Case No: K00LU633
Neutral Citation Number: [2025] EWHC 654 (KB)

IN THE HIGH COURT OF JUSTICE
THE COUNTY COURT AT PETERBOROUGH
SITTING AT NORWICH

Date: 17 March 2025

Before :

HHJ KAREN WALDEN-SMITH

- -

Between :

ABBOTSLEY LIMITED **Claimant**

- and –

PHEASANTLAND LIMITED **Defendant**

- -

- -

KERRY BRETHERTON KC (instructed by way of **DIRECT ACCESS)** for the **CLAIMANTS**
RICHARD BOTTOMLEY (instructed by **DEBENHAMS OTTAWAY LLP**) for the **DEFENDANT**
Hearing date: 21 February 2025

Approved Judgment

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HHJ KAREN WALDEN-SMITH:

Introduction

1. The Claimant, Abbotsley Limited ("Abbotsley"), appeals the order of DJ Falvey dated 26 June 2024 made with respect to the judgment he handed down on 19 June 2024. Abbotsley had brought a claim before the District Judge for possession of the property let to the Defendant, Pheasantland Limited ("Pheasantland") and for that claim for possession (by reason of forfeiture of the lease) to be dealt with on a summary basis. Additionally, Abbotsley sought an early determination of its claim for possession either by way of summary judgment pursuant to the provisions of CPR 24.3 or by an order to strike out the defence pursuant to the provisions of CPR 3.4(2)(a).

2. The District Judge acknowledged that, at least to an extent, he had failed to give sufficient reasons for his determination on the Abbotsley applications for early determination of the forfeiture case in his judgment on 19 June 2024. He gave further reasons in the hearing which took place on 18 July 2024.

3. It is necessary, therefore, to consider both the judgment on 19 June 2024 and the hearing on 18 July 2024 in order to consider the basis upon which DJ Falvey reached his decisions.

4. Permission to appeal was granted by me on grounds 1 and 3 of the Abbotsley grounds of appeal. I refused permission on ground 2 but did not mark it as being totally without merit and on that basis Abbotsley had an entitlement to renew the application for permission if they wished to remake the application. I gave directions that such a renewed oral application would be dealt with as a "rolled up" hearing.

5. I had the benefit of hearing counsel for both Abbotsley and for Pheasantland and I am grateful to both Ms Bretherton KC and Mr Bottomley for their focussed and helpful submissions. The appeal hearing was listed for a day and, save for a short period of time at the end of the day when the way to deal with costs was discussed, the appeal took all day together with the need for considerable further time for further consideration of the submissions for the purpose of this judgment.

The Background

6. This is one of two cases brought by Abbotsley against Pheasantland. The other case, brought under claim number J90PE914, is brought by Abbotsley as the First Claimant and Vivien Inez Saunders, the sole director and shareholder of Abbotsley, as the Second Claimant. That claim is against a large number of Defendants. The two claims cover a great deal of the same factual ground and, in pursuance of the overriding objective and in an attempt to keep the claims in a manageable form, I ordered the claims to be consolidated albeit dispensing with the requirement for the claims to be repleaded as one. This appeal is only dealing with the issues that arise in claim K00LU63.

7. Abbotsley entered into a Lease on 17 July 2003 of the property known as Holiday Chalet Land at Abbotsley Golf & Squash Club Limited, Eynesbury, Hardwicke, St Neots, Cambridgeshire PE19 6XN ("the Chalet Land"). The site is often referred to as a "caravan site" by Abbotsley even though all the photographs show that what is on

the land are solid wooden lodges. It would be helpful going forward that the land is referred to as "the Chalet Land" consistently. The permitted use is set out in the Lease to be "use as holiday and second home residential accommodation in chalets together with all services ancillary thereto."

8. The term of the Lease is for 125 years commencing on 17 July 2003.

9. There were two assignments of the lease of the Chalet Land, first to Norwegian Log Chalets Limited in 2004 and then to P.I. Estates Limited on 4 September 2010. Pheasantland took an assignment of the lease of the Chalet Land on 15 December 2017. Pheasantland as tenant and Abbotsley as landlord therefore have a relationship of landlord and tenant.

10. A notice pursuant to the provisions of section 146 of the Law of Property Act 1925 ("the section 146 notice"), dated 3 January 2023 and signed by Ms Saunders, was served on Pheasantland, alleging (in summary) that the lodges numbered 1, 3, 4, 6, 8, 9, 12, 14, 15, 16, 17, 18, 19 and 22 were being occupied as permanent accommodation; that lodge 4 was being occupied for commercial purposes; that lodges 6, 9, 16 and 20 had a large shed or sheds on their plot; and that 7, 9, 11, 12, 15, 16 and 17 had failed to enter into a deed of covenant with the landlord. Additionally, the section 146 notice contained allegations that Pheasantland had brought large machinery on the land to drill for a borehole; that the insurance policy failed to note the interest of Abbotsley; that nuisance, damage and disturbance had been caused by virtue of "trespassing on the water supply" of Abbotsley, and trespassing on the land by individuals. The section 146 notice gave a month's notice for the remedying of the breaches and required compensation.

11. The claim for possession of the Chalet Land was issued on 22 May 2023. The twenty-two page Particulars of Claim was settled by leading and junior counsel and signed by Ms Saunders on 16 May 2023 and was accompanied with 155 pages of schedules. The Particulars of Claim and schedules was served on Pheasantland on 29 July 2023.

12. The fourteen-page Defence, settled by counsel, together with 401 pages of documents annexed to the Defence, was served on 29 September 2023.

13. The day before the Defence was signed and served on Abbotsley, Ms Saunders signed a witness statement on 28 September 2023 seeking possession of the Chalet Lodge Land, together with a further exhibit of 30 pages.

14. Despite the filing of the Defence, that witness statement – including the words "as yet we have not been served with any defence or been given any indication of the defence" – was used to support an application made on 3 October 2023 for what has been referred to by Ms Bretherton KC as "early determination of the case."

15. That application for "early determination" was based upon the statement made before the Defence and accompanying documentation had been filed and served , and was, in fact, three applications:

    (i) An application to make a possession order pursuant to the provisions of CPR 55.8(1)(a)

"because the claim is not disputed on grounds which appear to be substantial";

(ii) Summary judgment pursuant to the provisions of CPR 24 because the defendant had no real prospect of successfully defending the claim and there is no other compelling reason why the case should be disposed of at trial;

(iii) An order striking out the statement of case pursuant to the provisions of CPR 3.4(2)(a) and (b) because the statement of case discloses no reasonable ground for defending the claim or is an abuse of the court's process or is likely to obstruct the just disposal of the proceedings.

16. The original claim for possession, which had described the Chalet Land as not including residential land, had been listed (pursuant to the provisions of CPR 55.5) for a hearing on 4 October 2023. The claim came before DJ Falvey sitting in Peterborough County Court and the parties were represented by junior counsel on both sides, namely Mr Waritay for Abbotsley and Mr Bottomley for Pheasantland. The possession hearing became a directions hearing and DJ Falvey listed that to be heard by him with a 3 hour time estimate on 26 February 2024. Abbotsley had requested that the application be listed within a two hour hearing and it was the District Judge who increased the time estimate by 50%.

17. Further to those directions, Pheasantland filed and served a witness statement from Robyn Adams of Debenhams Ottaway LLP dated 17 October 2023 together with a further 19 pages of exhibits. A fourteen-page statement in response together with a further 35 pages of exhibits, again in accordance with the directions of DJ Falvey, was filed and served by Ms Saunders on 23 October 2023.

18. Skeleton arguments were provided by counsel for both sides (respectively 17 and 11 pages in length) in advance of the hearing together with a bundle of 852 pages. Given the very heavy listing of district judges in the County Court I doubt that DJ Falvey had as much time to read into this document heavy and three-part application as he would have wished. Indeed he said at the outset of the hearing on 26 February 2024 that he had only received the papers at 8am that morning and, while he had an opportunity to read the papers, he certainly would not have had any opportunity to think through the various arguments being made before the hearing commenced. This is not a straightforward matter and an indication of the complexities of the application is that Ms Saunders, as Director of Abbotsley, decided not to instruct her very experienced (1993 call) property counsel, who had dealt with the hearing before DJ Falvey in October 2023, Mr Waritay, but to instruct leading counsel, Ms Bretherton KC, to represent her at the hearing. Mr Bottomley continued to represent Pheasantland.

19. I understand that the hearing took the full 3 hours and that DJ Falvey not only did not have time to deliver judgment within the time listed but also found that he needed time to consider the issues. Given that the appeal hearing took a full day before me, and I have needed additional time to go through the multiple issues raised before

being able to provide this judgment, I am not at all surprised that DJ Falvey needed that time.

20. I am told that DJ Falvey indicated that he would be able to give judgment in a few weeks. That was optimistic, and he was not able to deliver judgment in draft form until 31 May 2024. As he put it:

> "…Although I had approved it, the time of three hours [for the application] was optimistic and there was no scope for me to give proper consideration to the matters with which I need to deal. I told the parties at the end of the hearing how long I thought it would time me to circulate the judgment in draft – I apologise for the fact that it transpires I was at least equally optimistic in this. This is in part due to pressures of listing and other matters and in part down to the fact that the matter raises legal issues of genuine difficulty; and that difficulty has not reduced the more I have thought about the issues."

21. Counsel are fully aware of the strains on the County Court, particularly with the listing of District Judges, and will no doubt have been sympathetic to the pressures DJ Falvey was under. After circulating the draft on 31 May 2024, DJ Falvey had a hearing on 19 June 2024 when he made some opening remarks – including those set out above – and then delivered his judgment denying Abbotsley's application made pursuant to CPR 24 (summary judgment) and CPR 55 (possession). The judgment does not refer to the application to strike out pursuant to the provisions of CPR 3.4(2) (a) or (b).

22. On 18 July 2024, DJ Falvey expanded upon his reasons for his determination and refused permission to appeal while extending time for the application for permission to appeal to the circuit judge until 30 August 2024. Permission to appeal to the circuit bench was made on 30 August 2024.

23. Permission to appeal was granted by me on 11 December 2024 on grounds 1 and 3 with permission on ground 2 refused, but with Abbotsley having the right to renew the application orally with the appeal to follow if granted.

24. The hearing of the appeal was due to take place during the two days set aside on 6/7 January 2024. As a consequence of further applications being made by both Abbotsley and the Second Claimant, Ms Saunders, across the two claims (including for recusal, transfer and adjournment of the trial) it was unfortunately not possible to deal with the appeal. Even with ensuring that timetables were provided by Counsel in order for submissions to be made within the time allotted, 5 days have been spent over January and February dealing with various discrete matters which have been necessary to deal with now in order to ensure that the 15 plus-day trial can proceed without difficulty. Those 5 days do not include the time spent outside court in the drafting of the various judgments. The appeal was heard on 21 February 2025.

25. This appeal is, of course, by way of a review not a rehearing and in order to succeed Abbotsley will need to establish that the District Judge was wrong in the determinations he made in order to succeed in their appeals on the three-part application for early determination of the claim brought by Abbotsley.

The Grounds

26. The appeal is brought on three grounds. Grounds 1 and 3 have been granted permission, ground 2 has not. Permission to appeal on ground 2 has been renewed and I will deal with the three grounds in order. The three grounds are with respect to each of the grounds that Abbotsley brought the application for early determination – that is summary possession order under CPR 55.8, summary judgment under CPR 24, and strike out under CPR 3.4.

Ground 1

27. Ground 1 is the challenge to the district judge's decision to refuse Abbotsley's application that Abbotsley should have been entitled to an order for possession pursuant to the provisions of CPR 55.8, without any further hearing.

28. Abbotsley's challenge to the district judge's decision on CPR 55.8 contained three grounds:

> (i) The learned district judge erred in law in his construction of CPR 55.8 and/or erred in finding that A could not rely on CPR55.8.
>
> (ii) To the extent that the learned district judge considered the test under CPR55.8 at all the learned district judge erred in his approach to the test considering the length of the hearing as determinative or a powerful indicator rather than the test in the CPR and guidance of the Court of Appeal in *Global 100 Ltd v Laleva* [2021] EWCA Civ 1835; [2022] H.L.R. 20.
>
> (iii) As a result of any or all of the aforementioned errors of law the learned district judge failed to decide the application and/or claim or to consider or give reasons whether the claim was genuinely disputed on grounds which were arguable which required consideration of the arguments in the Appendix to this Skeleton Argument which the appeal court is asked to determine**.**

29. CPR 55.8 provides, amongst other provisions, the following:

> (1) At the hearing fixed in accordance with rule 55.5(1) or at any adjournment of that hearing, the court may –
>
> (a) decide the claim; or
>
> (b) give case management directions.

(2) Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.

30. In his judgment given at the hearing on 19 June 2024, DJ Falvey referred to CPR 55.36 as the provision which would allow the court to make a possession order which would have the same practical effect as summary judgment. CPR 55.36 is not the correct provision, as that relates to renting homes in Wales, and that appears to have been an error on the District Judge's part as Counsel for Abbostley had referred to the correct provision in her skeleton argument (CPR 55.8). I am also informed by Counsel that the erroneous reference to part 55.36 was something mentioned in the list of corrections provided to the District Judge after his draft judgment had been circulated. While it was not corrected by the District Judge, it made no practical difference as the wording of CPR 55.8 (1) and (2) is the same as CPR 55.36(1) and (2).

31. DJ Falvey determined that there should not be an order for possession against Pheasantland pursuant to the provisions of CPR 55.8 on two bases. First he decided that CPR 55.8 did not apply at all. Second, he decided that, even if CPR 55.8 applied, this was not a "simple case" that could be "decided speedily."

32. In his judgment given on 19 June 2024 he set out that in his order of 4 October 2023, made at the hearing fixed in accordance with rule 55.5(1), he did not adjourn the possession hearing but gave directions on Abbotsley's application for strike out and for summary judgment. In those circumstances he found that it was at least arguable that the part 24 application had the effect of debarring Abbotsley from relying on CPR 55.8(1). The reason for saying that, is that the hearing had, according to the wording of CPR 55.8, either to be the hearing fixed in accordance with CPR 55.5(1), or the adjournment of that hearing. If there was no adjournment of the CPR 55.5(1) hearing then, on DJ Falvey's reasoning, CPR 55.8 could not apply.

33. He further found that, if he did consider CPR 55.8 applied then CPR 55.5 was intended to *"allow simple cases to be dealt with speedily. The first hearing under that rule is generally listed for no more than 15 minutes; occasionally for 30. Adjournments are not unusual for example to allow a party to produce documents which they omitted to bring on the first occasion…I regard it as close to inconceivable that, in a case where three hours would be required for legal argument alone, the Court at the first hearing would adjourn with such a time estimate rather than allocating the matter to track".*

34. Consequently, he concluded that the hearing was not within the scope of CPR 55.5 or CPR 55.8 at all and, in any event, the proper use of the court's discretion would be to give allocation directions and not to make a possession order.

35. In the further hearing on 18 July 2024, counsel for Abbotsley sought permission to appeal on two limbs – a failure to give reasons and the substantive findings dismissing the three-part application.

36. As the Court of Appeal set out in *English v Emery Reimbold & Strick* [2002] EWCA Civ 605:

> "*We are not greatly attracted by the suggestion that a judge who has given inadequate reasons should be invited to have a second bite at the cherry. But we are much less attracted at the prospect of expensive appellate proceedings on the ground of lack of reasons. Where the judge who has heard the evidence has based a rational decision on it, the successful party will suffer an injustice if that decision is appealed, let alone set aside, simply because the judge has not included in his judgment adequate reasons for his decision. The appellate court will not be in as good a position to substitute its decision, should it decide that this course is viable, while an appeal followed by a re-hearing will involve a hideous waste of costs.*
>
> *Accordingly, we recommend the following course. If an application for permission to appeal on the ground of lack of reasons is made to the trial judge, the judge should consider whether his judgment is defective for lack of reasons, adjourning for that purpose should he find this necessary. If he concludes that it is, he should set out to remedy the defect by the provision of additional reasons refusing permission to appeal on the basis that he has adopted that course. If he concludes that he has given adequate reasons, he will no doubt refuse permission to appeal. If an application for permission to appeal on the ground of lack of reasons is made to the appellate court and it appears to the appellate court that the application is well founded, it should consider adjourning the application and remitting the case to the trial judge with an invitation to provide additional reasons for his decision or, where appropriate, his reasons for a specific finding or findings. Where the appellate court is in doubt as to whether the reasons are adequate, it may be appropriate to direct that the application be adjourned to an oral hearing, on notice to the respondent.*"

37. Counsel for Abbotsley therefore had an obligation, which she fulfilled, to set out to the District Judge that she did not consider he had given sufficient reasons for his determination. The reasons contained within the hearing on 18 July 2024, expanding on his reasons, therefore properly form part of his decision. With respect to part 55 he said this, in addition to his June 2024 judgment:

> "Now, so far as the Part 55 alternative route is concerned, that I do not think I need to expand on what I said in the judgment; namely, that at the first hearing – and, I would say, as a matter of practice, as an adjournment of that – the court can summarily dispose of a matter, and, indeed, in a very large proportion of rent arrears cases for social landlords – or private landlords, indeed – is able to do so. But this is not such a hearing. It was the hearing of the application. This may be a rather technical, procedural point, but it is one which seemed inescapable."

38. Consequently, over the two judgments (on 19 June 2024 and the further reasons on 18 July 2024) the reason why DJ Falvey found that Abbotsley could not recover possession of the Chalet Land under CPR 55 was that (i) this was not a hearing or adjourned hearing fixed pursuant to 55.5(1); and (ii) the 55.8 hearing (if that was what it was) was not suitable to decide the case when there was plainly a high level of dispute, given the length of time needed for the hearing in order to deal with all the issues.

39. Ms Bretherton KC for Abbotsley contends that the district judge was "plainly wrong". Her submissions are that the hearing fixed by CPR 55.5(1) (or adjournment) provides that the court is either obliged to determine the case or give case management directions. That is plainly correct on the basis of what is set out in CPR 55.8(1). She went on to submit that the provisions of CPR 55.8(1), read together with 55.8(2) require the judge to decide the case, she says to give possession, and only to give case management directions where the claim is genuinely disputed on grounds which appear to be substantial. She contends that as DJ Falvey did not make a determination that the claim was genuinely disputed "on grounds which appear to be substantial" and did not specify what those substantial disputes were, he could not properly do anything but grant possession of the Chalet Land at that hearing. She placed heavy reliance upon the decision of Lewison LJ in *Global 100 Ltd v Laleva & Ors* [2021] EWCA Civ 1835 in which he held that the test for summary judgment is the same test as that which applies to the required threshold under CPR 55.8(2). Namely, in determining whether case management directions require allocation or directions to allow for allocation, the judge has to determine whether the defendant has shown a real prospect of success in defending the claim. The same principles as are set out for summary judgment as helpfully summarised (again by Lewison J, as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch). Counsel contended that the District Judge was "plainly wrong" as he had failed to consider whether there were substantial grounds of defence to the claim.

40. Those submissions on behalf of Abbotsley, based upon the guidance given by the Court of Appeal in *Global 100 Ltd,* do not deal with the District Judge's initial finding, namely that the three-hour hearing on 26 February 2024 was not an adjourned CPR 55 hearing, but was the hearing of Abbotsley's application for summary judgment and/or strike out.

41. The chronology of the hearings was that when the claim was issued on 22 May 2023, the court fixed a date for the hearing of 4 October 2023 in accordance with the provisions of CPR 55.5. A notice of that hearing on 4 October 2023 was sent out by the court on 29 August 2023.

42. It appears from the dates on the order dated 10 October 2023, that the hearing in fact took place on 6 October 2023. Whether it was 4 or 6 October 2023 does not matter. At the hearing, which was recorded to be the first hearing of the claim (that is the CPR 55.8 hearing) the District Judge noted that Abbotsley had issued an application dated 3 October 2023. The District Judge gave directions on that application, which had extremely ambitiously suggested that two hours would be sufficient, allowing himself three hours, and with directions for the service of evidence on both sides.

43. The hearing in early October 2023 was the hearing listed by virtue of the provisions of CPR 55.5. It was at that hearing that the District Judge ought to have been, and as

I understand from submissions after the appeal hearing, was requested by Abbotsley to decide the claim under CPR 55.8(1)(a). Had Abbotsley been confident that this was a claim that could be dealt with at that first hearing then there was no need to make an application for strike out or summary judgment.

44. Abbotsley decided not to rely on the summary possession hearing but to issue a pre-emptive application on 3 October 2023 (the day before the day listed for the CPR 55.8 hearing) and request directions for the future hearing of those applications made. No doubt Abbotsley's advisers were aware that at that October hearing the court would say there was not the time to deal with the claim for possession, given the issues involved, and that the claim would be adjourned for allocation. It appears, therefore, that the three-part application for "early determination" was made prior to the hearing in October 2023 in order to avoid that consequence. Had Abbotsley been advised that there was no dispute to the claim for possession on substantial grounds (CPR 55.8(2)) then Abbotsley could have simply presented that argument to the court on that first hearing. Abbotsley decided to issue an application which included an application for possession under CPR 55.8, strike out, and summary judgment so that case management directions had to be given by the District Judge.

45. I am told that Mr Waritay, appearing for Abbotsley at that hearing, asked DJ Falvey to deal with the possession claim in the 15 minutes allotted for the CPR 55.8 hearing. That was refused. It seems to me that, if that were the request (and I have only been informed of this in the course of obtaining typographical corrections to my draft judgment), then it was an entirely unrealistic request. Abbotsley should have been aware that the claim they had brought, contained in Particulars of Claim, covering 24 pages and 175 pages of exhibits, and the 14-page Defence with 401 pages of exhibits, could not be dealt within the 15-minute hearing listed pursuant to CPR 55.5. Having not appealled the decision of the court not to hear the possession claim to give case management directions at that hearing in early October, Abbotsley cannot now have a second bite of that particular cherry.

46. The District Judge was not "plainly wrong" but correct to determine that the hearing fixed by CPR 55.5 had taken place (on 6 October 2023) and at that hearing, the decision of the court (not challenged or appealed by Abbotsley) was to give case management directions pursuant to CPR 55.8(1)(b)). The District Judge did not simply adjourn the hearing fixed pursuant to CPR 55.5. He exercised his discretion to give case management directions. The opportunity to obtain summary possession under CPR 55.8 was lost on 6 October 2023.

47. Even if, as appears to be contended for in the submissions of counsel for Abbotsley, the CPR should be construed so that a second hearing after case management directions (that is the hearing on 26 February 2024) is to be treated as the first hearing under CPR 55.5 so that CPR 55.8 applies to that second hearing (a construction which in my judgment does not bear any scrutiny), she is not assisted by *Global 100 Ltd.*

48. *Global 100 Ltd* provides authoritative guidance to courts with respect to what is meant by "grounds which appear to be substantial" within CPR 55.8. Even if it could properly be argued that the District Judge was wrong to determine that the hearing on 26 February 2024 was not a hearing pursuant to the provisions of 55.8, he cannot be criticised in finding that the claim could not be dealt with on a summary basis under CPR 55.8. The test laid down by *Global 100 Ltd* is the same test as that

for summary judgment, namely whether the defendant had shown a real prospect of success on the claim, that is a realistic rather than fanciful prospect of success (*Swain v Hillman* [2001] 1 All ER 91) or one which is more than merely arguable *(ED & F Man Liquid Properties v Patel* [2003] EWCA Civ 472).

49. In this claim, 53 separate breaches of the terms of the lease are alleged in the Particulars of Claim. Each one of those allegations was specifically dealt with and countered in the Defence, with any breaches that could be established alleged to have either been waived or remedied. The District Judge was not hearing the trial. He was not hearing evidence from the parties that would be subjected to scrutiny through cross-examination. He was not hearing submissions with respect to what he should make of any conflicting evidence. He was dealing with a three-part "early determination" application on the basis of the pleadings and the witness statements relating to that application. The District Judge had no basis for going behind the pleadings. There is nothing outlandish or plainly wrong on the face of the defence. While the claimant plainly feels passionately that she is correct in her allegations, and her counsel pointed out that she only needed to be correct on one of the 53 allegations set out, a belief in the correctness of a litigant's own case does not necessarily mean that it will in fact succeed.

50. Even if the hearing in February 2024 was a hearing pursuant to the provisions of CPR 55.5 and CPR 55.8 (which I do not accept), the allegations and defences meant that the defendant had more than a "fanciful" prospect of success. The District Judge was correct not to decide the case under CPR 55.8. Insofar as he did not provide sufficient reasons in the first judgment, he remedied that in July 2024 when he set out that his decision had been made on the basis that this was not a 55.8 hearing.

51. In any event, while the court has to determine whether there is a realistic rather than a fanciful defence (*Global 100 Ltd* and *Easyair Ltd)*, a judge still has to case manage and if he/she considers that the matters being raised by a party within a hearing are too extensive to deal with within that hearing then he/she is entitled to case manage in accordance with the overriding objective (CPR 1.1).

52. In his first judgment, the District Judge first set out that the hearing on 26 February 2024 was not a 55.8 hearing (see paragraph 17) but then, as I have already set out above, went on to say that CPR 55.5 *"is intended to allow simple cases to be dealt with speedily. The first hearing under that rule is generally listed for no more than 15 minutes; occasionally for 30. Adjournments are not unusual for example to allow a party to produce documents which they omitted to bring on the first occasion, to allow (at least in social housing cases) enquiries of the DWP as to benefit issues, or to arrange the attendance of interpreters[18]. The adjourned hearing is generally of similar length to the first; occasionally it may be as long as an hour. Having sat as a judge, initially fee paid and subsequently full-time, since the commencement of the Civil Procedure Rules (and having been a contentious landlord and tenant practitioner both before and after that) I regard it as close to inconceivable that, in a case where three hours would be required for legal argument alone, the court at the first hearing would adjourn with such a time estimate rather than allocating the matter to a track [19]."*

53. Abbotsley had only sought a hearing of 2 hours for the applications under CPR 55, CPR 24 and CPR 3.4. On the basis that counsel advising must have given

consideration to how long would be needed to explore the applications being made, and on the basis that part of the consideration in estimating time, counsel will consider how much time is needed for their own submissions, for submissions to be made by counsel for the respondent and for the judge to consider the submissions and give a judgment, it must have been felt that it was sufficient for counsel for the Claimant to raise all her arguments within 45 minutes (approximately 15 minutes for each limb of the application, including the CPR 55.8 issue) to allow 45 minutes for the Defendant's counsel to respond on all three limbs of the application, with 15 minutes for a reply (5 minutes on each ground) and 15 minutes for judgment (without any time for consideration). That was plainly overly ambitious and it is well known that district judges simply do not have additional time in their busy lists to extend hearings. It was sensible of District Judge Falvey to add a further 50% onto the time given for this application but that was still not long and, as it transpired, was not enough time for him to give thought to the issues or judgment.

54. It was clearly within the District Judge's case management discretion to conclude that, had 26 February 2024 hearing been a hearing pursuant to CPR 55.8, giving allocation directions was the correct way forward. That decision was in furtherance of the overriding objective, enabling the court to deal with cases justly and at proportionate cost, and is not one which is amenable to an appeal given the wide discretion available to a judge. In my judgment, there was no misdirection or gap in his reasoning. A case of this nature, with the defences raised on behalf of Pheasantland, was plainly not suitable for summary determination under CPR 55.8 – even if that option had still been open to Abbotsley.

55. Consequently, while I granted permission to appeal on ground 1, having heard full argument and considered the matter in great detail, I am clear that this limb of the appeal is without merit.

56. The District Judge was, first, correct to find that the hearing on 26 February 2024 was not a CPR 55.8 hearing but an adjournment of the applications for summary judgment and strike out. Even if the 26 February 2024 could properly be characterised as being the "first hearing" listed on issue of the claim, the District Judge was correct to exercise his case management discretion in accordance with the overriding objective and not deciding the case on that day and, if necessary by implication, finding that Pheasantland did have substantial grounds for defending the claim for possession.

Ground 2

57. Ground 2 is a challenge to the District Judge's determination that the property, which was the subject of this claim, was residential accommodation for the purpose of CPR 24.2(b) so that CPR 24 could not apply. The heading to this ground in the skeleton argument for the purposes of this appeal sets out "that (a) the lease was a lease of land and not chattels on the land; (b) residential use was prohibited by planning and/or by contract; (c) the statutory protection for residential users did not apply in this case; (d) the contract should have been read as a whole and in context and clearly did not relate to residential use". The skeleton argument further contends that "the District Judge erred in law in taking into account or considering determinative or giving undue weight to the relevant form N5 in preference to the language of the CPR." As a "result of any or all of the aforementioned errors of law the learned district judge

failed to decide the application and/or claim or consider or give reasons whether the claim was genuinely disputed on grounds which were arguable".

58. Counsel for the claimant urged this appeal court to consider the 9 page appendix to the skeleton argument both with respect to this ground and ground 1. It is clear that the District Judge would not have had time to consider all the arguments set out in that 9 page appendix within the 2 hour hearing that the Claimant had asked for this early determination hearing and, even with the 50% uplift in time given by the judge to himself, there was simply not the time before, after or during the hearing for the District Judge to devote the attention to the three-limbed application that the claimant feels it needed.

59. It is incumbent upon the party making the application to provide realistic time estimates for their application, particularly when an application that is before a district judge who, as is well known, carry the greatest burden of the volume of work in the County Court. Neither the court, nor the opponent, can know the level of detail, volume of material, or complexity of legal argument which a party is going to present and the court has to rely upon the applicant to be realistic in its estimation. It is not appropriate to criticise a district judge for failing to consider matters in great detail or failing to engage to the level the claimant would wish when it is the claimant who has failed to allow sufficient time. It is important to note, however, that my refusal to grant permission to appeal on this ground was not merely the underestimation of time needed for a thorough consideration of the matters raised but was because of the complexity of the issues not lending themselves to summary judgment.

60. While this hearing is by way of review and not rehearing, I have had been able to give myself the time necessary to consider all the arguments raised by Abbotsley, including those included in the 9 page appendix to the skeleton argument, in detail.

61. Having taken that time, both when considering whether permission be given on the papers and now, on the renewed oral application for permission, I have concluded that this is not a case which can be determined by way of summary judgment. The matters contained in the appendix are all issues which require exploration at trial, with evidence to be given, scrutinised and challenged through the trial process, and for submissions to be made. As I am satisfied that these are not matters that can be dealt with on a summary basis, I conclude that permission to appeal should not be given. Had District Judge Falvey determined that an application under CPR part 24 was open to Abbotsley, that application would not have succeeded.

62. CPR part 24 provides that the court may order summary judgement on the whole of a claim or on a particular issue if the defendant has no real prospect of successfully defending the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a trial.

63. As I have already set out, Lewison J (as he then was) set out the principles to apply to applications for summary judgment in *Easyair Ltd v Opal Telecom Ltd.* It is worthwhile to set out those principles, as recorded in the notes to the White Book, in full:

(i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful"

prospect of success *Swain v Hillman* [2001] 1 All ER 91;

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

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

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

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

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

(vii) On the other hand, it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason

> is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trail because something may turn up that would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725

64. Abbotsley contend that while various factual matters can be dealt with in the course of the trial, there ought to have been an early determination that the lease was forfeit. I disagree. Even if CPR part 24 could apply to this matter (and I will turn to the points made by DJ Falvey in his determination) this is not a case where the court needed to "grasp the nettle" because there was no real prospect of successfully defending the claim. The court has to take into account the evidence available and that which could reasonably be expected at trial, in this case including evidence from the lodge owners, and the court's role is not to simply accept on face value, and without analysis, the evidence put forward by the claimant.

65. As an example of this, Abbotsley sought to put forward evidence from Bryan Lecoche Limited with respect to the occupation of the various lodges. It is not entirely clear the basis upon which that evidence is put forward, but it is clear that it is not evidence which is accepted in its entirety by the lodge owners and the consequences of that evidence, even if accepted or if it were to withstand challenge by Pheasantland and the lodge owners, does not necessarily result in the conclusions Abbotsley seeks. These are exactly the sorts of matters which the court has to be careful to consider. The court is not to be bounced into making decisions which would shut out legitimate defences and, as is set out in *Easyair*, relying on *Doncaster Pharamceuticals v Bolton:*

> *"* the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;"

66. The allegations raised by Abbotsley that there are breaches of the lease with Pheasantland which means that the lease is forfeit can be summarised as follows: that the lodges (or some of them) are being permanently occupied; that the lodges are not being vacated in February; that sheds have been erected on the land; that a borehole was drilled; that a lodge was rented out other than for holiday accommodation; that there was a failure to obtain a deed of covenant; that there was a failure to obtain a written warranty that the lodges are tourist accommodation; that there was a failure to insure; that there was nuisance, damage and/or trespass. Pheasantland denies that there are any extant breaches of the lease covenants; that any historic breaches have been rectified or waived; that Pheasantland has no liability with respect to allegations of breaches by its predecessors and, more specifically, that the lodge owners are not using the lodges as permanent accommodation; that the relevant lodges are vacated in February; that the shed types were approved by Abbotsley and planning permission was not objected to; the borehole was not a breach of the terms of the lease and was permitted; that the property is insured; that Abbotsley is put to strict proof that a lodge was rented out other than for holiday accommodation, and that lodge has been vacated in any event; that Deeds of Covenants and written warranties; and that the court will need to determine the water and trespass claim.

67. In other words, the issues that Abbotsley raise as giving them a right to forfeit the lease are all challenged and, additionally, relief from forfeiture is sought. These are complex matters of fact which require exploration by the court. They are not issues that can be dealt with on the basis of one side of the argument and without consideration of the case put forward by Pheasantland.

68. Once it is clear that the is not a case suitable for summary judgment, the application for permission to appeal can go no further and that is an end to this ground.

69. The District Judge, however, determined the case on the basis that the subject matter of the claim was residential premises so that the provisions of CPR 24.2(b) applied which provides that summary judgment may be granted: "against a defendant in any type of proceedings except proceedings for possession of residential premises against a mortgagor or tenant or contract-holder, or against a former tenant or former contract-holder holding over with protected occupancy." This is not a "holding-over" case and the lease between Abbotsley and Pheasantland is plainly one of landlord and tenant. The only issue is whether Abbotsley are seeking possession, in the proceedings, of residential premises.

70. DJ Falvey's findings were as follows:

> "CPR 24.2(b) provides that summary judgment is not available against a defendant in "proceedings for possession of residential premises against a mortgagor or tenant or contract-holder …
>
> The Defendant is clearly a tenant
>
> The question which arises is as to "residential premises".
>
> As a matter simply of English usage, that phrase could it seems to me mean "premises which are wholly residential" or "land

> which includes residential premises." Either is an entirely reasonable interpretation of these words taken alone and I have hesitated between them.
>
> Mr Bottomley urged the latter on me on the basis of a teleological approach, namely that the purpose of the exclusion is to protect residential occupiers in the occupation of their homes. I see the logic of this (and it might be said in Convention terms to reflect the fact that article 8 rights may be seen as more a priority than pure property rights).
>
> However the consideration I find more convincing is that the prescribed form of Claim Form for possession claims (Form N5) requires the claimant to certify that the subject property does or does not *include* residential premises (my emphasis); and I assume that the Rules Committee has taken a consistent approach.
>
> I then turn to consider, in the light of that decision as to construction, whether the subject land does in fact "include residential premises".
>
> In my view it plainly does; the user clause in the Lease dated 17 July 2003 granted by the claimant (under its former name "Abbotsley Golf & Squash Club Limited) to the defendant's predecessor in title Luddington Investments Limited reads "[u]se as holiday and second home residential accommodation in chalets together with all services ancillary thereto."
>
> This wording clearly excludes use as a permanent dwelling (it being a matter"

71. The lease is, of course, a type of contract. The lease provides that the leasehold property *"on which inter alia it is intended to erect log cabins (which shall hereinafter be referred to as "Log Houses") and on which have been laid out the roads paths grassed wooded and landscaped area for use and enjoyment herewith"* and that the lessors (now Pheasantland by assignment) *"have previously granted underleases of or intend hereafter to grant underleases of plots for the erection of Log Houses on the estate."* The permitted use, as set out in the lease, is as *"holiday and second home residential accommodation in chalets together with all services ancillary thereto"* and the property is known as *"Holiday Chalet Land."*

72. Reference is again made in this part of the skeleton argument to "caravans" and I am not clear what that is a reference to. The definitions in the lease are to chalets and the photographs provided by Abbotsley all show large (three bedroomed) heavy wooden chalets or log houses in accordance with the terms of the lease. These are not moveable "chattels" but fixed structures. It may be that there is some confusion with the reference to the Caravan Sites and Control of Development Act 1960 where reference to "caravans" is made. The planning permission is with respect to the erection of holiday "lodges" that should not be occupied other than as holiday accommodation, the reason given being that the Local Planning Authority *"may*

retain control over the development where the occupation of residential accommodation ...". The Caravan Site Licence references to the reasonable demands of *"site residents"* for electricity and the provision of water suitable for drinking and to meet the reasonable demands of the *"residents."*

73. The evidence is, therefore, that the premises being let under the lease was for the purpose of erecting log cabins (or houses) for the purpose of residential (holiday) accommodation and that the people in the log cabins are "residents".

74. In the notes to CPR 24.2.2 in the White Book, the editor's interpretation is that it only applies to tenants whose occupancy is protected within the meaning of the Rent Act 1977 or Housing Act 1988. That does not appear to accord with the words of CPR 24.2. Leaving that to one side, the claim is against a tenant, and the consequence of forfeiting the land let to Pheasantland under the terms of the lease, would be that possession of the residential premises would also fall in. The effect of bringing forfeiture proceedings against Pheasantland is to seek possession of residential premises. It was not correct to say on the N5 that the Holiday Chalet Land did not include residential property. It plainly does. Further, the District Judge cannot be validly criticised for reading N5 and CPR part 24 in a consistent way.

75. This claim is not suitable for summary judgment determination for all the detailed reasons I have given. That is the end of this ground and the basis upon which permission to appeal is not granted. As a distinct issue, the District Judge determined that CPR 24 could not apply in any event as a result of the land that the claimant was seeking containing residential premises. In my judgment this is a determination he properly came to for the reasons he gave.

Ground 3

76. Ground 3 is with respect to the third limb of the application for early determination of this case, namely strike out pursuant to the provisions of CPR 3.4. The submission made on behalf of Abbotsley is that the District Judge failed to consider, or to consider properly, the application to strike out or to give any, or any proper, reasons for rejecting the application to strike out. The application to strike out required consideration of the arguments in the Appendix to the Skeleton Argument in support of this application for permission to appeal and which the appeal court is asked to determine.

77. There was not time in the day appeal before me for counsel for Abbotsley to raise the points that she has set out in her 9-page Appendix to the skeleton argument. I have made time to consider these points in detail in the course of dealing with this judgment. I have already set out my concerns about the failure to provide an adequate time estimate to allow the District Judge to deal with all the issues that Abbotsley wished to raise before the District Judge and that it is inappropriate to then criticise the judge for failing to give adequate consideration to points when he was not given sufficient time to do so.

78. It is correct that the District Judge failed to mentioned CPR 3.4 in the judgment he gave on 19 June 2024. It may be that was because he felt that he had already dealt with the substance of the arguments raised by Abbotsley when dealing with both CPR 55.8 and CPR 24.

79. In the hearing on 18 July 2024, when he gave additional reasons, he said this:

> "So far as strike out is concerned, quite apart from anything else – and, as [counsel for the Defendant] observed in his note for this hearing – on a strikeout application, one has to assume the factual accuracy of the pleaded case, and on that basis, this simply was not a strike out case."

This supports his view being that he had already dealt with the issues and that, insofar as CPR 3.4 raised separate points, that was succinctly dealt with by the fact that the pleaded cases had to be assumed to be accurate and, in the circumstances of this matter and the cases pleaded by both Abbotsley and Pheasantland, CPR 3.4 could not apply.

80. CPR 3.4 provides that the court *"may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings."*

81. The decision whether to strike out or not is a discretionary one ("may strike out…") and, while I granted permission to appeal on this point as a consequence of the apparent failure of the District Judge to consider strike out in his judgment, Abbotsley would have had to establish that his decision not to strike out was one that no judge could reasonably have made on the basis of the submissions before him. It is impossible to say that he was wrong to refuse to strike out the Defence. First the Defence dealt with the specific allegations made in the particulars of claim and, the accuracy of the facts pleaded are accepted for the purpose of the strike out application unless they are contradictory or obviously wrong (see Master Marsh in *MF Tel Sarl v Visa Europe Limited* [2023] EWHC 1336 (Ch)).

82. A strike out should only be granted if the court is certain that a claim is bound to fail and, in this case, the Defence discloses reasonable grounds for defending the claim. Further, this Defence is plainly not an abuse of process but an answer to the allegations made. Pheasantland is doing nothing more than defending its position and doing so in a proper way. In all those circumstances the strike out application was bound to fail.

Conclusion

83. I have deliberately given myself the time necessary to consider in detail the grounds of appeal brought by Abbotsley against the determination of District Judge Falvey to refuse the three-limbed application for early determination. I gave myself that time to ensure that there were no matters that were focussed upon by Abbotsley that may have led DJ Falvey to the wrong conclusions in light of the limited time given to him to decide these complex and detailed matters within a District Judge's very busy list.

84. I am satisfied that DJ Falvey did not err in his determination to refuse the applications for early determination in this case pursuant to the provisions of CPR 55.8 (summary possession); CPR 24 (summary judgment); or CPR 3.4 (strike out). I have considered with great care all the arguments raised before me and I am satisfied that this is a case which must proceed to a full consideration at trial with disclosure and

inspection of all the relevant documentation and with witness evidence scrutinised by the parties.

85. Of course, the failure to succeed on the early determination applications has absolutely no impact upon the trial and the final determinations which will be made on the basis of the evidence, law and submissions presented to the court in the trial.

Addendum

86. I have invited counsel to agree the order arising from this judgment, including the appropriate costs order. I have not received a draft order in time for handing down this judgment as two further matters have been raised by counsel for Abbotsley alongside the typographical corrections.

87. First, it is suggested that reasons should be expanded in paragraphs 40 and 58 of the judgment. Counsel for Pheasantland does not accept that any further reasons are needed or appropriate. I agree with counsel for Pheasantland. This already lengthy judgment does not require further expansion.

88. The second point raised is, without commitment that such an application would be made, Abbotsley should be granted an extension of time for the making of an application for permission to appeal this decision, either until 21 days after determination of the trial or, at the very least 21 days after judgment on submissions which are being made on the papers, with respect to costs.

89. As has been correctly noted by counsel for Abbotsley, any such appeal would be a second appeal and permission to appeal would be dealt with by the Court of Appeal. The Court of Appeal will not give permission unless it considers that (a) the appeal would (i) have a real prospect of success; and (ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it (CPR 52.7). While it would be a matter for the Court of Appeal to decide whether to grant permission on that test, counsel for Abbotsley has sufficient time to advise and draft grounds within 21 days of this judgment being handed down with respect to whether this is a case appropriate for a second appeal. Providing additional time would have the detrimental impact of increasing uncertainty for the parties going forward. The Respondent to this appeal, Pheasantland, and those who have leases with Pheasantland as their landlord, are entitled to know whether the "early determination" applications have now been conclusively decided or whether Abbotsely are continuing to endeavour to proceed with this part of the litigation. I therefore refuse the extension of time sought. Abbotsley has time to deal with the matter within the time-limits imposed by the Civil Procedure Rules.

90. I look forward to receiving the draft order agreed between Counsel with respect to the determinations in this judgment by no later than 4pm on Wednesday 19 March 2025.