



Neutral Citation Number: [2026] EWHC 1152 (Ch)

CR 2023 000110

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CHD)
IN THE MATTER OF THE PRIORS GROUP LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE COMPANIES ACT 2006

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 14/5/2026

Before :

ICC JUDGE BARBER

Between :

HENDERSON & JONES LIMITED

Applicant

- and -

(1) STEPHANIE CHAMBERS

(2) ALASTAIR CHAMBERS

Respondents

Mr Dan Butler (instructed by **Morgan Phelps Solicitors**) appeared for the **Applicant**
The Respondents appeared in person
Hearing dates: 13-14 January 2026

Approved Judgment

This judgment was handed down remotely at 2pm on 14 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC Judge Barber

1. On 14 January 2026 I made an order (i) dismissing the Applicant's summary judgment application dated 25 September 2025 and (ii) adjourning the trial of the Applicant's substantive application dated 9 January 2023, with written reasons to follow. This judgment sets out my reasons for that order. As aspects of the case engage the Respondents' rights under Article 8 of the European Convention on Human Rights, the published version of this judgment omits certain details in order to protect their privacy.

Background

2. The Applicant is a company carrying on business in the purchase and pursuit of causes of action belonging to insolvent companies.
3. The Respondents are husband and wife. Mr Chambers' background is in construction work.
4. In 2017, Mrs Chambers set up The Priors Group Limited ('the Company') with a view to creating an independent business. The Company remained dormant until March 2018, when Mr and Mrs Chambers together decided to use it to undertake commercial and domestic construction projects.
5. From incorporation to 23 August 2019, Mrs Chambers was sole de jure director. Mrs Chambers stepped down from that role in 2019, as a result of health issues among other things. When she stepped down, Mr Chambers replaced her as de jure director. Mrs Chambers was the sole member of the Company throughout.
6. For many years, Mr Chambers suffered from serious, but undiagnosed, health conditions. These affected him in a number of ways, including his memory and powers of concentration.
7. It was not until 2024 that Mr Chambers was formally diagnosed with certain health conditions. Since then he has engaged constructively with the care and medication plans set by his medical professionals and, after a sustained period of treatment, is now showing improvement, although progress has not been linear; there have been relapses on the way and the risk of relapse remains.
8. Against that backdrop, I turn to consider the events leading to these proceedings.
9. In March 2018 the Company entered into an agreement with Stackbourne Limited to undertake a c£1.2m construction refurbishment project in Cheltenham known as Buskers Court ('the Buskers Court Project'). The project involved the conversion of a former nightclub into 14 domestic apartments. Whilst practical completion was achieved in May 2019, there was a 12 month defect period on the project and a significant amount of snagging work was still being addressed up to about May 2020.
10. By early 2020, the Company had run into financial difficulties. This was partly as a result of the pandemic but was exacerbated by Mr Chambers' health. In the spring of

2020 Mr Chambers was admitted to hospital with bacterial meningitis. He also had other health conditions which at that time were as yet undiagnosed.

11. On 28 April 2020 a creditor known as Abeds Design and Engineering Limited ('Abeds') presented a winding up petition against the Company in proceedings numbered CR 2020 002203. The petition was in the relatively modest sum of £8378.74, based on what appears to have been a default judgment entered on 19 February 2020. The Respondents maintain that the debt was disputed on workmanship grounds and that Abeds had pursued a default judgment opportunistically, at a time when Mr Chambers was hampered by ill health in defending the proceedings. The petition was advertised in June 2020 and the petition was scheduled for hearing on 19 August 2020. According to the court file, only one other creditor, Plasline Dry Lining Limited, supported (in the sum of £15,300) following advertisement.
12. Mr Chambers (as sole de jure director of the Company at the time) sought insolvency advice from an insolvency practitioner known as Mr Kieran Bourne of Cromwell Insolvency Limited and in July 2020 set about placing the Company into creditors' voluntary liquidation. Mrs Chambers maintains that she was not informed at the time. According to Companies House filings, the Company was placed into CVL on 30 July 2020 and Mr Bourne was appointed as liquidator. Mr Bourne's latest progress report, for the period ended 29 July 2025, states that preferential claims stand at £7,651 and non-preferential unsecured claims (from eleven creditors including HMRC) total £233,829.87 (compared with a figure of £230,745, including £62,000 trade and expense creditors, given in the statement of affairs).
13. Mrs Chambers maintains that as sole member of the Company, she did not consent to or vote in favour of CVL and that her signature on various key documents was forged. She says that she did not learn about the CVL for two years. References in this judgment to 'the CVL' and the 'liquidator' should accordingly be treated as subject to that caveat.
14. On 19 August 2020, the winding up petition presented by Abeds was dismissed, on the court being informed by the counsel for the petitioner that the Company had been placed into CVL. According to the attendance sheet for the hearing, the Company was not represented at that hearing.
15. On 25 May 2022 the liquidator entered into an assignment agreement (on behalf of himself and the Company) with the Applicant, purporting to assign all the Company's and the liquidator's claims against the Respondents to the Applicant for an initial consideration of £10,000 plus 50% of net recoveries. The Respondents do not accept the legitimacy or validity of the assignment.

The Application

16. The present proceedings were issued on 9 January 2023. The proceedings relate to payments totalling £1,091,021.33 made by the Company between 1 February 2018 and 30 June 2020, identified by analysis of the Company's current bank account with National Westminster bank ('the Payments'). As pleaded, the Applicant's case is that the Respondents have not produced evidence to demonstrate that the Payments represent legitimate Company expenditure. The Applicant alleges that the Payments constitute breaches of trust and/or breaches of fiduciary or other duties owed by Mr and Mrs Chambers to the Company, whether under statute, in equity or at common law ('the

Company claims’); further or alternatively, transactions at an undervalue contrary to ss.238 and 240 IA 86; or alternatively, unlawful preferences contrary to ss.239 and 240 IA 86 (‘the Liquidator claims’).

17. The Respondents, who are litigants in person, do not recognise the Applicant as a legitimate party to the Application. They challenge the validity of the liquidation and the validity of the Assignment.

18. In relation to the validity of the liquidation, the Respondents deny that Mrs Chambers, as the Company’s sole member, resolved by special resolution to place the Company into voluntary liquidation. Insofar as material, paragraph [24] of the Amended Points of Defence (‘APoD’) (which responds to an allegation at paragraph [24] of the Points of Claim (‘PoC’) that at a general meeting of the Company held on 30 July 2020, Mrs Chambers as the Company’s sole member resolved by special resolution to place the Company into voluntary liquidation) provides as follows (with emphasis added):

‘24. Denied. Mrs Chambers had no contact with the liquidators and made no special resolution.... The liquidators should have ensured that Mrs Chambers was aware of the liquidation proceedings. Mrs Chambers believes that the liquidators acted in bad faith and told Mr Chambers exactly what to include on completion of the forms. Mr Chambers was pushed into signing the documents [without] Mrs Chambers’ knowledge.’

19. An averment of lack of knowledge on Mrs Chambers’ part is also made at APoD [55].

20. The impact of these averments is addressed at APoD [25](b) and [63], which provide as follows:

‘25(b) ...Mrs Chambers was not aware of the liquidation and the liquidators failed to carry out their obligations and get the necessary authority that would have been required.’

‘63 Please refer to para 24 the liquidators did not follow due process and gain the necessary authority to liquidate the company.’

21. At paragraph [16A] of the Amended Points of Reply (‘APoR’) (in a section of the APoR headed ‘The Conduct of the Liquidator’), the Applicant responds to these averments by stating that Mrs Chambers had not adduced documentary evidence ‘making good’ these ‘serious allegations’ and asserting that they should be treated with scepticism. Paragraph [17] of the APoR continues:

‘In any event... [the Applicant] does not plead to any of the allegations made against the Liquidator’.

22. At paragraphs [42] and [43] of the APoR, the Applicant responds specifically to paragraphs [24] and [25] of the APoD, pleading (insofar as material) as follows:

‘42. As to paragraph 24, [the Applicant] has no knowledge of Mr Chambers’ interactions with the Liquidator prior to the

Company's entry into liquidation, which in any event are irrelevant ... [The Applicant] repeats paragraphs 16 to 17 above'.

'43. ... [The Applicant] does not plead to the allegations against the Liquidator in sub-paragraph 25(b) and repeats paragraphs 16 to 17 above.'

23. At paragraph [64] of the APoR, responding to the averment at paragraph [55] of the APoD that 'The liquidator carried out the liquidation without the knowledge of Mrs Chambers', the Applicant 'repeats paragraphs 16 and 17 above'.
24. At paragraph [69] of the APoR, responding to paragraph 63 of the APoD (which, as noted above, pleads inter alia 'Please refer to para 24 the liquidators *did not follow due process and gain the necessary authority to liquidate the company*'), the Applicant states simply (with emphasis added):

'Paragraph 63 is noted. The *relevance* of the Liquidator's conduct and/or the contents of Appendices 4 and 9 are not admitted and [the Applicant] repeats paragraphs 16 to 17 above.'
25. The Respondents also by their APoD deny that Mrs Chambers was given proper notice of any assignment. This is denied.
26. As a separate line of defence, which in context must be taken as subject to the first two outlined above, the Respondents maintain by their APoD that they did act in the best interests of the Company at all times and that the Payments were made for *bona fide* business purposes. They stress that the Buskers Court Project was a c£1.2m project, which was in fact completed. They have adduced in evidence the JCT contract and attendant documentation relating to the project, confirming the JCT contract price of £1,094,588 and the averaged output costs per apartment. They have also adduced photographic and documentary evidence demonstrating conversion of the nightclub into 14 flats and completion of the project. As put by Mr Chambers in submissions, the Applicant alleges that the Payments were all sums misapplied, '*yet the building went up*'. The relatively modest number of trade and expense claims made in the CVL lends some support to the Respondents' position on this issue.
27. The Respondents' active vouching of each of the Payments, however, has been somewhat erratic. They maintain that this is largely a result of Mr Chambers' illness, which, historically at least, has significantly impeded the collation of evidence and preparation of their full defence. Until 2019, Mrs Chambers kept up the Company's paperwork. In 2019, however, when it was agreed that Mr Chambers would be appointed de jure director in place of Mrs Chambers, Mrs Chambers had handed over Company paperwork and ongoing record-keeping responsibilities to Mr Chambers. In the context of these proceedings, Mrs Chambers has since spent several years playing 'catch-up' in locating relevant records.
28. Both the original PoD (dated 18 April 2023) and the APoD (dated 9 August 2023) were prepared prior to Mr Chambers' formal diagnosis in 2024 with certain health conditions (and engagement with the treatment programme that followed). Mrs Chambers appears to have done much if not all of the drafting. In both versions of their defence, Mrs

Chambers makes clear on several occasions that, at the time of drafting, the Respondents were still working on reconstructing the Company's accounts, locating Company records and other material documentation and 'reconciling all figures' (see for example APoD [20]). The Respondents maintain that these tasks have been rendered more difficult by the loss of data on a laptop at one point seized by the police during an investigation into a third party and by the Applicant's unreasonable refusal to provide the Respondents with access to documents previously provided to the liquidator. The Applicant denies any allegations of unreasonable refusal to cooperate with the Respondents over documents.

29. The Respondents managed to disclose approximately 3,500 pages of unindexed receipts and invoices in the form of Appendices to their APoD, but these only partially vouched the Payments. Since service of the APoD, however, they have collated and disclosed further documents, which they maintain explain additional items of expenditure. They claim that a full analysis of all documentation now adduced will show that, in reality, the Company owes them money, rather than the other way around.

Procedural history

30. The matter was originally listed for trial before Deputy ICC Judge Parfitt on 21-22 May 2024 but was adjourned on medical grounds (specifically, the health of Mr Chambers) pursuant to an unissued application by the Respondents made on or around 20 May 2024, which the Deputy Judge heard on the first morning of the trial. The adjournment application was opposed.
31. By the time of the hearing, Deputy ICC Judge Parfitt had before him correspondence regarding Mr Chambers' illness, including a letter dated 14 May 2024 from Mr Chambers' consultant, Dr T. Dr T had been Mr Chambers' consultant since February 2024. He had most recently met with Mr Chambers on 14 May 2024 to review his case. Dr T's letter confirmed that Mr Chambers had been diagnosed with certain health conditions. The letter confirmed Mr Chambers' positive response to the medication prescribed thus far. It went on to recommend further titrations of Mr Chambers' medication and another review (to assess inter alia Mr Chambers' response to the increased dosage) five or six weeks later.
32. In granting an adjournment on 21 May 2024, Deputy ICC Judge Parfitt commented on the 'chaotic' way in which the Respondents had approached preparation for the trial, observing that this was 'likely' to have been caused or contributed to by Mr Chambers' health difficulties. Having considered correspondence including Dr T's letter of 14 May 2024, the Deputy Judge concluded that an adjournment was required in order to allow a fair trial to take place. At that stage indications were that the relisted trial would not take place until 2025; as the Deputy Judge put it, there would be 'plenty of time for Mr Chambers to respond to treatment' in the interim and, in the event that he remained unable to deal with the litigation, for the parties to work together towards a protocol to allow the case to be brought to a conclusion. Whilst declining to give any specific directions for further evidence to be filed or for any party to reformulate their case, he noted that the Respondents' case was in disarray and that it may be in their interests to revisit their approach and to consider what analysis could be undertaken to assist them in responding properly to the proceedings. The Deputy Judge awarded the Applicant its

costs thrown away by the adjournment (which have since been paid) and the trial was relisted for 19 and 20 June 2025.

33. Following the adjournment, Mr Chambers remained in treatment. Unfortunately, however, his path to recovery did not run smoothly.
34. In the run up to the new trial dates of 19-20 June 2025, the Applicant sought to engage with the Respondents regarding the preparation of trial bundles. By letter dated 29 April 2025, sent by post and email, the Applicant's solicitors wrote to the Respondents enclosing draft trial bundle indexes, inviting them to confirm by 13 May 2025 whether the indexes were agreed or whether they had any proposed amendments. The letter stated:
- ‘If you have any comments on the bundles contents or require additional documents to be included, please let us know by no later than 4pm on 13th May 2025.’
35. By email of the same date (29 April 2025), Mr Chambers responded:
- ‘Yes we will have updated documents for the trial bundle which I am working on that will be provided in advance of the trial.
- Thank you for providing your bundle.
- Please could you provide a hard copy of all the documents you will be relying on.’
36. After further email correspondence that day, at 19.26 on 29 April 2025, the Applicant's solicitors emailed stating:
- ‘Parties do not have leave to adduce any further evidence without first obtaining permission of the Court.’
37. This was not entirely correct; it is open to parties to include additional documents in trial bundles by agreement.
38. On 27 May 2025, the Respondents issued an application seeking a number of heads of relief, including permission to file additional evidence and vacation of the forthcoming trial. Mrs Chambers filed evidence in support which, among other things, addressed Mr Chambers' health and its impact on their ability to prepare for and participate at trial. Mr Elliott (the managing director of the Applicant) filed a witness statement in opposition dated 3 June 2025. The Respondents' application was listed for hearing on 12 June 2025.
39. The Respondents' application was dismissed by ICC Judge Agnello KC on 12 June 2025 on the grounds (in broad summary) that (i) the Respondents had failed to adduce the necessary medical evidence, compliant with the criteria in *Levy v Ellis-Carr*, in support of their application; and (ii) the Respondents had had 12 months to make an application to adduce further evidence and the Court would not entertain such an application in the week before trial. Judge Agnello KC awarded the Applicant its costs

of the application and directed a hybrid trial so that one or both of the Respondents could attend via video link if they chose to do so.

40. On 18 June 2025 at 16.57, Mrs Chambers emailed to the court and to the Applicant a 440-page bundle of further documents relating to the Payments ('the June 2025 Bundle'). Mrs Chambers also sent further emails updating the court and the Applicant that day on Mr Chambers' state of health, confirming that he was by that stage awaiting an NHS bed.
41. On 19 June 2025, on the morning of the relisted trial before ICC Judge Greenwood, Mrs Chambers renewed her application for an adjournment. The renewed adjournment application was made on the ground that Mr Chambers had by then been admitted to an NHS health facility as an inpatient and was likely to be in hospital for at least two weeks. The adjournment application was strenuously opposed by the Applicant, but ultimately granted by Judge Greenwood, on the basis that it would not be fair for the trial to proceed without Mr Chambers, given his role not only as a party, but also as the principal witness; Mr Chambers having been the principal decision maker in relation to the business of the Company. The Applicant was awarded its costs thrown away.
42. In opposing an adjournment, Counsel for the Applicant had argued that an adjournment would achieve nothing, on the basis that Mr Chambers might be hospitalised again, in the run-up to the next trial date. He also pressed for summary judgment that day, but this was rejected, Judge Greenwood indicating that if summary judgment was to be pursued, it should be by application and on notice in the usual way. The Judge did go on to say, however, that 'in so far as a solution is required', he would be willing that day to grant permission to issue a summary judgment application, 'because it could be made to come on apart from anything on the same occasion as the adjourned trial, so that the two could come on together'.
43. Reading the transcript of the hearing on 19 June 2025 as a whole, it appears that it was against this backdrop that Judge Greenwood was then invited by the Applicant to include, as part of his order adjourning the trial, permission to issue a summary judgment application. This appears to have been essentially a 'fall-back' measure, to allow for an application for summary judgment to be pursued on the next occasion if appropriate, in the event that Mr Chambers required hospitalisation at that time and was again unable to attend trial. The Judge also granted the Respondents permission to file and serve by 15 December 2025 evidence 'in respect of the Second Respondent's medical condition, his treatment, prognosis and any reasonable adjustments that might be required to accommodate either of the Respondents at trial'.
44. On 25 September 2025, the Applicant issued an application for summary judgment on its claims for breach of trust and/or breach of fiduciary or other duties (ie the Company claims) by the Respondents ('the SJ application'). The Applicant's letter accompanying that filing requested that the SJ application 'be listed to be heard on the first day of the upcoming trial on 13 January 2026'. The SJ application was accordingly issued with a return date of 13 January 2026. It was not served immediately.
45. The SJ application was supported by the second witness statement of Piers Elliott dated 24 September 2025 ('Elliott2'). This made reference to the documents annexed to the APoD, but not to the documents contained in the June 2025 Bundle: see [40] above. At

the hearing before me, Mr Butler explained that the Applicant had not addressed the latter documents in its SJ application on the ground that the Respondents had not been granted formal permission by the court to rely upon them.

46. Prior to service of the SJ application on the Respondents, Mrs Chambers informed the Applicant's solicitors by email on 26 September 2025 that she was in the process of preparing an application to court, with a view to seeking permission to file further witness statements from the Respondents and a direction that given witnesses (including the liquidator) attend trial for cross-examination. Mrs Chambers also sought confirmation of the Applicant's position on the Respondents' proposed application.
47. In an exchange of emails on 26 September 2025, the Applicant's solicitors made clear that they would need to see the Respondents' proposed application in draft before confirming their position.
48. It was after this exchange that the Applicant's solicitors served the SJ application and supporting evidence on the Respondents. A copy was sent to the Respondents by email dated 8 October 2025, with hard copies served thereafter by post.
49. In accordance with CPR 24.5(1)(f), section 3 of the SJ application notice drew the Respondents' attention to their right to rely on evidence opposing the application. Section 10 of the SJ application notice went on to state that if the Respondents wished to rely on written evidence at the hearing of the application, they should file and serve that evidence on every other party to the application. This was a reference to the requirements of CPR 24.5(3)(a), albeit misdescribed in the notice as CPR 24.5(1).
50. The issue and pursuit of the SJ application had unintended consequences from the Applicant's perspective. As noted previously, CPR 24.5 allows a respondent to a summary judgment application to file evidence in answer to it. At the hearing before me, Mrs Chambers confirmed that on receipt of the SJ application notice and attendant evidence in support, she concluded that the Respondents' proposed application for permission to file further evidence was no longer required; they could simply file evidence in answer to the SJ application instead.
51. The issue of the SJ application had further consequences on timing. Under CPR 24.5, unless the court directs otherwise, the deadline for evidence in answer to a summary judgment application is not less than 7 days before the return date. When seeking permission at the hearing before Judge Greenwood on 19 June 2025 to issue a summary judgment application, the Applicant had not sought alternative directions on the timetabling for evidence filed in answer to that application. Absent any alternative directions, the default position laid down by CPR 24.5 (no less than 7 days before the return date) therefore applied. At the Applicant's own request, the return date for the SJ application had been fixed for the first day of trial: see [44] above.
52. In the event, the Respondents filed evidence in answer to the SJ application on 17 December 2025, a month ahead of trial. The evidence comprised witness statements of Mrs Chambers and Mr Chambers dated 10 and 14 December 2025 respectively, exhibiting documents running to 1906 pages. Whilst the evidence included updating evidence regarding Mr Chambers' medical condition, the bulk of the documents contained in the exhibits, including invoices, receipts, bank statements, employment

records, and emails /other documents relating to the Payments and to the Company's purported entry into CVL, went to the Respondents' substantive defence.

53. As explained by the Respondents in their December 2025 statements and submissions, Mr Chambers had experienced a period of improved health as a result of his ongoing treatment and, with the assistance of their son, they had worked hard together as a family to locate outstanding relevant documents (seeking copies from third party suppliers/sub-contractors where required) and put them in a coherent order.
54. In the run-up to trial, on 4 January 2026 the Respondents also issued a witness summons, seeking Mr Bourne's attendance at trial for cross-examination; a step heralded in correspondence exchanged in November 2025.

Objections to the December 2025 evidence

55. The Applicant objected to the evidence filed by the Respondents in December 2025. Whilst accepting that the Respondents were permitted to file and serve evidence in response to the SJ application up to 7 days before the hearing and whilst also accepting that the documents exhibited to the Respondents' December 2025 witness statements 'may well be relevant', not only to the SJ application but also to trial, the Applicant maintained (at paragraph 7 of its skeleton argument) that:

'Given the volume of new documentation and the Christmas and New Year holiday, [the Applicant] has been unable to carry out a proper analysis of this material and its position is that it has been produced far too late to be admissible at trial.'

56. Paragraph 31-3 of the Applicant's skeleton went on to contend that the December 2025 witness statements:
 - i) went significantly beyond what was permitted by paragraph 3 of the Greenwood Order;
 - ii) sought to adduce evidence in support of issues which were not pleaded; and
 - iii) were not a 'proper' response to H&J's application for summary judgment but rather an attempt to circumvent earlier orders for the timetabling of evidence and their obligations under ss234-6 IA 1986 and as such were 'an abuse of process'.
57. The Applicant argued that the materials disclosed in December 2025 should have been disclosed years ago and submitted that 'the Court should exclude this evidence in its entirety pursuant to CPR 3 and/or CPR r.32.1.'
58. I reject the Applicant's informal application for an order that the Respondents' December 2025 evidence be excluded pursuant to CPR 3 and/or CPR 32.1. It was the Applicant's decision to issue and thereafter to pursue the SJ application. That decision had consequences. CPR 24.5 allows a respondent to a summary judgment application to file evidence in answer to it. I am entirely unpersuaded in the circumstances of this case that it would be an appropriate use of the court's powers under CPR 3 and/or CPR 32.1 to deny the Respondents their usual entitlement under CPR 24.5 and to exclude

their evidence in answer to the SJ application. In my judgment such a step would be contrary to the overriding objective; in particular the need to ‘deal with cases justly’ and so far as practicable to ensure that the parties are ‘on an equal footing’, can ‘participate fully in proceedings’ and can ‘give their best evidence’: CPR 1.1(1) and (2)(a).

59. To exclude the Respondents’ December 2025 evidence - on an unheralded informal application, flagged for the first time on exchange of skeleton arguments - would in my judgment be particularly unjust in this case, given Mr Chambers’ undoubted status as a vulnerable litigant under CPR PD 1A – and given also the fact that in November 2025 Mrs Chambers had been preparing the Respondents’ own application for permission to adduce further evidence and had only ceased such preparations on receipt of the SJ application: see [50] above.
60. The fact that the December 2025 evidence goes beyond the medical/reasonable adjustments evidence permitted by the order of Judge Greenwood is both unsurprising and irrelevant. The direction on evidence given by Judge Greenwood simply addressed the need for the court to be updated on Mr Chambers’ state of health and on any reasonable adjustments required by the Respondents in the run up to trial. The issue and service of the SJ application triggered a free-standing entitlement under CPR 24.5 for the Respondents to file evidence in answer to that application.
61. The suggestion that the December 2025 evidence should be excluded on the basis that it includes evidence in support of issues which are not pleaded is in my judgment entirely unpersuasive. The fact that the December 2025 evidence includes medical evidence regarding Mr Chambers and a summary of Mrs Chambers current health conditions is readily explained by the direction on that aspect given by Judge Greenwood at paragraph 3 of his order. Whilst I accept that the December 2025 evidence also makes reference to the state of Mr Chambers’ health in the past (in addition to current health conditions) and makes reference to certain experiences suffered by Mrs Chambers, which may be said to go further than the envisaged scope of Judge Greenwood’s directions, it would in my judgment be entirely disproportionate and contrary to the overriding objective to exclude the December 2025 evidence on that basis. Reading the December 2025 evidence as a whole, I reject any suggestion that by it the Respondents were seeking to ‘advance a form of medical defence via the back door’. As made clear during the course of submissions, should the Respondents wish to run a medical defence regarding the manner in which the Company was run, to the extent that any such defence was not already pleaded, they would need to apply for permission to amend in the usual way.
62. I also reject the Applicant’s submission that the December 2025 witness statements were not a ‘proper’ response to the SJ application but rather an attempt to circumvent earlier orders for the timetabling of evidence and their obligations under ss234-6 IA 1986 and as such were ‘an abuse of process’. The Respondents were entitled under CPR 24.5 to file evidence in answer to the SJ application and have done so. It was the Applicant’s decision to issue and pursue that application. The fact that this decision may have had unintended consequences for the Applicant does not render the Respondents’ response to it ‘improper’ or an ‘abuse of process’. I would add that the issue whether the Respondents have in all respects complied with their obligations under ss234-236 IA 1986 in the past in relation to delivery up of documents to the

liquidator is not a pleaded point and in any event does not appear to be a point open to the Applicant to take.

63. In oral submissions Mr Butler went on to contend that the evidence filed by the Respondents on 17 December 2025 had not been properly served, on the basis that it had only been lodged on CE-File. He also argued that the Respondents were one or two days late with the filing of medical evidence in accordance with Judge Greenwood's direction.
64. Dealing first with the point on service: in the circumstances of this case, I am satisfied that formal service of the December 2025 evidence should be dispensed with. It is clear from the correspondence in evidence that Mrs Chambers had by email dated 17 December 2025 informed the Applicant's solicitors that she had uploaded the Respondents' December witness statements and attendant exhibits to CE File that day, but was unable to email the same to the Applicant as the exhibits were too large. By her email, she had asked whether the Applicant would be able to access the documents from CE File. The Applicant's solicitors had then accessed the documents from CE File, printed them out and included them as a new 'Bundle G' for the hearing, which they sent to the Respondents on 18 December 2025. Mrs Chambers informed the court that at no time up to receipt of the Applicant's skeleton argument had the Applicant indicated in correspondence that it would be objecting to the Respondents' December 2025 evidence, whether on service grounds or otherwise. Had the Applicant wished to take a point on service, it should have alerted Mrs Chambers to its position promptly in response to her email of 17 December 2025. At that stage the Respondents still had ample time in which to effect formal service of evidence in answer to the SJ application comfortably ahead of the deadline for such evidence (which was 7 days prior to the return date, ie the first day of trial). In my judgment the time for the Applicant to take any point on service has long since passed.
65. Dealing next with the slightly late filing of medical evidence pursuant to Judge Greenwood's direction: from contemporaneous correspondence, it is clear that the very short delay in filing such evidence arose as the Respondents were awaiting receipt of the latest report from Mr Chambers' doctor. Mrs Chambers alerted the Applicant's solicitors to this by email timed at 2.24am on 15 December 2025 and in consequence a one day extension was agreed by email at 12.12 that day. Taking into account the agreed one day extension, the medical evidence was at most one day late under the terms of Judge Greenwood's order. In my judgment nothing turns on this. If necessary I would grant relief from sanction on the ground that the breach was trivial.
66. For all these reasons, I declined the Applicant's invitation to exclude the December 2025 evidence.

Applicant's trial adjournment application

67. In light of my ruling on the December 2025 evidence, the Applicant applied for an adjournment of the trial. On behalf of the Applicant, Mr Butler contended that the Applicant had not been afforded sufficient time to analyse the documentation exhibited to the Respondents' December witness statements in detail. The Applicant also had concerns as to *inter alia* (i) a number of generic handwritten invoices produced (a relatively small proportion of the c£1m claim, totalling approximately £30,000-

£40,000); and (ii) how a significant proportion of the new documentation was seemingly compiled within a little over a month of trial. Mr Butler maintained that whilst it was not possible to say at this stage whether such concerns were well founded, if the Applicant was to deal with the new material, it would wish to seek directions providing for the forensic inspection of both electronic and physical copies of some of the documents.

68. Mr Butler went on to argue that even leaving aside the need for forensic analysis of certain documents, the detailed nature of the material disclosed meant that, 'if [the Applicant] is to make an accurate assessment of the impact of this evidence on the quantum of its claims, a significant amount of work will be required' (A's skeleton, paragraph 47). In that regard he reminded the court that the Applicant had prepared a detailed spreadsheet analysis ('the Annex') of the documentation appended to the APOD; the Annex, he argued, would need updating to account for the new materials; a task likely to be, as Mr Butler reiterated at paragraph 48 of his skeleton, 'a significant undertaking'.
69. Mr Butler maintained that the Applicant was 'not in a position to deal with the contents of Bundle G at trial' and that, if the Respondents' December evidence was to be admitted, the only practical course was for the trial to be adjourned: Applicant's skeleton, paragraph 48.
70. The Respondent opposed the adjournment application. They argued that the Applicant had had possession of the December 2025 evidence for a month before trial, noting that, even allowing for the Christmas break, there had been at least 14 working days between the date on which the new evidence came into the Applicant's possession and the first day of trial. Given that the Applicant had the benefit of a team of solicitors, a barrister and legally qualified in house counsel, they argued, this was more than sufficient time in which to analyse the new materials. The Respondents also contended that an adjournment would cause them 'serious prejudice' as it would put at risk what they described as a 'unique clinical window' in which Mr Chambers was fit for trial. An adjournment, they argued, would 'further damage the Respondents' health'. The fair and proportionate course, they maintained, was to proceed with the trial.
71. Having considered the parties' competing submissions on the question of adjournment, I concluded that the trial should be adjourned. Whilst the Applicant has had possession of the December 2025 evidence for approximately 14 working days, given the volume and nature of the documentation exhibited to the Respondents' December witness statements, I accept that the Applicant reasonably requires a fuller opportunity to (i) analyse and interrogate that documentation, (ii) take stock of its impact on the Applicant's claims, (iii) prepare, file and serve evidence in reply if so advised, and (iv) update the Annex for use at trial.
72. In reaching this conclusion I confirm that I have taken into account the fact that whilst Mr Chambers is currently fit for trial, he remains *at risk* of relapse. The medical evidence before me however does not support the Respondents' contention that Mr Chambers was in a '*unique*' window of fitness.
73. The risk of relapse is but one of many factors for the court to take into account when deciding whether or not to grant the adjournment. In the circumstances of this case, the

detriment posed by the risk of relapse (and the stress that both Respondents undoubtedly feel at the prospect of a further adjournment) are in my judgment outweighed by the benefits that an adjournment will bring, not only to the Applicant, but to the Respondents and the court. In my judgment the grant of an adjournment will further the overriding objective and ensure the orderly, efficient and fair disposal of the case.

74. The adjournment will also allow the Applicant a proper opportunity to reevaluate its case in light of the documentation now produced, thereby potentially narrowing the issues between the parties and improving prospects of settlement.
75. For all these reasons, I adjourned the trial.

The Summary Judgment Application

76. Notwithstanding the grounds upon which it had pursued an adjournment of trial (summarised at [67]-[69] above), the Applicant continued to pursue the SJ application. For reasons which I shall come on to, this was a hopeless stance for the Applicant to take, considered in context. The fact that ICC Judge Greenwood gave permission in June 2025 for a summary judgment application to be issued does not detract from that conclusion. Judge Greenwood was dealing with an application for an adjournment of the trial on medical grounds and from the transcript of the hearing it is clear that he was not addressed in detail on the various limbs of the Respondents' pleaded defence.

The law

77. CPR r. 24.3 provides that the Court may grant summary judgment on a claim if:
- i) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
 - ii) there is no other compelling reason why the case should be disposed of at a trial.
78. The principles applicable to such applications are well known and were not in dispute. In summary
- (1) The court must consider whether the defendant has a 'realistic' as opposed to a 'fanciful' prospect of success;
 - (2) A 'realistic' defence is one that carries some degree of conviction. This means a defence that is more than merely arguable;
 - (3) In reaching its conclusion the court must not conduct a 'mini-trial';
 - (4) This does not mean that the court must take at face value and without analysis everything that a 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;
 - (5) However, in reaching its conclusion the court must take into account not only the evidence placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;

- (6) The burden rests on the claimant to establish that the defendant has no real prospects of success and that there is no other reason for trial. If the claimant adduces credible evidence in support of the summary judgment application, the defendant then comes under an evidential burden to prove some real prospect of success or other reason for trial.

The sums claimed

79. In its original form as served, the SJ application and the draft order accompanying it, supported by Elliott (2), sought summary judgment on all the Applicant's claims for breaches of trust and/or breaches of fiduciary duty (the Company claims) as pleaded in the PoC at paragraphs 41 to 61: Elliott (2) paragraph 19. The SJ application covered all Payments falling within the categories set out at PoC 19, totalling £1,091,021.33, less sums which the Applicant accepted had been accounted for by the documentation annexed to the APoD, leaving a balance claimed in the SJ application (as set out in the draft order accompanying it) as against both Respondents on a joint and several basis of £860,207.21 (later adjusted down to £858,818.61) and a further balance sought against Mr Chambers alone in the sum of £55,281.86. The evidence served in support of the SJ application, Elliott(2), was prepared on that basis.
80. In light of its failure to persuade the court to exclude the December 2025 evidence, however, at the hearing before me, the Applicant adopted a different tack. This was heralded for the first time as the Applicant's 'fall-back' position in Mr Butler's skeleton argument, exchanged shortly before trial. Paragraph 116 of Mr Butler's skeleton argument stated that, in the event that the December 2025 evidence was not excluded, the Applicant sought summary judgment in the sum of £104,134.77 (comprising £48,926.48 against both Respondents on a joint and several basis and £55,205.29 against Mr Chambers alone) instead ('the Alternative SJ case'). These sums were said to be a subset of the Payments which the Respondents had either admitted related to personal rather than Company expenditure in their own analysis of the Payments within the documents contained in Bundle G, or had failed to explain or justify.

Submissions

81. The Respondents objected to the Applicant pursuing the SJ application at all, reminding the court that the application was essentially a 'backstop' measure to cater for the possibility that the Respondents did not attend for trial.
82. The Respondents also strongly objected to the Applicant running the Alternative SJ case and 'cherry-picking' given sums for summary disposal. They said that they had been given no notice of the Alternative SJ case prior to exchange of skeleton arguments and that it was not heralded in any way by Elliott(2), notwithstanding that the Respondents had identified the personal payments now relied upon for the purposes of the Alternative SJ case in schedules included in the June 2025 Bundle, which the Applicant had had in its possession for several months prior to preparation and issue of the SJ application.
83. The Respondents argued that a full analysis of all documentation now adduced would show that in reality the Company owes them money, rather than the other way around, and that it would be unfair to permit the Applicant to seek to 'cherry-pick' given sums out of context and to ignore the bigger picture.

84. Mr Butler argued that the Respondents had no answer to the selected sums claimed by the Applicant's Alternative SJ application, relying on Manson v Smith [1997] 2 BCLC 161 at 163-164. This case is authority for the proposition that there is no rule 4.90 set-off (as it then was) available between a debt due to a misfeasant director and his liability to repay moneys as a result of his misfeasant conduct.
85. Mr Butler argued that any personal expenditure from the Company's bank account was 'necessarily misfeasant'. The Respondents vehemently opposed this suggestion, arguing that it would be 'premature' at this stage to proceed on the basis that the payments in question were misfeasant, reminding the court that they each made numerous payments from their own bank accounts on behalf of the Company on a running basis as and when required, alongside payments from the Company's business account when funds permitted, and contending that a full reconciliation was required in order to see the full picture. To make good that argument, during the course of the hearing before me, Mr Chambers took me to numerous examples in Bundle G of evidenced payments from the Respondents' personal bank accounts on behalf of the Company, including material sums *post-dating* the Payments relied upon by the Applicant on its Alternative SJ case. Both Respondents submitted that it would be unjust in the circumstances to address isolated payments without a full trial.
86. The Respondents also reminded the court that there were other issues to be determined at trial. These included the validity of the liquidation process and subsequent purported assignment; issues which, they argued, required 'oral witness testimony', including oral testimony from Mr Bourne.
87. Mr Butler argued that the Respondents' challenge as to the validity of the liquidation process, which he described in submissions (somewhat inaccurately) as 'complaints against the liquidator', went 'nowhere', referring the court to the case of Quereshi (as liquidator of Edgware Constitutional Club Limited) v Association of Conservative Clubs Limited [2019] EWHC 1165 (Ch) at [54].
88. The Respondents went on to argue that in reality the Alternative SJ application would not narrow the issues to be resolved at trial. The Alternative SJ application covered only a small fraction of the sums being claimed by the Applicant. There would still have to be a trial regarding the sizeable balance.
89. At paragraph 113 of his skeleton argument, Mr Butler stated that the Applicant 'reserved its position' as to whether, if summary judgment was granted, it would proceed to trial in respect of the remaining balance of its claims.

Conclusions on the SJ application

90. In my judgment the SJ application should be dismissed. On the pleadings and evidence before me, I conclude that the Respondents have realistic prospects of defending the Company claims in their entirety. I am also satisfied that there are in any event other compelling reasons why the whole case (that is to say, the Company claims *and* the Liquidator claims) should be disposed of at a trial.
91. It is a fundamental part of the Respondents' defence that, as sole member of the Company, Mrs Chambers did not vote in favour of placing the Company into CVL and was not aware of the steps being taken by Mr Chambers to place the Company into

CVL until long after Mr Bourne's purported appointment as liquidator. This puts in issue the validity of the liquidation process and subsequent assignment of claims to the Applicant.

92. The case of Quereshi does not greatly assist the Applicant in this regard. Mr Butler relied upon Quereshi at [54] in support of the proposition (in broad summary) that a mere procedural irregularity would not render a liquidation process invalid. In my judgment a fuller reading of the judgment in Quereshi at [54]-[57] is required. Paragraphs [54]-[57] provide as follows:

'54 Since procedural rules are designed to afford protection, the sensible approach when considering the effect of an infringement of such rules is to ask what the rules require, and what adverse effect might be delivered by any particular non-compliance with the rules: see Lewison LJ in *Speechley v Alliot* [2014] EWCA Civ 230 at [28]. If the protective process is omitted, but the same ends would *inevitably* be delivered even with the protection in place, then the courts will not insist that companies re-run the decision making process, passing through all the proper hoops, simply to get to the same finishing point.

55 This guiding principle is described forcefully in a number of cases. See Lindley LJ in *Brown v La Trinidad* (1887) 37 Ch D 1 at 17:

"I think it is most important that the court should hold fast to the rule upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment"

56 Similarly, see Plowman J in *Bentley-Stevens v Jones* [1974] 1 WLR 638 at 641A: where "the irregularities can all be cured by going through the proper processes and the ultimate result would *inevitably* be the same" (emphasis added) the court will not interfere. See too *Southern Counties Deposit Bank v Rider* (1895) 73 LT 374.

57 Two qualifications to this approach are important. First, concessions are only granted by the court where there is an irregularity in following prescribed processes; the courts will not validate a decision where no effort at all has been made to adhere to the protective procedures.... To proceed otherwise might suggest the imposed protection lacks any purpose. Secondly, the rigour of the 'inevitability' condition is important: the facts must demonstrate that the same ends would *inevitably* be achieved. It follows, for example, that rights of appearance or rights to state a case will always be insisted upon.'

93. Also of note is that, on the facts of Quereshi, the members were found to have voted in favour of an MVL and no member had challenged the validity of that process; it was

only the respondent to the application, who was neither a member or creditor, who had raised the issue: Quereshi at [59]-[60].

94. The two caveats noted in Quereshi at [57] are particularly pertinent in this case. The Respondents' evidence is that no effort was made to adhere to the correct procedure. Moreover, on the evidence as a whole, the 'inevitability' condition is not met. Mr Butler sought to argue that the Company would have been wound up anyway, on the petition of Abeds. Even putting to one side the fact that a winding up order on that petition was not inevitable (the Company may have applied to set aside the default judgment on which the petition was based, for example, or may have sought an adjournment of the first hearing with a view to paying off the petitioner and the supporting creditor), the mere fact that the Company could have been placed into compulsory liquidation, rather than CVL, does not in my judgment meet the 'inevitability' test referred to in Quereshi at [57]. That 'inevitability' test requires looking at whether *the same result* (ie the placing of the Company into CVL, with Mr Bourne appointed as liquidator) would have been achieved had the correct procedures been followed.
95. By its PoR, the Applicant has largely ignored the Respondent's challenge in their APoD regarding the validity of the liquidation process and has not pleaded a separate alternative case against Mr Chambers on this issue: see [18] to [24] above. Whilst it has adduced two witness statements from Mr Bourne which refer to correspondence sent to and received from Mrs Chambers' personal email account, and correspondence from Mr Chambers' email account purportedly 'signed off' by Mrs Chambers, in the period running up to Mr Bourne's purported appointment, Mr Bourne tacitly accepts by his evidence that he did not actually meet or speak to Mrs Chambers at any time over that period. Mrs Chambers' case is that she did not know of and did not consent to the placing of the Company into CVL. Whilst I accept that the court does not have to take at face value everything that a party says in their witness statement, particularly if contradicted by contemporaneous documents, Mrs Chambers' case must be considered in context; in particular the clear evidence before the court that she was for many years the victim of material conduct which included interference with/interception of her mail and Mr Chambers' own evidence that he accessed Mrs Chambers' devices in order to sign off documents in her name relating to the CVL in the run-up to Mr Bourne's purported appointment as liquidator. In short, on the facts of this case, the issue whether Mrs Chambers as sole member knew of and consented to the placing of the Company into CVL is plainly not an issue which can be resolved on documents alone. It will require full interrogation at trial with the benefit of cross-examination of all material witnesses, including both Respondents and Mr Bourne.
96. A successful challenge of the validity of the CVL would in turn impact on the validity of the assignment by which the Applicant claims entitlement to bring these proceedings. The assignment of the Company claims was made by Mr Bourne purportedly as agent for the Company. The assignment of the Liquidator claims was made by Mr Bourne purportedly as principal. Whilst I was not taken in submissions to the assignment itself, the consideration payable by the Applicant under the assignment appears to have been consideration payable in respect of *all* the claims purportedly assigned; no separate consideration for the Company and Liquidator claims respectively is mentioned in the evidence.

97. Whilst, in theory, it is open to a company to ratify a transaction purportedly entered into in its name or on its behalf but not in fact authorised by it at the time (Bowstead on Agency, 25th ed, arts 13 to 20), on the facts of this case, no such ratification process has been undertaken. Even if it had, it could only extend (at best) to the Company claims, as Mr Bourne purported to act as principal for the remainder of the claims; and it could well meet with further difficulties if the consideration for the Company claims is not severable from the consideration for the claims in respect of which Mr Bourne purported to act as principal.
98. In my judgment, on the pleadings and evidence as they stand, the Respondents' challenge to the validity of the CVL and the assignment would of itself warrant a dismissal of the SJ application. Having heard full submissions on the other grounds relied upon, however, I do not base my decision to dismiss the SJ application on the validity challenge alone. I base it also on the conclusions reached at [100] to [104] below.
99. The mere fact that the SJ application was originally intended as a 'backstop' measure, to cater for the possibility that the Respondents did not attend for trial, did not, of itself, preclude the Applicant from pursuing it on the first day of trial.
100. The pursuit of the Alternative SJ case, on a basis heralded only on exchange of skeleton arguments, however, was in my judgment procedurally unfair. The Respondents were entitled to know the case they have to meet. This was of particular importance in the present case, given that Mr Chambers is a vulnerable litigant with well-evidenced serious health conditions. To be bounced into an alternative case in such circumstances, thrown together at the eleventh hour, was in my judgment unfair to the Respondents. The Applicant should properly have set out the Alternative SJ case in its evidence in support of the SJ application had it wished to pursue it, but failed to do so. Mr Butler argued that it was only on receipt of the December 2025 evidence that the Applicant learned of the personal payments relied upon for the purposes of the Alternative SJ case. This was not correct, however, as the Respondents had disclosed details of the personal payments in question in a schedule included in the June 2025 Bundle, which the Applicant had had in its possession for several months prior to the issue of the SJ application and had chosen to ignore.
101. Mr Butler's submissions that the Respondents had no answer to the selected sums claimed by the Applicant's Alternative SJ case were in any event unpersuasive. The case of Manson v Smith relied upon is simply authority for the proposition that there is no rule 4.90 set-off (as it then was) available between a debt due to a misfeasant director and his liability to repay moneys as a result of his misfeasant conduct. The Respondents have not admitted misfeasance. Nor have they yet been found to be misfeasant.
102. In this regard I reject Mr Butler's submission that any personal expenditure from the Company's bank account was 'necessarily misfeasant'. The Respondents' case is that they each made numerous payments from their own personal bank accounts on behalf of the Company on a running basis as and when required, alongside payments from the Company's business account when funds permitted. This is not unusual in the context of a small family-run company. The numerous examples in Bundle G of evidenced payments from the Respondents' personal bank accounts on behalf of the Company, to which I was taken during submissions, including material sums *post-dating* the

payments relied upon by the Applicant on its Alternative SJ case, strongly support the Respondents' account of events.

103. In my judgment it would be premature at this stage to proceed on the basis that the payments relied upon for the purposes of the Alternative SJ case were necessarily misfeasant. Mr Butler's attempts to run a Sequana argument in relation to certain of the payments, for example, based partly on selected quotes from a directors questionnaire completed by Mr Chambers on 30 July 2020 and an email sent in October 2021, did not bear close scrutiny when the quoted passages were considered in context. Overall, the process of determining whether or not the Respondents have been misfeasant in any material respect will involve multifactorial analysis of the evidence as a whole and detailed submissions of law. In my judgment it would be unjust in the circumstances of this case to address isolated payments in the manner suggested by the Applicant without a full trial. The Respondents' case is that a full analysis of all documentation now adduced will show that in reality the Company owes them money, rather than the other way around. The Applicant itself has accepted that it needs more time to digest the impact of the December 2025 evidence on the quantum of its claim. Indeed this was one of the grounds relied upon in support of its application for an adjournment of the trial: see [68] and [69] above.
104. A further factor pointing in favour of dismissal of the Alternative SJ case is that it covers only a small fraction of the sums claimed by the Applicant. Even if the Applicant had persuaded me that the Respondents had no real prospect of successfully defending its claim in respect of the sums in question (which it has not), there would still have to be a trial in respect of the balance and the time required for trial would not be materially shortened.
105. For all these reasons,
- (1) On the pleadings and evidence before me, I conclude that the Respondents have realistic prospects of defending the Company claims in their entirety;
 - (2) I am also satisfied that there are in any event other compelling reasons why the whole case (that is to say, the Company claims and the Liquidator claims) should be disposed of at a trial.

The Way Forward

106. I shall hear submissions on costs and any consequential relief at a later hearing following the handing down of this judgment.

ICC Judge Barber