 Resources and Risk

- 4.2.1 There have been a number of litigation risks associated with this case and the Council has crossed many of the key litigation ones. The Order of Sale of the Cardoza property is being defended, but the full defence has not been filed with the court as yet and the Council is unsure of the grounds. Each step will be carefully risk assessed on a cost benefit basis and prudent but robust action will be taken to implement the enforcement to ensure that the judgement debt is recovered.
- 4.2.2 In order to manage the risk it is recommended that the Council follows a strong risk assessed approach to recovery.
- 4.2.3 Cabinet have already agreed funding for the enforcement action and no further funding is being sought in this report.

4.3 Legal

These are considered in the body of the report.

4.4 Equality and Health

Nothing directly arising from the report.

4.5 Consultees (Internal and External)

Chief Finance Officer; Chief Executive

4.7 Other Implications None specifically

5. Background Papers

Confidential Sixfields Litigation File

Francis Fernandes Borough Secretary and Monitoring Officer
Email: FFernandes@northampton.gov.uk Tel: 01604 837334
