Neutral Citation Number: **[2024] EWHC 3123 (Ch)**

Case No: PT-2023-000595

IN HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, PROBATE & TRUSTS LIST (Chd)

Rolls Building
Fetter Lane
London EC4A 1NL

Before:

MASTER MARSH
(sitting in retirement)

- - - - - - - - - - - - - - - -

Between:

(1) ANDREW FRANK PITMAN HUBBARD **(2) NIGHAT HUBBARD**	**Claimants**
- and –	
(1) ROBERT WILLIAM PITMAN HUBBARD **(2) ANN VERONICA HUBBARD**	**Defendants**

- -
- -

NIGEL WOODHOUSE (instructed by Benchmark Solicitors LLP) for the **Claimants**
STEPHEN WILLIAMS (Williams Solicitors LLP) for the **First Defendant**

- -

Approved Judgment

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Tel No: 020 7067 2900. DX: 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MASTER MARSH:

1. On Friday 1 November 2024 I heard the first defendant's application issued on 5 September 2024. The first defendant applies to strike out the claimants' claims under CPR Rule 3.4(2)(a), (b) and (c) or one of those in the alternative; and in the further alternative he applies for summary judgment on the claimants' claims under CPR Rule 24.3. In each case, the application is made by reference to the 'claimants' claims'. The application notice is endorsed with a statement saying:

> "This is urgent business and cannot await a hearing before the assigned Master in its due turn because of the Claimants' continuing attempts to harm the Defendants, as foreshadowed by the threat made by the Second Claimant in her email sent in September 2021..."

There is then reference to the email followed by:

> "... and it is their vendetta which motivates their desire to continue with these proceedings. Further continuation of these proceedings adds daily to the losses being suffered by the First Defendant Trustee, which is a direct consequence of the actions of the Claimants."

2. Nigel Woodhouse appeared on behalf of the claimants and Stephen Williams appeared for the first defendant. The second defendant was not represented.

3. At the conclusion of the hearing last Friday there was insufficient time to deliver a judgment. I indicated to the parties that the application would be dismissed with reasons to follow. This judgment provides my reasons.

Background

4. The first and second claimants are husband and wife. The first defendant is the first claimant's twin brother. The second defendant is the first defendant's former wife.

5. It is unnecessary to provide either the full background to the proceedings, which is very extensive, or its full procedural history. Some background does, however, need to be given to put the application in its context.

6. The claim was issued on 17 December 2021, nearly three years ago. It relates to land at East Bergholt, near Colchester in Essex. As originally put, the claimants sought an interest in the land, relying on various grounds, including a proprietary estoppel or an entitlement under an oral trust. Matters progressed through a period of procedural wrangling and amendment but had crystallised by the time the claim came before Master Brightwell on 19 June 2023. The order made on that date recites three things which are of importance. First, that admissions had been made by the first and second defendants, by their respective amended defences, that the parties had entered into a written declaration of trust in respect of the land dated 16 August 2005. Secondly, that part of the development land, as it was defined, was held on trust and had been sold by the defendants to Countryside Properties UK Limited on 30 March 2022 for £5.5 million. Thirdly, that £1.2 million had been held by the defendants' conveyancing solicitors, Barker Gotelee, forming part of the proceeds of sale of the land, and some

£650,000 had been released to the claimants as an interim payment, leaving £550,000 held by Barker Gotelee.

7. The order itself made declarations concerning the claimants' 20% entitlement or interest in the development land and the proceeds and the first defendant's entitlement to what is defined as "Roberts plot". The parties were required by the order to consider mediation, but in the event of settlement not being reached there was to be a further directions hearing to make orders for such inquiries and accounts as may be necessary to determine the value of the claimants' claim and any other orders.

8. Unfortunately, the parties were not able to resolve their differences at this stage. It is notable, however, that the claim developed in a way which meant that no trial of the claim itself was required in light of the admissions. The case was to proceed based upon the defendants' admissions by taking an account of their conduct of the trust as trustees and the claimants' entitlement, such as it may be, to payment from it.

9. The claim came back before Master Brightwell on 12 December 2023 and he directed that a one-day hearing be fixed to determine the form of account to be given by the defendants. That hearing took place before Deputy Master Francis on 8 May 2024. Orders were made requiring the claimants to file a witness statement saying what information they required as to the income, expenditure and/or disposals of trust assets; and the defendants were required to provide a witness statement giving the information that was sought. In addition, the defendants were required to provide an updated form of account drafted by Thomas Quinn, Chartered Accountants, covering the full period of the trust. The Deputy Master directed there be a further hearing as to the form of the account on the first convenient date with a time estimate of half a day. The precise terms of the account to be undertaken were not defined on that occasion.

10. The claim next came before Master Brightwell on 12 August 2024 (and that is the hearing that immediately precedes the one before me). By that point there had been an updated account produced by Thomas Quinn in the form of a profit and loss account and balance sheet and information produced by the defendants about their activities as trustees. The parties had started the process of an account being taken. Although the terms of the account had not been defined, it is fair to say the parties were not in doubt about what was intended. The trustees (the defendants) were to provide an account to the claimants as beneficiaries under the express trust of the trust assets.

11. Master Brightwell's order provided, in the first five paragraphs, as follows:

> "(1) By 4 p.m. on 2 September 2024, the Claimants shall file and serve in the form of a Scott Schedule … their objections to the Defendants' account as set out in the "Final Account" prepared by Thomas Quinn dated 4 June 2024 for the period from 2004 to 31 October 2023.
>
> "(2) Any application by the First Defendant to strike out or seeking summary judgment on the Objections shall be made by 4.00 p.m. on 9 September 2024.

> "(3) By 4.00 p.m. on 23 September 2024 the Defendants shall file and serve their responses to the Objections in the appropriate column of the Scott Schedule and at the same time file and serve any further witness statements on which they rely. The Defendants shall by the same time also disclose by copy any further documents relied on and any known adverse documents.
>
> "(4). By 4.00 p.m. 14 October to 2024, the Claimants shall file and serve their response to the Defendants' responses in the appropriate column in the Scott Schedule and at the same time file and serve any further witness statements on which they rely. The Claimants shall by the same time also disclose by copy any further documents relied on and any known adverse documents.
>
> "(5) A hearing shall be listed to determine the objections and to settle the account with a time estimate of three days plus one day of pre-reading. The account shall not be on the footing of wilful default."

12. Full trial directions were given by the Master with a mechanism for a trial date to be fixed in a three month window commencing on 14 November 2024. However, no trial date for taking the account as envisaged by Master Brightwell's order has been set. The order clearly contemplated that by the time stage 5 (paragraph (5) under the order) had been reached, the account would be ready for a three day trial with the parties' evidence and documents fully available. But in the event, that has not happened because the first defendant's application has diverted attention away from trial preparation.

13. Mr Williams submitted that the application to strike out was issued at the behest of Master Brightwell. In other words, it was an application required, or at least encouraged, by him. In my judgment, it is obvious that this was not the case and this clearly appears from the wording of paragraph (2) which is merely permissive. It was for the first defendant to decide whether he wished to allow the account to proceed to a trial, in accordance with Master Brightwell's order, or to try to short-circuit the process and hope to persuade the court to deal with the account summarily.

14. The claimants duly produced objections by reference to the final version of the Thomas Quinn accounts and there are 65 objections set out in the Scott Schedule, which now has the defendants' responses and the claimants' replies to those responses.

Jurisdiction

15. I need first to deal with the question of jurisdiction. At the outset of the hearing, I raised with counsel a question about the court's jurisdiction to make an order under CPR rule, 3.4(2) or CPR rule 24.3 in relation to the taking of an account. I pointed out that CPR rule 3.4(2) refers to striking out a "statement of case", and that term has a defined meaning which is set out in CPR rule 2.3 as being a claim form, particulars of claim, defence Part 20 claim or reply. CPR rule 16 and Practice Direction 16 set out provisions relating to statements of case, not objections on taking an account. At first sight, CPR rule 3.4(2) is not apt to be applied to objections under an account.

16. Accounts are governed by Practice Direction 40A and this is, on its face, a self-contained code. No set form of account is specified because the process will vary depending upon the subject matter of the case and the nature of the objections. What is clear, however, is that no 'statement of case' is required because an account will be ordered as relief arising from a claim made in a statement of case. The Practice Direction deals with the account being verified and then makes provisions at paragraph 3 for giving objections to the account. It is necessary to consider this paragraph in full.
17. Paragraph 3.1 frames the circumstances in which objections are required and covers a common account and an account taken on the basis of wilful default. Here we are dealing only with the former. Paragraph 3.1 specifies:

> "Any party who wishes to contend –
>
> (a) that an accounting party has received more than the amount shown by the account to have been received, or
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> (b) that the accounting party should be treated as having received more than he has actually received, or
>
> (c) that any item in the account is erroneous in respect of amount, or
>
> (d) that in any other respect the account is inaccurate, must, unless the court directs otherwise, give written notice to the accounting party of his objections."

18. Paragraph 3.2 is central to the first defendant's application. It states what the objections should comprise.

> "3.2. The written notice referred to in paragraph 3.1 must, so far as the objecting party is able to do so -
>
> (a) state, the amount by which it is contended that the account understates the amount received by the accounting party,
>
> (b) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount he actually received,
>
> (c) specify the respects in which it is contended that the account is inaccurate, and
>
> (d) in each case, give the grounds on which the contention is made."

19. Paragraph 3.3 makes provision for the written notice providing objection to be verified.

20. It is notable that the Practice Direction does not cross refer to any other Practice Direction or rule other than Part 22 relating to statements of case. Practice Direction 40A does not contain any express provision for the taking of an account on a summary basis or striking out objections, or otherwise managing the taking of an account to prevent the account being used abusively. I will come back to the requirements of paragraph 3, but I observe at this stage they are clearly designed to ensure that the accounting party is able to understand the nature of each objection taken. It would be wrong, however, to equate objections with statement of case, such as particulars of claim. The degree of detail that will be required will vary from account to account, and the basis upon which the account is being provided.

21. In my judgment, CPR rule 3.4(2) has no direct application to objections provided on the taking of an account. If a strict analysis is taken that element of the application must fail.

22. The position as to CPR Rule 24.2 is only slightly less clear. The rule permits judgment to be given on "the whole of the claim or on a particular issue" if the claimant has no real prospect of succeeding on the claim or issue, or the defendant has no real prospect of successfully defending the claim or issue, and in each case the second limb of the rule applies. In this case, there is no "claim" as such that is going forward. The claim has been resolved by the declaration granted by Master Brightwell on 19 June 2023. It is proceeding as to the relief that is consequential upon the admission and that declaration. The proceedings are beyond a stage at which judgment on the claim may be granted. I also do not think it can properly be said that there is a particular issue going forward that is amenable to Part 24; or that each objection is an issue, or collectively they are an issue. Part 24 specifies the type of proceedings to which the rule applies and permits an application in any type of proceedings unless otherwise specified. But that does not extend the scope of the rule to every stage of proceedings.

23. Clearly neither Mr Williams nor Mr Woodhouse had an opportunity to consider the points I have discussed, and I have not had the benefit of their research and submissions from them about jurisdiction. They were, however, obvious points that ought to have been thought about before the application was issued.

24. For completeness, I should also refer to the general power under CPR rule 3.1(2)(m) which enables the court to take any step for the purposes of managing the claim and furthering the overriding objective, and also the general power under CPR rule 3.8(1) to impose sanctions.

25. During the hearing, both counsel appeared to accept that even if there is no jurisdiction available under CPR rule 3.4(2) or Part 24, the court has power under its inherent jurisdiction to manage the conduct of an account and to deal with objections summarily by way of strike-out. However, as I have indicated, I have doubts about precisely what powers there may be beyond the normal case management powers, to ensure that a party complies with orders and rules and Practice Directions. It is unlikely in my judgment that the inherent jurisdiction permits the court to apply by analogy one or all limbs of CPR rule 3.4(2) and to take powers to strike out a claim where that power is not expressly given. The power to manage the claim in accordance with the requirements of the overriding objective is one thing. The power to strike out is another other than as a sanction for a failure to comply with a rule or Practice Direction.

26. In managing the taking of an account, there are steps that can be taken if there is a failure to comply with an order or Practice Direction 40A. It would undoubtedly be open to the court, if it felt that objections did not comply, to make an order requiring compliance and to attach a sanction to the order. The sanction could state, for example, that the objector is not entitled to proceed with a particular objection if it is not properly formulated, or that the accounting party is not entitled to provide evidence in respect of an objection if the response to it is not made clear. However, sanctions are, in my experience, to be used sparingly in this context if the court is to avoid having to conduct a trial or inquiry with unhelpful restrictions placed upon it, particularly if it is the defendant's responses to the objections that are struck out.

27. I also have in mind the long-standing approach that an application under CPR rule 3.4(2)(a) relating to a statement of case should only be struck out where it is bound to fail; that sets a high threshold; and also that in every case, the court should consider whether an opportunity should be given to cure defects in the way in which a case is put forward. The latter principle, in particular, is one the court should have in mind when considering whether or not to impose a strike out sanction in relation to objections on taking an account.

28. Abuse gives rise to different considerations. Although the power to strike out for abuse in CPR rule 3.4(2)(b) relates to the statement of case, there is a wider power to strike out a claim if the conduct of the claim is vexatious or abusive. The notes in the *Civil Procedure 2024* at paragraph 3.4.14 set out circumstances in which conduct of a legitimate claim for an improper collateral purpose may be abusive.

29. I was referred by Mr Williams to the decision of the Court of Appeal in *Wallis v Valentine* [2002] EWCA Civ 1034 in which Sir Murray Stuart-Smith adopted the statement of principle set out in the pre-CPR decision of *Broxton v McClelland* [1995] EMLR 485. In that case Simon Brown LJ said, at pages 497 to 498:

> "1. Motive and intention as such are irrelevant (save where 'malice' is a relevant plea): the fact that a party who asserts a legal right is activated by feelings of personal animosity, vindictiveness, or general antagonism towards his opponent is nothing to the point. As was said by Glass JA in *Champtaloup v Thomas* (1976) 2 NSWLR 264, 271:
>
> 'To impose the further requirement that the donee [of a legal right] must be actuated by a legitimate purpose, thus forcing a judicial trek through a quagmire of mixed motives would, in my opinion, be a dangerous and needless innovation'.
>
> "2. Accordingly, the institution of proceedings with an ulterior motive is not of itself enough to constitute an abuse. An action is only that if the court's processes are being misused to achieve something not properly available to the plaintiff in the course of properly conducted proceeding. The cases seem to appear to suggest two distinct categories of such misuse process: (i) The achievement of a collateral advantage beyond the proper scope of the action -- a classic instance

> was *Grainger v Hill*, where the proceedings of which complaint was made had been designated quite improperly to secure for the claimants a ship's register to which they had no legitimate claim whatever. The difficulty in deciding where precisely falls the boundary of such impermissible collateral advantage is addressed by Bridge LJ's judgment in *Goldsmith v Sperrings* Limited at page 503. (ii) The conduct of the proceedings themselves not so as to vindicate a right, but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice, or the like beyond those ordinarily encountered in the course of properly conducted litigation.
>
> "3. Only in the most clear and obvious case will it be appropriate upon preliminary application as an abuse of process to prevent a plaintiff from bringing an apparently proper cause of action to trial."

The Account

30. I turn to look at taking the account. In doing so it is right to have regard to Master Brightwell's direction that the account is not being undertaken on the basis of wilful default. The claimants have not shown that the first defendant or the second defendant have acted in breach of trust. The account is proceeding as a common account with the defendants as trustees being required to explain their conduct as trustees.

31. Mr Williams relies on the guidance provided by the Court of Appeal in *Exsus Travel Ltd & Ors v Turner & Anor* [2014] EWCA Civ 1331 [22]. Lord Justice McCombe said:

> "22. As is well known, the liability to account arises from a variety of relationships, varying from strict trusteeships to an agency where the agent controls property belonging to a principal. 'The taking of an account is the means by which a beneficiary requires trustee to justify his stewardship of trust property' (*Ultraframe (UK) Ltd. v Fielding* [2006] FSR 17 at [1513], cited in Snell's Equity). The following passage from the text book is of particular relevance to this case:
>
> > Taking the Account
> >
> > '(3). The accounting party first submits his verified accounts and supporting documents, and the beneficiary may then raise any specific objections he may have. Objections to an account presented to the court as complete are either by way of surcharge or falsification. The beneficiary surcharges the account when he contends that the accounting party should have charged himself on the incoming side of the account with more than he had admitted. The beneficiary falsifies the account when he challenges an item of discharge entered into the outgoings side of the account.

> Burden of Proof
>
> (4) The beneficiary carries the burden of proving surcharges and the accounting party carries the burden of proving his discharge. The accounting party must therefore be prepared to document each item, and presumptions may be made against him if he has not kept proper records or has destroyed them…'"

32. Later in his judgment at [42], McCombe LJ said:

> "There is indeed a legal burden on an accounting party to justify what has happened to sums received and to justify payments made as being for the benefit of the beneficiary, in accordance with the principles set out above. How that burden is discharged will vary from case to case."

33. I would add that the court is always alive to the possibility that the account may be pursued as an "instrument of oppression", or as it was put more dramatically by Cozens-Hardy J in *Campbell v Gillespie* [1900] 1 Ch 225 at 229, as "blackmail". As discussed in *Henchley v Thompson* [2017] EWHC 225 (Ch) at [26], that notion is more likely to be relevant to the exercise of the court's discretion whether or not to order that an account be taken, and whether the account should be on the basis of wilful default. However, it is easy to see that an account involving a large number of objections might be oppressive, although the number of objections of itself may not be a matter for comment, for example where the account covers an extensive period and the trustees' account is not straightforward.

34. The notion of an account is as much to do with explaining what has been done with trust assets as it is in providing figures. The trustee accounting party must provide an account and evidence to support it and the trustee's explanation must reach a threshold at which the beneficiary is given a reasonable understanding of the position such that an objection may, if appropriate, be made. Then the question of burden of proof arises. If the objection is to income, the beneficiary seeks to surcharge the account and the burden of making good the surcharge rests on the beneficiary. If the objection is as to expenses or outgoings, the beneficiary is said to falsify the account and the burden lies upon the trustee to show that the expense or outgoing was justified.

35. I turn to Practice Direction 40A. The drafting is less than ideal. An account taken as a common account will have different needs from an account taken on the basis of wilful default, as will individual surcharges and falsifications. It appears to me that paragraph 3.1(a) and (b) and 3.2(a) and (b) relate to income. 3.1(c) and (d) relate to other adjustments – items which are 'erroneous' or 'inaccurate'. However, oddly, paragraphs 3.1(c) and (d) are not precisely translated in paragraph 3.2. Paragraph 3.2(c) only applies to items that are said to be 'inaccurate'. The notion of items being 'erroneous' is dropped. Paragraph 3.2(d) requires, in relation to each of (a), (b) and (c), the ground upon which the contention is made to be stated.

36. I do not accept Mr Williams' submission that every objection must deal with the requirements of paragraph 3.2(a) to (d). The extent to which each of (a) to (c) needs to be dealt with will depend upon the subject matter of the objection. For example, an objection which relates to charges made by or incurred by the trustee does not need to provide as in paragraph 3.2(a) the amount by which it is said the account understates the amount received by the accounting party. It is simply an objection to expenditure.

37. Two further points can usefully be made. First, it is clear that the order dated 12 August 2024, without saying so in terms, plainly contemplated that in giving objections, Practice Direction 40A would be complied with. Secondly, the requirements of Practice Direction 40A, paragraph 3.2, are qualified by the words "as far as able to do so". The obligation is only to say what the objection is and the ground upon which the objection is made, unless it relates to the income. In that case, the amount said to be understated has to be provided. It seems to me, however, that the requirements of paragraph 3.2(b) are only likely to arise in the case of accounts being conducted on the basis of wilful default. There is in any event, no requirement on a party to provide all the evidence that is relied upon or to plead a case in full, and there are obvious reasons for this. The beneficiary will often not have all the evidence that will be required for the purposes of taking an account.

The First Defendant's Case

38. Mr Williams opened his case at a high level. He submitted that the claimants are now using the trust and these proceedings, as he puts it, to conduct an obvious vendetta or cruel hoax, as an instrument of oppression to ruin financially both defendants. He described the claimants' position in the claim as being tantamount to conspiracy to defraud. He said that the claims have never had a case and that for three years false claims have been pursued. He went on to emphasise that the first defendant is facing a substantial tax bill and is under pressure from HMRC and possibly facing bankruptcy proceedings. His indebtedness is increasing at the rate of £10,000 per month and so an urgent resolution to the account is needed.

39. The court was provided with a variety of witness statements in support of the application. Mr Williams' eighth witness statement is drafted in forthright terms. He sets out his assertion that the claimants have never had a case and are pursuing a vendetta. He complains that the claimants have sought to delay the taking of the account, and he says the Scott Schedule demonstrates that the claimants have no case. He also refers to attempts made, as he puts it, by the claimants to prevent the sale of the development land and provides a list which he says details the many, many attempts to literally "bust the trust". He refers in his witness statement to another bundle, but I was not taken to the documents there which he says are pertinent to the notion of trust busting.

40. The first defendant made two witness statements, the principal one being his sixth statement. He complains about the claimants' objections and says that the claimants have been fighting the claim to cause him and his family a maximum amount of suffering and harm. He too says the claimants are pursuing a vendetta. The substance of his complaint can be seen from three paragraphs in his statement:

> "7. All the objections are actually simple statements of challenge absent of any reasoned argument or reference to any supporting evidence. Following receipt of their objections, we are still none the wiser as to exactly what the claimants' case is, except perhaps they dispute every decision and choice made by the trustees. Because of this, I very strongly suspect their resentment is with the trustees themselves, but not how we administer the trust.
>
> 8. If one examines their objections closely, they are so generalised it is impossible to know what their specific objections are.
>
> 9. None of their objections –
>
> 9.1 quantify their losses.
>
> 9.2 describe how much they should be paid and have not received;
>
> 9.2(sic) Set out exactly why the account prepared is inaccurate; and
>
> 9.3. Give reasoned grounds with evidence to back them up.
>
> 10.In those circumstances, I fail to see how they can expect to challenge the trustee's decisions when administering the trust when they have already been paid £700,000 for a 20% interest, exactly one half of second defendant's distribution for 40%."

41. At paragraph 17 of his written statement, he goes on to provide a list of nine questions, which he is asking himself. He says that when he attempts to answer the questions - he does not, in fact, provide his answers - he concludes that the claim is an abuse of the legal process, "being no more than a demonstration of greed and avarice played out against a backdrop of vendetta, using the Chancery Court to inflict harm".

42. His seventh witness statement is a short statement dealing with a discrete item in the accounts where there is, it transpires, an issue of fact.

43. Karen Hubbard, who is the first defendant's wife, has made a witness statement which is longer than her husband's, which is also expressed in a very forthright way. She complains, amongst other things, about the conduct of the claimant's legal team, and says they have sought to string out the claim for as long as possible, they have been late in providing submissions, late in preparing court bundles and the claimants' solicitor is rude and disrespectful. These are assertions that are not backed up with specific examples. She says also that the claimants have made false statements to the Lands Tribunal and says that they are in contempt or have committed perjury, or have been

perverting the course of justice. She goes on to make a personal attack on the claimants' counsel, Mr Woodhouse.

44. The witness statement continues in this vein until she comes to deal with the claimants' objections in the Scott Schedule, and she does so largely by asking a series of questions which are not rhetorical and which she does not answer. The one specific item of evidence supporting the allegation of abuse is an email sent by the second claimant to the first defendant in September 2021, so some three years ago, in which the second claimant said.

> "Robert, I thought you should know Andy is not well. Doctors suspect he has oesophageal cancer with uncertain prognosis. Therefore, he has given me the full reign to deal with the farm conflict. Thankfully, my family are and have always been there for us. They have offered financial backing to fight this in court and believe me, I do not have any loyalties to you or Ann. I intend to cause you as much heartache as I possibly can. I hold you directly responsible for his illness?"

45. It goes on later:

> "As you said, test it in court; well I am. I have also been liaising with HMRC. We do not appear on any tax returns you and Ann have submitted. If anything happens to Andy, believe me, I will destroy you and Ann legally, and I hope you can live with yourself, what you have done to your twin brother." [my emphasis]

46. The statements "I intend to cause you as much heartache as possible" and "I will destroy you legally", are unfortunate and ill-judged. However, they were made three years ago and it seems to me that when considering abuse, the conduct of the claimants since then in the course of the proceedings, is of far greater significance. The second claimant, I should add, accepts that she was acting intemperately and she seeks to explain her conduct by stress caused by finding out that her husband was seriously ill.

47. The hallmarks of abuse are often found in the conduct of proceedings by applications being made that are dismissed that have no merit and adverse costs orders being made; often costs orders that are not paid. Here, apart from the generalised complaints, there is little if any evidence that the proceedings have been conducted improperly. There are assertions that the claimants have delayed the process, but I can see nothing in the orders to which I have referred earlier in this judgment that would suggest abusive conduct by the claimants. Furthermore, I have not been provided with a judgment delivered by either Master Brightwell or Deputy Master Francis that makes adverse comments about the claimants. It seems very unlikely that a claim of this vintage that had been conducted oppressively could have escaped judicial comment.

48. I have not referred to the claimants' two witness statements made in response to the application. I do not consider it is necessary to refer to them.

Disposal

49. In essence, there are three elements to the application. The first is as to the form of the grounds put forward by the claimants. The second is as to limitation and the third is as to abuse.

50. As to form, there is a difference of construction in Practice Direction 40A between the parties. Mr Woodhouse made the application on the basis that the requirements of paragraph 3.2 are cumulative; that in relation to each objection, the objecting party must deal with each of (a) to (d), that is the amount understated, the amount to be treated as having received in addition, respects in which the account is inaccurate and the grounds. As I have indicated, I consider that approach fails to reflect the terms of paragraph 3 of Practice Direction 40A and the differences between the income and expenses and between surcharges and falsification. It also fails to appreciate that the objecting party may not know, for example, what figure should have been received.

51. Although the first defendant's application was issued before the Scott Schedule was complete, it seems to me it is right for the court to consider whether the claimants have complied with paragraph 3.2 by reference not just to their objection, but also to their reply to the defendant's response. The purpose of paragraph 3.2 is to ensure that the accounting party is able to understand the objection and therefore able to produce, on the hearing of the account, the oral and documentary evidence they wish to rely upon. It is right to consider the objections as a whole, because the application relates to all the objections. However, it is clearly not desirable on an interim application to review all 65 objections and to decide in each case whether each one is adequately drafted. Indeed, to my mind, that is the essential weakness of the application. I can accept that a targeted application that identifies a limited number of objections might be useful as a case management exercise. But here the first defendant seeks, with limited individual analysis, to condemn every objection. I turn to consider some of the objections.

52. Mr Woodhouse's approach, which I accept, is that three of the objections are properly characterised as being surcharges (objections 2, 8 and 10) and the remaining 62 are properly seen as falsifications.

53. Objection 2 is to rental income as to £86,002. The claimants say.

> "Account understated by £21,400. D1 has admitted by his witness statement dated 20 December 2023 that £107,500 rental was received."

54. It is said that the figure received is understated. The first defendant's response is merely to say that the original figure he provided was wrong. It seems to me that the claimants' case is clear. They are saying: you, the first defendant, gave us a figure in a witness statement, and we seek a proper explanation about why you now say a different figure is to be put forward. That seems to me to be an entirely proper objection and adequately set out.

55. Objection 8 relates to the Barnes and Harris Land. The objection relates to £2,053,298. The objection is:

> "No objection to £532,875 receipt for Harris Land. Account understated by £1,437,077 in respect of Barns. HMLR records prices paid for Barns at £2,957,500. Ds have to-date failed to provide completion statements or other documentation showing payment of difference between sale price to the developer Knights development."

56. In their reply, further information is supplied.

> "Ds rely upon payments into their bank account from their solicitor, Geraldine McAleese, as supporting their case as to the amounts they received in respect of the sale prices of the Barns as recorded at HMLR. Ds have failed to provide any other supporting documentation as to actual receipts of sale proceeds of the Barns. Ms McAleese has stated in correspondence with Cs solicitors that she was not involved in the Barn sales. Further, the amounts received Ds into their bank accounts do not accord with the amounts which Ds should have received, applying Clause 12 of the Development Agreement. Further, insofar as there has been a breach of trust, Ds have deliberately concealed such breach from Cs and/or the breach consists of D1 and/or D2 converting trust funds to their own use."

57. Again, it seems to me, whether or not ultimately the objection is one that will prosper, it is set out in clear and adequate terms such that the defendants are able to understand what is said.

58. Objection 10 relates to interest in the sum of £38,879. It is a query about interest accruing on funds held by Barker Gotelee. The amount of interest in the account is inevitably out of date and on taking the account it will need to be updated. I do not see there is any difficulty with the objection as it stands.

59. Turning to falsifications, the remaining 62 entries vary widely from relatively small sums -- item 33 relates to the lawn mower and fuel in the sum of £3,300 -- to item 35 under which £425,000 is claimed by the first defendant as a developer's fee. There is no charging clause in the trust and it is plainly up to the first defendant to justify the amount and for the claimants to challenge. Again, this is an example, as it seems to me, of an objection which is absolutely clear.

60. Item 72, which relates to the first defendant's charge of £25,000 per annum, giving a total of £250,000, is also clear in the absence of a charging clause. Items 18, 19, 20, 21, 22 and 23 relate to the very substantial legal costs that are said to be proper expenses. Item 44 relates to Ann's legal fees of £200,000. Even with invoices having been provided, which have a breakdown, it is open to the claimants to challenge these sums. In the case of Mr Williams' substantial fees, they put the first defendant to proof and seek an assessment under section 71(3) Solicitors Act 1974. I can see nothing wrong with that approach. These are, of course, merely examples.

61. Mr Williams submitted that there are a number of instances where the claimants are making an objection which can be characterised as a "not authorised" or "did not ask

me" type objection, and there are also examples of objection where the defendants are put to proof. Just taking two examples where that approach to the objections is adopted, objection 3 relates to the bank loan of £242,232 received by the trust. The claimants say "bank loan not authorised" and the defendants have produced no evidence that the loan was used for authorised purposes and not the defendants' personal expenses and purposes. This position is fleshed out in their reply where they say that their position is that this is not income of the trust and *ipso facto* the repayment of the loan with interest is not a deductible expense. This all seems to me to be clear. Although the objection is in the income part of the account, the objection in reality relates to payments out, namely repayment of the loan. It is for the defendants to justify that repayment as an expense of the trust. This may well be a simple task for them to evidence at the hearing to explain what the loan was for and what it was used for.

62. Objection 12 relates to loan interest of £278,849. Again, the objection relates to the loan. Was it for the purpose of the trust or not? In this case, the claimants have added that the defendants are put to strict proof. It seems to me it will be a matter for the judge who tries the account to determine whether the objection has force and whether the defendants have met the evidential threshold that is placed upon them. I can see no evidence, as Mr Williams submits, of the first defendant having provided evidence in each of these cases that reaches the evidential threshold, such that it is obvious for the purposes of a summary disposal that the burden has shifted. These are matters which need to be considered at the trial.

63. I would add that there are clear instances where it is not possible for the claimants to provide an alternative figure. Taking, for example, legal costs, it is not for them where they seek an assessment at this stage to provide a figure as an alternative.

64. The central issue for the court is whether the first defendant or the defendants are able to understand the objection in each case. I accept the possibility that the objections may not ultimately be successful. That is not a matter for me to deal with at this stage. The key at this stage is the degree of coherence. With 65 objections, unless they can all be said compendiously, to fall at the first coherence hurdle, or there are clear cases that are hopeless, I consider it is wrong in principle for the court to be required to undertake a review exercise prior to the hearing of the account. If, as Mr Williams submits, the claimants' case will fail, they will be unsuccessful. The hearing of the account is but a short period away.

65. Stepping back from the detailed set of objections, the question I have to consider is whether the claimants should be required to re-draw their objections. It seems to me that the detail to be provided under paragraph 3.2 of Practice Direction 48 will vary depending on whether income or expenses are challenged and the obligation is qualified. Looking at the claimants' case, taking their objections and reply together, I am satisfied that their objections are adequately set out and that no further order is needed.

66. I turn now to deal with limitation. I accept as a general proposition that the court might, I have emphasise "might", be able to conclude in a clear case where there are no further facts that need to be established or no dispute about facts, that an item in the account which is challenged is in fact time-barred and to be able to remove it from the

schedule of objections. However, there is a need to be cautious. Section 21 of the Limitation Act provides:

> "(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust being an action –
>
> ...
>
> (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use."

67. Subsection (3) then goes on to provide a six year period for the right of action to accrue, but subsection (3) is subject to subsection (1).

68. Mr Williams relies on the decision of Caroline Shea KC, sitting as judge of the High Court in *Kekwick v Kekwick* [2022] EWHC 2563 Ch. However, it seems to me that the Deputy Judge's decision in that case does not assist the first defendant. In *Kekwick v Kekwick,* the claimant was a beneficiary under a trust and brought a Part 8 claim seeking directions under CPR rule 64(2)(a). The claim did not seek an account. The Deputy Judge concluded that the claimant had not brought an action within the meaning of the Limitation Act. But here the claimants plainly have brought a claim seeking an account. They sought one in their claim form. I do not say that limitation will play no role on the taking of the account. However, I am unable to conclude on a summary basis that some objections should not proceed. On the hearing of the account, the court will have to consider whether section 21(1) applies, in particular whether sums have been converted to the defendants' use, and it is possible that the court may also have to consider issues of concealment. The determination in each case will require specific facts to be available. In my judgment, the limitation points are not amenable to a summary decision.

69. Finally, I turned to deal with abuse. I accept that had the first defendant been able to make out a clear case that the proceedings and/or the account were being conducted in a manner that is an abuse of the court's process, there is an inherent jurisdiction to strike out the account. However, in my judgment, the first defendant's case comes nowhere near to establishing abuse. It is right that unfortunate remarks were made by the second claimant in 2021, and that does lend some weight to the first defendant's case that the claimants are motivated by malice. But that, as the authorities show, does not suffice. The first defendant is unable to point to any order made by the court which suggests abusive conduct or any adverse judicial observation in a judgment. Even if the time taken to reach this stage of the claim may be ideal, about which I make no observation, I am unable to say where the blame lies or if there is blame to be attached to one party.

70. The manner in which the first defendant has made his case on abuse and the evidence put forward is unfortunate and unhelpful in a case that involves marked ill-feeling, and I deprecate the personal attack made by the first defendant on the claimants' solicitor and counsel.

71. In conclusion, therefore, as to jurisdiction it seems to me that the court's powers are limited and do not include the powers that the first defendant asked the court to apply. Where there are powers of the type I have indicated, they are to be used cautiously and to the extent that there are powers, I consider in the exercise of my discretion, they are not appropriate to be used in this case.

72. Overall, I consider that the application was ill-judged and it was put forward under a jurisdiction which the court plainly does not have and put forward in a manner which, as I have said, I consider to be unfortunate.

73. The application will be dismissed.

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(This judgment has been approved by the Judge.)

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com