Neutral Citation Number: [2024] EWHC 2736 (Ch)

Case No: PT-2018-000556

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (CH D)

Royal Courts of Justice
Rolls Building, London EC4A 1NL

Date: 30/10/2024

Before :

MASTER BOWLES (SITTING IN RETIREMENT)

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Between :

Rollerteam Limited	**Claimant**
- and -	
(1) Linda Riley	
-and-	
(2) Stephen Riley	**Defendants**

- -
- -

Simon Williams (instructed by **Direct Acces**) for the **Claimant**
Cheryl Jones (instructed by **Direct Access**) for the **1st Defendant**
The 2nd Defendant did not appear and was not represented,

Hearing dates: 26, 27 and 28 June 2024

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER BOWLES (SITTING IN RETIREMENT)

Master Bowles (sitting in retirement) :

1. This judgment reflects a further (and, it is to be hoped, final) stage in long standing litigation between the Claimant, Rollerteam Limited (Rollerteam), and the First Defendant, Linda Riley (Linda), arising out of a trust deed, dated 11 April 2013, (the trust deed), pursuant to which, until 16 November 2022, Linda held a property at 1 Parkgate Road, in Battersea (Parkgate) upon trust for Rollerteam. The background, history and circumstances of that dispute are set out in some detail in my earlier judgment in this matter (**[2023] EWHC 107 (Ch),** with which this judgment should be read**.** As appears in that judgment, at the dates material to that judgment (and, now, this judgment), the director and controlling mind of Rollerteam was Mr John Aidiniantz (John). John is Linda's half-brother.

2. My earlier judgment followed a three day trial on 11, 12 and 13 October 2022, in respect of a number of Core Issues, as earlier defined in my order of 14 December 2021. I determined and declared that Linda had been in breach of trust in failing to procure the transfer of Parkgate to Rollerteam with vacant possession, when requested to do so by Rollerteam, by request dated 22 October 2015, and by failing to procure the sale of Parkgate with vacant possession, when requested to do so by Rollerteam, by request dated 23 May 2017.

3. I held, in my judgment, handed down on 25 January 2023, that, in failing to procure the transfer with vacant possession, requested in October 2015, Linda had been in breach of her obligations, as trustee, under clause 10 of the deed of trust, when read with section 11(1)(b) of the Trusts of Land and Appointment of Trustees Act 996, and that, in failing to procure the sale of Parkgate with vacant possession, as requested in May 2017, Linda had failed in her obligations under clause 10 of the deed of trust.

4. More specifically, I determined, in paragraphs 166 and 167 of my judgment, that, faced with requests to procure, in one case, the transfer and, in the other case, the sale of Parkgate with vacant possession, in circumstances, in each instance, which might well have resulted in expensive litigation, it remained Linda's obligation to take steps to implement, or give effect to, Rollerteam's valid directions. In each instance, however, she would have been entitled, once she became aware that compliance with Rollerteam's requests would be costly, to turn to Rollerteam for funding, or indemnity. Linda, however, took no such steps, but, instead and in breach of trust, elected to treat the May 2017 request as illegal and the 2015 request as one that could be declined.

5. Foreshadowing the matters to be discussed and determined in this judgment, I indicated, in paragraph 167, that 'The consequences of those breaches, how matters would have played out had Linda not ignored, or declined, the directions and what, if any, equitable compensation' might 'fall due to Rollerteam, arising from those breaches' were 'all matters for future consideration'.

6. My order of 25 January 2023 gave directions for the determination of Rollerteam's entitlement to equitable compensation, arising from the breaches that had been established and, also, the determination of the issues which Ms Riley had raised in her Counterclaim and which had been held over pending the determination of the Core issues. This judgment pertains to those matters.

7. In regard to the claim for equitable compensation, the order limited the breaches of trust for which equitable compensation was, potentially, payable, to those set out in paragraphs 15 to 19 of the Amended Particulars of Claim. Those paragraphs, read with paragraphs 13 and 14 of the Amended Particulars of Claim and with the deletion of paragraph 12 of the original Particulars of Claim, by way of the order of Chief Master Marsh, dated 2 August 2019, have the effect that equitable compensation, if payable, is payable only in respect of the consequences of the two breaches of trust set out in paragraph 3 of this judgment.

8. Pursuant to the 25 January 2023 order, Points of Claim and Points of Defence and Counterclaim were served and filed by the parties. By the date of this trial and following further directions, latterly by my order of 29 May 2024, the contentions of the parties were set out in Re-Amended Points of Claim and Re-Amended points of Defence and Counterclaim, dated, respectively, 29 May 2024 and 17 June 2024.

9. The main heads of equitable compensation contended for by Rollerteam relate to mortgage interest payments, which it is said would not have been incurred if, in compliance with the trust deed and her obligations as trustee, Linda had transferred Parkgate to Rollerteam in 2015, or carried out Rollerteam's direction as to the sale of Parkgate in May 2017, to the lost opportunity to benefit from the vacant possession of Parkgate, which, it is said, would have been obtained had Linda complied with her obligations under the trust deed and as trustee, and the wasted legal costs incurred by Rollerteam, in seeking to procure Linda's compliance with her obligations under the trust deed and as trustee.

10. In answer to those claims and, in addition to specific submissions, in respect of Rollerteam's particular claims, Linda raises two broad based defences, namely that, in light of Rollerteam's conduct in respect of and surrounding this litigation, it would be inequitable for Linda to be ordered to pay compensation; alternatively, that she should be relieved, in whole, or in part, from liability to Rollerteam, in respect of equitable compensation, pursuant to section 61 of the Trustee Act 1925.

11. Before turning to the detail, the starting point for all Rollerteam's claims is the contention that 'but for' Linda's breaches of trust, the losses, which are said to be the subject of the claimed equitable compensation, would not have been incurred. The essential premise, underlying that contention, is that, if Linda had conducted herself in the way set out in paragraphs 166 and 167 of my earlier judgment and paragraphs 4 and 5 of this judgment, then, whether in 2015 or 2017, vacant possession would have been obtained, the mortgage, to which Parkgate was subject, discharged, thereby relieving Rollerteam of its obligation under clause 8 of the trust deed to reimburse Linda for mortgage payments made by her in respect of the mortgage, and legal costs would not have had to be subsequently and abortively incurred in seeking to procure either a transfer, or a sale, with vacant possession.

12. The 'but for' test for causation, in respect of claims for equitable compensation, is not in any doubt: **Target Holdings v Redferns [1996] AC 421**. The question, as to what would have occurred if only Linda had conducted herself as, as trustee, she should have done, although not exhaustively pursued in argument and evidence, is rather less straightforward to answer.

13. The probability, however, as it seems to me, is that, had Linda acknowledged the validity of either the 2015, or the 2017 direction and acted, in the manner she should have done, upon that direction, then vacant possession would have been obtained, the mortgage would have been discharged and such legal costs, as Rollerteam team incurred, subsequent to whichever direction came to be implemented, would not have had to be incurred.

14. In particular, I am not persuaded that, in the context of either the 2015 or the 2017 direction and had Linda taken steps to implement either direction, any funding that she might have required from Rollerteam, or any alternative other arrangements necessary to effect vacant possession, would not have been put in place, nor that, on that implementation, Rollerteam, in respect of the 2015 direction, would not, in fulfilment of its obligations under clause 10 of the trust deed, have discharged the mortgage over Parkgate and brought to an end its obligations to reimburse Linda in respect of the then existing mortgage over Parkgate.

15. The history of this matter, as set out in my earlier judgment, makes plain that from an early stage Rollerteam has been anxious to secure either the transfer or the sale of Parkgate, with a corresponding termination of the trust created by the trust deed and of its obligations to Linda, as to reimbursement of mortgage payments, or otherwise, under the trust deed.

16. In that context and given that both the 2015 and 2017 directions (as well as an earlier direction, in March 2014 and a subsequent direction in July 2019, all as set out in my earlier judgment) were initiated via Rollerteam's then solicitors, I consider it extremely unlikely that, prior to the initiation of the various directions, provision was not made for the discharge of the mortgage over Parkgate, or, therefore, that, had Linda taken steps to implement the relevant directions, that the Parkgate mortgage would not have been discharged.

17. In regard to the 2017 direction, which called for a sale, the discharge of the mortgage would, necessarily, have been effected out of the proceeds of sale. In regard to the 2015 direction, paragraphs 67 and 68 of my earlier judgment records that the direction, itself, by letter dated 2 July 2015, affirmed Rollerteam's ability to discharge the mortgage and that, by October 2015, Rollerteam was in funds to discharge the mortgage.

18. Although the point was made, in argument, that at the hearing of the Inquiry before the then Chief Master, in February 2018, referred to in paragraph 64 of my earlier judgment, there is mention of evidence from John (paragraph 14 of the Chief Master's judgment) to the effect that Rollerteam had no money, that evidence, even if true at the date it was given, does not establish a lack of liquidity in Rollerteam, at the date of the 2015 direction. What is also clear is that when, eventually, Parkgate was transferred to Rollerteam, pursuant to my order of 14 October 2022 and as referred to in paragraph 96 of my earlier judgment, the mortgage over Parkgate was duly discharged. I see no reason to think that, had the transfer taken place earlier and as requested by Rollerteam, the same would not have occurred.

19. Correspondingly, albeit with somewhat more hesitation, I am satisfied that, had Linda accepted the validity of the 2015 or 2017 directions and, in moving to implement those directions, had had call to seek costs, or indemnity as to costs, from Rollerteam, in order to secure vacant possession of Parkgate from, in particular, her brother, Stephen Riley

(Stephen), then either those costs would, in the event, have been forthcoming, such as to enable Linda to comply with the direction as to vacant possession, or other arrangements to that end, would have been put in place.

20. I have little doubt but that, if Linda had sought to implement either the 2015 or 2017 direction, she would have faced opposition in securing vacant possession. Stephen's occupancy of the upper floor of Parkgate and his steps to assert rights in respect of Parkgate are fully set out in my earlier judgment. It is not realistic to think that, if Linda had, in pursuance of her obligation as trustee, required him to leave Parkgate, he would have done so without a battle and without raising, as against her, the claims and defences asserted both before the Chief Master, as set out in paragraphs 89 to 92 of my earlier judgment, and as argued before me and determined by me in the October 2022 trial. While his arguments would, for the reasons given by the Chief Master and by me, have failed, there can be no doubt but that, in defeating those arguments, Linda would have had to incur significant costs.

21. The question, then, is what would have been Rollerteam's response, when called upon by Linda, to advance those costs, or indemnify her, in respect of those costs.

22. In that regard, it is plain from the narrative contained in my earlier judgment that, as early as 2013, Rollerteam was seeking vacant possession of Parkgate. In that context, the ordinary expectation would be that Rollerteam, to achieve its desired end, would have been happy either to provide, or guarantee, the necessary funding, or, by agreement and as eventually occurred, to take a transfer and then take its own steps to secure vacant possession.

23. The other side of the coin, however, as demonstrated in these proceedings, is that, contrary to my ruling on core issue 3, as set out in my earlier judgment, at paragraphs 168 to 173, it was, at least from the commencement of these proceedings in 2018, Rollerteam's position that Linda, in allowing Stephen and another long-term occupant of Parkgate, Elizabeth Mackertich (Elizabeth), to remain in occupation, was in breach of clause 3 of the trust deed. The corollary of that position, as it seems to me, is that, looked at from Rollerteam's perspective, Rollerteam's clear expectation would be that the cost of removing Stephen and Elizabeth should fall upon Linda and not upon Rollerteam.

24. That position, namely that the continued occupancy of Parkgate by Stephen and Elizabeth was seen as the responsibility of Linda, is reflected, as at 2019, by the letter written by Rollerteam's then solicitors, HPLP, dated 11 July 2019, referred to in paragraph 79 of my earlier judgment. That letter, which, at that stage, directed Linda to effect a transfer of Parkgate, without first obtaining vacant possession, made plain that, in proceeding in that way, Rollerteam was not waiving any rights that it might have, as against Linda, for breach of trust, in respect of matters that might be raised by the occupants of Parkgate when faced with possession proceedings by Rollerteam.

25. Notwithstanding the foregoing, it remains my view that the probability is that, had Linda sought to implement the 2015 and 2017 directions, as she should have done, then either the necessary funds would have been forthcoming from Rollerteam to allow her to litigate against the occupants of Parkgate, or, more likely, that she and Rollerteam would have reached an accommodation, whereby, as eventually transpired, Parkgate

was transferred to Rollerteam and Rollerteam, itself, took steps (as since the earlier trial it has done) to secure possession from the then occupants of Parkgate.

26. In regard to 2015, as appears from my earlier judgment, at paragraphs 67 and 68, the parties came very close to effecting a transfer and the termination of the trust. It was only after all other arrangements were in place that the projected transfer foundered on the question of vacant possession. If, in that context, Linda, instead of denying her obligation to give vacant possession, had accepted that obligation, subject to funding, then, it seems to me that, one way or another, the matter would have proceeded. At that stage, the current proceedings were not on foot and positions, correspondingly, had not become entrenched. Rollerteam wanted the matter to proceed and it was in Rollerteam's interests, having regard to its potential mortgage obligations, for the matter to proceed.

27. Although, as I commented in paragraph 57 of my earlier judgment, John, who, as already stated, was, at the dates relevant to this litigation, the guiding force and controlling mind of Rollerteam, has shown a tendency to sometimes artificial legalism, I am satisfied, having seen and heard him give evidence, that, faced with the opportunity of securing the transfer of Parkgate and of achieving vacant possession, he is much more likely to have been guided by practicality and self-interest, than to have taken a stand on legal principle.

28. I am satisfied, accordingly, that the transfer would have proceeded and that, either any necessary funds would have been forthcoming to enable Linda to tale any necessary proceedings, or, perhaps more likely, that the parties would have agreed a transfer without vacant possession, leaving Rollerteam to take its own steps to procure possession.

29. In regard to 2017, it seems to me that the same considerations would have applied to the same effect and that, looking at the matter pragmatically, the strong likelihood is that John, on behalf of Rollerteam, would have engaged with Linda either to fund the necessary litigation, or to take a transfer of Parkgate without vacant possession and itself procure vacant possession prior to the then contemplated sale.

30. The question, as to what would have happened in 2017, had Linda complied with her trustee obligations, is, however, given my conclusion as to the 2015 direction, one that may well be entirely otiose. If Linda had complied with the 2015 direction, with the result that, allowing for the time likely to be taken in possession proceedings against the Parkgate occupants, Parkgate would, by a date in 2016, have been transferred to Rollerteam, the mortgage discharged and vacant possession obtained, then there would have been no 2017 direction, nor any need, or place, for any further direction to Linda, in her capacity as trustee.

31. In the light of the foregoing and, in particular, my conclusion that 'but for' Linda's breach of trust, in respect of the 2015 direction, the transfer of Parkgate would have been effected, the mortgage would have been discharged and vacant possession would have been obtained by, at the latest, a date in 2016, I turn to consider what Rollerteam's position would have been, in respect of each of its heads of claim, had, counterfactually, that state of affairs had come to pass.

32. In regard to the mortgage, Rollerteam's, in its Points of Claim, in respect of equitable compensation, pleaded that it should be reimbursed for payments made under, or in

respect of, the mortgage, either for the period April 2014 to June 2019, in the sum of £103,897.22, or from November 2015 to June 2019, in the sum of £78,604.90. In the further alternative, if reliance fell to be placed on Linda's non-compliance with the 2017 direction, reimbursement was sought in the sum of £46,029.11, reflecting the period April 2017 to June 2019.

33. The figure of £103,897.22 was said to arise from Linda's non-compliance, in breach of trust, with a direction given by Rollerteam, in respect of the transfer of Parkgate, in March 2014. However, as explained in paragraph 7 of this judgment (and paragraphs 72 and 73 of my earlier judgment) that alleged breach was deleted from Rollerteam's Amended Particulars of Claim, by the order of Chief Master Marsh, dated 2 August 2019, and, accordingly, is no longer before the court. Rather, the 'live' question, in respect of the mortgage, is what reimbursement, if any, is due to Rollerteam consequential upon Linda's breach of trust, in respect of the October 2015 direction.

34. As to that, in careful written final submissions, Mr Williams, on behalf of Rollerteam, drew attention to the sum of £18,969.24 paid directly to the mortgagee, Mortgage Works. Those payments, as shown in Rollerteam's bank statements, were, however, all made between 2013 and July 2015 and, accordingly, all, therefore, precede Linda's failure to implement the October 2015 direction. It follows that none of those payments are payment that 'but for' Linda's 2015 breach of trust would not have had to be made.

35. The balance of the payments, in respect of which, as pleaded, reimbursement is sought and, specifically, the payments potentially recoverable from Linda, by reason of her failure to implement the 2015 direction, are all payments characterised, in the pleadings and by Mr Williams in his oral submissions, as being made not by Rollerteam but on behalf of Rollerteam.

36. The reason for that characterisation is because, in fact, the payments in question were not made by Rollerteam, but, as set out in paragraphs 62 to 65 of my earlier judgment, were made by John, pursuant to orders of Chief Master Marsh dated, respectively, 25 June 2018, 25 January 2019, 7 May 2019 and 4 July 2019, out of funds that John had been ordered to pay into court by Robert Englehart QC, by his order dated 5 June 2015.

37. As is clear, however, from those paragraphs and from the judgment of Chief Master Marsh, dated 16 May 2018, those orders were not orders made in respect of Rollerteam, or Rollerteam's liability, in respect of the mortgage, but reflected John's personal obligation to reimburse Linda in respect of all mortgage instalments falling due from September 2012. It follows that, although, as appears from Rollerteam's bank statement entry of 3 July 2015, the funds paid into court, or, at least, the bulk of them, emanated from Rollerteam, those payments were not made by Rollerteam but by John and were not paid on behalf of Rollerteam but were paid by John instead of being paid by Rollerteam.

38. Although Rollerteam had, as discussed later in this judgment, the clear obligation, under clause 8 of the trust deed, to reimburse Linda in respect of mortgage instalments, it had, as set out in paragraphs 60, 156 and 158 of my earlier judgment, taken the erroneous view that, on purported principles of mutuality, it was entitled to suspend, or refuse, reimbursement, by reason of Linda's breaches of the trust deed and it was, in that context, that John, in his own right, and not on behalf of Rollerteam was called

upon to reimburse mortgage instalments incurred by Linda and, in that context, that monies paid into court by John were paid out for that purpose.

39. In the result, I am satisfied that Rollerteam's claim to recover equitable compensation in the period to June 2019 fails.

40. In regard to the period from June 2019 until the eventual redemption of the Parkgate mortgage, following the transfer of Parkgate to Rollerteam, as set out in paragraph 96 of my earlier judgment, no monies have yet been paid to Linda in reimbursement of mortgage payments effected by her in respect of the Parkgate mortgage. As set out in paragraph 65 of my earlier judgment, the order of Chief Master Marsh, dated 4 July 2019, exhausted the monies in court in circumstances where, as explained in paragraph 38 of this judgment Rollerteam was refusing to honour its obligations under the trust deed.

41. Although the reimbursement of those monies, pursuant to Rollerteam's obligation under clause 8 of the trust deed, falls under and forms a substantial part of Linda's Counterclaim (£56,193.37), rather than Rollerteam's claim for equitable compensation, it is convenient to consider it in this part of the judgment.

42. There is no doubt that, standing in isolation, Rollerteam is liable to reimburse Linda in the amount claimed. Rollerteam's answer to the claim, however, is that the mortgage payments in question would never have fallen due and would never have had to be reimbursed if only Linda had complied with her obligations under the trust deed and implemented either the 2015 or 2017 direction and, therefore, that either the mortgage payments arose out of her own default and, for that reason, were not subject to reimbursement, or, alternatively, that Rollerteam is entitled to set off, against its liability to reimburse the relevant mortgage instalments, Linda's liability to pay equitable compensation to Rollerteam in respect of and in the amount of those reimbursements, as being reimbursements which 'but for' Linda's breach of trust would not have been incurred.

43. I am comfortable with the latter analysis. It seems to me that Rollerteam is entitled, in equity, to set-off, against and in extinction of its liability under the trust deed for failing to reimburse the relevant mortgage instalments, Linda's own obligation to pay equitable compensation to Rollerteam, in an equivalent amount, for causing Rollerteam to incur its liability to reimburse Linda in respect of those instalments, which 'but for' Linda's breach of trust would never have arisen.

44. I add, for completeness, although the matter was not, in the end, pursued by Mr Williams, on behalf of Rollerteam, that, in his oral and written opening submissions, Mr Wiliams had adverted to a sum of circa £71,000, allegedly overpaid by Rollerteam, to Linda, in respect of the Parkgate mortgage, in the period up to March 2013, and either recoverable, pursuant to the prayer for 'Other Relief', in Rollerteam's Re-Amended Points of Claim, or by way of a set-off, as against monies which might otherwise fall due to Linda in respect of her Counterclaim.

45. This alleged overpayment was not a claim advanced in any of the pleadings in this Claim, nor, by way of set-off, or at all, in Rollerteam's defence to Linda's Counterclaim.

46. Substantively, as, in the end, Mr Williams rightly conceded, any claim, or set-off, in respect of this sum, was, in any event, precluded by the terms of the settlement agreement, dated 21 May 2013, referred to and set out in paragraph 38 of my earlier judgment, whereby Rollerteam agreed that the terms of the settlement were in full and final settlement of 'all and any .. claims howsoever arising and of whatsoever nature' that Rollerteam had or might have against Linda, Stephen, or Linda's sister, Jennifer Decoteau, other than any claims that Rollerteam might have against Linda in respect of Rollerteam's beneficial interest in Parkgate.

47. Reverting to Rollerteam's claim for equitable compensation, the second counterfactual question for my determination is as to what would have happened to Parkgate if vacant possession of Parkgate had been obtained arising out of the 2015 direction and, specifically, what compensatable loss, if any, Rollerteam has suffered arising out of the fact that vacant possession was not obtained until November 2023.

48. In the final iteration of its Points of Claim, namely its Re-amended Points of Claim , dated 29 May 2024, Rollerteam's contention, in respect of this head of claim, was that, 'but for' Linda's 2015 breach of trust, it would have been able to let out Parkgate at an open market rent of at least £3,432 per month, that, alternatively, it, or its directors, would have been able to occupy Parkgate, instead of it, or its directors, having to rent other accommodation, but that, given the passage of time it could not specifically aver which course it would have taken, save that Parkgate would not have been left empty. On this footing, it was pleaded that equitable compensation should be paid either in the sum of £329,472 (representing that monthly sum over the 96 months between November 2015 and November 2023) or in such other sum as the court considered reasonable.

49. Given the pleaded uncertainty as to what would have taken place if vacant possession had been obtained, Mr Williams, in his closing submissions focused upon the chance that Rollerteam had lost, by reason of Linda's breach and argued that I should assess equitable compensation on the basis of an evaluation of the percentage chance of the various possibilities. Those possibilities included, according to John's evidence, the possibility that he and his wife, Andre von Ehrenstein (Andrea) (the current director of Rollerteam) would have occupied Parkgate with their, then, young child, that Parkgate would have been let to students, or that it would, as was undoubtedly canvassed in, I think, 2019, have been sold to Andrea's daughter, Laura.

50. In response to this submission, Ms Jones, for Linda, applying common law rules as to the circumstances in which the court can evaluate a lost chance in percentage terms, submitted, in reliance upon the Supreme Court decision, in **Perry v Raleys Solicitors [2020] AC 352,** in particular, **paragraph 20,** that, where the determination of what would have occurred in particular circumstances is dependent upon the choice made by the particular Claimant, then that determination must be made on the balance of probabilities, whereas, where the determination is dependent upon what others would have done in the particular circumstances, then, in that context, the court's task is to evaluate the lost chance. Founding upon that submission, her further contention was that, in this case, where the determination of what would have occurred is dependent solely upon what Rollerteam would have done, had it achieved vacant possession, but where Rollerteam admits that it cannot say with any certainty what it would have done, had vacant possession been achieved, then no probability can be established and no compensation payable for the lost chance.

51. Attractively though that argument was advanced, I am not persuaded. I was rightly reminded by Mr Williams that the principles upon which equitable compensation are assessed differ from those applying to the determination of common law damages. Concepts such as foresight and remoteness have no application. The object of the exercise is to place the beneficiary in the position that he would have been in 'but for' the breach of trust and, to that end and as set out by the High Court of Australia, in **Maguire v Makaronis [1997] 188 CLR 449 at 496**, the remedy 'will be fashioned according to the exigencies of the particular case, so as to do what is practically just between the parties'.

52. Accordingly, if the exigencies of this particular case require an evaluation, in percentage terms, of the chance lost to Rollerteam by reason of Linda's breach of trust, in order to do what is just, then I can see no good reason why that approach should not be adopted. Conversely, if, on a fair consideration of the evidence there are clear probabilities, or improbabilities, as to what would have occurred 'but for' the breach in question, then, plainly, those factors must be brought into play in assessing the appropriate measure of equitable compensation.

53. Turning to the evidence, I have already indicated, in paragraph 22 of this judgment, that from an early stage John was seeking vacant possession of Parkgate. In that context, I have found it surprising that John was not able, in his evidence, to say what his intentions as to Parkgate had been when once he had secured that vacant possession. My impression of John, having now seen and heard him give evidence, on two occasions, is that, in his business dealings, he normally has a purpose. What, I think, one can say is that it is unlikely that John wished to secure vacant possession of Parkgate in order to then allow it to stand empty, or unused.

54. Ms Jones submission is that John's intended purpose in seeking vacant possession was to sell Parkgate and that, had vacant possession been obtained, pursuant to the October 2015 direction, Parkgate would then have been sold. In that event, there would have been no question of the renting out of Parkgate and, correspondingly, no question of Rollerteam suffering the loss of any rental income which 'but for' Linda's breach of trust would otherwise have been obtained.

55. In support of that submission Ms Jones points to both positive and negative indicia.

56. Positively, she points to the valuation report obtained by Rollerteam in June 2015, prior to the October 2015 direction. That valuation addressed only the question of sale and did not touch upon, or include, any rental assessment. The obvious inference, she submits, is that Rollerteam's plan for Parkgate was sale and that the renting out of Parkgate was, simply, not in mind.

57. Positively, also, she points to the 2017 direction, which explicitly, directed a sale of Parkgate, to a letter from John, dated 1 August 2019 and written in the context of the 2019 direction as to transfer, referred to in paragraph 24 of this judgment and paragraph 79 of my earlier judgment, informing the recipient, a Mr Innes-Ker, that Parkgate would soon be available to show to prospective purchasers, and to Rollerteam's application for an interim order for sale, referred to in paragraph 91 of my earlier judgment.

58. Negatively, she notes the complete absence of any documentary material, in the period from June 2015 until the eventual transfer of Parkgate in November 2022, suggesting that any consideration was being given, or had been given to renting out Parkgate.

59. The conclusion that Ms Jones invites me to draw is that John's intention, on behalf of Rollerteam, from June 2015 and onward, was always that Parkgate be sold and that the possible renting out of Parkgate was never in mind, with the consequence that, had Linda implemented the 2015 direction, such that vacant possession was obtained, Parkgate would then, at that stage, probably 2016, have been sold.

60. I find that submission compelling. It seems to me that the clear probability is that, at all times, Rollerteam was seeking vacant possession with a view to sale and I can see no good reason (and none has been advanced) as to why, had vacant possession been obtained following the 2015 direction, that sale would not have taken place.

61. In reaching this conclusion, I have not overlooked John's evidence. That evidence was to the effect that, consequent upon the passage of time, he was not able to say, with hindsight, what would have happened but for Linda's breach of trust, that Parkgate might have been sold, but that he believes, given that he and Andrea were living in rented property from June 2015 to March 2017, that it is likely that they would have occupied it themselves, thereby saving Rollerteam the rent upon that rented property. Nor have I overlooked John's evidence, under cross examination, that the reason that the 2015 valuation did not embrace a rental assessment was because, at that stage, Rollerteam was doing no more than looking into possibilities.

62. For the reasons set out in paragraph 53 of this judgment I do not feel able to accept that evidence. I find it implausible and unlikely that John should have taken the steps he took in 2015, or, indeed, at other times, to secure the transfer of Parkgate and to obtain vacant possession of Parkgate, without some particular purpose in mind and, correspondingly, without now being able to recall that purpose, and as already set out, I agree entirely with Ms Jones that the likely purpose, given all the available indicia, was, always, to secure a sale.

63. In that context, I do not find myself able to accept that the valuation obtained by Rollerteam in June 2015 was, merely, an exercise in considering possibilities. It is much more likely, given all the circumstances, that the valuation was obtained with a view to the intended sale of Parkgate. Had Rollerteam, simply, been considering possibilities one would have expected that the valuation would have embraced all possibilities, including, therefore, an assessment of rental values. The fact that it did not is, as it seems to me, a clear indication that, even at this relatively early stage, it was sale and not anything else that Rollerteam had in mind.

64. I am likewise unable to accept that there was ever any realistic possibility that Rollerteam would have been diverted from its intended purpose and, instead of selling Parkgate, made it available to its directors, John and Andrea for their occupation.

65. As a starting point, the dates in respect of which John and Andrea entered into, or required, rented accommodation do not sit well with the potential implementation of the 2015 direction. John and Andrea took a tenancy of what I understand to have been a modern four-bedroomed town house, at 5 Bacons Lane, in Highgate, on 15 June 2015 for a term of one year, subsequently renewed for a further year, on 26 April 2016, albeit,

as I understand it, then surrendered early, given that John and Andrea moved permanently to Germany in March 2017.

66. Given those dates, it is apparent that the initial tenancy of 5 Bacons Lane was already in place substantially before the date of the October 2015 direction and substantially before, therefore, the date at which, if Linda had complied with the direction, the direction could have been implemented and vacant possession obtained. It follows, necessarily, that the initial tenancy was not and could not be one which 'but for' Linda's breach would not have been taken. It follows, further, that, Parkgate could only ever have been available to John and Andrea in place of their renewal of their 5 Bacons Lane tenancy and then only if the 2015 direction had been fully implemented, in the sense of vacant possession having been obtained, prior to the date, in April 2016, when the tenancy was renewed.

67. It seems to me to be profoundly unlikely, in this context, that, rather than selling Parkgate, as I find was intended, John and Andrea would , using their control of Rollerteam, have elected to move into Parkgate.

68. That proposition posits their electing to move out of a, seemingly, high grade property (rental £88,400 per annum), to which they had only recently moved and where they had the option of renewing their tenancy, into a recently vacated property, described by the valuer, in June 2915, as laid out as two flats and, while in average/good condition, requiring modernisation upon the lower floors. Photographs before the court illustrating the state of Parkgate, before works of repair/modernisation were carried out in 2020, show that Parkgate was in what can best be called a 'lived in' state.

69. While John, in his evidence, sought to highlight the qualities and advantages of Parkgate, I am quite satisfied that, in the absence of financial need (as to which no evidence at all has been advanced) any idea of Andrea and John moving into Parkgate is entirely notional and would never have been considered as a realistic option.

70. I am, additionally, unpersuaded that, even if the posited move would have taken place, with a consequential saving of rent to Rollerteam, that that saving is recoverable as equitable compensation. It is not suggested that Rollerteam was under any obligation to rent property for John and Andrea. Its expenditure upon their rent was purely voluntary. The saving of rent that would have occurred, had John and Andrea moved into Parkgate, instead of renting 5 Bacons Lane, at Rollerteam's cost, would have been a saving of rent which Rollerteam had never been obligated to pay and, as such, as it seems to me, not a compensatable loss.

71. Be this last as it may, I am satisfied, for the reasons that I have given, that the clear probability is that, if the 2015 direction had been implemented by Linda, as it should have been, and if vacant possession had then been obtained, then Parkgate would, at that stage, have been sold. The consequence of that conclusion is that Parkgate would not have been rented out, nor used as a home for John and Andrea, and, it not being suggested that a delay in the sale of Parkgate has caused Rollerteam any loss, that, in regard to the failure by Linda to implement the 2015 direction and secure vacant possession, no claim for equitable compensation is made out. Given what I regard as the clear probabilities. It would I think be both wrong and unnecessary to resort to an evaluation of a lost chance. Such an approach would run the risk, contemplated in

Maguire v Makaronis, in the passage at **page 496**, to which reference has already been made. of robbing the fiduciary and unjustly enriching the beneficiary.

72. The third and final head of equitable compensation advanced by Rollerteam relates to the abortive legal costs said to have been incurred by Rollerteam, in consequence of Linda's breach of trust in respect of the October 2015 direction.

73. In principle, I have no quarrel with this head of claim. Plainly, if the 2015 direction had been implemented by Linda and resulted in the transfer of Parkgate with vacant possession it would not have been necessary for any legal costs to have been expended to the same purpose. The issue, here, is to isolate and quantify those costs.

74. Rollerteam asserts a claim for costs, put at £10,000, in respect of the 2015 direction. No evidence, however, was advanced in support of those costs and, more significantly, those costs, or at least some of them, would, had Linda acted to implement the direction, have been incurred, in any event, in the implementation of the direction, There is no sufficient material to enable me to make any award in respect of this aspect of this head of claim and I make none.

75. Somewhat more material exists in respect of the claim, put at £45,744.59, advanced by Rollerteam in respect of the abortive costs of the 2019 direction as to transfer, already touched upon, in paragraph 24 of this judgment. A consideration, however, of HPLP's invoices, relied upon by Rollerteam in support of this aspect of its claim, shows that the bulk of the costs which are sought relate, not to the transactional costs incurred in respect of the 2019 direction, but to the then current aspects of these proceedings (which had been commenced in 2018) and, in particular, to the application heard by the Chief Master on 2 August 2019, referred to in paragraph 72 of my earlier judgment, and which resulted in an order that Rollerteam pay 75% of Linda's costs and a corresponding determination that Rollerteam should bear its own costs.

76. That said, it is plain from the matters set out in paragraphs 79 to 86 of my earlier judgment that Mr Eaton, of HPLP, spent a significant amount of time, seeking to push on a transfer of Parkgate and that the costs incurred in respect of those efforts fall outside this litigation and would not have had to be incurred 'but for' Linda's earlier failures to comply with and give effect to Rollerteam's directions.

77. Doing the best I can with the very limited materials available, I think it proper to make an allowance in favour of Rollerteam in the sum of £7,500 to reflect those matters. That figure takes account of Mr Eaton's charging rate of circa £250 per hour and an element of counsel's initial advice, in June 2019, some part of which will have addressed the transactional way forward.

78. In the result, I determine that Rollerteam is entitled, subject to the matters next discussed, to equitable compensation from Linda in the sum of £7,500.

79. Those matters relate to the over-arching defences advanced by Linda, as set out in paragraph 10 of this judgment, specifically, the contention that it would be inequitable for Rollerteam to make any recovery, alternatively that Linda should be relieved of liability, pursuant to section 61 of the Trustee Act 1925, and bear not just upon the liability for abortive costs just set out but also upon the set-off discussed in paragraph

43 of this judgment and also potential set-offs available to Rollerteam, as discussed later in this judgment.

80. I do not consider it inequitable for Rollerteam to recover, whether by claim, or set-off, monies which 'but for' Linda's breach it would not have had to expend, or in respect of which it would not, otherwise, bear any liability. The over-riding fact, which, as it seems to me, entitles Rollerteam to make its recoveries, is that throughout the long drawn out dealings between Rollerteam and Linda it has been Rollerteam which has consistently and in accordance with its rights under the trust deed sought to secure the transfer of Parkgate, rid both Linda and itself of liability under the Mortgage Works mortgage and bring the trust to an end. Whatever her reasoning, it has been Linda who has obstructed that process. In the light of that fundamental circumstance and whatever, even serious, blemishes there may have been in Rollerteam's conduct and behaviour, within and around this litigation, it would be unfair and inequitable for Rollerteam not to be placed in the position that it would have been had it not been for Linda's breach of trust in respect of the 2015 direction.

81. By the same token and , by a parity of reasoning, I do not think that Linda should be relieved of liability under section 61 of the Trustee Act 1925. Section 61 requires that a defaulting trustee behave honestly and reasonably, ini respect of the matter constituting his, or her, default. If that condition is satisfied, then the court has a discretion to relieve the trustee from liability for that default, whether in whole or in part. As explained by Briggs LJ, in **Santander UK Plc v R A legal Solicitors [2014] EWCA Civ 183 at paragraphs 33 and 34,** the court, in exercising that discretion, must have regard to the effect of the grant of relief upon the beneficiaries of the trust as well as upon the trustee. The court must balance fairness to the trustee against an appreciation of the impact that the grant of relief will have upon the beneficiaries.

82. In the instant case, then, the focus of the court's attention must be upon Linda's default in respect of her want of compliance with the 2015 direction and whether, in respect of that non-compliance, she acted honestly and reasonably. If so, then the court must enter into the discretionary balancing act described by Briggs LJ.

83. In those regards, I am satisfied that Linda's honest belief, certainly, in respect of the 2015 direction, was that the trust deed operated subject to the continuing rights of occupancy of the long standing occupants of Parkgate, Stephen and Elizabeth. The question as to whether that belief was a reasonable belief is rather more at large.

84. Linda's stance, when giving her evidence, seemed to me to be based rather more upon assumption and sentiment than upon reason. Additionally, in respect rather more of the 2017 and 2019 directions than the 2015 direction, it seemed to me that a point was reached where Linda's conduct, in respect of her obligations under clause 10 of the trust deed, was significantly dictated by her desire to impose leverage upon Rollerteam in order to secure her reimbursement in respect of outstanding mortgage instalments. A trustee who seeks to use her position as trustee and the exercise of her obligations as trustee to her own advantage is, palpably, not acting reasonably.

85. That said, I am not satisfied that that was Linda's position in 2015, although it may well have been later on.

86. In the event, however, I do not need to make a finding on the point. For purposes of this judgment, I am prepared to work on the assumption that Linda, when refusing to implement the 2015 direction, was acting in the honest and reasonable belief that she was entitled so to do,

87. That then opens up the discretionary balancing act and, in that regard, I am quite satisfied that relief should not be granted under section 61 of the Act.

88. It seems to me that to relieve her of her liabilities to Rollerteam would, for the reasons already set out in paragraph 80 of this judgment, be thoroughly unfair to Rollerteam. Linda, even if acting reasonably and in good faith, was acting in breach of her trust. The consequence of that breach has been that Rollerteam has expended money and incurred liabilities that 'but for' her breach it would not have incurred and is entitled, as beneficiary, to have its position restored to that which it would have been had Linda complied with her obligations as trustee. Any other outcome would, in my view be wrong and constitute a failure by the court to properly appreciate and recognisee the consequences of its exercise of its relieving jurisdiction upon Rollerteam.

89. It remains to consider Linda's Counterclaim.

90. I have already dealt, in paragraphs 41 to 43 of this judgment, with Linda's claim to be reimbursed mortgage instalments paid by her to Mortgage Works, in the period June 2019 to November 2022. That claim is met and extinguished, by way of an equitable set-off, against the monies due to Linda in reimbursement of the relevant mortgage instalments, of an equivalent sum due to Rollerteam, as equitable compensation for the fact that 'but for' Linda's breach of trust those monies would never have fallen due.

91. The balance of Linda's Counterclaim relates to further alleged breaches by Rollerteam of its obligation arising out of, or in connection with, the trust deed. Her claims relate to repairs, outgoings and insurance. Claims in respect of solicitors costs incurred in respect of the abortive transfers and costs allegedly arising out of the fact that, as set out in paragraph 83 of my earlier judgment, Parkgate fell into receivership in the autumn of 2019 were not pursued.

92. By clause 4 of the trust deed, Linda was required to keep Parkgate in good repair and condition, to keep Parkgate adequately and properly painted and decorated and to replace fixtures and fittings which have become worn out or unfit. In compliance with that obligation she had, she said, expended some £24,362.20, in placing and keeping Parkgate in repair and in replacing fixtures and fittings on a like for like basis, to which she was entitled to reimbursement.

93. In answer to that claim, Mr Williams drew my attention to the fact that, in contradistinction to the provisions of the trust deed making provision for reimbursement (clause 8, the mortgage, clause 7 outgoings) clause 4 made no such provision, with the result that Linda had no contractual entitlement to recover monies spent in the maintenance and repair of Parkgate.

94. Ms Jones sought to answer that point, which applies, also, to Linda's claim in respect of insurance costs, where, pursuant to clause 5 of the trust deed, Linda had a duty to insure, but where, again, the trust deed contained no express provision as to reimbursement, by reference to clause 7 of the trust deed.

95. Clause 7 requires, subject to reimbursement, that Linda pays all 'costs in connection with the supply of services and utilities' to Parkgate and 'to pay when due all charges rates taxes duties and assessments and other outgoings relating to or imposed upon' Parkgate, or its use, and Ms Jones submission is that, construed in context, the repairing and insuring expenses incurred by Linda are recoverable, or subject to reimbursement, as outgoings relating to Parkgate.

96. I regard that as a strained construction, even making allowance for the fact that the trust deed was provided by Rollerteam to Linda at a time when she did not have legal advice and where, therefore, the deed, arguably, is to be construed contra proferentem. It seems plain to me that the relevant provisions of clause 7, upon which Ms Jones relies, are to be construed sui generis with the other parts of those provisions and that they relate, therefore, to her liability, subject to reimbursement, to pay property taxes and the like incurred in relation to Parkgate, but do not and are not intended to deal with other obligations, such as insurance and repairs, separately provided for under the terms of clauses 4 and 5 of the trust deed.

97. That said, however, as discussed in the course of final submissions, it seems to me that, subject to any contractual exclusion, Linda is entitled, upon well understood equitable principles, to an indemnity from Rollerteam, in respect of expenses (here in respect of repair and insurance) that she has properly incurred in the course of carrying out her duties as trustee and in compliance with her obligations, as trustee, under the trust deed. Those principles, as explained by Lord Lindley, in **Hardoon v Belilios [1901] AC118 at 123/124**, cited in **Lewin on Trusts 20th Edition at 19-057**, entitle a trustee, such as Linda, to a personal indemnity, independent of contract, enforceable, in equity, against Rollerteam, in its capacity as a beneficiary, sui juris and absolutely entitled to Parkgate, in respect of expenses, such as insurance and repair, that she has been obliged to incur, by reason of her obligations, as trustee, under the trust deed. As it was put by Lord Lindley 'The plainest principles of justice require that the cestui que trust who gets all the benefit of the property should bear its burden'.

98. Mr Williams did not deny the essential proposition just set out. His argument was that the absence of contractual provisions as to reimbursement in respect of the relevant obligations as to insurance and repair, when set against the presence of such provisions in respect of the mortgage and the outgoings provided for by clause 7, should lead me to construe the trust deed as being intended to exclude Linda's personal right of indemnity in respect of those obligations, as well as any contractual right.

99. I cannot agree. It seems to me that where, echoing Lord Lindley, plain principles of justice require a beneficiary to indemnify a trustee in respect of expenses incurred as trustee, it should require very clear words to displace that entitlement and that, while the absence of explicit contractual provisions as to reimbursement preclude the existence of such contractual rights, that absence does not go any distance towards excluding Linda's equitable right to indemnity.

100. It follows that, in principle, I am satisfied that Linda is entitled to recover costs properly incurred both in respect of repair and insurance. As to amount, Rollerteam did not specifically challenge any item of the claimed repairs, nor any costs incurred in replacing fixtures and fittings. Nor did Rollerteam advance any challenge, as such, to the modest insurance costs of £334.44 per annum claimed by Linda for the period between 2015 and 2022 in the overall sum of £2,341.08.

101. Both those potential recoveries, however, seem to me to be subject to the same difficulty as has precluded Linda's claim in respect of her reimbursement of monies paid to Mortgage Works, as discussed and set out in paragraphs 41 to 43 and 90 of this judgment. The repair costs claimed by Linda relate to works carried out in 2020 and the insurance costs relate, as just stated, to a period 2015 to 2022. But for Linda's non-compliance, in breach of trust, with the 2015 direction, the trust would have been at an end by, the end of 2015, and, barring the insurance costs for 2015, neither the repair costs or the insurance costs would have been incurred and, consequentially, no obligation to reimburse would have arisen.

102. In those circumstances, Rollerteam has, as it seems to me, a claim for equitable compensation in the amount that it would otherwise have had to pay to Linda, by way of reimbursement of her claims in respect of repairs and insurance, which can be set-off against and in extinction of those claims. Alternatively, given that, if Linda had complied with her obligations under the trust deed in respect of the 2015 direction, the trust would by 2016 have come to an end and the expenses in question would not have been incurred, those expenses are not expenses properly incurred by Linda in the performance of her obligations as trustee such as to give rise to a right to indemnity. Either way, the sums in question, save, I think, for the insurance premium for 2015 (£334.44) are irrecoverable by Linda.

103. The same point, limited, in this instance to the availability of set-off, arises in respect of any recovery by Linda in respect of her expenditure under clause 7 of the trust deed in relation to services and utilities. At best, those recoveries can only be made in respect of a period terminating in 2015, when, had Linda complied with her obligations as trustee, the trust and with it her obligations under the rust would have come to an end.

104. There remain, however, further problems in respect of her recovery, by way of reimbursement, in respect of her expenditure on services and utilities.

105. The amount claimed by Linda, in the period April 2013 to November 2022, is £60,515.48. That amount is said to be underwritten by a schedule purporting to identify the various elements said to constitute services and utilities on a quarterly basis across the relevant period. The schedule is based upon and supported by a number of invoices, all, bar one, relating to costs incurred in 2020. It provides no direct information at all as to the costs of services and utilities incurred in respect of Parkgate in the period from 2013 to 2015, save for one invoice, dating to 2014, relating to the electricity costs apparently incurred by Stephen in the period January to April 2014, although, quite plainly, costs incurred in 2013 to 2015 are unlikely to have been at the same level as those incurred up to seven years later. Neither Linda's witness statement nor her oral evidence gave me any further assistance in this regard.

106. Over and above the foregoing and rightly emphasised by Mr Williams, on behalf of Rollerteam, given that Rollerteam's obligation to reimburse relates only to payments made by Linda, it is striking that none of the invoices, or bills, relied upon in respect of this aspect of the Counterclaim can be shown to have been addressed to Linda. Save for the invoice addressed to Stephen, to which reference has already been made, all the invoices and bills have been redacted.

107. In these circumstances I am not persuaded that the invoices which are before the court were actually paid by Linda, nor that in the earlier period (2013 to 2016) where, as

already explained, services and utilities paid for by Linda would be subject to reimbursement, the corresponding payments were made by Linda.

108. I can see no good reason at all as to why invoices presented to and paid by Linda should have been redacted and the obvious inference is that the redactions were designed to obscure the fact that the invoices in question were actually addressed, rather as one might expect, to the persons living at Parkgate and using the services to which the invoices relate and that it was those persons, perhaps specifically, Stephen and Elizabeth, who paid for those services.

109. Linda, it should be remembered never lived at Parkgate during the relevant period and there is no good reason to think, nor, indeed, any evidence, that she paid the domestic accounts for such matters as gas and electricity used by those residents rather than those persons making their own arrangements with the service providers, as suggested by the redacted invoices, and paying for those services in the usual way. While it might be envisaged that the charges for water rates for Parkgate might have devolved on Linda, as the legal owner, the evidence, such as it is, is that that liability, also, was incurred and charged to Stephen.

110. In the result, I do not feel able to make any award to Linda in respect of this head of her Counterclaim and, taken, overall, the only part of her Counterclaim that I accept is the very modest insurance cost that, on her case and as set out in paragraph 102 of this judgment, she would have incurred for Parkgate in 2015.

111. In the further result, Rollerteam is entitled to equitable compensation in the sum of £7,500, against which Linda is entitled, pursuant to her Counterclaim, to set off £334.44. Accordingly, Rollerteam is entitled to judgment against Linda in the sum of £7,165.56.