



Neutral Citation Number: [2023] EWHC 1994 (KB)

Appeal no: QA-2022-000152  
Claim no.: QB-2019-002530

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31/07/2023

**Before :**

**MR JUSTICE SOOLE**

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**Between :**

**ANNA CHRISTIE**

**Respondent/  
Claimant**

**- and -**

**(1) MARY WARD LEGAL CENTRE**

**First  
Defendant**

**(2) ANDREW DYMOND**

**Appellant/  
Second  
Defendant**

**Mr Patrick Maxwell** (instructed by **Browne Jacobson LLP**) for the Appellant  
**The Respondent** in person

Hearing date: 25 May 2023

## **Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment**Mr Justice Soole :**

1. This is an appeal by Mr Andrew Dymond, a barrister, against the decision of Master McCloud dated 30 June 2022 which rejected his contention that the Respondent Ms Anna Christie's claim in tort of professional negligence should be struck out or summarily dismissed (CPR 3.4/24.2) as being time-barred under s.2 Limitation Act 1980.
2. The Claim Form was issued on 15 July 2019 and alleged negligence by Mr Dymond in advice given by him in respect of her defence to proceedings for forfeiture of her long leasehold interest in her home (28 Pallant House, Tabard Street, London SE1). All allegations of negligence are denied.
3. The claim is brought against the Mary Ward Legal Centre (MWLC) and Mr Dymond. The claim against the former was struck out by Master McCloud on the basis of a defence of reliance upon the advice of Mr Dymond. Ms Christie's appeal against that decision was upheld by Turner J on 17 July 2023: [2023] EWHC 1814 (KB).

Narrative

4. By a claim form issued on 7 December 2009, Ms Christie's landlord, the London Borough of Southwark ('the Council'), claimed £7837 in alleged unpaid service charges. Ms Christie challenged the reasonableness of those charges and the matter was referred to the Leasehold Valuation Tribunal. The Tribunal found that the charges were reasonable save that she was entitled to a credit of £22.88.
5. On 3 January 2012 the Council obtained judgment for the service charges and contractual interest in the total sum of £10,815.09. On 18 January 2012 it served notice under s.146 Law of Property Act 1925 (s.146) requiring payment of the judgment sum and costs in the total of £11,037.09.
6. Following rejection of Ms Christie's offer to discharge the debt by instalments of £20 per week, on 4 April 2012 the Council issued proceedings for forfeiture in reliance on the s.146 notice. Following an issue as to whether the Council had waived its right to forfeit by acceptance of certain payments of £20 per week, the Council discontinued the proceedings.
7. On 18 June 2012 the Council issued a second notice under s.146, requiring payment of a total £11,048.09. On 10 October 2012, it issued a second claim of forfeiture, relying on that second notice.
8. By written instructions dated 18 October 2012, MWLC instructed Mr Dymond to advise on the merits of defending the claim on the grounds that the Council had waived its right to forfeiture having accepted payment from Ms Christie and/or that the Council had brought the second proceedings on the same basis as the discontinued first.
9. By his written advice dated 1 November 2012 Mr Dymond advised in particular that (i) he did not consider that the Court would find waiver (ii) there was no procedural point arising from the discontinuance of the first proceedings. He further advised that Ms Christie could apply for relief from forfeiture and in order to do so would have to

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pay the total sum owed (then £14,001.20); that £20 per week was unlikely to be accepted; and that since she did not have any earnings and her only real asset was the flat, the prudent course would be to seek an adjournment of the proceedings in order to sell the flat. At a conference with Ms Christie on 5 November 2012 Mr Dymond gave advice to similar effect.

10. On 6 November 2012 Mr Dymond represented Ms Christie at Court; and obtained an adjournment for the purpose of sale of the flat and discharge of the debt. The order included the recital that *'upon it appearing to the court that the Claimant has a right [to] forfeiture of the lease'* and an order for *'Costs in the claim'*.
11. Pending sale of the flat, orders by consent were made on 30 January and 19 April 2013 for the adjournment of the proceedings. Each order provided for Ms Christie to pay the Council's *'costs of these proceedings to be assessed if not agreed'*.
12. Mr Dymond had no involvement in the matter after April 2013; and Ms Christie thereafter acted in person.
13. On 28 June 2013 the claim came back before the Court. Ms Christie appeared in person. She maintained her contention that there had been a waiver of the right to forfeit. This was rejected. The resulting Order included recitals of *'the Court deciding that the Claimant has not waived its right to forfeit the lease'* and of *'the Claimant accepting that the Defendant may apply for relief from forfeiture by the issue of a Part 23 Application in the claim and that if the Court decides to grant relief from forfeiture the Court may also set aside the order for possession made below'*; ordered possession of the property by 9 August 2013; that *'Costs of the proceedings including today are reserved to any application for relief from forfeiture'*; and that *'If an application for relief from forfeiture is received by the Court by 4pm on 9 August 2013 the date for possession...is extended until the application has been heard or further order'*. Ms Christie's application for permission to appeal was refused on the grounds that there was no real prospect of success.
14. On 29 or 30 July 2013 Ms Christie completed the sale of the flat; it seems, very shortly after exchange of contracts. From the proceeds she paid all outstanding sums to the Council.
15. By Order dated 2 May 2014 District Judge Kelly granted Ms Christie and her successors in title relief from forfeiture. However, in consequence of the sale, Ms Christie had lost her home.
16. Ms Christie applied for permission to appeal the Order of 2 May 2014, albeit this was in substance an application to set aside the possession order of 28 June 2013. This application was dismissed by Her Honour Judge Taylor on 13 February 2015 and certified as totally without merit.

**This claim**

17. These proceedings were issued by Ms Christie, again acting in person, on 15 July 2019. Expressed in a variety of ways, the essential particulars of negligence against Mr Dymond are that he should have advised that (i) the Council by its conduct had waived the right to forfeit; (ii) the second s.146 notice was thereby and otherwise

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invalid; (iii) she was entitled to loan provision from public funds pursuant to the Housing (Service Charge Loans) Regulations 1992 and the Employment and Support Allowance Regulations 2008; and that with such funds she would have obtained automatic relief from forfeiture; and (iv) his advice that she should sell the flat was negligent. All these allegations are denied.

18. The most substantial loss claimed is the loss of her lease and her home: see POC paragraph 31. The attached Schedule of Special Damage includes (emphasis in the original):

***‘1. Loss of Lease. As a result of the negligent advice/breach of duty of care/breach of contract the Claimant assigned her 125 year lease on 29.07.2013 for £290,000.00 and as a result has lost the rise in the value of the property currently valued at £450,000.00 and is unable to buy a similar property with the remaining capital £250,000***

***2. Costs of Sale of Lease***

<i>Landlord’s Court costs for forfeiture case</i>	<b>£9,000</b>
<i>Agents fees</i>	<b>£6,000</b>
<i>Seller’s Solicitor’s fees</i>	<b>£1,169</b>

Ms Christie also claims sums for loss of personal belongings, payments of rent and moving and storage costs; but it is accepted that these are not material to the present issue.

19. By application dated 13 November 2019, Mr Dymond applied for strike-out/summary dismissal of the claim pursuant to CPR 3.4(2)(a)/24.2(a)(i) on the grounds that *‘the claim has no prospect of succeeding. It is statute barred. Further or alternatively, the Particulars of Claim do not disclose a case in negligence against the Second Defendant with any prospect of success.’* In the result the hearing before Master McCloud (as it related to the claim against Mr Dymond) was confined to the limitation issue.
20. As to the claim in contract against Mr Dymond, his essential case is that there was no contractual relationship; but in any event his involvement had ceased in April 2013 which was more than 6 years before the issue of proceedings on 15 July 2019. Here and below, Ms Christie accepts that any such claim is time-barred.
21. As to the claim in tort, the essential contention before the Master on behalf of Mr Dymond was that - on her pleaded case – Ms Christie sustained real and attributable damage more than 6 years before the issue of proceedings: in particular from (i) the Council’s legal costs, as ordered on 6 November 2012, 30 January 2013 and 19 April 2013; (ii) the possession order of 28 June 2013; (iii) diminution in value of her chose in action, i.e. the claim for relief from forfeiture; and (iv) her contractual liability to pay the costs of sale (estate agents; conveyancing) which would have been incurred before the date of completion and before 15 July 2013.
22. As to the law, Counsel for Mr Dymond, Mr Patrick Maxwell primarily relied on the key legal principles summarised by the Court of Appeal in Hatton v Chafes [2003]

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PNLR 24 per Clarke LJ at [12]; and as subsequently reaffirmed in other decisions of the Court of Appeal, e.g. Berney v Saul [2013] EWCA Civ 640 per Gloster LJ at [67]. Omitting the various references to supporting authority, these are:

*'(i) A cause of action in negligence does not arise until the claimant suffers damage as a result of the defendant's negligent act or omission.*

*(ii) The damage must be 'real' as distinct from minimal...*

*(iii) Actual damage is any detriment, liability or loss capable of assessment in money terms and includes liability which may arise on a contingency...*

*(iv) The loss must be relevant in the sense that it falls within the measure of damages applicable to the wrong in question...*

*(v) A claimant cannot defeat the statute of limitations by claiming only in respect of damage which occurs within the limitation period if he has suffered damage from the same wrongful act outside that period...'*

23. Ms Christie's essential case was that she did not suffer damage until completion of the sale of her flat on 29/30 July 2023 (as noted, exchange of contracts having been very shortly before). As to the law, she in particular contended that her claim (i) fell within the category of case where the purpose of engaging the professional has been to secure some right or benefit for the client in connection with a contemplated transaction, citing in particular Pegasus Management Holdings v Ernst & Young [2008] EWHC 2720 (Ch) per Lewison J (as he then was) at [107]; and (ii) was supported by the decisions of the Court of Appeal in Hopkins v MacKenzie [1994] PIQR 43; Khan v. Falvey [2002] EWCA Civ 400; and Berney v. Saul [2013] EWCA Civ 640.

**The judgment**

24. Together with the summary of principles from Hatton, the Master's judgment cited these and a number of familiar authorities on the issue of limitation in tort for economic loss which the parties had referred to in their submissions.
25. The Master's conclusions may be summarised as follows:
- (i) as observed by the Court of Appeal in e.g. Berney v. Saul, limitation issues in this context are very fact-sensitive [33];
- (ii) Ms Christie not being a lawyer, it was right to allow *'some latitude in the niceties of pleading'* and therefore to consider *'...the substance of her arguments rather than the formalities of drafting'* [33];
- (iii) the substance of her complaint was that the failure to advise her to seek relief by way of loan or charge against the property was the cause of the forced sale and associated loss. Thus *'...what Ms Christie is complaining about here is the loss of her right to seek relief by way of loan or charge against the property. It is the inability to obtain relief which caused her loss due to the forced sale.'* [34];

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(iv) by contrast, her case was that the possession order did not cause that loss: *'The possession order did not even arguably cause the sale: it was the loss of the right to seek relief. She could have opted out of the sale and obtained a charge for the arrears and the loss of the right to relief would then not have taken place.'* [34];

(v) relief and the preservation of her home became impossible upon exchange of contracts for the sale of the flat, which effectively coincided with completion [36];

(vi) accordingly time began to run at that point, and not before [37];

(vii) neither the earlier costs' orders nor her costs of sale started time to run at an earlier date. Thus *'The two or three rather trivial court hearings, resulting in some delay and awards of costs against Ms Christie and indeed a possession order but with a very extended period allowing her (if she so wished) to seek relief against forfeiture, keeping that right alive in its entirety, and some inevitably minor conveyancers costs preparatory to sale, may well have impacted her funds out of pocket, and her and the court's time but, it seems to me that the difficulty which the Defendants face is akin to that in Hopkins namely that what Ms Christie is complaining about here is the loss of her right to seek relief by way of loan or charge against the property.'* [34].

Likewise, *'The fact that some probably minimal expense and inconvenience was caused by some adjournments and even the possession order (but with the right to seek relief being preserved) in the claim does not necessarily establish that those adjournments and costs were caused by the Defendants' negligence rather than, for example the fact that at that stage Ms Christie was considering selling, relying on counsel's advice, despite wanting to keep the flat if possible.'* [37].

26. As to the costs orders, there was a discrete issue as to whether the order made on 28 June 2013 was intended to displace the previous adverse costs orders against Ms Christie. Following reference to the terms of those orders and the transcript of exchanges in Court on 28 June, the Master concluded that *'Whether the understood agreement of the Council implicit in their proposal was indeed that the costs of the action would be returned to 'reserved' status, as is Ms Christie's understanding, or perhaps misunderstanding, would be a fact sensitive matter for a trial and could if it were relevant involve evidence of what may have been discussed outside the courtroom if anything. I doubt the legal effect of the order would be to achieve that unless it was a matter of concession or effective agreement by the council, since the conventional interpretation is that prior concluded orders for costs are not included within later ones absent something clear.'* [39]. The Master continued: *'That aside, I do not think the costs orders are relevant.'* [40].
27. As to diminution in value of the right to seek relief from forfeiture, the Master stated: *'Ms Christie had not lost, or in my judgment suffered material diminution to her chose in action in the form of right to seek relief on the terms she ultimately would have wanted: along the lines of Berney v Saul and Hopkins v Mackenzie, her chose in action namely the right to seek relief on the terms she ultimately wanted was not lost or in my judgment materially impaired until the end of July 2013. Per contra, the court had expressly extended and preserved that right until 9 August very much as in Berney v Saul there had been an agreed extension of time, which was relied on by Moses and Rimer LJJ at para 92 of the majority judgment, and hence no real risk that*

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*the claim would have been struck out in that case during the period of the extension.* '[40].

28. Citing both the principle that there must be '*real damage as distinct from purely minimal damage*' and the observation in Khan at [30] that '*...a claimant does not suffer real damage in the form of diminution of the value of his chose in action until there is a serious risk that the original action could be dismissed for want of prosecution*', the Master concluded that (i) the legal (Court) costs and the costs of sale were in any event trivial and that (ii) there was no diminution in the value of her right to seek relief from forfeiture.
29. Thus: '*By analogy here it seems to me that if the 'harm' done in the form of adjournments and some legal cost is properly to be taken into account (and I am not satisfied that it is, it not being established absent a close examination of facts at trial) as clearly caused by the negligence in question, then the minimal and indeed, relative to the claim, trivial, nature of that harm does not amount to real damage for the purposes of for example the quotation from Hatton v Chafes above. Her chose in action in relation to relief was expressly protected by the possession order and was not in my judgment diminished in its value*' [42].
30. Further, citing Hatton principle (iv), the Master doubted that such costs would fall within the measure of damages applicable to the wrong in question [42]; '*but I do not need to go further than to refer to the minimal or trivial nature of the costs relative to this claim in any event even if they are relevant*'.
31. In reaching that conclusion, the Master had reminded herself of the principle in Hatton point (v) that a party cannot limit the claim to a period after the limitation date so as to escape the effect of the statute. However that was not this case: '*...the right to relief which I am perforce assuming for the present case, was lost – all or nothing - on sale of the property, and a couple of adjournments and some modest legal costs did not impact upon the right to relief (and indeed when the possession order was made which gave an extended date for seeking relief, the costs were reserved and not awarded against Ms Christie). This analysis on my part appears consistent both with the approach of Gloster LJ and with a somewhat more cautious approach of Moses and Rimer LJJ in Berney v Saul to the running of time.*' [43].
32. The Master concluded that it was '*not fanciful to argue that the claim was commenced less than 6 years from limitation start date...If it is clear that the value of the chose in action (the right to relief) has been substantially, materially, diminished before the limitation date, an action will be statute barred but [that] there is a reasonable prospect of showing that that is not the case here.*' [45].
33. In granting permission to appeal, the Master did so on the basis, not that there was a real prospect of success, but that there was 'some other compelling reason' (CPR 52.6(1)(b)), namely a perceived tension in the authorities as to the correct approach; in particular citing Hopkins, Khan and Pegasus.

**The Appellant's submissions**

34. There are four grounds of appeal. Mr Maxwell rightly took the first two grounds together.

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35. The first contends that the Master was wrong to take no account of the items of damage suffered outside the limitation period, namely (i) the costs orders made on 6 November 2012, 30 January 2013 and 19 April 2013; (ii) Ms Christie's liability for her conveyancing costs on the sale; (iii) the possession order itself; and (iv) the diminution in value of her chose in action, i.e. her claim for relief from forfeiture, before 15 July 2013. In doing so, the Master had transgressed the principle that the statute cannot be defeated by claiming only in respect of attributable damage which falls within the limitation period. Mr Maxwell made clear that he did not rely at this stage on the items of loss identified as agents' fees on the sale; on the present assumption (subject to the evidence) that these would not be payable unless and until the occurrence of exchange/completion.
36. The second and linked ground is that the Master mischaracterised the claim as one that was solely about the loss of a right to seek relief from forfeiture by way of loan/charge against the property. In consequence the Master *'used the wrong counterfactual'* in considering whether the alleged negligent advice caused Ms Christie to suffer loss; and when such damage occurred and the cause of action accrued.
37. As to mischaracterisation, Mr Maxwell submits that Ms Christie's case is not solely concerned with the loss of her right to seek relief from forfeiture. Thus her Particulars of Claim also allege that Mr Dymond failed to give appropriate advice on arguments that would have amounted to a complete and substantive defence to the Council's claim for possession by way of forfeiture, i.e. in particular on the basis of waiver.
38. If Mr Dymond had advised Ms Christie to defend the claim on such substantive grounds or to make an application for relief on the basis that the outstanding service charges would be met by a loan or charge under the identified statutory provisions, the litigation would necessarily have taken a different course. Either the claim would have been successfully defended without any order for possession or adverse costs orders or a successful application for relief would have been made and granted at an earlier stage, i.e. without adjournment hearings and thus the adverse costs orders.
39. Mr Maxwell acknowledged that Ms Christie had been entitled not to follow Mr Dymond's advice on the substantive defence; and indeed had not abandoned that defence but had unsuccessfully argued it before the Court on 28 June 2013; and that, if so, there was an argument that the Council's costs of meeting the substantive defence were not attributable to any advice from Mr Dymond. However Ms Christie had relied on his advice in respect of relief from forfeiture; and with proper advice the course of proceedings would have avoided the adjournments and associated orders for costs. Thus on the pleaded claim in respect of advice on relief from forfeiture she had suffered loss outside the limitation period; and even if Mr Dymond's advice on the substantive defence should have been followed.
40. In consequence Ms Christie suffered, as pleaded, relevant damage outside the limitation period as identified in the relevant parts of her Schedule of Loss, namely:
- Costs orders
41. Ms Christie's pleaded case is the costs orders made on 6 November 2012, 30 January 2013 and 19 April 2013 were caused by reliance on Mr Dymond's advice. It was



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fanciful to conclude that a trial judge might reach a different conclusion. Those costs were claimed at £9000 and the Master was taken to evidence that by 29 July 2013 they totalled £8982.95. Such damage could not be described as ‘minimal’ or ‘trivial’ but was real and substantial; nor did the authorities import any question of relativity when making that assessment: cf. the Judgment at [42].

42. Nor was it right to hold that the causation of that liability for costs was a question of fact for determination at trial: cf. Judgment at [42]. It was Ms Christie’s pleaded case that those costs were a consequence of Mr Dymond’s advice. Further, the costs order made on 28 June 2013 provided no answer to that conclusion. As the Master correctly recognised [39], the conventional interpretation is that prior concluded orders the costs are not included in later orders. The previous costs orders had not been set aside.
43. Mr Maxwell rightly did not pursue an argument that Ms Christie was in any event liable for such costs pursuant to clause 2(13) of her lease.

Costs of sale

44. In reliance on Mr Dymond’s advice Ms Christie had marketed her flat for sale in November 2012. The Master had been taken to evidence of her solicitor carrying out work on 24 January 2013: see her Judgment at [29]. Ms Christie had thereby incurred liability for her conveyancing solicitor’s costs outside the limitation period. Further the Master was wrong to conclude that the sum claimed (£1169) constituted minimal or trivial, not real, damage.
45. Mr Maxwell accepted that there was no evidence as to how much of those costs had been incurred outside the limitation period; but, given the speed of events between the possession order and the sale, the inference must be that the liability was incurred before 15 July 2013.

Possession order

46. The Master was wrong not to hold (cf. at [42]) that the possession order itself constituted actual damage. This required no evidence. A flat encumbered by a possession order was self-evidently of less value than one not so encumbered; and regardless of whether relief from forfeiture may be available.
47. In any event, Ms Christie’s position at the hearing before HH Judge Taylor on 13 February 2015 was that under the pressure of the possession order and the risk of losing her £290,000 equity in the flat, she had quickly put it on the market and in consequence suffered a financial loss of £70,000. Thus *‘And with such a huge loss, you know, I only had weeks to sell it, I had to take a drop of £70,000 in the value of the property. That’s a disproportionate loss to pay a judgment sum under the threat that, if I didn’t find the money I would lose the entire equity of £290,000’*: transcript p.4F.
48. Further, once the possession order had been made, she could no longer defend the forfeiture claim on substantive grounds; she had lost that right altogether.

Diminution in value of chose in action

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49. The Master had rightly acknowledged that diminution in the value of Ms Christie's right to apply for relief from forfeiture could constitute damage; but wrongly held that there was no such diminution prior to the sale of the flat [43]. Having particular regard to the statutory provisions for relief (s.146(2)), the prospect of less favourable terms being attached to the grant of relief increased during any period of delay during which the Council incurred costs.
50. In argument he accepted that this point took the matter no further than the issue of adverse costs orders. With proper advice the proceedings would have taken a different course, in particular without the need for adjournments; the Council's costs would therefore have been less; and hence the conditions for the grant of relief would have been more favourable. It was fanciful to suggest that a trial judge might conclude otherwise.

Ground 3

51. The third ground of appeal is that the Master placed undue weight on the decision of the Court of Appeal in Hopkins. In that case the claimant sued solely in relation to loss or damage suffered by reason of the striking out of the claim, as the decision in Khan emphasised: see e.g. the observation of Chadwick LJ at [56-57] that in the light of the House of Lords' decision in Nykredit Mortgage Bank Plc v. Edward Erdman Group Ltd [1997] 1 WLR 167 the application of Hopkins should be limited to those cases in which the only loss on which the claimant seeks to found his cause of action is the loss of his right to pursue the earlier action by reason of the strike out.
52. By contrast, Ms Christie's claim was in relation to multiple different heads of damage, none of which was loss suffered by reason of the striking out of the claim. Her claim is altogether different.
53. Further there was no need to resolve any perceived tension between the decisions of the Court of Appeal in Hopkins, Khan, or Berney. The correct approach was a fact-intensive application of the general principles which – at least for the purposes of this case – were sufficiently identified in the Hatton summary.

Ground 4

54. The Master was also wrong to treat the case as akin to one where the instructions to the professional were to advise in respect of a contemplated transaction; and where failure to give competent advice results in the client not getting what he ought to have got. As a result the Master wrongly followed Pegasus Management Holdings v. Ernst & Young [2008] EWHC 2720 (Ch) and held that Ms Christie suffered damage only upon the sale of her property.
55. The Master was wrong to observe that there was '*...more of a parallel...than D2 accepts*' [27] between this case and the category of case identified in Pegasus. There was no true analogy. In this case Mr Dymond was engaged to advise in relation to litigation and Ms Christie suffered losses that were unrelated to the entering of any particular transaction.

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56. In any event nothing in Pegasus – whether at first instance or in the Court of Appeal<sup>1</sup> - displaced the central principles for identifying the date when the client suffered relevant damage. For the reasons given under the first two grounds of appeal, Ms Christie suffered relevant damage long before the sale of the flat completed.

**Alternative case**

57. In the alternative to striking out/dismissing the whole case, Mr Maxwell submitted that the claim based on the advice given in respect of the substantive defence to the claim of forfeiture should be struck out; because on any view that claim was time-barred by the date of the possession order. Upon that order being made, Ms Christie had suffered the loss of her substantive defence.

**Respondent's submissions**

58. Ms Christie, acting in person, served skeleton arguments and a bundle in support of the decision of the Master and also a Respondent's Notice. Whilst making various submissions on the facts and the case law, her overall contention was that the Master's decision was correct for the reasons she gave.

**Discussion**

59. Two preliminary and linked points should be made. First, the hearing before Master McCloud was not the trial of a preliminary issue on limitation. Rather, it was an application that, by reason of the limitation defence advanced, the claim should be struck out as disclosing no reasonable grounds for bringing the claim (CPR 3.4(2)(a)) and/or summarily dismissed as having no real prospects of success (24.2(a)(i)).
60. Whilst an application under CPR 3.4(2) is focussed on the pleaded case and CPR 24.2 also takes account of the evidence, in the context of this limitation defence (and as Mr Maxwell accepted) the two procedural alternatives stand or fall together. Thus, if Ms Christie has a real, not fanciful, prospect of defeating the limitation defence at full trial, the application must fail on each basis.
61. Secondly (and as Mr Maxwell accepts), given the focus on the prospects of success at full trial, the Court must exercise some caution when asked by a defendant raising a limitation defence to proceed on the basis of the claimant's pleaded case at its highest and fullest. For otherwise there is the risk that the merits of limitation defence will be considered on a false basis, i.e. which takes undue account of a part of the claim (e.g. a particular alleged breach or causation of a particular loss) which may fail on the substantive merits at full trial. To do so on an interlocutory application could thus place a claimant in a worse position (on the limitation defence) than if the claim had gone to full trial.
62. As to the law, the arguments and decision below gave a good deal of consideration to the many authorities in this area of law and to the conceptual complexities to which they have given rise: e.g. as to whether there is tension between certain decisions of the Court of Appeal; and as to the categorisation of the claim, see e.g. the three-fold categorisation by Rimer LJ in Pegasus at [28].

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<sup>1</sup> [2010] EWCA Civ 181

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63. Whilst in some cases these issues may require close consideration, I do not (at least at this stage) consider this to be such a case. In my judgment the relevant principles for the disposal of this application and appeal are as sufficiently summarised by Clarke LJ in Hatton. Set against those principles, and as Master McCloud rightly directed herself, the task of the court is intensely fact-sensitive: to that effect, see also Berney per Gloster LJ at [70] and Maharaj v Johnson [2015] UKPC 28 at [26].
64. Whilst my reasoning differs in certain respects, in my judgment the Master was right to conclude that Ms Christie has a real prospect of defeating the limitation defence at full trial.
65. First, I accept that Ms Christie's claim of negligence is not limited to the allegation that Mr Dymond should have advised her in respect of the alleged availability of statutory loan/charge facilities as a route to obtaining relief from forfeiture. Her pleaded claim is also that he gave wrong advice in respect of the substantive defence to the claim of possession on the grounds of forfeiture.
66. Secondly, I consider that the pleaded global loss of £9000 for the Council's costs of the forfeiture proceedings, if recoverable in that total, is unlikely to be regarded as minimal or trivial; and whether considered in absolute or relative terms. By contrast I see greater force in that description of the sum of £1169 for solicitors' conveyancing costs. However I consider that these are ultimately questions for trial rather than summary determination.
67. Thirdly, I do not accept Mr Maxwell's central arguments that (i) Ms Christie's claims of negligent advice on the substantive defence and on relief from forfeiture must necessarily be viewed together (in his word, holistically); nor that (ii) all the subsequent events involving cost to Ms Christie must necessarily be treated as consequential upon Mr Dymond's advice.
68. As to point (i), these are distinct allegations and it would be wrong to proceed on an assumed basis that Ms Christie succeeds on both at full trial. To do so would run the risk identified in my second preliminary point. This is of particular importance in the context of the allegation about the advice in respect of the substantive defence, which is made against the finding of the Court on 28 June 2013 that there had been no waiver.
69. Thus the ultimate finding on liability can affect both the correct characterisation of the claim in question and the facts to which the limitation principles are to be applied.
70. As to point (ii), this counterfactual in particular takes no account of the apparent fact that Ms Christie did not accept or follow Mr Dymond's advice in respect of the substantive defence; thus potentially negating any causal link between his advice, the Council's costs on that issue and the possession order itself.

Costs orders

71. Further, and whether the claims taken together or separately, I am not persuaded that the costs orders incurred between November 2012 and 19 April 2013 necessarily follow from the advice that was given. For example, I do not think it fanciful to foresee a finding that the adjournments and associated costs might have been

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necessary in any event, pending an application for the alleged loan facilities; see also the similar point made by the Master at [37]. All these questions of causation raise too many imponderables and in my judgment are questions of fact for trial.

72. In any event, I agree with the Master that there is a real issue of fact (or of mixed fact and law) as to whether or not the effect of the costs order of 28 June 2013 was to replace the previous costs orders; so that no such loss had occurred by that date. In my judgment that is a real, not fanciful, issue for trial.

Solicitors' conveyancing costs

73. In my judgment it is not clear from the evidence that Ms Christie incurred liability for the claimed cost (£1169) before 15 July 2013. This again is a matter for trial. Further the letter from the conveyancing solicitors to MWLC dated 24 January 2013 provides no useful information at this stage. On the face of it, its evidence of work carried out to date goes no further than reference to receipt of MWLC's letter of the same date and a telephone conversation, together with advice that the solicitors '*...are in possession of the Leasehold Information Pack from Southwark Council and can confirm that this has been submitted to the proposed buyers solicitors along with the draft contract package*'. This gives no indication as to how much chargeable costs had been incurred by that date; nor any basis to infer that Ms Christie's contractual liability for all or part of the total claimed costs had been incurred by 15 July 2013.
74. I also consider that there are potential questions for trial as to whether any part of those costs is attributable to the alleged negligence and/or whether they fell within the measure of damages applicable to the wrong in question. For example, I can envisage a potential argument that Ms Christie would have had to incur solicitors' costs if Mr Dymond had given the alleged appropriate advice to apply for a service charges loan.

Possession order

75. I do not accept that it is self-evident that the value of the flat was necessarily diminished by the fact of the possession order. This is no more than an assertion; and gives no weight to the fact that the order provided Ms Christie with an unqualified right to apply for relief from forfeiture within the stipulated period; nor to the principle that, upon a successful application for relief, the lease is restored to life as from the date of forfeiture: see Ivory Gate Ltd. v. Spetale (1999) 77 P. & C. R. 141 at 147.
76. In any event, there are potential triable issues as to the cause of the possession order, in particular having regard to Ms Christie's apparent rejection of Mr Dymond's advice on the substantive defence; and also as to whether the possession order (rather than the need to obtain relief from forfeiture) was a cause of the sale. The Master stated at [34] '*The possession order did not even arguably cause the sale: it was the loss of the right to seek relief...*'; and on any view there is an issue for trial.

Diminution in value of the chose in action

77. I do not accept that the Master was wrong to conclude that there was a real prospect of establishing that there was before 15 July 2013 no diminution in value of Ms Christie's right to seek relief for forfeiture. Mr Maxwell acknowledged that this issue

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took his argument no further than that of the Council's costs; so in the light of my conclusion on that issue this point must equally fail. In any event, diminution in value is a matter for evidence at trial, not assertion.

**Grounds 3 and 4**

78. I can deal with these grounds more shortly. For the reasons given above, I do not consider (at least on the evidence at this stage) that resolution of this application and appeal depends on consideration of possible tensions between decisions of the Court of Appeal; nor of categorisation as between the three categories identified in Pegasus. In my judgment, the limitation issue depends on the application of uncontroversial established principles to the specific facts of the case.

**The alternative remedy**

79. I am not persuaded by the alternative argument that the Court should at least strike out/dismiss the claim against Mr Dymond in respect of his advice on a substantive defence to the Council's claim; on the basis that damage in that respect must have occurred by no later than the possession order of 28 June 2013. Given my conclusion that there is a real argument for trial that there was no such damage in circumstances where the order also made express provision for an application for relief from forfeiture, I consider that an equal objection to that alternative disposal of this appeal.

**Conclusion**

80. For the reasons given above, I agree with the Master's conclusion that Ms Christie's resistance to the limitation defence must go to trial. Accordingly the appeal must be dismissed.
81. I conclude by returning to the point that the application and this appeal do not constitute a preliminary issue on the limitation defence. The decision is simply that the limitation issue is fit for trial, not for summary disposal. Accordingly, and for the avoidance of doubt, the reasoning in this decision in no way binds the parties as to the arguments on limitation which may be advanced, nor the Court as to its reasoning, at trial.