Neutral Citation Number: [2019] EWHC 3494 (QB)

Case No: QB-2019-000695

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2019

Before :

MR JUSTICE WARBY

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Between :

Triplark Limited	**Claimant**
- and -	
(1) Northwood Hall (Freehold) Limited	
(2) Philip Whale	
(3) David Wismayer	**Defendants**

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- -

Alexandra Marzec (instructed by **Hamlins LLP**) for the **Claimant**
Adam Speker (instructed by **Payne Hicks Beach**) for the **Defendants**

Hearing date: 5 December 2019

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Approved Judgment

Mr Justice Warby:

1. This has been the trial of meaning and other issues as preliminary issues in this claim for damages for libel and malicious falsehood.

The claim

2. The claim stems from a dispute over the ownership of Northwood Hall, a 1930s apartment block in Highgate, North London. Northwood Hall comprises 194 flats. The Particulars of Claim refer to the claimant company ("Triplark") as the owner of the freehold of Northwood Hall, and 30 of the flats. Most of the other flats in the block are held by individual leaseholders. The first defendant ("NHFL") is a company incorporated in December 2017, with a view to implementing a scheme for the collective enfranchisement of the individual leaseholders ("The Scheme"). The second defendant ("Mr Whale"), a retired solicitor, is a director of NHFL and a leaseholder at Northwood Hall. The third defendant, Mr Wismayer, is engaged in the property management business, and involved with the affairs of Northwood Hall.

3. Triplark's case is that during, or before, March 2018 the three defendants entered into a common design to injure the claimant's reputation by publishing false and defamatory statements about Triplark, in an attempt to secure support for the Scheme from leaseholders at Northwood Hall. It is alleged that this common design was implemented in March 2018 by means of two publications ("the Publications"), each of which is said to be a libel or a malicious falsehood actionable at the suit of Triplark.

4. The first Publication is a leaflet or prospectus sent out on or around 5 March 2018 to all the leaseholders or, on Triplark's case, all the flats at Northwood Hall. It is a long document, running to over 6,500 words, signed by Mr Whale, over the company name of NHFL, with an email address Info@NorthwoodHallFreehold.co.uk and a phone number,. It bears the title, "*NORTHWOOD HALL (FREEHOLD) LIMITED – Collective Enfranchisement – (S13 Leasehold Reform Housing and Urban Development Act 1993) – An invitation to participate"*, and is said to have been published to all the leaseholders and other residents. It has been called "The Invitation". Triplark complains of the whole of the Invitation.

5. The second Publication has been called "The Letter". Like the Invitation it was signed by Mr Whale, over the company name of NHFL, with a corporate email address. It bears the date 24 March 2018, and the claimant's case is that it was sent to all leaseholders and other residents at Northwood Hall. It is headed "*Freehold Enfranchisement, Response to the Allegations made by NWHLG (Northwood Hall Leaseholder Group) and Mr Maunder Taylor*". Triplark complains of the whole of the Letter, which runs to some 4,200 words.

6. Triplark's case is that each of the Publications refers to it, bears natural and ordinary meanings that are defamatory of it, and has caused or is likely to cause serious harm to its reputation within the meaning of s 1 of the Defamation Act 2013. Further and alternatively, Triplark alleges that the words complained of are false, and were published maliciously, and their publication was calculated to cause pecuniary damage to Triplark in respect of its business as a property freeholder.

The preliminary issues

7. The issues for trial, pursuant to an order of Master McCloud dated 11 September 2019, are essentially the same in relation to each Publication. Slightly reformulated for simplicity, they are these:

   (1) whether the words complained of bore the meanings complained of, and if not, what natural and ordinary meanings they bore about Triplark;

   (2) whether the meanings found are defamatory of Triplark at common law;

   (3) whether the words complained of, "in the meanings found, are statements of fact or expressions of opinion"; and if to any extent the answer is that they are expressions of opinion; and

   (4) whether the Publication "indicated, in general or specific terms, the basis of the opinion(s) stated".

8. The arguments have developed in such a way that the first and second issues now embrace the question of whether the words complained of refer to Triplark, and the separate question of whether, if so, the words defame it as a company, rather than some individual(s) responsible for the conduct of its affairs.

9. But I am not now concerned with any other issues raised by the case so far, such as responsibility for publication, whether either of the Publications caused serious harm to reputation, or whether they were false, malicious, or calculated to cause pecuniary loss. Nothing in this judgment should be treated or read as indicating any conclusion on any of those issues. Nor are those necessarily the only issues that would arise. At this stage, no Defence has been served. One of the main advantages of preliminary issues of this kind is to enable the parties to review their positions in the light of final decisions on some key issues, and decide what (if any) further questions need to be raised for determination by the Court.

Legal principles

10. The legal principles that apply when determining the meaning of words for the purposes of a defamation claim are well-established, very familiar to the Court, and not in dispute at this trial. Both sides have cited and relied on the recent distillation of those principles by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [11]-[12]. It is unnecessary to set them all out, in detail. Some points of importance, for present purposes, are these:

    (1) At the heart of the exercise is the need to identify the single meaning that would be conveyed to an ordinary, reasonable reader of the words complained of. The task involves an assessment of the words used, in their context, and no extraneous material.

    (2) The reader is assumed to read the whole of the publication, bringing to the process a cast of mind that lies somewhere between the extremes of being "avid for scandal" and "unduly naive." Sometimes, it is possible, by inference, to attribute some additional characteristics to the reader, given the nature of the particular publication

under consideration, and its audience or readership. Caution is required before doing this (see *Simpson v MGN Ltd* [2015] EWHC 77 (QB) [10]) but, as I will explain later, it is common ground that it can be done in this case.

(3) The meaning to be identified is the natural and ordinary meaning. This includes what is implicit; the ordinary reader can and does read between the lines. But the parties and the Court should beware of over-elaborate analysis. They should also be wary of larding the meaning with evaluative phraseology that in reality derives from the reader's own moral judgments, rather than the words themselves: see *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [54], *Tinkler v Ferguson* [2019] EWCA Civ 819 [37].

11. The relevant common law test for whether a meaning is defamatory is uncontroversial. The authoritative formulation is that a statement will be defamatory if it is one that "substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do": *Lachaux v Independent Print Ltd* [2019] UKSC 27 [2019] 3 WLR 18 [9], approving *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J). The word "substantially" in the *Thornton* formulation is an important element of the common law test, incorporating as it does a threshold of seriousness or gravity that serves to exclude trivial allegations. In one respect, however, this formulation can be slightly misleading. At common law, a claimant does not need to prove the actual impact of a statement; the common law looks exclusively to whether the words have a defamatory tendency. As Lord Sumption put it in *Lachaux* at [17]. "… the defamatory character of the statement … depends only on the meaning of the words and their inherent tendency to damage the claimant's reputation." See also my judgment at first instance in *Lachaux* [2015] EWHC 2242 (QB) [2015] EMLR 28 [15(5)].

12. These principles apply, albeit in slightly modified form, in a case like the present where the claim is brought by a company. It has long been established that a company can sue in respect of an imputation which tends to injure its reputation in business or trade. The authoritative statement of this aspect of the law is that of Lord Keith in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, 547, which again focuses on whether the offending statement has a defamatory tendency:

> "… a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it."

Other examples given in Gatley include statements which are "such as to lead ordinary people of ordinary sense to the opinion that it conducts its business in a dishonest, improper or inefficient manner", in respect of which "the law is the same as in the case of an individual" (Gatley on Libel & Slander 12th ed para 8.16). These principles are consistent with Article 10 of the Convention: *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44 [2007] 1 AC 359.

13. In view of *Thornton,* an imputation will only be actionable by a corporation if it has a tendency to cause a *substantial* adverse effect on people's attitudes towards the company. By statute, the threshold has been set higher, requiring "serious harm to the reputation of the claimant", which can only be made out on proof of "serious financial loss", or its likelihood: see s 1(2) of the Defamation Act 2013. That is not an issue for today. However, as Mr Speker points out, corporate claims can throw up other special considerations, in relation to both reference and defamatory meaning. The Court may need to look closely at the question of reference; sometimes an allegation may, in substance and reality, refer to and reflect exclusively on the conduct of its officers or staff. There may be cases, where a corporate claim is viable, but artificial. Mr Speker has referred me to discussion of these topics by Eady J, in a series of cases in the early years of this century: *Multigroup Bulgaria v. Oxford Analytica Limited* [2001] EMLR 28, *Elite Model Management Corp v. BBC* , 24 May 2001, unreported, QBD, and *Al Rajhi Banking & Investment Corporation v The Wall Street Journal* [2003] EWHC 1358 (QB) [6-8].

14. The question of whether a statement is factual or one of opinion can be important. Opinions are easier to defend than factual assertions, as should be the case, given the importance of the free exchange of ideas in a democracy. The common law defence of fair comment has been replaced by the statutory defence of honest opinion, contained in s 3 of the Defamation Act 2013. The first requirement of the statutory defence is that the statement "was a statement of opinion": s 3(2) Defamation Act 2013.

15. The principles by which the court decides into which category a particular statement falls are not affected by the 2013 Act. They have been considered and applied on a number of occasions over recent years: see, for instance, *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB) [2015] 1 WLR 971 [88]-[98], *Koutsogiannis* [16]-[17], *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) [24-29], *Greenstein v Campaign against Antisemitism* [2019] EWHC 281 (QB) [30], and *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 [34-39]. Nobody has suggested that there is any material distinction between the various formulations adopted in these cases. The first requirement is that the words should be recognisable as opinion. Opinion has been defined as "something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation etc". It is common ground that the test is an objective one and that, as with meaning, the ultimate determinant is how the words would strike the ordinary reasonable reader: see *Butt* [39] (Sharp LJ).

16. Mr Speker has highlighted some points from the "fact or comment" authorities which he says, and I accept, are of relevance to this case. The first is that the subject-matter of words and their context may be important indicators of whether they are fact or comment: *British Chiropractic Association v Singh* [2010] EWCA Civ 350 [2011] 1 WLR 133 [26], [31]. The second point he makes is also drawn from *Singh*: that there are dangers in drawing too rigorous a distinction between the question of whether words are defamatory and the question of whether they are fact or comment. To ask the questions separately, in that order, "may not always be the best approach, because the answer to the first question may stifle the answer to the second": *Singh*, [32]. By the same token, the answer to the second question may at least inform the answer to the first. Although expressions of opinion can of course be defamatory (else there would be no need for s 3 of the 2013 Act), the fact that an imputation is opinion may have a

bearing on whether it is defamatory. The issue is considered, albeit in the context of s 1 of the 2013 Act, in *Sube v News Group Newspapers Ltd* [2018] EWHC 1234 (QB) [33], and *Morgan v Associated Newspapers Ltd (No 2)* [2018] EMLR 25 [18], [31].

17. There is also something of an overlap between the question of whether a statement is one of opinion, and the second requirement of the statutory defence under s 3 of the Act, namely "that the statement complained of indicated, whether in general or specific terms, the basis of the opinion" (s 3(3)). Although an inference may amount to a statement of opinion, the bare statement of an inference, without reference to the facts on which it is based, may well appear as a statement of fact: see *Kemsley v Foot* [1952] AC 345. As Sharp LJ, DBE, pointed out in *Butt* at [37], not every inference counts as an opinion; context is all. Put simply, the more clearly a statement indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion.

18. Some of the 19th century cases can be read as suggesting that different rules apply to imputations of bad motive, or criminal intention, and that these are always or generally to be treated as factual in nature: see *Campbell v Spottiswoode* (1863) 3 B&S 769 (Compton J), and *Hunt v Star Newspaper Co Ltd* [1908] 2 KB 309 (Fletcher Moulton LJ). But, as was common ground at the hearing before me, in the modern law the principles to which I have referred apply equally to statements of those kinds. As Nicklin J put it in *Koutsogiannis* at [16(v)]:

> "Whether an allegation that someone has acted "dishonestly" or "criminally" is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact."

Methodology

19. In the light of the principles I have outlined, the standard practice at trials of meaning is to read the publication sued upon, and reach some provisional conclusions, before reading, hearing and considering the arguments put forward by the parties: see, for instance, *Tinkler v Ferguson* [32], *Sheikh v Associated Newspapers Limited* [2019] EWHC 2947 (QB) [26]. This involves the Judge putting himself or herself in the position of the hypothetical ordinary reasonable reader, but with the applicable principles in mind. I carried out that task on the morning of the hearing, so that the words and my provisional conclusions on them were fresh in my mind when reading and then hearing the submissions of Ms Marzec and Mr Speker.

20. I had given some thought, before reading the words complained of, to the nature and purpose of the Publications, the characteristics of the intended readership, and the way in which such readers would be likely to approach the offending words. These were substantial written communications of a business character. They were sent, in hard copy, to the leaseholders of Northwood Hall. On the claimant's case they were also sent to the tenants, but on any view they were aimed at the leaseholders. They were serious communications, about a proposal for the collective acquisition of the freehold. They related, therefore, to a matter with an important bearing on the financial interests of the leaseholders, and in the case of many if not most of the readers, to the future of their

homes. The topic will have been of real and direct interest to them, and one would expect the documents to be read with care and attention.

21. All of this seems obvious, and when it came to the hearing, none of it was disputed by either side. Indeed, Ms Marzec has stressed the formal, serious and apparently considered nature of the Publications, as features which support her case that they convey defamatory imputations of fact. Mr Speker did add an observation, to which I shall need to return later. He said that the Publications were both communications on topics involving the "lived experience" of the leaseholders, and submitted that this was a matter of some importance when considering each of the preliminary issues.

The Publications

22. It is conventional, in a judgment on meaning, to set out the words that are being assessed. They are the essential, undisputed, facts on which the judgment must be based. To add nearly 11,000 words to this judgment would, however, be unnecessary and disproportionate. It seemed to me on reading the Publications, and the written and oral argument confirmed, that the key passages form a relatively small proportion of the whole. Although I have had regard to the whole of each Publication, by way of context, sufficient transparency is achieved by extracting the key passages and placing them in the Appendices to this judgment. In doing so, I have used the paragraph numbering added by the claimant for ease of reference, and what follows will refer to that paragraph numbering.

23. It can be seen from Appendix A that the Invitation gives an account of the ownership structure at Northwood Hall that differs from the pleaded case for Triplark. Paragraphs [5] and [13] of the Invitation identify the freehold owner as Crownhelm, with Triplark as the head leaseholder. When I enquired about this at the hearing I was told by Ms Marzec, on instructions, that both versions were accurate: at the time of the Invitation, Triplark held the head-lease of Northwood Hall; it was Crownhelm, its wholly owned subsidiary, which at that time owned the freehold, and 30 of the flats; but Triplark later acquired Crownhelm's interests. I have since been told that this happened in mid-March 2018, and (according to Triplark) that the true figure is 32 flats. I shall come back to the significance of all this.

The Invitation

24. Triplark attributes three meanings to the Invitation, each of which it contends is a defamatory factual imputation. I start with meaning. The pleaded meanings are these (I add references to the paragraphs of the Invitation particularly relied on by Ms Marzec as supporting each meaning):-

    (1) "the Claimant has incompetently maintained and intentionally neglected Northwood Hall in breach of its obligations as the freeholder" ([17], [141]);

    (2) "the Claimant has artificially and wrongly inflated premiums for lease extensions and unjustifiably overcharged tenants by forcing them to pay exorbitant professional costs" ([18], [55]. [86-89 (and footnote 5)], and [132-133]; paragraphs [114-118] are relied on as context);

(3) "the Claimant has acted in a wholly reprehensible manner by taking advantage of vulnerable Leaseholders by blackmailing them with a view to unlawfully extorting service charge arrears from those individuals" ([126-128]).

25. Ms Marzec submits that these imputations do little if anything more than reflect the literal meaning of the words complained of: what they say. She argues that the reader would regard the Invitation as a serious document, setting out a carefully thought out business proposition, using words which have been carefully and deliberately chosen. This is not a case of language used casually, loosely, or metaphorically. Ms Marzec submits that it is clear that the document is about Triplark, rather than any individual. No individual is named or referred to in the Invitation, in connection with the alleged acts or omissions of Triplark, nor have the defendants identified any circumstance which would lead a reader to conclude that the criticisms were aimed at any individual. She emphasises that the various strands of meaning are to some extent interdependent; having been told that the landlord has acted incompetently, with deliberate neglect, and overcharged its tenants, the reader would be all the more likely to treat the allegation of "blackmail" as meant literally. Ms Marzec argues that all the imputations are of a kind that would tend to put people off having dealings with Triplark; they fall firmly within the categories recognised as defamatory of corporate entities.

26. Mr Speker begins with some general points. He does not dispute that the ordinary reader would treat the Invitation as a serious document, but he submits that the document would be seen for what it is: written advocacy, trying to convince the reader to join the Scheme. The Court should focus on the overall impression the reader would gain and this, he argues, is that the authors are unhappy with the current ownership arrangements, believe there is a better way to manage the block, and are seeking to explain how that can be achieved. The key topic for the reader would be the supposed benefits of the Scheme. The reader would not focus attention on anything said about Triplark, its merits or demerits. If they did, they would assess the authors' words against their own experiences as leaseholders.

27. As for the claimant's meanings, Mr Speker submits that all three are artificial, and go beyond what is said or implied by the words complained of; they are the product of over-elaborate analysis. He argues as follows:

(1) The first meaning is strained; the reader would recognise phrases like "effects of incompetence" and "calculated neglect" as "rhetorical flourishes".

(2) As to the second meaning, the relevant passages consist of comparisons between the costs of new leases under the s 42 regime and what the defendants believed the position would be under the Scheme. The meaning complained of includes adverbs ("artificially", "wrongly", "unjustifiably") which are not stated or implicit in the words used. The words about exorbitant fees do not refer to Triplark, and do not mean that it was forcing tenants to pay exorbitant professional fees; that is the responsibility of the specialist firms.

(3) The third meaning also wrongly attributes to the Invitation a range of condemnatory imputations ("wholly reprehensible manner", "taking advantage", "vulnerable" and "unlawfully extorting"), which are nowhere to be found in, nor are they implied by, the words. Although the Invitation does use the word "blackmail" this would not be understood as alleging the criminal offence of that name. The word is in

quotation marks. In its context, within the section headed "The Vendors' lien", the relevant passage cannot bear a meaning graver than this: that in 2015 (in the view of the authors), Triplark unnecessarily and wrongly required some tenants to pay disputed arrears of service charge when RTM was the entity to which service charges were then payable; and that since the Claimant did so then, there is a possibility they may act in a similar way in the future. In his oral submissions, Mr Speker summarised the gist of this meaning: that Triplark acted as enforcer for RTM and might do the same again.

28. In my judgment, the Invitation bore the following natural and ordinary meanings about Triplark: that it

(1) had been guilty of incompetence in its role as head leaseholder of Northwood Hall;

(2) had for decades deliberately neglected the maintenance of the property, thereby oppressing the leaseholders;

(3) had formulated development proposals for the roof of Northwood Hall that were insensitive, allowing leaseholders no say in the matter;

(4) knowing that many leaseholders would be unable or unwilling to take on the financial risks of contesting valuations before an independent body (the First Tier Tribunal), had taken the opportunity to demand premiums for lease extensions that were 10-20% above their true value, inflated, ramped up, and extortionate;

(5) in 2015, deliberately abused its own power and the weakness and lack of sophistication of some leaseholders to force them, in return for lease extensions, to pay substantial arrears of service charges which were disputed and which they did not owe, thereby blackmailing the leaseholders; and

(6) that there were reasonable grounds to fear that, if free to do so, the company would do the same again.

29. These are broadly the meanings I arrived at on first reading the Invitation, and Counsel's arguments have not altered the essential conclusions. Conscious of the need to avoid over-elaborate analysis I will summarise the key features of my thinking. The first meaning emerges clearly from paragraphs [13], [16] and [17], bolstered in particular by paragraphs [129-134] and [141]. The second meaning is conveyed principally by paragraphs [13], [17] and [141], again having regard to the immediate context. The third meaning derives from [26], [34-36] and [38]. The imputation of insensitivity is implicit in [36]. Meaning (4) is conveyed by paragraphs [20], [86-89], footnote 5, and paragraph [133]. Meanings (5) and (6) distil the essence of what is said about Triplark in the section of the Invitation, at paragraphs [119-127] that deals with the Vendors' Lien.

30. Mr Speker may well be right to say that readers will have focused attention on the financial pros and cons of the Scheme, and how it would affect them personally. But it does not follow and, applying the tests I have identified, I cannot conclude, that the ordinary reasonable reader would have ignored harmful information about the existing landlords. As Mr Speker says, the reader is being offered comparisons between the current regime and the benefits that the Scheme might bring. The prospect of gaining

freedom from the landlords, and the manager, and the advantages of doing so, are integral components of that comparison. The meanings I have found reflect the words of the Invitation and those implications I am satisfied the reader would find within the wording. There are direct allegations of incompetence, neglect, oppression, extortionate and ramped up premiums, of blackmail, and the prospect of further misconduct. All of these are directed at or would be taken to refer to Triplark, and none of them are anywhere contradicted or qualified. None of them are rhetorical in the sense that they would not be taken literally. Whether any of them are mere comment is a separate question that belongs at a later stage of the analysis.

31. Ms Marzec is right to say that each strand of meaning informs others; words that might not have conveyed such serious imputations take their colour from the associated material. In some respects, I have gone slightly beyond the pleaded meanings. I have done this by importing some of the express language of the Invitation. I am free to do this, on the authorities. On the face of the order for the preliminary trial, it is part of my task, unconfined by the statements of case. In this case, at least, it seemed to me potentially helpful, to avoid artificiality. Within limits the claimant may choose, or not, to adopt any additional elements of meaning that I find, assuming I go on to find them defamatory. (The claimant is not, of course, free to make a selection that is inconsistent with my findings.)

32. It will be seen, however, that I have rejected some aspects of the claimant's case. The concluding words of Triplark's first meaning are not conveyed by the words complained of; as I have pointed out, the Invitation expressly identifies Crownhelm as the freeholder; the imputations concern Triplark as "head leaseholder". Triplark's second and third meanings both contain a number of evaluative terms which are not contained in the Invitation. In my judgment, they fall foul of the rule against the artificial importation of judgmental adverbs described in *Brown v Bower* and *Tinkler v Ferguson.* In addition, the use of the word "reprehensible" as a gloss on a meaning is unhelpful, when the Court has to determine whether the imputation is defamatory. I agree with Mr Speker that the imputation of excessive professional fees is one that is aimed at the providers of the professional services, and not at Triplark; the suggestion is that both Triplark and the professionals have taken advantage of the weak position of leaseholders to overcharge them. Other imputations of overcharging, by others, are to be found in the words complained of, for instance at [134]. These passages do not reflect on Triplark, but they are contextual matter that makes some contribution to the impression that would be made on the ordinary reader by what is said about Triplark.

33. Having identified these meanings, I have considered the second and third preliminary issues (whether the meanings are defamatory, and whether they are fact or comment) in conjunction with one another. This is an easier task, having stripped out the surplus adverbs and adjectives introduced by the pleader (not, by the way, Ms Marzec). In determining whether meanings are factual or matters of opinion, I apply the principles identified earlier. The question of whether the words are defamatory of Triplark is not so straightforward. I apply the *Thornton* test, but the question is how I should apply it, in the context of this particular corporate claim.

34. I have mentioned already the acknowledged discrepancy between paragraph 1 of the Particulars of Claim and what I have been told are the facts at the time of publication. A later part of the statement of case, where Particulars of Serious Harm are given, features the same discrepancy. But the Particulars of Claim also assert that Triplark

has "a significant interest in Northwood Hall", which is consistent with the role of head leaseholder; and they also assert (at paragraph 1) that "The Claimant has a long-established history, having operated within the property industry for over 40 years." Confounding the position further, however, the Particulars go on to aver that the allegations complained of

> "21.1 … are likely to have a significant impact on the way the claimant is viewed within the property and management industries and by the leaseholders in particular, in addition to other individuals and organisations with whom the claimant engages. The words complained of were published to those individuals who pay regular charges to the Claimant.
>
> 21.2 …. Northwood Hall is the Claimant's sole investment. As a result, the Publications are likely to have a significant consequential impact as follows:
>
> 21.2.1 Should the Leasholders be persuaded to join the Scheme … it will result in the loss of its freehold interest and therefore also the income that it derives from its role as freeholder…
>
> 21.2.2 Most of the flats owned in hand by the Claimant are let out on assured shorthold tenancies, from which the Claimant derives a significant part of its income …"

35. The position is clearly unsatisfactory. This section of the Particulars of Claim sets out the claimant's case compendiously, in respect of both Publications. But on the basis of what I am now told it is inaccurate, in what could be a significant way, so far as the Invitation is concerned. The pleaded allegations of prospective income loss as a result of the Invitation appear to be based on the false premise that Triplark was the freeholder at the time of publication. There also seems to be a partial mismatch between the publishees (leaseholders and residents) and those in whose eyes the claimant company says its reputation has been harmed (who include "other individuals and organisations", to whom the words are not said to have been published). On the other hand, there are pleaded allegations which suggest that, even as a head leaseholder, the claimant company could suffer financial loss if leaseholders chose to go with the Scheme. Overall, without attempting any full analysis or reaching any conclusions, there would appear, on the face of it, to be a possibility that the claim could fail, on the footing that even on the basis of the meanings that I have found, Triplark cannot show that it had a trading or other business reputation such that the publication of those imputations had a tendency to harm it in the way of its then business.

36. This is a possibility that only became apparent during the hearing, as a result of what I was then told. Understandably, perhaps, Mr Speker took the opportunity to advance a submission - not made in his skeleton argument - that the claim could not succeed because, on the face of it, the claimant company's only role was as a property owner (and not, it now appears, a freeholder). It was not said to trade in any other way or to employ anyone.

37. This was a submission founded on well-established principles. The passage from the *Derbyshire* case, cited above, reflects the underlying point, that a company can only

sue in respect of imputations that are injurious to its trading or business reputation and liable to cause it financial loss. An allied principle is that, unlike an individual, a company must prove the existence of a reputation, capable of being injured in such a way as to cause it financial harm: *Jameel v Wall Street Journal* [90-91] (Lord Hoffmann) [93], [96] (Lord Hope), Lord Scott [125]. *Multigroup Bulgaria* is probably the best-known illustration of these principles at work. That was a corporate claim dismissed at trial after the defendants submitted, at the close of the claimant's case, that they had no case to answer. Eady J accepted that on the evidence the claimant was a non-trading company, being one holding company within a shifting group structure, and not the ultimate holding company. It did not enjoy a distinct trading reputation in its own right, nor was there any evidence that it had founded, or exercised any management role in, any of its subsidiaries as opposed to merely owning shares in them. It could not be damaged in the eyes of its investors; it did not have any competitors; and it did not have any customers. Accordingly, the Judge held (at [42]):

> "…. no reasonable jury, properly directed, could conclude that this particular corporate claimant was defamed, or damaged, with regard to any trading or business reputation, in the eyes of reasonable readers of the words complained of, within any of the relevant jurisdictions."

38. However, the defendants' reliance on these principles involved a departure from their previous stance. In correspondence, they had conceded that if the words complained of bore the meanings pleaded in paragraph 18 of the Particulars of Claim, they were defamatory at common law. Moreover, as indicated by the passage cited, the question of whether Triplark has a relevant reputation is a question of fact. It is not one squarely raised for resolution at this trial. Nor is the anterior issue, of whether Triplark has sufficiently pleaded such a reputation. Indeed, it appears to me that nobody thought these might be issues until the hearing before me; until then, the parties had both assumed the question of whether the words were defamatory would be resolved on the assumption that the pleaded case was true, and in the belief that the pleaded case, if true, was sufficient. It now appears that the pleaded case requires some adjustment, to match the facts, or Triplark's case, on ownership, reputation and reputational harm. I do not consider that any issue on that aspect of the case has been raised in such a way that it would be fair and proper for me to resolve it at this hearing. In short, the submission is premature.

39. I have asked myself whether, in the circumstances, I should decline to rule on the second preliminary issue. I do not believe that would be helpful. I bear in mind that Triplark does appear to have been, at the material time, the leaseholders' immediate landlord, and a company which would lose its interest in the property if the Scheme went ahead. Although it is in some ways unsatisfactory, and I recognise this may not be the last word on the subject, I shall approach the question of whether any given meaning of the Invitation is defamatory of Triplark on the basis of the pleaded case, asking myself whether the imputation has an inherent tendency to bring about a substantial adverse effect on the attitude of leaseholders towards the claimant company, assuming what is pleaded about Triplark's role to be true.

40. Mr Speker has submitted that the Invitation says nothing which meets the relevant tests. He argues that the defendants should not be held liable in defamation for seeking to challenge the *status quo,* and suggests there are parallels between the present case and

Modi v Clarke [2011] EWCA Civ 937. I do not think that case is really in point. Mr Modi complained of words that attributed to him the creation of "a plan to destroy world cricket's structure and especially that in England, and create a new rebel league". The Court of Appeal upheld the decision of Tugendhat J that this was not defamatory, save in one limited respect. At paragraph [30], Thomas LJ said,

> "..... It is difficult to see how saying of someone that he wishes to destroy the structure of world cricket would be considered by society at large as being disparaging; there may be all sorts of reasons why someone would wish to change the structure of cricket, but it would be only to that section that believed in the present structure that making such a statement would be disparaging…"

(The words were defamatory, in the judgment of the Court of Appeal, only to the extent that they suggested that Mr Modi's revolutionary plans involved him dishonourably breaking rules to which he had subscribed: see [35-37]).

41. The defendants' submission is that in this case, as in *Modi*, the words complained of do no more than suggest there is a need for change, a proposition with which some might agree and others might not. In my judgment this is to misinterpret the nature of the words complained of, and the decision in *Modi*. *Modi* was an application of the principle that words are only defamatory in law if they attribute to the claimant some quality or conduct which is contrary to standards that are shared and agreed upon by society as a whole or, in the old language, "would tend to lower the plaintiff in the estimation of right-thinking members of society generally": *Skuse v Granada Television Limited* [1996] EMLR 278, 286 (Sir Thomas Bingham, MR). So, "a statement is not defamatory if it would only tend to have an adverse effect on the attitudes to the claimant of a certain section of society": *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68 [50]. This limiting principle, which I have labelled "the consensus requirement" (*Rufus v Elliott* [2015] EHWC 807 (QB) [46]), is not engaged in the present case. The Invitation was not just offering an alternative view of how best to manage Northwood Hall. Everyone would agree that it is a bad thing for a landlord to be incompetent, deliberately to neglect maintenance, to act oppressively, to charge tenants exorbitant sums for lease premiums, to engage in conduct that can be labelled "blackmail", and to be ready to repeat it if given the chance. Conduct of that kind represents a significant breach of established community standards.

42. My conclusions on the second and third issues, and in brief the reasons behind them, are these. Meaning (1) is defamatory and factual. Imputations of professional incompetence can be expressions of opinion, but here there is no accompanying explanation, nor any indication of what facts the allegation is based upon. Incompetence is alleged as a fact, with no explanation or accompanying detail. I see some force in Mr Speker's "shared experience" point. In some contexts, no doubt, a reader or hearer of defamatory words would take them to be comment on what everybody present knows; there would be no need to point out the facts. That would be the case, for instance, if one eye-witness to a road accident said to another: the driver was careless and incompetent. There would be no need to point out the facts on which an allegation was based. This situation has some similarities. The writer is addressing people who are likely to have some knowledge of the subject matter. But the analogy, as so often,

is inexact. Here, there were some 160 independent leaseholders. It cannot be assumed that they all had the same knowledge of the facts. Indeed, that seems improbable, given that the imputation does not concern a single incident but events over a period of time. As is common knowledge, leaseholders come and go, and (inevitably) their experience of the landlord's behaviour will differ. There were also, it seems, some short-term tenants who were not leaseholders.

43. Moreover, a better analysis, and the way it struck me, is that the writer is communicating on the basis, not that everybody knows the supporting facts, but on the footing that everybody knows the landlords and managers are incompetent. That, if it represented the reality, could have ramifications at the "serious harm" stage, but it does not affect either of the questions I am addressing now.

44. Meaning (2) is defamatory. The imputation that Triplark had oppressed leaseholders is a statement of opinion. Otherwise, this meaning is factual. This is for similar reasons to those just given in relation to meaning (1). Neglect is an objective matter. An allegation of deliberate misconduct could take the form of a comment, if presented as an inference from identifiable facts. But that is not this case.

45. Meaning (3) has two factual elements: the formulation of development proposals, and allowing leaseholders no say. The first is plainly non-defamatory; the second has a defamatory tendency, but does not cross the common law threshold of seriousness. The imputation of insensitivity is a comment, with a defamatory tendency, but one so mild that it also fails to cross the threshold of seriousness. No doubt this is why no complaint is made of any meaning on the lines of my (3).

46. Meaning (4) is defamatory. It contains three comments ("inflated", "ramped up" and "extortionate"). The remainder of this meaning is a defamatory factual imputation. Absent footnote 5, the text might have presented itself to the reader as an expression or expressions of opinion. But the footnote rams home to the reader what the writer is seeking to convey, in terms that are factual and unequivocal. This is not just general observation; it is clearly presented as applicable to Triplark.

47. Meaning (5) is defamatory and factual, except for the imputation of blackmail, and the concluding observation that there were grounds to fear the company would do the same again; both of these are expressions of opinion. Blackmail is an ordinary English word. Depending on its context, it may be an implied statement of fact coupled with some opinion and some legal conclusions (meaning that the person concerned made an unwarranted demand with menaces). In this context it is a comment, or expression of opinion. That is one part of the significance of the quotation marks, which indicate that the allegation is not intended by the author to be taken literally. But in addition, the passages relied on set out exactly what is alleged to have been done by Triplark, so that the term "blackmail" appears as a summary description of the facts recounted. It is not quite clear whether the suggestion is that Triplark forced leaseholders to make payments to Triplark itself, or to the company that would have been the creditor, if sums were owed. But at its core, the factual picture presented is clear, including the suggestion that Triplark's conduct was deliberate. Meaning (6) is about Triplark's likely future behaviour, and is plainly in the nature of comment or opinion; it can only be read as an inference from what it has (allegedly) done before.

48. I can deal quite shortly with the fourth preliminary issue. The factual basis for the imputation of oppression in meaning (2) is expressly indicated in the words complained of, in paragraphs [17] and [141]. I can pass over the comment in meaning (3). The factual basis for the comments in meaning (4) is expressly indicated in the paragraphs I have identified as giving rise to that meaning, and in the remainder of meaning (4) itself. Likewise, the imputation of blackmail is expressly based on the alleged facts set out in meaning (5). The inferential suggestion that Triplark might do the same again (meaning (6)) is expressly or implicitly based on those facts, and other harmful factual imputations about Triplark contained in the Invitation. I add that if, contrary to my view, the allegations of incompetence and deliberate neglect in meanings (1) and (2) should be categorised as statements of opinion, they are in my judgment bereft of any indication of the supporting facts, whether express or implied.

The Letter

49. Triplark attributes the following three meanings to the Letter which, again, are all said to be defamatory factual imputations. Again, I deal first with the question of what the words mean about the claimant company. I have emphasised in bold the core features of each meaning, which distinguish them from one another, according to the submissions of Ms Marzec. Again, I add reference in brackets to the paragraphs on which particular reliance is placed.

    (1) "the Claimant is **responsible for a relentless propaganda campaign that has made various misleading and untrue claims** about the Scheme, **as well as false statements** about NHFL and other individuals supporting the Scheme, in particular Mr Whale and Mr Gay" ([3], [6-10], [23-25], [29-30], [42], [47-48]);

    (2) "the Claimant has **acted unlawfully in making those statements** about NHFL and other associated individuals because the statements are false and are therefore highly defamatory, and are so serious that they require a retraction and an apology to be made by the Claimant to remedy the harm caused to those in respect of whom the statements were made" ([8] and [12]); and

    (3) "the Claimant has **engaged in this type of** outrageous and unlawful **behaviour in an improper bid to undermine the Scheme** by confusing the Leaseholders and dissuading and/or preventing them from exercising their legal rights, and thereby preventing them from realising the full value of their interests in Northwood Hall" ([9], [24-25], [41]).

50. Ms Marzec submits that, again, the meanings complained of do no more than "aptly summarise" the points made in the passages I have cited.

51. There is no dispute that the Letter takes the form of a response to "allegations", which it alleges are part of a propaganda campaign. Nor has Mr Speker sought to argue that the passages relied on do not denigrate and defame those responsible for the "campaign". The primary point taken relates to reference to the claimant. Mr Speker submits that the Letter does not say that the "allegations" were made by Triplark, nor does it attribute responsibility to Triplark for the "outrageous", "misleading and untrue", and "libellous" claims which it sets out to rebut. He draws particular attention to paragraphs [8], [12], [32] and the section starting at [44], pointing out that all refer

to allegations, remarks or claims "made by NWHLG". He relies on the statement in paragraph [30] that leaseholders have had "no direct communication from Triplark".

52. Ms Marzec acknowledges that the organisation said to have actually made the allegations, and to be carrying out a "propaganda" campaign, is NHFL, but invites a more realistic appraisal. She emphasises the context. The words begin with references to Triplark, asserting that it will do everything possible to prevent leaseholders exercising their legal rights. Paragraph [30] refers in terms to "the propaganda campaign of Triplark". Later in the document, at [40] and [41], the authors refer again to Triplark, its "disruptive tactics" and the need to "minimise the opportunity" for it and others "to seek to undermine the process". NHFL is depicted as an ally and supporter of Triplark which is doing its bidding.

53. In my judgment, Ms Marzec is plainly correct on this issue. In context, the words used clearly convey to the reader that the "propaganda" is being issued at the behest of Triplark; that the company (along with others) is behind the propaganda campaign. Paragraph [30] seems to me of particular significance. It does indeed state that leaseholders have not had a communication from Triplark but the emphasis here is on the word "direct". The same paragraph expressly identifies the "propaganda campaign of Triplark". The relevant part of the provisional meaning which I noted down before reading or hearing submissions about the Letter was that Triplark "collaborated with Mr Maunder Taylor to use a leaseholders' organisation as a vehicle for propaganda". That, in my judgment, encapsulates that aspect of the Letter's content.

54. I add that this and the other aspects of the imputations, to which I shall come, refer to and concern Triplark as a company, because it is the company's conduct that is referred to, and attacked or criticised by the words of the Invitation. At least, it is the conduct of Triplark itself and/or in conjunction with Crownhelm; the two are treated in the words complained of as synonymous. In my judgment, on the facts of this case, in this context, the defendants' reliance on the *Multigroup, Elite,* and *Al Rajhi* line of authority is misplaced.

55. Those authorities seem to me to stand for three separate principles. The first is stated in Gatley, at para 8.17:

> "A company cannot maintain an action for defamation in respect of words which reflect solely upon its individual officers or members, and not upon the company itself."

This could be the case where the allegation is of personal misconduct, such as sexual promiscuity, by an officer of the company (ibid.). On no view of the words complained of here, is this a case of that kind; the words and the imputations they convey relate solely to the conduct of the company's business. Equally, however, a publication might (at least in principle) impute misconduct by a director, for instance bribery, in the course of business activities on behalf of the company but, on a proper analysis, it might nevertheless defame only the individual and not the company for which he or she worked. But that is a long way from this case. It will always be a question of whether the particular words both refer to and convey imputations about the company. Here, in my judgment, they do.

56. The second principle is the one I have addressed already: a company can only sue in respect of harm to a trading or other reputation, which it must prove as a fact, which is capable of being harmed in such a way as to cause the company financial loss.

57. The third principle reflected in the passages relied on by the defendants is that a corporate libel claim, even if viable by these standards, might represent an abuse of the Court's process, if the reality is that the company has been "put up" by individuals who are seeking to use it indirectly to vindicate their personal reputations or obtain compensation. That is a more complex issue, and not one that is before me at this preliminary trial. I simply observe that there is no reference in the words used to any director or other person acting for the company, nor is there anything that indicates that the true or even the main target is some individual. There is, in the material before me, no reason to believe that Triplark is being used as some kind of "front" for an individual, seeking to clear his or her name indirectly; and, to be fair, Mr Speker did not put it that way.

58. Turning to the three imputations complained of, Mr Speker submits first of all that even if he is wrong about reference the words do not state or imply that Triplark has been "making" the statements complained of, or that it "has engaged" in any of the activities referred to. To that extent, the pleaded meanings cannot be sustained. I accept that submission, as far as it goes. It is reflected in the partial meaning I have identified. Otherwise, Mr Speker submits that, again, the claimant's meanings are the product of over-elaborate analysis. The second meaning is too technical, he says, and requires knowledge of defamation law which the ordinary reader would not have. The second and third meanings are unnecessary, and insufficiently distinct from the first. The third meaning is confused and unclear.

59. I agree that the division of the pleaded meanings into three involves a degree of artificiality, and overlap. I also agree that the meanings advanced by Triplark are in some respects over-elaborate. But the central messages of the Letter, so far as Triplark is concerned, are clear enough. In my judgment the Letter bore the following natural and ordinary meaning about Triplark.

> In a desperate attempt to defeat the Scheme and prevent leaseholders from exercising their legal rights, or delay it, Triplark has colluded with Crownhelm and Mr Maunder Taylor to use a leaseholders' organisation (NWHLG) as a vehicle for a propaganda campaign by which the company seeks and will continue to seek to undermine trust in the defendants, by misleading, causing confusion, wasting time and resources, using disruptive tactics, and making outrageous allegations of criminality and deception against the defendants which are false, baseless and libellous.

This meaning derives principally from paragraphs [3], [4], [7-9], [12], [23-31], [42] and [44-51].

60. Again, I have addressed the twin questions of whether the meaning is opinion and whether it is defamatory simultaneously. When it comes to the question of whether the Letter was defamatory, there appear to be fewer complexities than in the case of Invitation. It is common ground that by 24 March 2018, Triplark was indeed the

freeholder of Northwood Hall. There may be disputes over whether the pleaded case, or the underlying facts, form a sufficient basis for a corporate libel claim, but I proceed on the same basis as identified in paragraph [39] above.

61. Mr Speker submits that if the Letter is defamatory of Triplark, then it is plainly the expression of opinion. The Letter sets out various claims made about the defendants by NWHLG and Mr Maunder Taylor and responds to those claims, setting out the basis for the comments. This is said to be "quintessential opinion".

62. There is much to be said for this line of argument. In my judgment, the words "propaganda campaign" ([9], [23], [28], [30], [42]) are a statement of opinion, representing the defendants' evaluative assessment of the nature of the allegations which the Letter seeks to rebut. The imputation of motive or purpose – to defeat the scheme or delay it – is also in the nature of a statement of opinion. It is an inference, the basis for which is indicated in the Letter, namely that the Scheme would deprive the landlords of a valuable asset and the manager of a lucrative position: see [3], [9], [25-27] The word "desperate" (paragraphs [9] and [25]) is also a statement of opinion. The term "disruptive" (paragraph [40]) is a comment or statement of opinion. Likewise, the term "outrageous" [48]. The basis for all these assessments is set out in the Letter. Like the Invitation, the Letter contains a prediction as to the future (that Triplark will continue with the propaganda campaign, see [23-24]), which amounts to a statement of opinion, the basis for which is also indicated expressly in the Letter.

63. But to a substantial extent, the basis for these comments or opinions, as presented in the Letter, is factual in nature. In essence, the Letter identifies some serious allegations against the defendants that have been made by NWHLG and Mr Maunder Taylor. It asserts as fact that Triplark is behind the making of those allegations; I do not accept the defendants' contention that the reference to Triplark is itself in the nature of a comment or opinion. The letter goes on to assert that the allegations are misleading, false, and baseless. It identifies a number of methods said to have been used by Triplark and others in pursuit of the alleged purposes (of defeating or delaying the scheme, by undermining trust). Critically, it adds a variety of imputations as to the intention behind the use of those methods. Intention, here, is distinct from motive or purpose. I refer to what the Letter suggests about the ways in which Triplark has sought to undermine trust and defeat the Scheme: by misleading, causing confusion, using disruptive *tactics,* and making allegations of criminality and deception that are false and baseless.

64. Of course, people can make allegations, even serious ones, that are untrue without intending to do so. The section of the Letter headed "Other Claims", if it stood alone, might not be actionable. The letter clearly distinguishes these "claims" from the "defamatory Claims" address in paragraphs [44-51]. As to the Defamatory Claims, characterised as "libellous": it is possible, at least in principle, to accuse A of libelling B, without defaming A. The words would have to be chosen carefully, but they might exonerate A of any intention to mislead, or they might turn on some technicality. There are aspects of this section of the Letter which, viewed in isolation, might fall into that category. Paragraphs [44-46], for instance, contain a rebuttal of an allegation of illegality which turns on whether, on a proper analysis, the Scheme is an "investment scheme" for the purposes of the Financial Conduct Authority regulations. This part of the Letter is consistent with the allegations being mistaken, but not worse. That, however, is not how the matter is presented in the Letter, read as a whole.

65. Triplark, along with others, is portrayed as *seeking* to mislead, confuse, cause waste, and so forth. That is the impression conveyed by the opening section of the Letter, and in particular the following. The suggestions that Triplark and its supporters may or would "*do everything possible*" [3], [23] to prevent the leaseholders exercising their rights; that those behind the campaign "are using *various tactics to confuse the real situation* and stop you exercising your legal rights" [4], and "*will seek* to undermine your trust .. *It will also seek to* create confusion and cause delay" [24]; that "a waste of time and resources is precisely *one of the aims*" of the campaign. That impression is reinforced by paragraphs [48-51]. Paragraphs [48] and [50], in particular, portray those responsible for the "campaign" as having made serious allegations, of criminality and deception, without the least basis for doing so. The overall impression of deliberate conduct is also bolstered by the word "scaremongering" in [61], which clearly suggests a deliberate attempt to gain by stirring up fear.

66. To be clear: the aspects of the imputation that follow in quotation marks form, in my judgment, the defamatory factual core to a document which, although it contains a good deal of comment and opinion, is, taken overall (and on the basis identified above), defamatory of Triplark: that in an attempt to defeat the Scheme and prevent leaseholders from exercising their legal rights, or delay it, "*Triplark has colluded with Crownhelm and Mr Maunder Taylor to use a leaseholders' organisation (NWHLG) as a vehicle*" for a propaganda campaign "*by which the company seeks to undermine trust in the defendants, by misleading, causing confusion, wasting time and resources, using"* disruptive *"tactics, and making"* outrageous *"allegations of criminality and deception against the defendants which are false, baseless and libellous*".

Appendix A

The Invitation

"[1] We are writing to you today about the *'Collective Enfranchisement'* of Northwood Hall. *'Collective Enfranchisement'* is a procedure by which the qualifying participants (leaseholders) of a qualifying building exercise their legal rights under the Leasehold Reform Housing and Urban Development Act 1993 ("the Act"). This legislation entitles leaseholders to buy the freehold of their building. Under the Act, we have established Northwood Hall (Freehold) Limited ("the Company") to perform the role of *'nominee purchaser*, i.e., the legal entity that will own the freehold.

…

[3] As to funding, subject to getting sufficient participation by the qualifying tenants, by partnering with a specialist *'White Knight'* investor called Lindmead Limited, we have secured finance in whatever sum that may be required. We provide details regarding Lindmead below.

Executive summary

[4] Before explaining the detail of our proposal and this invitation, we set out a brief summary of the main points for you to consider:

- [5] *'Collective Enfranchisement'* means we are buying the freehold from Crownhelm *and* we are eliminating Triplark's head-lease - ownership of the freehold will be vested in the Company;

…

- [8] you will be entitled to the grant of a new, modern and valuable 999 year lease which will end the need for expensive S42 applications for lease extensions;

…

'Collective Enfranchisement'

[13] In everyday terms, *'collective enfranchisement'* is a formal legal process which is regulated by law in the form of the Act. In Northwood Hall this means that a sufficient number of leaseholders, acting through the Company, may buy out the head-lease (owned by Triplark Limited) and may acquire the freehold (owned by Crownhelm Limited). The Act requires the Company to buy out *all* superior interests above the underleases (i.e., the flat leases), which is why the process would involve buying out Triplark's head lease as well as the freehold itself.

…

[15] With the benefit of our expert valuer's advice, we estimate that the likely total capital required to fund the purchase price and the legal and professional costs is in the region of £2 million. This assumes that Crownhelm/Triplark does not have a right to take a *'leaseback'* of its 30 flats. In the unlikely event that Triplark wishes to divest itself of all of its interests in Northwood hall, we estimate that up to a further £10 million would have to be provided. In any event, all necessary finance will be provided by Lindmead.

[16] *'Collective enfranchisement'* achieves the following benefits for the participants:

- [17] the building and the leaseholders are freed from the effects of incompetence and calculated neglect by freeholder, head leaseholder and managers;
- [18] it secures all future capital appreciation in the value of the flats for the leaseholders (currently the Crownhelm/Triplark interests get a significant share of this which is reflected in the extortionate premiums payable for S42 lease extensions);

…

- [20] it ends the need for expensive S42 applications for 90 year lease extensions;

…

The 'White Knight' investor - Lindmead Limited

[24] In securing the funding for the collective, we have joined forces with a highly experienced *'White Knight' investor*, Lindmead Limited

…

[28] As a commercially driven investor, in return for underwriting the cost of purchasing the freehold, Lindmead requires a return on its investment. This is provided for in three ways which are:

…

[34] 3) The third element from which Lindmead could profit from its investment is the development potential on the Northwood Hall site. Assuming that the significant planning obstacles can be overcome, then either Triplark will develop the roof for its own profit, or the jointly owned freehold company can do so for the benefit of the participating leaseholders and the investor.

[35] With only these two options, it should be obvious that we the leaseholders in joint venture with Lindmead would benefit greatly if we could only control the process. In securing our commitment to assist in the enfranchisement, the participants

will get a say in the manner in which any development could proceed.

[36] Unlike Triplark, which is offering no say for others, the involvement of leaseholders would ensure that all design issues would be treated sensitively and that the overall impact would benefit Northwood Hall as a whole.

[37] Given that any development will impact on leaseholders it is only right that they too should share in the profit of any such work and we have agreed with Lindmead that one third of the profit will be paid to the Company to be applied for the benefit of the leaseholders participating in the freehold purchase.

[38] The profit sharing ratio, one third being appropriated to the participant leaseholders, allows Lindmead a return on its investment while leaving room for a developer to make a profit too. If the prospective returns are not commercially attractive to both the investor and to the developer, the scheme could not get off the ground. We estimate that the potential benefit to each participant leaseholder would be between £20,000 to £30,000. This potential benefit far exceeds any uncertain future contributions from Triplark to the refurbishment costs of Northwood Hall were Triplark to carry out their intended development.

…

What does a participating leaseholder get in the enfranchisement?

[55] While subject to differing terms (according to the individual participant's circumstances, as explained below), all participants will eventually end up in exactly the same position as every other. The intention is to create a level playing field in which every leaseholder has the same lease and owns one share in the new freeholder. …

…

The 6 different categories of participant and non-participants

[65] There are 6 distinct groups of leaseholders in Northwood Hall. Each group has different characteristics and require processing appropriate to their circumstances so that everybody who participates in the enfranchisement ends up with equal standing as leaseholders and shareholders in the Company - the level playing field concept.

[66] Each leaseholder should be able to identify their respective category and on request, free of charge and without obligation, we will provide a computation for any leaseholder of the amount that they would be expected to pay as a typical premium for their 999 year lease together with a comparison of the amount payable under a 542 surrender and re-grant (typically called a 90 year lease extension). To illustrate what that looks like, we attach an

example of a typical 84 year lease for an average two-bedroom flat in Northwood Hall.

The 6 categories are as follows:

…

[86] 4 *Category 4 tenants* (14 in number) have leases with 84 years left to expiry but are already engaged in applications under S42 of the Act for the re-grant of new lease with an additional unexpired term of 90 years.

[87] These 15 tenants, identified by reference to HM Land Registry records, are being charged inflated premiums and exorbitant legal and professional costs. The premiums sought are about 10 to 15% above those payable in the collective enfranchisement we are proposing so about £1,000 at the lowest and £2,500 at the upper end of the spectrum.

[88] Add to this the total legal and professional costs payable through the likes of specialist firms such as CG Naylor (solicitors) and MyLeasehold (valuers), which together with the sums charged by the Crownhelm/Triplark interests amount to an eye-watering £5,500.

[89] The figures combined mean that a S42 application in Northwood Hall costs on average about £6,000 more than the share of the price payable by the same average leaseholder in a collective enfranchisement.[5]

…

---

[5] The main reason S42 applications are comparatively expensive is that an individual seeking a 90 year 'extension' cannot usually afford or justify the cost of a dispute at the FTT. Landlords and their professional advisers exploit this reality and ramp up the fees and the premium knowing that the leaseholder will not risk an argument. The problem is further compounded by the tenants' advisers who are also aware of the difficulty and also take advantage. A five-minute desktop valuation can cost several hundred pounds as does a simple S42 Notice with the solicitor ordinarily doing little more than transfer the valuation components into the notice.

…

- [114] there will not be a *'Licence to assign'* provision - there will be no associated legal fees (currently charged by Triplark's solicitors at £1,800) nor will a leaseholder require the freeholder's permission to sell their flat. The existing provisions in the leases of non-participants will be waived;
- [115] there will not be any requirement for a buyer to execute a *'Deed of covenant'* nor will there be any associated fee (presently charged by Triplark's solicitors at £100 plus VAT so £120);
- [116] a buyer will still be required to give notice of assignment but the registration fee will be fixed at £25 only (presently charged by Triplark at £75 plus VAT, so £90);
- [117] sales information packs will be provided without charge (Maunder Taylor charges £150 plus VAT, so €180);
- [118] subletting will not be subject to restrictions as specified in the current lease, which provides for a limit of 6 months in any year if sub-letting on a furnished basis. The freeholder's consent to sublet will still be required but such consent must not be unreasonably withheld. In practice, this will require leaseholders to provide references and a copy of the tenancy agreement and to pay a registration fee of £25. Non-participating leaseholders may expect that the outdated restrictions to which their lease would still be subject would be relaxed.

…

The 'Vendors' lien'

[119] We need to draw your attention to an important issue that will crystallise on completion of the purchase. In addition to the price payable and the landlord companies' legal and professional costs, we are required to pay all amounts due to either entity (Crownhelm and/or Triplark) pursuant to the terms of the leases.

…

[124] This means that together with the price and their entitlement to costs, arrears of ground rent and services charges *legally* owed to either Crownhelm or Triplark must be paid too.

…

[126] In relation to service charges, the position is different. As a Tribunal appointed Manager, Mr. Maunder Taylor is a separate legal entity from both Crownhelm and Triplark. Mr. Maunder Taylor is not the agent of either of the landlord companies; he is a completely independent person and he is the legal entity to

which all tenants in Northwood Hall presently owe the obligation to pay service charges. Accordingly, in relation to service charges, nothing is presently legally owed to Crownhelm or Triplark,

[127] We have been prompted to look at this because we already know that with lease extensions under S42 of the Act, a similar though not identical provision to S32 applies. Notwithstanding that at the time (the end of 2015) the RTM company was the entity to which service charges were then payable, i.e., nothing was owed to Triplark, Triplark took the opportunity to *'blackmail'* the tenants into paying their disputed arrears of service charge when completing their lease extensions. Lacking competent legal advice, most of the tenants affected paid up even though many were extremely unhappy in doing so. A small number of those tenants relied on our advice and avoided that payment.

[128] We have taken advice on this issue. The considered view is that in the particular circumstances of this case, the vendors' lien is unlikely to apply to alleged arrears demanded by the Manager.

Summary

[129] We know that there have been occasions in the past when the possibility of buying the freehold has been considered only to be discarded as impractical due to the perceived cost and the apparently insurmountable legal obstacles. We are confident that we have found a solution that addresses every one of the leaseholders' concerns which we cite as:

…

- [132] under the Triplark/Crownhelm regime, we are vulnerable to excessive administration fees, a prime example being the combined fees of £2,200 for seller and buyer charged on a sale by Triplark's lawyers and by the Manager;
- [133] premiums and legal and professional fees payable on a S42 lease extension are extortionate. The premium is about 10 to 20% higher than via the freehold purchase, and the legal and professional fees total about £5,000 for both sides' advisors whereas in a *'collective enfranchisement,* we can expect to pay an average of only £1,000 in fees;
- [134] with control of the freehold we would cancel the Manager's extortionate cost overrun; as freeholders, we would decide *all* aspects of the management role;

…

[140] We aim to serve the originating notice under S.13 of the Act as soon as we have secured sufficient participation. We

anticipate that Crownhelm/Triplark will do everything possible to obstruct or delay the process but we nevertheless expect the ensuing application to the First Tier Tribunal to be completed within 12 months following service of the Notice.

[141] When completed, in partnership with Lindmead, the collective enfranchisement will have established a commonwealth of leaseholders and in the process will free Northwood Hall from Triplark's calculated neglect which has oppressed Northwood Hall for decades."

Appendix B

The Letter

Introduction

[1] The Leasehold Reform, Housing and Urban Development Act 1993 gives qualifying tenants of flats a collective right to buy the freehold of the block (collective enfranchisement).

[2] This right will allow Northwood Hall leaseholders to realise the true value of our flats and extend our leases considerably.

[3] Of course, in exercising this right we will be legally transferring this value from Crownhelm/Triplark to a company which we will all control. It is not hard therefore to appreciate that Crownhelm/Triplark and their supporters may do everything possible to prevent us exercising our legal rights.

…

[6] This rest of this letter will address:

[7] 1. Why the recent claims by NWHLG and Mr Maunder Taylor concerning the freehold enfranchisement are misleading and/or untrue;

[8] 2. That accusations of criminality and deception made against those promoting the freehold enfranchisement are completely untrue and without any basis and that an apology and retraction has been sought;

[9] 3. That these allegations are all part of an expected propaganda campaign to undermine the freehold enfranchisement with NWHLG and Mr Maunder Taylor desperately working together to put you off signing up to the scheme;

[10] 4. What the Freehold Company stands for and how it will always act.

[11] This letter is our response to recent allegations made against the Northwood Hall (Freehold) Company and those promoting it, as well as claims by NWHLG in communications to both members and non-members.

[12] The response is necessarily detailed and has taken some time because we also needed to seek legal advice in the wake of the defamatory remarks made by NWHLG last week.

…

Overview

– Propaganda Campaign

[23] In the Invitation to Participate in the freehold enfranchisement we noted that Crownhelm/Triplark would do everything possible to obstruct or delay the enfranchisement process. The recent communications from NWHLG and Mr

Maunder Taylor are simply the beginning of that propaganda campaign and you can expect more of the same as we progress.

[24] The campaign will seek to undermine your trust in those promoting the freehold enfranchisement and in their ability to deliver the benefits of the enfranchisement. It will also seek to create confusion and cause delay.

[25] Outright opposition of all kinds is of course to be expected from Crownhelm/Triplark, who as the freeholder stand to lose a valuable asset. That valuable asset will then be owned by the leaseholders. They are desperate to avoid this happening.

[26] Mr Maunder Taylor faces the loss of his lucrative management role and the reward we assume he expects to receive for successfully facilitating the Triplark rooftop development scheme.

[27] The vested interests of Triplark and Mr Maunder Taylor concerning the freehold are completely at odds with those of the leaseholders.

- NWHLG are leading the Propaganda Campaign

[28] It is not clear why NWHLG is leading the propaganda campaign because it would mean that the very people it claims to represent would lose out on all the benefits a share of the freehold brings.

NWHLG needs to explain to leaseholders:

[29] • Why they have aligned themselves with the financial interests of Triplark and Maunder Taylor?

[30] • Why they are leading the propaganda campaign of Triplark and Mr Maunder Taylor's opposition to the freehold enfranchisement? So far leaseholders have had no direct communication from Triplark or Mr Maunder Taylor, just NWHLG.

[31] • Why, in claiming to be looking after the interests of leaseholders, they have not sought *independent* legal advice from a law firm experienced in enfranchisement, who would be instructed to review the proposal from a leaseholder's point of view and not that of the landlord desperate to hold on to its freehold? An *Independent* law firm means one not acting for or paid for by Triplark or Mr Maunder Taylor but instead specifically instructed to assist the leaseholders and owing a duty of care to NWHLG.

[32] • It is clear to us that NWHLG has relied on legal advice in producing their communications, and it is also seems likely that such advice cannot have been *independent.*

[33] • Why has NWHLG thought it appropriate to make outrageous claims of criminality and deception against those

who are simply trying to promote a freehold enfranchisement which will benefit the leaseholders?

[34] • It comes down to a question of trust. While NWHLG remain so closely aligned with Crownhelm/Triplark and Mr Maunder Taylor and issuing such inflammatory communications, you cannot trust them to be providing leaseholders with an independent assessment of the freehold enfranchisement.

…

[41] The sooner we reach the 97 participant trigger the better to minimise the opportunity of Crownhelm/Triplark and Mr Maunder Taylor to seek to undermine the process.

- Conclusion

[42] This letter provides a detailed response to the allegations. However, as we have said we expect this propaganda campaign to continue. We may well decide not to respond in any detail to future NWHLG communications because to do so is a waste of time and resources which is precisely one of the aims of the propaganda campaign.

…

The following is the detailed rebuttal of the misleading and/or untrue claims made by NWHLG and Mr Maunder Taylor.

Defamatory Claims

[44] *1) "We now believe that what is being offered is not simply an enfranchisement, but is*

in fact an investment scheme, and so it is against the regulations of the Financial Conduct Authority (FCA), which means it is illegal."

We are confident that this is not correct.

…

[47] *2) "Unless and until it is regulated, our preliminary view is that this is a criminal activity and we are arranging to make a complaint about Geoffrey Gay (the director of the company) and Mr. Philip Whale (the owner of the B shares in the company) to the FCA."*

[48] There is no basis for the unfounded and unsubstantiated allegation that the collective enfranchisement is *'criminal'* or that the individuals engaged in promoting it to leaseholders have committed any criminal offence of any kind. Mr Gay is a prominent businessman who is highly experienced in property investment including collective enfranchisement, while I am a solicitor of 35 years standing with extensive experience in commercial law. To allege that we are engaged in *'criminal*

activity' is outrageous and an unjustified attack on our reputations and integrity.

[49] *3) "We have evidence that Mr. Wismayer (who is the person we believe to be behind the enfranchisement proposal) is well aware that some of what is being offered is simply not possible, which makes this a deception."*

[50] There is no aspect of our proposal that could afford NWHLG any basis for the allegation that the freehold enfranchisement proposal amounts to a deception. Nor is there any aspect that may be described as *'simply not possible'*.

[51] These statements are libelous and untrue. Our solicitors have written to all members of the NWHLG Committee seeking an apology and a retraction.

Other Claims

…

[60] *6) "Anyone signing up is vulnerable to the company making demands for money from time to time, and they will be obliged to pay it" – Flat owners will not have control of costs*

[61] This is scaremongering and is untrue.

…

[97] *18) "You will understand from the above, that there is a distinct risk that they will end up with the freehold of the building only, fail to enfranchise the garages, fail to acquire the development rights of the roof space, and most of the incentives being offered will not be capable of delivery. Nevertheless, they will control the freehold of the building, subject only to the S.24 Management Order which I presume they will either apply to the Tribunal to discharge or vigorously contest any attempt at it being renewed."*

[98] Mr Maunder Taylor is scare-mongering. We are satisfied that we can successfully deal with the tactics Mr Maunder Taylor suggests may be available to the landlord in an attempt to frustrate our acquisition of the roof space and garages.

…

[103] I urge everybody to think for themselves, not be distracted by NWHLG misinformation, and to weigh up the incredible benefits to be had by participating in a successful freehold enfranchisement and ridding ourselves of Triplark once and for all."