

GETTING TO KNOW YOU

This is a feature where we ask clients of HH a range of obscure questions in order to get a better appreciation of their life and interests.

This edition features Daniel Leech of TDS Midlands Ltd and you can learn more about Daniel and the TDS Group if you go to their website www.tdsmidlands.co.uk. They are at the forefront of Building Information Modelling in the UK which is set to change the future of building services.



Daniel Leech TDS Midlands Ltd

1. Where were you born?

Telford

2. What do you enjoy most about being in business?

Being in charge of my own destiny

3. What one piece of advice would you give to aspiring entrepreneurs?

Believe!! And Is the juice worth the squeeze?

4. What is your most memorable event in your life?

Birth of my two daughters

5. What is your favourite book?

Mind Management 'The Chimp Paradox' by Dr Steve Peters

6. What fictional character would you most like to be?

Roy of the rovers

7. If you were a superhero what would your superpower be?

Time travel

8. If you could be an animal, what would it be and why?

Dog – ours is part of our family and I would want to be the same

9. If you could travel in time, where would you go first?

Right back to the start to see how it did all begin

10. What is your favourite food?

Thai

11. What are you currently listening to?

Sam Smith

12. What country would you most like to visit?

Australia

13. What is the highlight of your career to date?

Surviving what I believe was the worst recession / depression we will probably ever face

14. What did you want to be when you grew up?

Solicitor

15. Who would you want to play you in a movie about your life?

Al Pacino

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BUILDING ON THE FOUNDATIONS LAID IN 1899

Established in 1899 Arthur M. Griffiths & Son Ltd (“AMG”) has continued to grow from humble beginnings to become one of the most respected construction companies in the Midlands.

The current phase of the companies development has seen the management team of Maurice Walsh, Simon Dix, Gary Wildsmith and Richard Green complete a management buyout from the Griffiths family in April this year, with turnover and profitability doubling in the past 12 months.

AMG, who are based in Wolverhampton, are one of the Midlands foremost providers of construction solutions. Over recent years AMG have been involved in many high profile projects across the education and healthcare sectors as well as various industrial and commercial contracts. Notable clients include all of the local authorities and NHS health Trusts in the Midlands. The company’s secured future order book is already approaching £30m for 2015/2016.

Maurice Walsh (Managing Director of AMG) said: “The AMG management team will continue to build on the reputation and ethos of the past 116 years, maintaining the same family values but moving forward with modern technology and methods of construction.”

Richard Green (Construction Director of AMG) said “Our philosophy is quite simple - To be the benchmark for which all others aspire to be.”

Ruth Murday and Colin Rodrigues of our firm assisted AMG throughout the process by adding proactive commercial advice to ensure that negotiations were completed swiftly and reflected the understanding of the parties in concise documentation.

ChadStone Accountancy based in Telford advised the AMG management team and funding solutions were provided by HSBC.



Richard Green of AMG, Sarina Mann of Hawkins Hatton, Maurice Walsh of AMG, Clare Hanna of Hawkins Hatton, Simon Dix of AMG and Gary Wildsmith of AMG

Colin Rodrigues, our corporate partner said: “Many buyouts fall at the first hurdle when parties are unable to meet the expectations of the other; however, the job of a lawyer is to keep all of the parties focused on the end goal and not get distracted by side issues. With a company steeped in so much family history it was important to respect the wishes of the family as part of the negotiation.”

Jon Forster (HSBC) said: “It was a pleasure to continue to support the management team of AMG; the company has been a customer of the bank for such a long time and now has an exciting and bright future ahead of it.”

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EXCLUDING LIABILITY IN COMMERCIAL CONTRACTS

Harminder Sandhu, our managing director and head of Dispute Resolution provides some guidance on the drafting of commercial contracts.

Generally two businesses negotiating the terms of a commercial agreement are permitted to choose whatever those terms are. Often businesses will seek to reduce the liabilities under the contract by negotiating the insertion of a contract limitation or exclusion clause. The operation of exclusion clauses is governed by the Unfair Contract Terms Act 1977 (“UCTA”) and through case law. The following are some of the key restrictions:

- Liability for death or personal injury cannot be excluded;
- The exclusion clause must be incorporated in the contract by signature, by notice or a course of dealings;
- Reasonable steps must be taken to bring the exclusion clause to the attention of the other party;
- A person who is not a party to the contract cannot seek to rely on the exclusion clause;
- If there is any uncertainty or ambiguity the exclusion clause will be construed against the party seeking to rely on it;
- Liability for fraud cannot be excluded;
- An exclusion cannot be relied upon if it is contrary to public policy

We find exclusion clauses in negotiated agreements and also in standard terms and conditions of business. Generally these exclusions seek to either restrict the extent of a party’s contractual obligations or they limit the extent of damages for any subsequent breach of contract.

In commercial contracts exclusion clauses generally seek to exclude liabilities for breach of contract and misrepresentations. However, it is very important to carefully consider how an exclusion clause is drafted and how it operates in the context of the agreement as a whole. This is



Harminder Sandhu

on the basis that a Court will not permit a party to a contract to seek to rely on an exclusion which effectively exonerates it from its contractual liabilities and undermines the main objective of the contract. The Court as a matter of public policy will also not permit an innocent party to be left without a remedy.

We are skilled in drafting bespoke commercial contracts and standard terms and conditions of business as well as acting for clients seeking to litigate on the question of whether an exclusion clause can be relied upon.

For any further information or advice please contact Harminder Sandhu at hsandhu@hawkinshatton.co.uk or on **01384 216840**.

TO BUY OR NOT TO BUY THAT IS THE QUESTION?

The UK has had unprecedented low interest rates since March 2009, however the economic environment has now started on its cycle of upturn and is producing growth. When this growth is combined with continuing low interest rates, businesses start to question whether “to buy or not to buy?” their commercial property. In answering this question, business owners are live to the risks and uncertainties they still face, not least how the results of the recent general election will play out, the ongoing question of whether the economic growth will continue and how long can low interest rates be sustained.

There is a rise in the number of SMEs seeking to become owner-occupiers, and many of our clients have taken this step. Instead of negotiating rent, our clients are negotiating purchase prices. Clients have been surprised by both how much they can borrow without a sizeable deposit and in some instances that the level of payments on a mortgage are comparable to the rent that they would have paid. Even in instances where mortgage payments are slightly higher, clients have been able to either borrow more, or fix their rate for a longer period of certainty. There are also tax advantages in purchasing your own property, such as deductions in the form of capital allowances on certain expenditure, which can prove a valuable incentive.

The indirect advantages of buying a commercial property are also significant when you bear in mind that the business’ balance sheet will improve over a period of time as the mortgage is reduced and potential liabilities such as dilapidations and relocation costs no longer have to be provided for.

As with everything, buying a property is a long-term decision and not something that must be dictated as a result of low interest rates or availability of borrowing; it must be part of the long term strategy for the business. Clients have also taken the opportunity to purchase commercial property within pension funds, allowing for an in-specie transfer to make up any shortfalls. This has the advantage of securing the commercial property for the business



Colin Rodrigues

without burdening the business owners with the long-term commitment to the current location.

However, the question of whether “to buy or not to buy?” is a double-edged sword, business owners need to ensure that the decision to purchase their commercial property is the right one for them. Business owners have the ability to negotiate their obligations within leases which can assist them in the short or medium to long term. In the short term levels of rent, rent-free periods and break clauses allow a business greater flexibility whilst in the medium to long term capping liabilities on repairs and service charges prevent contingent liabilities from escalating.

We have seen that Lloyds, RBS, HSBC and Santander all have an appetite for commercial property lends to owner-occupiers. As such the best advice we can give you is to talk to your accountant and bank manager to see whether you should “buy or not buy”. Once you have decided, we can help guide and advise you down your chosen route.