Neutral Citation Number: **[2025] EWHC 45 (Ch)**

Case No: PT-2022-000983

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
Property, Trust and Probate List (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15 January 2025

Before :

MASTER PESTER

- -

Between :

TRIPLARK LIMITED	**Claimant**
- and -	
Mr BRUCE MAUNDER-TAYLOR	**Defendant**

- -
- -

BRIE STEVENS-HOARE KC and CAMERON STOCKS (instructed by **Hamlins LLP**) for the **Claimant**
NICHOLAS TROMPETER KC (instructed by **Gisby Harrison Solicitors**) for the **Defendant**

Hearing dates: 14 November 2024

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APPROVED JUDGMENT

This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10am on 15 January 2025.

MASTER PESTER:

Introduction

1. The Claimant ("Triplark"), is the registered freehold proprietor of Northwood Hall, Hornsey Lane, N6 5PG ("Northwood Hall"), a building comprising 194 flats, and is the current trustee of the service charge funds of the leaseholders of Northwood Hall. Triplark also owns 35 of the flats at Northwood Hall as part of the freehold or pursuant to leases. The various leases to the flats are in substantially similar terms.

2. The Defendant, Mr Maunder-Taylor, was the statutory manager of Northwood Hall, from 24 June 2016 until 13 September 2019 pursuant to s. 24 of the Landlord and Tenant Act 1987 ("the LTA 1987").

3. There are two applications before the Court:

   (1) Triplark's application, dated 15 February 2024, for an order pursuant to CPR r. 24.3 for summary judgment against Mr Maunder-Taylor ("Triplark's summary judgment application"); and

   (2) Mr Maunder-Taylor's application, dated 16 August 2024, for an order pursuant to CPR r. 3.4(2)(a) and/or (b) striking out all or parts of the Amended Points of Claim; alternatively for reverse summary judgment against the Claimant under CPR Part 24 ("Mr Maunder-Taylor's counter-application").

   The two applications were listed to be heard together. The two applications are, in substance, mirror images of each other, with both sides contending that the other has no real prospect of succeeding on the whole or parts of their case.

4. There is a further application, dated 4 November 2024, by Triplark to strike out parts of Mr Maunder-Taylor's consolidated defence relating to Triplark's Part 8 claim form, on the ground that this was an abuse of process. I will refer to this as Triplark's strike out application. The submission, in outline, was that in considering Mr Maunder-Taylor's consolidated defence, it had become apparent to Triplark that Mr Maunder-Taylor was seeking to run arguments which were contrary to those run in earlier proceedings, and which it was said could and should have been raised in those proceedings. It was submitted that running those arguments at this stage was an abuse of process. Triplark's strike out application was not formally listed before me. In any event, it was not possible, in the single day allotted to deal with the first two applications, to hear submissions on this second application by Triplark.

5. A case and costs management conference was held (before me) in these proceedings on 6 March 2024. Although by that point Triplark's summary judgment application had already been issued, in the event it could not be listed (together with Mr Maunder-Taylor's counter application) until November 2024. I understand this was due to the difficulty in matching up the dates when leading counsel were available.

6. There is now a 10 day trial listed in these proceedings, in a 5 day window commencing on 29 April 2025. It is unfortunate that the two applications could not have been heard earlier.

7. A very considerable volume of material was placed before me, consisting of five lever arch files of documentary evidence, plus two lever arch files of over twenty authorities, as well as various legislative provisions and extracts from

textbooks. I accept, of course, that simply because there is a large volume of material, or a number of authorities to consider, that does not make a case unsuitable for summary disposal. However, in this case the quantity and extent of material tends to suggest that neither side's case is as simple and straightforward as they each maintain it to be.

The proceedings

8. These proceedings were originally started by way of two claims, a Part 8 claim, in which Triplark sought an account and reconstitution of the statutory trust created by s. 42 of the LTA 1987 for around £2.5million, and a Part 7 claim by Triplark as freeholder and leaseholder seeking damages or restitution up to £2.5million. By a consent order dated 9 March 2023 Master Kaye ordered that the two claims should be consolidated, with the Part 7 claim being the lead claim.

Background

9. These claims are one strand of extensive and bitterly contested litigation relating to Northwood Hall. What follows in this section is intended to be no more than a high level summary of the disputes relating to Northwood Hall, so far as is relevant to the decisions I am asked to make.

10. Northwood Hall is a purpose-built block of 194 flats, constructed in or around 1935. Of the total, 159 flats are held under long leases with varying unexpired terms and the remaining 35 are held by Triplark (34 directly out of its freehold interest and one as long leaseholder).

11. I understand that from 1987, Triplark's original interest in Northwood Hall was as Head Lessee. In September 2016, it acquired the freehold reversion through a wholly owned subsidiary. The freehold was transferred to Triplark in March 2018.

12. A major cause of difficulty at Northwood Hall has been the works to replace the communal heating and hot water system. Triplark obtained advice and estimates about a replacement system in 2009. Some of the lessees were unhappy that the proposed works were making little progress. In 2010, a number of leaseholders decided to exercise their right to establish a Right to Manage company. Accordingly, a Right To Manage company ("the RTM") was incorporated on 23 June 2010. It acquired the right to manage on 12 January 2011. The RTM was formed with a view to organising a replacement heating and hot water system for Northwood Hall. The RTM appointed managing agents, Canonbury Management ("Canonbury").

13. In June 2011 the RTM engaged CBG Consulting ("CBG") to prepare a design and tenders were invited. On 19 December 2013 the RTM contracted with Parker Bromley Ltd ("Parker Bromley") for the construction of the heating project. CBG was appointed as contract administrator and Canonbury as project manager. The contract was agreed for the sum of £2.68 million. Professional fees further increased that cost. Works were intended to start in February 2014 and to be completed in December 2014.

14. I do not think it is necessary to go into detail about the subsequent events save that there was a change of design to the project in 2014 which was controversial and led to increased costs. This and issues of poor management ultimately led

to an application dated 14 April 2016 by a number of lessees to appoint Mr Maunder-Taylor as manager under s. 24 of the LTA 1987. Triplark supported that application. By an interim order dated 24 June 2016 (amended on 1 July 2016) the Tribunal appointed Mr Maunder-Taylor. By a final order dated 24 September 2016 he was appointed for three years until 13 September 2019, varied by order dated 27 January 2017.

15. Mr Maunder-Taylor continued with the heating and hot water project in its amended design and proceeded to install new heating and hot water systems into the individual flats, against opposition from some leaseholders. The demands for service charges and disputes over the installation of the new system led to further litigation, case number D10CL409 ("the Consolidated Action"). The Consolidation Action started as the following proceedings:

(1) A claim commenced by 12 leaseholders seeking relief in relation to works carried out to Northwood Hall by Mr Maunder-Taylor as manager, and also the RTM (this was initially by way of a High Court action seeking injunctive relief to prevent Mr Maunder-Taylor from cutting off the supply of hot water and requiring him to restore the supply of central heating, as well as seeking damages and the recovery of payments made by way of service charge to Mr Maunder-Taylor and the RTM); and

(2) An application made by Mr Maunder-Taylor under s. 27A of the Landlord and Tenant Act 1985 ("the LTA 1985") as against a separate group of 25 leaseholders for service charge arrears which was subsequently transferred to the County Court.

In the Consolidated Action both sets of tenants sought the recovery of payments made by way of service charge to Mr Maunder-Taylor which they said should not have been made because they were not due.

16. The Consolidated Action went to trial in April 2019 against Mr Maunder-Taylor alone (in January 2019 the claims by the First and Second Action tenants against the RTM had been settled by way of a Tomlin Order) resulting in a judgment dated 22 May 2019 ("the McGrath Judgment") and an order of even date ("the McGrath Order"). The hearing before Recorder McGrath took place over eight days, with evidence given by 13 lessees, a Mr Wismayer (Mr Wismayer was a person who some of the leaseholders had originally wanted to be appointed manager, rather than Mr Maunder-Taylor), Mr Maunder-Taylor himself and his service charge accountant Stephen Bird.

17. Amongst other matters, the McGrath Judgment found that interim service charges were not recoverable unless and until proper notice had been given under the terms of the leases, that the leases made no provision for the accumulation of a reserve fund and that under the leases the landlord had no right to recover the cost of replacing the apparatus within the flats ("the Internal Works") as part of the service charge.

18. Further, a recital in the McGrath Order recorded that Mr Maunder-Taylor informed the Court that within 21 days he would amend the statements of accounts of each tenant, to correctly reflect the findings of the Court on the liability for service charge in the periods concerned. Mr Maunder-Taylor accepts that he did not do so, save in relation to the costs orders, although he says that this was not done because the solicitor acting for the tenants never

responded to an email seeking details of the settlement with the RTM: see Amended Consolidated Defence, paragraphs 36 - 37. Triplark has been able to recover from Mr Maunder-Taylor some of the legal costs and manager's costs, as detailed further below.

19. As part of the McGrath Order a section 20C order was made in favour of the leaseholders who had been parties to the litigation in the Consolidated Action to protect the lessees from paying Mr Maunder-Taylor's costs.

20. On 20 August 2018, while the Consolidated Action was ongoing, Mr Maunder-Taylor applied to the First Tier Tribunal (case reference LON/00AP/LSC/2018/0344) under s. 27A of the LTA 1985 seeking a determination of the reasonableness and payability of service charges for the years ending 30 June 2018 and 30 June 2019. Mr Maunder-Taylor later withdrew the application in respect of the year ending 30 June 2019. The application ("the 2018 Tribunal Application") went to a hearing on 22, 23 July and 4 September 2019 before a panel comprising Mr M Martynski (Tribunal Judge), Mr P Casey and Mr J Francis. The original decision was dated 20 September 2019, amended on 18 October 2019 and reviewed on 10 March 2020 ("the FTT Decision").

21. The FTT Decision determined (among other matters):

(1) Legal Fees in the sum of £56,747.14 were not reasonably incurred;

(2) Pipe End Works in the sums of £290,735 and £17,047.20 (total £307,782.20) were not reasonably incurred;

(3) Of the total Management Fees (£69,840) only £58,200 were reasonably incurred leaving £11,640 not reasonably incurred;

(4) £1,629 of the Professional Fees were not a service charge item; and

(5) Manager's Fees of £28,440 were not reasonably incurred.

22. The consequence of the findings that costs were not reasonably incurred is that they were not payable by leaseholders under s.19(1) of the LTA 1985.

23. The FTT Decision was appealed on a separate issue (to do with reserve funds). The appeal was determined by Martin Rodger KC sitting in the Upper Tribunal on 6 September 2019 ("the Upper Tribunal Decision"). The Upper Tribunal found Mr Maunder-Taylor was bound by his concession (despite the terms of the leases) in the Consolidated Action that the leases contained no power to collect contributions towards a reserve fund: see paragraphs 30 and 53. Accordingly, the FTT ought not to have determined that in relation to any of the leaseholders the management order, by itself, authorised Mr Maunder-Taylor to operate a reserve fund by its adoption of the powers in the leases when he was bound by the decision in the Consolidated Action that the leases did not have that effect: at paragraph 59. At paragraph 61, the Upper Tribunal added that:

"I emphasise that this decision does not have any effect on the rights of Triplark, the landlord, to collect a reserve fund. It was not party to the County Court proceedings or to the management order and is not bound by any of the decisions concerning the rights of the leaseholders and the manager."

24. On 13 September 2019 Mr Maunder-Taylor's appointment came to an end and management responsibility reverted to Triplark. Mr Maunder-Taylor continued

to manage Northwood Hall on Triplark's behalf until it appointed new managing agents, KMP Solutions Limited ("KMP") in December 2019.

25. It is Triplark's case that a considerable amount of time was required to undertake a thorough review and reconstruction of the accounts and records produced by Mr Maunder-Taylor, working with accountants Melinek Fine LLP. Triplark says that there has been a huge amount of correspondence in which Mr Maunder-Taylor has been asked to provide proper details, accounting records and/or explanations to enable KMP to put together proper accounts which are fit for purpose, and that this "huge volume of work" has inevitably resulted in substantial professional fees, which would not have been necessary had Mr Maunder-Taylor kept and provided proper accounts and records. These additional losses form part of the Part 7 claim.

26. In October 2019, Mr Maunder-Taylor credited some sums to the leaseholders in line with the FTT Decision:

(1) £11,640 being that part of the Management Fees deemed to be unreasonable; and

(2) £1,629 being that part of the Professional Fees deemed to be unreasonable.

27. Triplark has put in evidence that the legal fees of £56,757 for all lessees were recovered from Mr Maunder-Taylor between March 2020 and February 2022. This seems to be accepted in Mr Maunder-Taylor's witness statement, paragraph 64.

28. Triplark has put in evidence that there is a balance outstanding from the Manager's Fees of £11,324.18.

29. In June 2022 68 leaseholders (being leaseholders of 56 Flats) issued an Application in the First-tier Tribunal ("the s. 27A Application") for a determination pursuant to s. 27A of the LTA 1985 for service charges in the period 2011-2022 and amongst other matters, a declaration that no service charges are payable for the period when Mr Maunder-Taylor was managing Northwood Hall. Triplark is the sole respondent to the s. 27A Application which went to a final hearing, lasting five days, in December 2023. (As part of these proceedings Triplark claims any losses suffered as a result of the poor management by Mr Maunder-Taylor alleged by the leaseholders in the s. 27A Application.)

30. A decision was handed down on 24 May 2024, again by Judge McGrath, sitting with a valuer chairman and accountant assigned from the Tax Chamber. The leaseholders in those proceedings sought a determination that the "findings in the McGrath Judgment and Order and those in the Upper Tribunal … should be applied by the Tribunal for the benefit of all leaseholders at Northwood Hall. …" The Tribunal rejected this application, holding that the McGrath Judgment was not binding *in rem*, and specifically was not binding on Triplark. The Tribunal said this, at [45] - [47]:

> *"45. We do not accept the Applicant's submissions. We do not consider the McGrath Order to be binding in rem. Although determinations about service charge cases relate to service charge funds which are held in trust for all leaseholders that is insufficient to justify treating them as having been made in rem. The creation and maintenance of the statutory trust depends, in the first instance, on the terms of the individual leases between the parties. In the county court proceedings, the action was brought against individual lessees and the claim was based on an allegation that those leaseholders were in breach of their leases by their failure to pay specified service charges.*
>
> *46. The McGrath Judgment was made in the county court and (save for the section 20ZA decision) was not a Tribunal cases. The rules relating to lead*

cases in the county court were not engaged. The treatment of lead cases in the Tribunal is governed by rules 24 and 25 of the Procedural regulations. Neither rule applies in this case and nor do they apply generally because specific procedural steps must be taken for them to be engaged. Very importantly all parties and potential parties must be actively involved in order to preserve procedural fairness.

47. It appears that numerous leaseholders have paid the service charges concerned in the judgment without demur. Section 27A(4)(a) provides that no application under section 27A(1) may be made in respect of a matter which has been agreed or admitted by the tenant. …"

The evidence

31. The Part 8 claim is supported by two statements from Sarah Finch, Triplark's solicitor.

32. In support of Triplark's summary judgment application, Triplark relies on two witness statements of Solomon Mozes, of KMP. Mr Maunder-Taylor has filed a witness statement in response.

Legal test

33. Triplark's application for summary judgment under CPR r. 24.2 is brought on the basis that Mr Maunder-Taylor has no real prospect of successfully defending the claim and there is no other compelling reason for a trial. The principles applying when determining a summary judgment application are well-known. The classic statement of principle was set out by Lewison J (as he then was) in *Easy Air Ltd v Opal Telecom Ltd* [2009] EWHC Ch 339, at [15], in a passage which has been approved by the Court of Appeal in *A.C. Ward Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 (and applied at first instance on many occasions):

"(i) The court must consider whether the claimant (or defendant) has a 'realistic' as opposed to a 'fanciful' prospect of success: Swain v Hillman [2001] 2 All ER 91;

(ii) "A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];

(iii) In reaching its conclusion the court must not conduct a 'mini-trial': Swain v Hillman;

(iv) This does not mean that the court must take at face value and without analysis everything that a claimant [or defendant] says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10];

(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No. 5) [2001] EWCA Civ 550;

(vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 3;

(vii) On the other hand it is not uncommon for an application under CPR Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for a proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have

> *a bearing on the question of construction: ICI Chemical & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725."*

34. As to strike out, CPR r. 3.4(2) gives the court power to strike out a statement of case which discloses no reasonable grounds for bringing or defending a claim or a statement of case which is an abuse of process. Where, on the material before the court, there are disputed issues of fact, the court should not strike out a claim unless certain it is bound to fail: see per Peter Gibson LJ at [22] in *Colin Richards & Co v Hughes* [2004] EWCA Civ 226.The point made in that case was that the relevant area of law was subject to some uncertainty and developing, and it was highly desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts. The test is similar but not identical to that for summary judgment where the court will not grant summary judgment, unless the defence has no real prospect of success.

Submissions

35. Triplark submits that neither the Amended Consolidated Defence, nor Mr Maunder-Taylor's witness statement, disclose any viable defence, nor does he have a real prospect of defending the claims made in the Part 8 claim, and there is no other reason for the matter to go trial. Although Triplark was not a party to the Consolidated Action, it says that it is a trustee entitled to stand in the shoes of its beneficiaries who were a party, in relation to the subject matter of that trust and submits that its current position as trustee is "… as the defendant's successor trustee".

36. Triplark's summary judgment application is therefore based on the following propositions:

(1) Triplark alleges that, during Mr Maunder-Taylor's appointment as manager, he held any service charges on trust under the statutory trust created by s. 42 of the LTA 1987. Mr Maunder-Taylor does not dispute this. S. 42 provides, in relation to dwellings, that where the tenant(s) is/are required to contribute costs by service charge payments, the payee must hold the payments in a separate trust fund or funds.

(2) As regards the Internal Works, Triplark refers to and relies on the McGrath Judgment to say that the sums paid out of the statutory trust for the Internal Works were paid in breach of trust.

(3) As regards the cost of the Pipe End Works (£307,782.20) and management fees, Triplark similarly refers to and relies on the FTT Decision to claim that "these sums were also paid out of the statutory trust in breach of trust".

(4) Triplark relies on, among other authorities, *Holding and Management Ltd v Property Holding and Investment Trust plc* [1989] 1 WLR 1313 and *St Mary's Mansions Ltd v Limegate Investment Co Ltd and Others* [2003] 1 EGLR 41 to say that costs and expenses incurred or paid out which were not authorised by the relevant leases were not reasonably or properly incurred. The statutory protections provided by s. 42 apply to service charges paid by leaseholders to a tribunal-appointed manager: *Suchorski and others v Norton* [2021] UKUT 166, at [7]. I did not understand these propositions derived from the authorities to be disputed.

37. Counsel for Triplark referred to the following passage in *Service Charges and Management* (5th Edition) section 29-10:

> *"[Section 42] may provide a remedy against a former landlord who has wrongfully dissipated any service charge money or a sinking fund, for example on works that are not of a reasonable standard or cost, or on works which do not fall within the landlord's obligations under the terms of the lease. The former landlord would be required to compensate the trust fund. In such a situation, although the lessees could apply to the court, an arbitrator or (in the case of residential service charges) to the appropriate tribunal [being, in England, the FTT, Property Chamber] to determine liability, a determination in their favour would be of little practical benefit because there would no longer be any existing landlord and tenant relationship. In those circumstances, it is suggested that the breach of trust route may provide a more useful remedy."*

I would make two points on this passage. The language used is, perhaps, somewhat tentative ("It is suggested that …"). In any event, no authority is cited where this has been done.

38. The overall relief sought, as set out in the draft order accompanying the application, is that Mr Maunder-Taylor must account to Triplark and/or reconstitute the statutory trust in respect of the Pipe End Works, a remaining balance of £11,324.18 in relation to management fees, and sums spent on Internal Works, those sums to be determined in a further hearing. The costs of the Internal Works is a much more significant sum, being somewhere in excess of £1.5 million. While the draft order suggests that this further hearing to fix the quantum of the Internal Works is to be listed with a time estimate of two hours, in oral submissions that parties appeared to accept that such a further hearing would be likely to last two or three days. It seems to me that it might be longer.

39. Triplark's summary judgment application is thus limited to sums paid out of the service charge account by Mr Maunder-Taylor, in the period during which he was the statutory trustee, in circumstances where there is a judgment by either a Court or Tribunal against Mr Maunder-Taylor (namely, the McGrath Judgment and the FTT Decision) to the effect that those sums are not

recoverable from the leaseholders. There is also a claim in relation to a reserve fund, based on the decision of the Upper Tribunal, but this is not something pursued on Triplark's summary judgment application. Triplark's position is that, given the effect of those judgments, Mr Maunder-Taylor has clearly paid away trust funds he was not entitled to pay away, and that accordingly he has acted in breach of trust. Further, it is submitted that as Mr Maunder-Taylor was a full participant in the proceedings that resulted in those judgments, he is now bound by them and not entitled to run a defence that contradicts them or is a collateral attack on them. Accordingly, it is submitted that a summary disposal is appropriate.

40. Mr Maunder-Taylor's position is that the fundamental premise which underpins Triplark's summary judgment application is that he is "bound by" the McGrath Judgment and the FTT Decision. However, Triplark was not a party to the McGrath Judgment or to the 2018 Tribunal Application which culminated in the FTT Decision and the Upper Tribunal Decision. Therefore, both the findings of fact and any legal consequences or effects of those findings are inadmissible in these proceedings, and do not give rise to any form of *res judicata*/estoppel. Accordingly, Mr Maunder-Taylor submits that Triplark's reliance on the McGrath Judgment and the FTT Decision are in fact "fatal to and/or destructive to its case".

Discussion and analysis

41. It is a striking feature of the two applications which I am considering that both parties are saying that the proceedings, or parts of them, can be disposed of summarily in their favour. The starting point for my consideration of the parties'

submissions is that a final adjudication of a legal dispute is conclusive as between the parties to the litigation and their privies as to the matters necessarily determined, and the conclusion on these matters cannot be challenged in subsequent litigation between them (whether in separate proceedings or at a later stage of the same proceedings): see *Phipson on Evidence* (20th ed, 2021), at 43-23. The corollary of that central principle is that judgments can have no such effect as between strangers or a party and a stranger: ibid, at 43-25.

42. At one stage it seemed to me as though the real issue between the parties was whether Mr Maunder-Taylor had a real prospect of disputing the proposition that Triplark was "a privy", either of its beneficiaries, or of Mr Maunder-Taylor as a previous trustee, and therefore entitled to rely on the findings in the McGrath Judgment and the FTT Decision. As explained in *Phipson*, at 43-27:

> *"Res judicata estoppels may be relied on by or against privies. Privies may be privy to the parties by blood, title or identity of interest … When deciding whether a person is a privy it is valuable to remember the maxim "estoppels must be mutual"; it being a well-established principle that no one can take advantage of a judgment unless they would have been bound had it gone against them. As instances of successive relationship, judgments for or against an ancestor are evidence for or against his heir; those against a testator bind his executor, legatee or devisee; and the same rule applies to grantees, mortgagees and assignees, provided their titles accrue subsequently to the judgment. So, a judgment against the holder of an office will bind his successor and one against a representative class, a future member of that class. …"*

43. However, in its Amended Reply, at paragraph 22, Triplark pleads that "… it is accepted that the Claimant was not a party to the proceedings in which the McGrath Judgment was given and it therefore does not give rise to res judicata estoppel that the Claimant can directly rely on or benefit from in relation to claims made as freeholder or leaseholder for its own benefit" and at paragraph 29, the Claimant pleads that "… it is accepted that the Claimant was not a party

to the 2018 Tribunal Application and the judgments therein do not give rise to res judicata estoppel that the Claimant can directly rely on or benefit from in relation to claims made as freeholder and/or leaseholder for its own benefit." But the key words in those passages are "as freeholder and/or leaseholder for its own benefit". Triplark says that it is not relying on the relevant judgment and the decisions as freeholder and/or leaseholder, but as a "successor trustee".

44. In fact, Triplark appeared to be saying that it did not need to rely on the principle of *res judicata* estoppel at all. Instead, Triplark submitted that this was a situation where the McGrath Judgment and the decisions of the FTT Tribunal and the Upper Tribunal were admissible of evidence as to their findings. Triplark stressed that although it was not a party to the Consolidated Action, it is a trustee entitled to stand in the shoes of its beneficiaries who were a party, in relation to the subject matter of the trust. Triplark, as trustee, is seeking to enforce by its Part 8 claim exactly the same trust in relation to which the earlier judgment and decisions have already made findings, and that, in consequence, it was no longer open to Mr Maunder-Taylor to challenge his liability to reconstitute the trust at the suit of Triplark. But, returning to the passage in *Phipson*, at 43-27 quoted above, parties may be privy "by blood, title or identity of interest". It did sound to me rather as though Triplark was trying to suggest that there was a privity of interest between it and the beneficiaries of the statutory trust.

45. I was taken to a number of authorities. The first cited to me was the well-known decision in *Hollington v Hewthorn* [1943] 1 KB 587. In *Hollington v Hewthorn*, the plaintiff sought to rely in civil proceedings upon the defendant driver's

criminal conviction for careless driving as evidence of his negligence. The Court of Appeal held that evidence of the conviction was inadmissible. That particular conclusion was repealed by s. 11 of the Civil Evidence Act 1968, which broadly provides that any subsisting conviction by a United Kingdom court is admissible in subsequent civil proceedings (as defined in s. 18(1) of the Act), to prove that the offence was committed by the person convicted, whenever it is relevant to do so. However, the general statement of principle set out in that case as to the effect of a judgment on someone who is not a party remains good law and has been frequently cited with approval in a number of subsequent cases. The statement of principle is as follows:

> *"… A judgment, however, is conclusive against all persons of the existence of the state of things which it actually affects when the existence of that state is a fact in issue. Thus, if A sues B, alleging that owing to B's negligence he has been held liable to pay xl. to C, the judgment obtained by is conclusive as to the amount of damages that A has had to pay C, but it is not evidence that B was negligent: see Green v New River Co (1792) 4 Term Rep. 589, and B can show, if he can, that the amount recovered was not the true measure of damage."* (see at pp. 596-7)

46. Triplark says that the McGrath Judgment and the decisions of the FTT and the Upper Tribunal are admissible evidence of the existence of a liability on the part of Mr Maunder-Taylor, the nature of that liability and the extent of it. Moreover, those findings are set out (or embedded) in the McGrath Order of 22 May 2019 in the County Court at Central London, with the consequence that Triplark is entitled to rely on those findings, even more so because they are findings made against Mr Maunder-Taylor, not as a stranger, but as a party.

47. In response, Mr Maunder-Taylor says that the central principle to be derived from *Hollington v Hewthorn* is to ask what was "necessarily determined". He says that the question whether he was in breach of trust was not necessarily

determined. Indeed, s. 42 of the LTA 1987 is not referred to in the McGrath Judgment at all. Mr Maunder-Taylor in the earlier proceedings had no opportunity to raise a defence based on s. 61 of the Trustee Act 1925 ("the Trustee Act"), which provides a power to relieve a trustee either wholly or partly from personal liability, where he has acted honestly and reasonably, and "ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach …". In circumstances where no allegation of breach of trust was being pursued, he had no proper opportunity to raise such a defence, and it would be wrong to deprive him now of such an opportunity.

48. The rule in *Hollington v Hewthorn* was recently considered in *Ward v Savill* [2021] EWCA 1378. The issue was whether the appellant claimants could rely on a declaratory judgment granted to them in earlier proceedings, to which the respondent was not a party, to found claims against her in the present proceedings. The Court of Appeal dismissed the appeal, holding that the appellants could not rely on the declaratory judgment to which the defendant was not a party, as it was not a judgment *in rem*. Sir Julian Flaux noted that the rule in *Hollington v Hewthorn* still applies in respect of judgments in previous civil proceedings so that a judgment, verdict or award of another tribunal is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other civil proceedings between different parties.

49. Triplark also took me to the decision of the House of Lords in *Reichel v Magrath* (1889) 14 App. Case 665. I can take the facts from the headnote. The appellant brought an action against his bishop and the patrons of a benefice claiming a

declaration that he was vicar of the benefice, and that an instrument of resignation which he had executed was void, together with an injunction to restrain the bishop from instituting and the patrons from presenting any other person to the benefice. The action was tried and judgment was given against the appellant on the ground that the vicarage was void by reason of his resignation thereof with the consent of the bishop. Afterwards the respondent, having been duly appointed to the benefice as the appellant's successor, brought an action against the appellant claiming a declaration that the respondent was vicar and a perpetual injunction to restrain the appellant from depriving the respondent of the use and occupation of the house and lands. In his statement of defence the appellant set up the same case as that on which he had been defeated in the action in which he was the plaintiff.

50. It is hardly surprising that the House of Lords held that there was inherent jurisdiction in the Court to strike out the appellant's statement of defence as "frivolous and vexatious and an abuse of the procedure". There is almost no analysis in the various short speeches of the Judicial Committee, and the facts are very different from the case before me. In any event, *Reichel v Magrath* concerned a particular office, that of vicar, and what was said is not necessarily transferable to the situation of successor trustees.

51. Triplark also relied on a number of cases where a sole director facing a claim by liquidators of a company seeks "in effect" to relitigate a matter that is already the subject of a judgment against the company. It seems to me that there may be a different principle at work in those cases to the situation before me. In some cases, it is a matter of statutory construction whether the director is allowed to

relitigate the issue, or not; and in others, the matter has been decided on the basis of asking whether the defence raised by the director is or is not an abuse of process.

52. In the first of those cases, *Secretary of State for Business Innovation and Skills v Potiwal* [2012] EWHC 3273 (Ch), the Secretary of State brought a claim that Mr Potiwal be disqualified as a director under s. 6 of the Company Directors Disqualification Act 1986. The grounds on which disqualification was sought was that a company of which Mr Potiwal had been the director, Red 12 Trading Limited ("Red 12") had been involved in a fraudulent evasion of VAT, and that Mr Potiwal had caused Red 12 to claim more than £2m by way of VAT refund from HMRC. Mr Potiwal filed evidence that Red 12 did participate in transactions connected with the fraudulent evasion of VAT, but he denied that he either knew or ought to have known that Red 12 was participating in that fraud. The Secretary of State applied to strike out that evidence, on the ground that Mr Potiwal was estopped *per rem judicatam* from denying that he had the requisite knowledge. Red 12 had previously unsuccessfully challenged a disallowance of the company's VAT claim in amounts exceeding £2million. Mr Potiwal was the only witness of fact in the VAT Tribunal proceedings, and he was both cross-examined and disbelieved by the Tribunal in its Decision, the Tribunal finding that Mr Potiwal had knowledge of the VAT evasion.

53. Briggs J, as he then was, held that Mr Potiwal and Red 12 were clearly privies in the context of the proceedings before the VAT Tribunal, even though he was neither asserting a personal claim of his own, nor was he exposed to personal liability for costs in the event (as occurred) that the appeal failed: see at [17].

However, Briggs J found the question whether the Secretary of State has the requisite privity of interest with HMRC to be a more difficult question. Whilst both are (or represent) government departments, and both were funded by the public purse (that is, the taxpayer), they exercise different functions, and HMRC could not of its own motion share information with other government departments: at [18] – [19]. In the end, Briggs J held that:

> *"20. After some hesitation I have concluded that, despite the substantial overlap in interest between HMRC and the Secretary of State in relation to the issue as to Mr Potiwal's knowledge, it is not quite sufficient to make them privies. My reasons follow. First, the question is whether the degree of identification of interest makes it just for the one to be bound by the outcome of proceedings about that issue involving the other, and bound regardless which way that outcome goes. The effect of identification of two parties as privies is automatic, and gives rise to an estoppel which prevents the dispute or the issue being revisited, regardless of the circumstances of the first trial, and of the outcome. It is precisely because those consequences are automatic and potentially far-reaching that the law should in my view be slow to recognise privity of interest between different persons. As Megarry VC put it in Gleeson v Wippell :*
>
> *'The doctrine of privity for these purposes is somewhat narrow.'*
>
> *21. Secondly, the modern tendency, exemplified by Johnson v Gore Wood , is to treat the res judicata principle as an aspect of the law of abuse of process. Thus, whereas it used to be thought that a situation to which the rule in Henderson v Henderson applied automatically barred the pursuit of a matter which could have been pursued in earlier proceedings, the modern rule is only that it may do so, if in all the circumstances it would be an abuse. I consider that it would therefore go against the grain of the development of the law about abuse of process to identify for the first time a new class of privity of interest between two very different arms of government pursuing different aspects of the public interest, and being motivated in particular cases by different policy and funding considerations when doing so.*
>
> *22. The result is that the first way in which the Secretary of State puts his case on this application fails. Although there was privity of interest between Mr Potiwal and Red 12 on the question as to his knowledge of the VAT fraud in which his company participated, there is no estoppel binding him because of the absence of the requisite privity of interest between HMRC and the Secretary of State in relation to that issue."*

54. However, Briggs J held that to permit the issue as to Mr Potiwal's knowledge to be relitigated would be to bring the administration of justice into disrepute, in the eyes of right-thinking people: at [28]. Accordingly, Mr Potiwal's evidence was struck out as an abuse of process, and not on the ground of estoppel *per rem judicatam*. But again, the facts of that case are quite different from the present one.

55. The next decision is that of the Court of Appeal, *PSV 1982 Ltd v Langdon* [2022] EWCA Civ 1319. The Court of Appeal there held that where a company's liability for a debt had been established by a court, and the debt had been incurred at a time when a director of the company was in breach of the Insolvency Act 1986 s.216, then s.217 operated to make the director automatically personally liable for that debt. The judgment creditor did not have to bring separate proceedings to prove the debt against the director. S. 217(3)(a) provided that a person who was involved in the management of a company known by a prohibited name in contravention of s. 216 was "personally responsible for all the relevant debts of a company".

56. The case turns on the wording of the statutory provisions, rather than the ambit of the rule in *Hollington v Hewthorn*. This is readily apparent from the judgment of Asplin LJ (who gave the only reasoned judgment) at [42]:

> *"42. It also seems to me that no question of binding a stranger by a judgment to which he was not a party arises and the rule in Hollington v Hewthorn as explained in Ward v Savill has no application. The section itself provides that the director (in this case) becomes liable for the relevant debts of the company. In this case, there is no dispute that the judgment in the Commercial Court Proceedings and the Consequential Orders were binding as against DYGL. The only question is how to determine what that relevant debt is for the purposes of enforcing the remedy provided by sections 217(1) and (2) against Mr Langdon. In this case, Teare J's order*

> *dated 19 December 2019 provided that judgment had been entered against DYGL for certain sums and that it was liable to indemnify the first claimant in respect of reasonable costs. The amount of those costs was the subject of a subsequent consent order. The Consequential Orders create the judgment debt against DYGL. They are the source of that debt. They speak for themselves. It is explained at para 43-02 of Phipson on Evidence (19th ed) that:*
>
> > *"Judgments being public transaction of a solemn nature are presumed to be faithfully recorded. Every judgment is, therefore, conclusive evidence for or against all persons (whether parties, privies or strangers) of its own existence, date and legal effect, as distinguished from the accuracy of the decision rendered. In other words, the law attributes unerring verity to the substantive, as opposed to the judicial portions of the record."*
>
> *There is no need to look to Teare J's findings of fact or reasoning against DYGL in order to establish DYGL's liability. Nor is one concerned with the legal consequences of those findings. Until they are set aside whether by appeal or by other procedural means, the Consequential Orders are proof of the debt. It is no surprise that this is the way in which the matter was pleaded against Mr Langdon."*

Thus, it was s. 217 itself which creates the liability on the part of the director for debts of the company, regardless of whether the existence and extent of those debts was established in previous litigation, and even though the director was not party to that earlier litigation and was not a privy of the company (as the Court of Appeal recorded at [2], picking up a finding of the first instance judge).

57. Another case, *Mark John Wilson (in his capacity as Liquidator of E-Tel (UK) Limited (In Liquidation) v Nemish Mehta* [2023] EWHC 1214 (Ch), a decision of ICC Judge Jones, says, following *Secretary of State v Potiwal*, that it would be an abuse of process to allow a director to relitigate matters already decided against him in separate tribunal proceedings. This was not a reserved judgment, and it was decided without any participation from the defendant (who had asked for an adjournment, which had been refused).

58. The recent decision in *Hyde v Todd* [2024] EWHC 1423 (Ch) went the other way. There, the liquidators brought a claim against directors pursuant to s. 214 of the Insolvency Act 1986 (wrongful trading), and sought to rely in a summary judgment application on findings made in previous proceedings in the First Tier Tribunal (Tax). At first instance, Chief ICC Judge Briggs dismissed the application for summary judgment. The appeal against his decision was dismissed by Edwin Johnson J. The appellant liquidators' claim relied heavily upon findings made by the Tribunal, in particular, upon findings made by the Tribunal as to the respondent directors' knowledge, going back to 2006, that the transactions in which the company was engaged were connected with the fraudulent evasion of VAT. However, the liquidators had not been party to the proceedings in the Tribunal. It was not argued by the liquidators that the respondent director qualified as a privy of the company, and thus was formally bound by the Tribunal's decision.

59. Edwin Johnson J gave two reasons for dismissing the appeal. The first was that a claim under s. 214 was acutely fact sensitive and raised factual issues which were not suitable to determination on a summary basis: see at [63] – [66]. The second was that reliance on the findings in the FTT Decision was "at first sight" precluded by the rule in *Hollington v Hewthorn:* at [76]. The appellants sought to get around this by reference to *Secretary of State v Potiwal*, and *Wilson v Mehta*, to which I have referred above. The appellants contended that the case was on all fours with *Potiwal* and *Mehta*, and just as it would have been an abuse in those cases to permit the respondent to relitigate the issue of his knowledge of the relevant VAT fraud, so it would be an abuse for the respondent to relitigate the issue of his knowledge of the VAT fraud in the present case: at

[87]. Edwin Johnson J held that while "there may be very considerable merit in this argument" and that, at trial, the appellants would be able to say that they are entitled to rely upon the Tribunal Decision, there were two problems with making a summary determination of the question whether the appellants could so rely, as follows. The first problem related to the first reason for dismissing the appeal, namely that the s. 214 claim raised issues, relating to the respondents' state of mind, which had not been not before the Tribunal: see at [89] – [90].

60. The second problem, and more important reason for present purposes, was the "more fundamental question of whether the Appellants can rely upon the findings of the FTT Decision". The Judge held that it was not appropriate to decide that on a summary basis. This was a question of whether there was an abuse of process. In a passage that is worth quoting, the Judge said this:

> *"97. As can be seen, the question of whether, in cases of this kind, there is an abuse of process involves a fact sensitive inquiry, requiring an intense focus on the facts of the particular case and, turning specifically to the present case, a focus upon the thoroughness and fairness of the way in which the issue as to the Respondent's knowledge of the underlying VAT fraud was conducted by the FTT. I would add to this, in the present case, the requirement for an intense focus upon the overlap or lack of overlap between (i) the findings made by the FTT as to the Respondent's knowledge of the VAT fraud and (ii) the issues as to the Respondent's knowledge and state of mind which are relevant in the Section 214 Claim. The Appellants say that the position is clear, and can be seen to be clear at this stage. I do not accept this. In my view the question of whether there is an abuse of process or unfairness or the bringing of the administration of justice into disrepute in the present case, of a kind which was found in Potiwal and Mehta, is for trial. There may be other cases, involving an issue of this kind, where the position is clear and can be seen to be clear at the summary judgment stage. In my view, and by reference to the arguments and evidence in the present case, the present case is not such a case. I add that the position seems to me to be much the same in relation to the Company's decision not to challenge the findings of fact made by the FTT."*

61. Finally, in terms of the authorities cited to me, Counsel for Mr Maunder-Taylor took me to *Wenman v Mackenzie* (1855) 5 El & Bl 447. The facts are complicated, but I did not find this case of much assistance. It seems to me to be authority for the proposition that a judgment against a tenant does not bind a reversioner, or, as Counsel put, the latter is not a privy of the former. That is not this case. Triplark claims to be entitled to rely on the McGrath Judgement and Order, and the Tribunal Decisions, as a successor trustee, and not as freeholder.

62. In summary, I am concerned on Triplark's summary judgment application with whether Mr Maunder-Taylor has a real (as opposed to fanciful prospect) of successfully defending the claim against him. As I understood Counsel for Triplark, Triplark is not saying that it can rely on a *res judicata* estoppel against Mr Maunder-Taylor, perhaps for the reason that "estoppels must be mutual". Further, Triplark is not, on its summary judgment application, claiming that it is entitled to judgment on the basis of abuse of process. That is a separate claim, which is pursued by way of Triplark's separate strike out application, on which I have not heard submissions.

63. I can see the force in Triplark's case that the McGrath Judgment and Order and the decisions of the FTT and the Upper Tribunal necessarily mean that Mr Maunder-Taylor has been held to be in breach of trust, and that Triplark as the "successor trustee" is entitled to rely on those findings. However, notwithstanding the persuasive way in which the case was put, it did not seem to me that the authorities relied on by Triplark necessarily led to the conclusion that it was entitled to summary judgment. I have come to the clear conclusion

that the issues raised in the applications are not suitable for summary disposal, and that the matter ought to be determined at trial. My reasons are as follows:

(1) When Triplarks says that the McGrath Order is evidence on which it is entitled to rely, one must be careful as to what it is evidence of. It seems to me that Mr Maunder-Taylor is entitled to argue that the Order is not evidence of breach of trust, or that (even if it is), Mr Maunder-Taylor remains entitled to invoke s. 61 of the Trustee Act and / or arguments that some at least of the leaseholders acquiesced in what would otherwise have been a breach of trust, or are estopped from claiming against him (whether via Triplark or otherwise). As I understand it, at no stage in the proceedings which led to the McGrath Judgment and McGrath Order was it alleged that Mr Maunder-Taylor was in breach of trust. What was sought in the Consolidated Action was recovery of service charges as mistakenly paid, damages for breach of the Mr Maunder-Taylor's obligation (as manager) to provide central heating, an injunction requiring Mr Maunder-Taylor to re-provide central heating, and a permanent injunction to prevent Mr Maunder-Taylor from cutting off the hot water supply. In those circumstances, there is force in Mr Maunder-Taylor's submission that he has had no proper opportunity to raise arguments based on s. 61. Consideration of s. 61 is inevitably highly fact based and will rarely be appropriate for summary determination.

(2) I derive further support for my conclusion that the matter is not suitable for summary judgment because the McGrath Order has been explicitly said not to be an order *in rem*. Triplark's position when it was defendant in the recent

27A Application, which culminated in the decision dated 24 May 2024, was that it was "not open to the Tribunal to simply apply the findings and consequences of the McGrath Order to non-parties in the proceedings". I accept of course that Mr Maunder-Taylor was a party to the McGrath Order. That is certainly a point of distinction. However, Triplark was not a party in the Consolidated Action which led to the McGrath Order. In those circumstances, where Triplark is saying (and the court agreed) that Triplark was not bound by the findings in the Consolidated Action there is at least a degree of tension in Triplark now saying in these proceedings that it is entitled to rely summarily on those findings and consequences made in the Consolidated Action as against Mr Maunder-Taylor.

(3) Similarly, the Upper Tribunal stressed that its decision did "not have any effect on the rights of Triplark": at [61]. Yet, Triplark asserts that it can rely on the findings as against Mr Maunder-Taylor.

(4) In summary, the effect of the various decisions, and Triplark's ability to rely on them, raise questions of real legal difficulty. The right forum to resolve those issues is at trial.

64. I also make it clear that I do not accept Mr Maunder-Taylor's submission that a strike out order should be entered in his favour, as against Triplark. Mr Maunder-Taylor invites me to find that the findings in and outcome of the McGrath Judgment and Order and the Tribunal Decisions are inadmissible in these proceedings. That too is a matter for trial.

Conclusion

65. It follows that I will dismiss both Triplark's application for summary judgment and Mr Maunder-Taylor's counter-application. I will hear from the parties as to what should happen to Triplark's application for strike out, although my initial view is that given the proximity of the upcoming trial the application should be adjourned to trial. It will be open to Triplark to submit at trial that, even if Triplark cannot directly rely on the earlier judgment and decisions, it would be an abuse of process for Mr Maunder-Taylor to be allowed to re-argue points which went against him at the earlier hearings.

66. I will hear from Counsel as to what other consequential orders I should be making at this stage.