

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/11/2017

Before :

**JUSTINE THORNTON QC**  
**sitting as a Deputy Judge of the High Court**

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Between:

**Reginald Hyde**  
**Nicholas Standeven**  
**ITR Global Limited**

**Claimants**

- and -

**Simple Skips Limited**

**First**  
**Defendant**

- and -

**John Corney**

**Second**  
**Defendant**

- and -

**Keith Stiles**

**Third**  
**Defendant**

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**Mr Mark Warwick QC** (instructed by **Gordon Dadds**) for the **Claimants**  
**Mr Charles Apthorp** (instructed by **Robert Simmons**) for the **Second Defendant**  
**Mr Rajinder Sahonte** (instructed by **Peter Lynn & Co**) for the **Third Defendant**

Hearing dates: 18, 19, 20, 23 and 24 October 2017

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**Judgment Approved**

## **Introduction**

1. In these proceedings, the Claimants seek monies totalling approximately £992,180 in relation to the management, or mismanagement, of waste recycling activities at a site at Oakfield Farm, Wells Lane, in Ascot between May 2014 and July 2016. The claims are made in contract and in tort (trespass and misrepresentation).

## **The parties and the claim**

2. The First and Second Claimants are the executors of the will of Stephen Hyde and claim in that capacity. Mr Hyde owned the site at Oakfield Farm, until his death on 23 May 2014. The Third Claimant, ITR Global Ltd, had a tenancy of part of the site which it licensed to the Defendants in May 2014. The director and shareholder of ITR Global Ltd, Mr Kas Ali, was closely involved with events at the site giving rise to this claim.
3. The First Defendant is Simple Skips Limited, a company which held the environmental permit for waste activities at the site from 6 October 2014 until 2 February 2017 when the permit was revoked by the Environment Agency for serious non-compliance. The Second and Third Defendants, Mr Corney and Mr Stiles, were business partners who agreed to run a recycling business at the site. Mr Stiles, was the sole director and shareholder of Simple Skips Limited from April 2014 until June 2016. Mr Stiles and Mr Corney appear to have had a bitter falling out over events on site.
4. The contours of the claim changed during the trial. By closing submissions the claim comprised the following elements:
  - i) A claim for trespass by unlawful deposit of waste on part of the site. The claim is for £605,840. Whilst an element of trespass is admitted, the extent of the trespass, the appropriate measure of damages and quantum are disputed.
  - ii) Unpaid licence fees arising out of an oral licence which the Claimants say was entered into by Schyde Investments Limited, a company owned by Mr Hyde with the Defendants, whereby the Defendants were allowed to deposit waste in a series of bays at the western edge of the site. The amount claimed is £62,220. The Defendants accept that negotiations were entered into for the licence but deny the negotiations concluded with an agreement for a licence.
  - iii) Unpaid licence fees under a written licence dated 23 May 2014 between Remarketing IT Limited, the former name of ITR Global Ltd (the Third Claimant) and the Defendants in relation to the use of and clean-up of an area of the site I refer to in this judgment as the central yard area. The amount claimed is £33,720.

- iv) Damages for misrepresentation, by way of negligent misstatement, arising from representations by the Defendants that a stockpile in the central yard area contained asbestos. The amount claimed is £19,200, being lost licence fees incurred by the Third Claimant whilst stockpile C was hand picked to remove any asbestos.
  - v) Damages for the cost of clearing the yard and repairing the damaged bays. The estimated cost of clearing the Yard is £70,000 - £80,000. The estimated cost of removing waste from shipping containers in the yard is £31,200. The estimated cost of repairing the bays is £55,000.
  - vi) Lost income from July 2016, when the Defendants left the site, to September 2016, by virtue of the site being unusable as a result of the deposited waste. The amount claimed is £53,769 for lost licence fees from renting out the central yard area and £51, 240, for lost rental of a shed referred to as the WEEE Shed and bays.
5. The Second and Third Defendants ask the Court to make broad findings as to their relative responsibility for the unfortunate events on site.

### **Factual background in brief**

#### *The site*

6. Oakfield Farm sits within the Green Belt and is surrounded by trees, which appear to have screened the waste activities from public viewpoint. Access to the site is by a private road into a rectangular yard with hard standing. In the centre is an inner yard area with a roof cover. Wooden bays flank the western edge of the yard whilst an office and canteen area is located on the opposite side. A shed, referred to as the WEEE Shed (waste from electrical and electronic equipment), is at the northern edge of the site, adjacent to the entrance. Gates lead from the yard to an area referred to by the parties as the Mound.

#### *Historic waste activity*

7. Waste processing and dumping has taken place on the site since about 1997. In 2010 a Planning Inspector's report describes the site as follows:

“On the south and south-eastern parts of the site are heaps of various kinds of materials including soils, demolition wastes, green wastes, rubble and miscellaneous single items of waste. Beyond the site's southern eastern boundary the materials on the site merge into a much larger heap of similar materials several metres high...

...the simple and undisputed fact that still on the site are many thousands of tonnes of waste materials ...”

*Mr Hyde (deceased) purchases the site*

8. Mr Stephen Hyde purchased part of the site in 2008, initially through his company, Schyde Investments Ltd, followed by the remainder of the site in December 2010. Mr Hyde granted a tenancy of part of the central yard area to a company called Recycle Recycle Ltd. The director of the company was Mr Ali who subsequently became a director of ITR Global Ltd, the Third Claimant. In June 2010, the Environment Agency granted an environmental permit to Recycle Recycle Ltd for the operation of the site as a household commercial and industrial waste transfer station, with treatment, for non-hazardous waste.

*Unlawful deposit of waste in 2014*

9. In 2012 Recycle Recycle Limited granted a licence to a company called Ecologique Limited to operate its waste business at the site. Ecologique Limited breached the conditions of the environmental permit held by Recycle Recycle Limited with the result that the Environment Agency served an enforcement notice on 5 March 2014 on grounds that mixed skip waste, partly sorted mixed skip waste and wood waste had not been stored, as it should have been, in a building or a secure container. The Agency subsequently prosecuted Mr Ali in relation to the unlawful activity.

*The Yard licence*

10. The waste unlawfully deposited by Ecologique Limited needed clearing. To do this, Mr Ali entered into an arrangement with the Defendants whereby the Defendants would rent the central yard area of the site for waste recycling operations whilst clearing up some of the waste left by Ecologique Limited. A fixed term licence, dated 23 May 2014, was entered into between Remarketing IT Ltd and the Defendants (“the Yard licence”).

*The discovery of asbestos in July 2014*

11. Almost immediately, operations under the licence ran into difficulties. There were delays whilst Mr Ali finished clearing the piles of waste he had taken responsibility for under the licence. Then at the end of July 2014, asbestos was discovered in a stockpile in the central yard area which the Defendants were responsible for clearing. Under the terms of the Yard licence the presence of asbestos meant the pile became the responsibility of Remarketing IT Limited and the pile was laboriously hand picked by Mr Ali’s staff during August and into September 2014.

*The Bays licence*

12. On 6 October 2014 the Environment Agency transferred the permit for the site from Recycle Recycle Limited to Simple Skips Limited, and Simple Skips Limited started trading from the site on 13 October 2014.
13. Around this time Mr Ali, Mr Corney, Mr Stiles and Mr Patel engaged in discussions about the Defendants taking over the remainder of the site, in particular the wooden bays and the WEEE shed. An exchange of emails records discussion about the terms of a licence to this effect and the rent payable.

*Matters start to deteriorate*

14. Not long after Simple Skips Limited started trading, the operational complexities of simultaneously attempting to operate a waste transfer station; clear previously deposited waste and obtain planning permission to put a roof over the central yard area (as required by the environmental permit) started to become apparent. Emails in January and February 2015 show Schyde Investments Ltd chasing for rent; Simple Skips Limited experiencing cash flow problems and arguments between the parties about delays in waste clearance.
15. By the end of March 2015, the problems had started to become apparent to outsiders. An email from Mr Edmund, director of Schyde Investments Ltd to Mr Patel on 30 March describes a site visit by local councillors:

*“More concerning from the site visit was Councillor Hinton going on and on about the increase in waste in the bays. This has increased regardless of your intention not to utilise these...The bays you were vacating have now spilled out so far that the one way system for vehicles is no longer possible and there was vehicle chaos during the planning committee site visit”*

#### *Environment Agency concerns*

16. The Environment Agency was also becoming concerned. On 24 August 2015, an officer with the Environment Agency visited the site and produced a compliance report. He concluded that Simple Skips Limited was not complying with its permit. Simple Skips Limited was issued with a warning and required to submit a voluntary action plan to remedy the permit breaches. The plan was duly produced in September 2015 but appears to have made little difference. The Agency returned to the site on 23 November 2015 and reported that the waste piles had increased, in some cases significantly. Shortly afterwards the Agency suspended waste activity on site pending steps to be taken to bring the site back into compliance.

#### *All party meeting 27 November 2015*

17. The main protagonists met at the end of November to discuss the problems and how to rectify matters. I set out a record of the meeting below as it is material to the issues arising in this case.

#### *Relations between Mr Stiles and Mr Corney break down*

18. At this stage relations between Mr Stiles (D3) and Mr Corney (D2) appear to have deteriorated. An email from Mr Stiles to Mr Corney dated 8 December 2015 states:

*“I am extremely concerned that due to poor management and negligence you have allowed the businesses to reach a situation where they are now faced with severe financial difficulties”*

19. In December 2015 relations broke down completely. Mr Corney left the site and did not return.

### *Environment Agency enforcement notice and site is vacated*

20. Matters improved briefly when the Environment Agency lifted the suspension notice on 22 April 2016 but the improvement was not to last long. The Environment Agency discovered that approximately 40 roll-on roll-off containers of waste were deposited on the Mound on or before 7 July 2016. The Agency served a notice under section 59 Environmental Protection Act 1990 requiring removal of unsorted skip waste from the Mound.
21. For the Claimants, this was, it seems, the last straw. The Defendants were barred access from the site in a tense stand off at the end of July.
22. On 9 February 2017 the Environment Agency revoked the permit on the basis that Simple Skips Limited was not a competent operator; had been in breach of the permit on numerous occasions and lacked technically competent management.

### *Current position*

23. On 17 October 2017 planning permission was granted for residential housing on the site. One of the conditions of the planning permission is that development cannot take place prior to approval of a remediation scheme. A schedule produced by Hydrock engineering consultants estimates the cost of removing the waste from the site at £4.4 million.

### *The proceedings*

24. The shape and content of the proceedings has changed as matters have progressed. By order of Master Cook, dated 24 February 2017, judgment was entered in favour of the Claimants against the Second Defendant with damages to be assessed at trial of the claim. By order of Master Thornett, dated 6 April 2017, the First Defendant, Simple Skips Limited, was deemed to accept all findings of facts and awards of damages as flow from having adopted the Third Defendant's case.
25. In closing submissions the Third Defendant indicated that counterclaims for overpayment of licence fees and service charge under the Yard licence and for plant and machinery left on site were no longer pursued.
26. The Third Defendant had sought a declaration for indemnification by the First and Second Defendants. The Second Defendant alleged breach of trust and confidence. Both Defendants sought to rely on the Civil Liability Contribution Act. In closing submissions, Counsel for both Defendants agreed that the Court should simply make broad findings about the responsibility of Mr Corney and Mr Stiles for events giving rise to the claim.

### **Issues**

27. The following issues arise for consideration:
  - i) The date by which Mr Ali had complied with his obligations under the Yard licence, such that rent became payable by the Defendants

- ii) Whether agreement was reached between Mr Edmunds and Mr Patel that the Defendants could use the bays for monthly payments of rent (the Bay licence)
- iii) A factual assessment of when and where waste was deposited on site between 13 October 2014 to 30 July 2016
- iv) The quantity of waste deposited on the Mound and a waste pile referred to as Waste Pile B
- v) Whether the discovery of asbestos was a ruse by the Defendants designed to get Mr Ali to take responsibility for clearing stockpile C in the central yard area
- vi) The appropriate measure of damages for trespass by unlawful deposit of waste
- vii) The roles and relative responsibilities of Mr Corney and Mr Stiles for events on site

### **Witnesses**

28. Eight witnesses gave evidence. The following witnesses gave evidence for the Claimants:

- i) ***Ms Jacqueline Gale.*** Aside from Mr Ali, Ms Gale has had the longest association with the site working first for Mr Ali and then for Simple Skips. Ms Gale was the only witness to have had any formal waste training. She was awarded a certificate of continuing competence by the Chartered Institute of Wastes Management in 2014. Her job including collating information about the waste arriving and leaving the site to generate so called 'waste returns' for submission to the Environment Agency. The focus of her oral evidence was the waste returns from October 2014 to March 2016. On 26 June 2016 she left her job due to her concerns over mismanagement of the site. Her evidence was unchallenged and provides helpful corroboration of the topographical and photographic evidence.
- ii) ***Mr Michael Edmund.*** Mr Edmunds is the sole director of Schyde Investments Ltd, a company owned by Mr Hyde (deceased). He characterised his role as bringing professionalism to Mr Hyde's successful entrepreneurial activities, describing Mr Hyde and his brother, Reginald Hyde (C1) as old fashioned entrepreneurs content to work on trust and a handshake whilst Mr Edmunds generated the paperwork to capture the deal. Mr Edmund oversaw the production of the topographical surveys in 2015 and 2016 which demonstrate the amount of waste deposited on the Mound and Wood pile B during this period. I found him to be professional and competent.
- iii) ***Mr Kas Ali.*** Mr Ali is the director of ITR Global Limited (C3) and was intimately connected with events on site. He was frank and open in his evidence. He conveyed a strong sense of loyalty to the Hydes, who he regarded as family friends and wanting to put matters right on the site, given his contribution to the initial problems. At times his evidence demonstrated a relaxed attitude to the formalities of regulatory compliance or title to land. By

his own admission his strategy for clearing up the waste was, in part, to shift it to other piles not regulated by the Environment Agency and outside the scope of his tenancy.

- iv) **Mr Reginald Hyde.** Understandably, given his role as the executor of his brother's estate, Mr Hyde's knowledge of day to day events on site was relatively limited. However he had a clear memory of seeing large amounts of waste deposited on the Mound in July 2016. He clearly regarded this as a betrayal of his trust in the Defendants and their eviction from the site followed shortly afterwards.

29. The following witnesses gave evidence for the Defendants:

- i) **Mr Corney.** Mr Corney gave evidence about his role and the deterioration in his relationship with Mr Stiles. He described himself as a 'hands on' rather than a 'book taught' business man who had been naive in trusting Mr Stiles. He had no paperwork and little detail of his arrangement with Mr Stiles. He did his best to help the Court but was unable to materially advance my understanding of matters.
- ii) **Mr Stiles.** Mr Stiles came across as a shrewd and experienced businessman. He gave his evidence carefully often providing technical answers that avoided answering the question. He conveyed a sense of bitterness about what he regarded as Mr Corney leaving him in the lurch, as well as frustration with Mr Ali's efforts to clear the site. From about November 2015, he appears to have focussed his efforts on extracting himself from the mess by somewhat devious means including secretly recording conversations. Whilst he may have had some justification for his views on Mr Corney and Mr Ali, his feelings appear to have blinded him to a recognition of the detrimental impacts of his actions on the landowner.
- iii) **Mr Manish Patel.** Mr Patel's role was to run the day to day operations on site. He had no formal waste qualifications. He was uncomfortable giving evidence and his aim appeared to be to say as little as possible. He was however more candid than Mr Stiles when direct questions were put to him. He was clearly taken aback about the poor state of the site when taken to still shots from the drone footage in June 2017.
- iv) **Ms Rachel Elimelech.** Ms Elimelech was a solicitor for the Pennaf Premier Group of companies retained by Mr Stiles' group of companies. She had limited involvement in relevant matters and was acting on instructions. She appeared to feel strongly that Mr Stiles had been wronged by Mr Corney and was prepared to fight Mr Stiles' corner. I do not consider her evidence added materially to my understanding of matters

### **The evidence**

- 30. At the heart of this case is a somewhat convoluted factual assessment of where and when waste was deposited at and/or removed from the Oakfield site between May 2014 to July 2016 and the legal and financial implications.

31. In *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm), Leggatt J made observations, adopted in other cases, about the unreliability of human memory in the context of civil litigation (paragraph 15):

*“An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.*

*While everyone knows that memory is fallible I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony...*

*...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”*

32. This is the way that I have approached the evidence in the present case. I have placed particular reliance on compliance reports and regulatory notices produced by the Environment Agency; photographic evidence of changes on the site over the two years; topographical evidence; unchallenged waste returns and contemporaneous emails.

### **Environment Agency regulation of the site**

33. The Environment Agency’s compliance reports and escalating enforcement activity between 2015 – 2017 provide an objective chronological assessment of events on site.

34. On 24 August 2015, an officer with the Environment Agency visited the site and produced a compliance report. The report comments as follows:

*We discussed the continuing removal and sorting of the non compliant waste deposited by the previous occupier and the growing wood waste pile which is entirely Simple Skips...*

*‘non specified waste is being stored outside the building and not in a secure container. This is now a repeated breach and there was more non-compliant waste than was found during my July inspection...*

*Action: submit a voluntary waste plan to ...remedy the... breach*

35. The officer returned to the site on 23 November 2015 to find the following:

*'plastics had not changed since my previous inspection. The mixed waste looked under control. However the wood waste pile had grown significantly. Inert and crushed stockpiles had also significantly increased...*

*"Plastics: the voluntary action plan required 25 loads of plastic to be removed by 23/11/15. No loads had been removed by this time. Wood: The voluntary action plan required 41 loads of wood to be removed by 23/11/15. Only 7 loads had been removed by this date resulting in a significant increase in the non-compliant wood stockpile. General waste – the voluntary action plan required 22 loads of general waste to be removed. This was achieved.*

36. On 2 December 2015, the Environment Agency served a Notice suspending operations on the site on the basis that:

*"significant quantities of combustible non specified waste is being stored outside and is not being stored in secure containers. The non specified waste being stored outside comprises wood, plastic and general mixed waste"*

37. On 2 July 2016, the Agency served a notice, under section 59(1)(a) Environmental Protection Act 1990, on Simple Skips Limited requiring removal of unlawfully deposited skip waste deposited on the Mound.

38. On 9 February 2017 the Environment Agency revoked the permit. Its reasons for doing so are compelling:

*"The Environment Agency considers that Simple Skips Limited is not a competent operator and will not operate the Regulated Facility in accordance with the Permit. In addition use of other enforcement tools has failed to bring Simple Skips into compliance to protect the environment. Specifically*

- Simple Skips has breached the Permit numerous times since the Permit was transferred to it on 6 October 2014. Breaches were of Permit Condition 2.3.1 referring to Table 2.3 in relation to waste storage and a significant breach for lack of technically competent management.*
- The Environment Agency has provided significant advice and guidance on how to comply with the Permit, setting out actions for compliance and approving a Voluntary Action Plan. This failed to secure Permit compliance*
- The Environment Agency served a regulation 37 Suspension Notice on Simple Skips for contravention of Permit Condition 2.3.1 referring to Table 2.3 giving rise to a risk of pollution from fire. Compliance with the Suspension Notice was not achieved until 22 April 2016. Simple Skips signed a Formal Caution for failure to comply with the Suspension Notice by the deadline but again became non-compliant with Permit condition 2.3.1*
- On or before 7 July 2016, approximately 40 roll-on roll-off containers of waste were deposited on an area known as the Mound, situated adjacent and immediately south east of the Regulated Facility. The Mound is a non permitted area. Security records found within the*

*waste deposited on the Mound originate from the Hilton Hotel in Newbury. A waste transfer note dated 29 June 2016 shows that 5.8 tonnes of mixed municipal waste was collected from the Hilton Hotel in Newbury on 29 June 2016 and was transferred to Simple Skips that day*

### **Photographic evidence of the changes on site**

39. The Yard licence between Remarketing IT Limited and the Defendants is accompanied by an aerial photograph showing the location of waste piles in the Yard. In evidence, Mr Ali explained that the plan was used by the Environment Agency in its prosecution of Mr Ali following the unlawful deposit of waste by Ecologique Limited in 2014. It therefore provides a baseline for the state of the site when Simple Skips Limited arrived on site.
40. The photo shows waste was present in most areas of the site, albeit in separate piles. The central yard area has three stockpiles of waste, labelled A, B and C. Clearance of these piles was the focus of the Yard licence. The photograph shows two larger piles, labelled Wood A and a pile labelled Wood B at the southern end of the site at the entrance to the Mound area. Waste can be seen in the bay areas to the western side of the site. A larger pile of material, also labelled C, sits adjacent to the bays at the north western edge of the site.
41. Planning consultants for Schyde Investments Limited took photos of the site on 11 November 2014, a few weeks after Simple Skips Limited started trading from the site. The photos show that stockpiles A and C in the central yard are largely clear but stockpile B is still present. The central yard looks tidy despite the presence of stockpile B. The concrete floor looks like it has been swept and there are neat piles of what looks like earth in the area that was formerly stockpile C. Pile C in the north western corner remains. The bays have waste in but it is possible to see vegetation and trees behind the bays. Waste is evident on Wood Pile A and B and the Mound.
42. Photographs taken in July 2015 show waste spread across the central yard area. There appears to be more waste in the bay area and in Wood Pile A. There are pictures of waste overflowing from containers creating a sense of disorder.
43. Still images of drone footage on 13 June 2017 show a considerable build up of material behind the bays and in the central yard area when compared with the 2014 photos. Waste in Wood pile B and behind the bays appears to have become compacted such that it looks like part of the site's contours, which is consistent with the topographical evidence. Skips of waste are overflowing creating a sense of mess and disorder. A comparison of the 2014 and 2017 photos of the Mound show a significant increase in the waste.

### **Topographical evidence**

44. Professional surveyors, S V Surveying, surveyed the site to identify and map the surface in 2015 and 2016. The first survey on 16 April 2015 was undertaken in connection with plans to develop the site. A further survey was taken on 25 July 2016

when Simple Skips Limited left the site, to enable the option holder to assess the state of the site. The surveys indicate that a total of 13000 m<sup>3</sup> of waste was deposited on the Mound (4661m<sup>3</sup>) and on Wood pile B/behind the bays (8,363 m<sup>3</sup>) during this period.

45. Using the topographical information Mr Edmunds calculated the tonnage of the waste deposited as 5,535.20 (by multiplying the cubic metres by a figure of 0.425 which he considered to be the average weight of mixed waste). He assessed the average cost of disposal of a tonne of waste as £120. This enabled him to calculate the cost of removal of the waste as £241,600 for the Mound and £364,240 for Wood pile B/the bays (he had applied a bulking factor of 25% to the 8363m<sup>3</sup> on the wood pile and behind the bays to give 10 454 m<sup>3</sup> before converting to tonnage and multiplying by £120).
46. The Third Defendant did not seek to challenge the waste volumes established by the surveys; the average cost of a tonne of waste or the average weight of the waste. Instead Mr Sahonte, on behalf of Mr Stiles, contended that the evidence was expert evidence; that it was wrong for the Claimants to seek to rely on the evidence under the hearsay rule; production of the evidence was unfair because the Claimants had previously disavowed the use of expert evidence at trial and the evidence should have been excluded on the grounds that its production was unfair and the effect was to deprive the opposing party of an opportunity to cross examine the real author of the evidence.
47. In response Mr Warwick relied on the case of *Mondial Assistance (UK) Limited v Bridgewater Properties Limited* [2016] EWHC 3494 (Ch), in which the admissibility of reports appended by an expert valuer on the conditions of specific parts of premises was challenged. The landlord objected that the tenant was trying to include the evidence in the appendices by the back door as it did not have permission to adduce evidence from other experts. Nugee J disagreed. The combined effect of the Civil Evidence Act 1972 s.3 and the Civil Evidence Act 1995 s.1(1) was that the opinion of a properly qualified expert was prima facie admissible, following *Rogers v Hoyle* [2015] Q.B. 265. The position was not affected by the provisions of CPR Pt 35 unless the evidence was that of "a person who had been instructed to give or prepare expert evidence for the purpose of proceedings" under r.35.2(1). In the course of his judgment Nugee J gave examples of the types of opinion evidence falling within this rule. They include reports commissioned by the parties if they are commissioned for some other purpose and then sought to be adduced in the proceedings. The weight to be attached to the document is a matter for the Court and objections to the evidence can be given effect to by affecting the weight to be given to the evidence.
48. In this case the topographical surveys by SV Surveying were not prepared for the purpose of the proceedings but were commissioned for planning purposes. They were prepared by professional surveyors and there has been no challenge to their expertise in this regard. Accordingly I consider the evidence is prima facie admissible on the basis it is opinion evidence by an expert qualified to give the evidence. In assessing the weight to be given to the surveys I have taken account of the objection by the Third Defendant to the evidence. Mr Sahonte argues that no hearsay notice was given under CPR33.2. However, whilst the Civil Evidence Act 1995 requires a hearsay notice to be given, failure to comply does not affect the admissibility of the evidence but may be taken into account by the Court (section 2(4)). The Third Defendant was

told of the existence of the surveys by way of responses to further information ten months before trial and they were subsequently disclosed to him. Despite this the Third Defendant did not produce any evidence of his own to counter the surveys. In these circumstances his objection starts to resemble a convenient way to seek to exclude damaging evidence. Moreover, in attaching weight to the surveys I have taken into account that they are consistent with the unchallenged evidence from the waste returns, to which I now turn.

### **The waste returns**

49. The Environment Agency monitors waste on a regulated site by requiring operators to submit details of the types of waste and amounts of waste coming onto and leaving site. The information is submitted by so called 'waste returns'.
50. Ms Gale was responsible for submitting the waste returns for Simple Skips for the period October 2014 to March 2016. Her figures show that the Defendants brought 10,383.66 tonnes of excess waste onto site in this period. Her evidence was unchallenged in this regard. From this information Mr Edmunds estimated the cost of removal of the waste to be £1,246,039 (assuming that each tonne of waste costs on average £120 to remove, a figure that was not challenged). Ms Gale also analysed the returns submitted by Simple Skips Limited for the period April 2016 to July 2016, after she had left the site. They show that 1624 tonnes of waste entered the site during that period.
51. The waste returns show that 6,293 tonnes of waste entered site during the period April 2015 to March 2016. In my judgment this is comparable with the topographical evidence of 5535 tonnes of waste on the Mound and Wood Pile B given the waste returns cover the whole site.

### **The all parties meeting of 27 November 2015**

52. On 27<sup>th</sup> November 2015, Mr Corney, Mr Stiles, Mr Patel, Mr Edmunds, Mr Reginald Hyde and Mr Ali met to discuss the deteriorating position on site and to find a solution. Mr Ali emailed round an attendance note of the meeting and Mr Patel with acknowledgements and queries. The text below sets out the text in the exact form sent by Mr Ali (including various typos). The text in italics indicates Mr Patel's response.

Hi All

Following on from our meeting today,

It is noted the tenant at Simple Skips have over exceeded the limit of waste allowed to be stored on site and are in breach of their contractual agreements. **SIMPLE SKIPS** have met with Schyde the Landlords today 26<sup>th</sup> NOV 2015 to find a solution and bring the site back to the limits as part of the contract. It is also noted the Tenant Simple Skips are using additional land that is not rented to them.

We have noted the following.

The area known as the Mound is located towards the rear of the site and is generally secured within a gated area, the gates have been damaged and Schyde will have the gates repaired in respect Simple Skips will pay for the repair as the damage has been caused by the negligence of Simple Skips, It has been agreed by all Parties within 14 days Meaning the 14<sup>th</sup> of DEC 2015 Simple Skips will clear the inert pile going beyond the gates and the within 7 days clear the Green waste pile on the opposite site of the gates to allow access for works to be carried out. It is also noted the tenant Simple Skips will clear all there belongings from the area known as the mount. This is primarily Cabins and Demolition Equipment within 7 days.

*Agree To This*

As part of the clear up it is noted Kas Ali will clear the CLEAN plastic pile once the Green waste is cleared and the insert sat in front of the plastic pile, please note Kas Ali will need to book a machine with a grab and have wagons on 3 hour turnaround, space must be cleared to make sure this happens to plan. Again this requires the green waste and the scrap 40YD bin to be cleared. Please note Kas Ali will not be taking any plastic material that has been contaminated with Inert, Simple Skips have agreed to clear this material and Load this material off site. Kas Ali will pay for the landfill charges only.

JOB TARGET: Mani and John to remove the green waste and clear the inert to make access for loading.

We have started to move the Green Waste and the scrap 40 yard bin. The plastics are now accessible. It was agreed at the meeting by John Corney and Kas Ali that Simple Skips will clean the contaminated materials by washing them and preparing them ready to be taken away. Once the material has been cleaned Kas Ali will be responsible for the transport and landfill costs of removal.

The area known as the bays is located to the right hand side of the site as you walk into the Yard area from the main gates, It is noted that Simple Skips used the land since March of 2015 and have not paid any rent revenues to Schyde.

It is noted the bay area will be cleared and returned to Schyde on the 28<sup>th</sup> February 2016.

*Agree To This*

JOB TARGET: Reduce and remove all hard-core by the 20<sup>th</sup> DEC 2015, Clear the inert Pile to the left of the gates located to the rear of the site and make a new location for the hard-core and Inert to be processed. NO HARD CORE OR INERT to be taken to the bay area from the 20<sup>th</sup> DEC 2015. SIMPLE SKIPS AGREES to have the crusher running from Monday 30<sup>th</sup> NOVEMBER 2015.

Screening and Crushing has started with loads being taken out at 12:00 noon today.

JOB TARGET: Reduce and remove all inert from the bay area 50% BY END OF JANUARY 2016 and the balance by END OF FEBRUARY 2016. Fencers WILL FENCE OF THE BAY AREA AT THE END OF FEBRUARY 2016.

WOOD: Remove wood immediately and have secured containers to hold the waste as required by the agency by END OF JANUARY 2016.

*Wood loads have started moving from this morning Monday 30<sup>th</sup> November 2015.*

There will be daily assessments to make sure we work towards the above agreement, CCTV will be calibrated for access to all parties.

The site must remain in a clean tidy manor, currently the muck is travelling onto the main road, please reduce the level of muck travelling within the tyres of the lorries by cleaning the yard area on a regular basis. The car park area has access leaves from the trees that need to be swept to maintain the cleanliness of the site.

SIMPLE SKIPS AGREES ACCESS TO WASTE TICKETS for outbound waste information so all parties can assess the levels being reduced.

*Agree to these points*

53. I attach weight to the fact that Mr Patel added acknowledgements and comments and did so after each paragraph and that Mr Corney and Mr Stiles were copied in to the attendance note. Accordingly, I find the Defendants accepted responsibility for the following:
- i) Simple Skips had used the bay area since March 2015 and had not paid any rent.
  - ii) Simple Skips had deposited waste in the mound area
  - iii) Simple Skips were in breach of the Yard licence and the licence for use of the bay area
  - iv) Simple Skips had exceeded the limits of waste allowed to be stored on the site
  - v) Simple Skips were using additional land that was not rented to them, which I take to mean the Mound, given the email later refers to gates to the Mound area which Simple Skips had damaged.

## **THE HEADS OF CLAIM**

### **The Mound and Wood Pile B – Claim in Trespass**

54. The claim in trespass in relation to the mound and Wood Pile B represents the largest head of claim. The Claimants say that there was no question of any licence for the Defendants to deposit waste in either location. The site was under the exclusive control and possession of the Defendants from November 2014, as evidence from Ms Gale, Mr Ali and Mr Corney demonstrated. The topographical evidence provides irrefutable proof as to the extent of the trespass. The Claimants claim the cost of

removing the material from the site on the basis that reinstatement will be required under the planning permission or by the Environment Agency. For Wood Pile B, the cost of removal is estimated at £364,240 and for the Mound, £241,600.

55. In oral evidence Mr Stiles accepted that he could not dispute the Environment Agency's finding that on or before 7 July 2016 approximately 40 large containers of waste were deposited on the mound but he was not prepared to admit to anything further suggesting, inter alia, that Mr Ali was responsible for some of the deposits.
56. It was common ground that a trespass occurs when there is an unjustified intrusion by one party upon land which is in the possession of another (Blackstone, *Commentaries on the Laws of England*, vol 3, p 209; *Clerk & Lindsell on Torts*, 19th ed (2006), para 19.01)
57. Drawing the evidence together from photographs, Environment Agency reports, topographical surveys; waste returns and contemporaneous emails, I make the following findings about the deposit of waste on the Mound and Wood Pile B during the period 1 June 2014 – 30 July 2016

#### *The Mound*

58. The Mound contains historically dumped waste, as is apparent from the Planning Inspector's decision of 2010 referring to the mound as a heap of waste several metres high. Waste is evident on the mound in the November 2014 photographs.
59. Contemporaneous emails indicate that Mr Ali moved waste from the central yard area to the Mound and encouraged Simple Skips to do the same. In an email dated 21 July 2014 from Mr Ali to Mr Stiles, Mr Patel and Mr Corney, Mr Ali states that;  
  
*"Mani can you get the skips tipped to clear the pad and maybe put them up on the top mound for now".*
60. The point was picked up on in a letter dated 25 July 2014 from Ms Elimelech to Mr Ali which states that:  
  
*"A large proportion of the rubbish that you were required to dispose of has merely been relocated to another part of the site which is unsatisfactory".*
61. According to the Environment Agency, on or before 7 July 2016, approximately 40 roll-on roll off containers of waste were deposited on the Mound. Security records found within the waste deposited on the Mound originate from the Hilton Hotel in Newbury. A waste transfer note dated 29 June 2016 shows that 5.8 tonnes of mixed municipal waste was collected from the Hilton Hotel in Newbury on 29 June 2016 and was transferred to Simple Skips that day. The Environment Agency notice served on Simple Skips Limited under section 59 Environmental Protection Act 1990 requiring removal of waste shows the area of deposit on the Mound that must be removed.
62. The topographical evidence demonstrates that between 16 April 2015 and 25 July 4661m<sup>3</sup> of waste was dumped on the Mound.

63. The still shots of the drone footage in 13 June 2017 show a significant increase in waste on the mound compared with the 2014 photos.

*Wood Pile B*

64. Wood Pile B does not feature as an area of concern in the enforcement notice served by the Agency in March 2014. The aerial photograph of May 2014 shows a large pile of historically deposited waste referred to as Wood Pile B but it is not included within the terms of the Yard licence. The November 2014 photographs do not show the pile. In the July 2015 photographs the pile is referred to as mound 2 and can be seen at a prominent height rising half way up the tree line behind it. The plan accompanying the Agency's suspension notice of 2 December 2015 labels the pile as containing plastics which suggests plastics were added during the course of Simple Skips operations.
65. The topographical evidence demonstrates that between 16 April 2015 and 25 July 2016 8,363 m<sup>3</sup> of waste was deposited on Wood Pile B and behind the bays.
66. More generally: the excessive deposits of waste on site were of concern to local councillors by May 2015, as the email from Mr Edmund to Mr Patel on 30 March 2015 demonstrates. Significantly, the Defendants accepted broad responsibility in the email record of the parties' meeting on 27 November 2017 where it is said that "the Tenant Simple Skips are using additional land that is not rented to them" and the email sets out arrangements for clearing waste from the Mound area.

*Assessment of damages*

67. Accordingly I find that the Defendants trespassed onto the Mound and Wood Pile B and deposited 5,535 tonnes of waste between 16 April 2015 and 25 July 2016.
68. The parties dispute the correct legal approach to the assessment of damages.
69. On behalf of Mr Stiles, Mr Sahonte disputes that damage to land has occurred in circumstances where the site has historically been used as a dumping ground. Accordingly the appropriate way to measure damages is damage for use and occupation of the site, pursuant to the so called wayleave cases. Mr Sahonte relies, in particular, on the factually analogous case of *Whitwham v Westminster Brymbo Coal Co* [1896] 2 Ch 538 where the defendants had tipped refuse from their colliery onto the plaintiff's land which rendered the land valueless except for tipping purposes. The Court of Appeal held that the amount of damages was to be assessed on the basis of the principles in the way leave cases, namely that if one person uses another person's land for his own purposes he ought to pay for such use. Mr Sahonte also relies on the principles set out in *Capital Stadium Holdings (No 2) Ltd v St Marylebone Properties Plc* [2012] 1 P&CR.7 and *Network Rail v Conarken Group Ltd & Farrell Transport* [2011] EWCA Civ 644. In the former it was common ground that damages should be assessed on a user basis, that is, on the basis of a hypothetical negotiation as to the fee that would have been paid by a reasonable person for the grant of a licence to use the land in question. In the latter case, arising out of negligent damage to property, Network Rail claimed for payments made to train operating companies who had been deprived of the use of the railway as a result of the accidents. This was a case, Mr Sahonte submitted, where damages had been sought and obtained on proof of damage.

70. In contrast the Claimants in this case had not established that the waste needed to be removed. At its highest their case was that the land had been utilised for tipping. Mr Hyde's estate was proposing to pay £605,600 to remediate the land in order to derive a benefit of letting the yard area at a monthly rental of £3,600, annualised at £36,000. The remediation cost was nearly seventeen times the annual rent. Putting it another way, it was not proper mitigation of the Claimants loss to spend £605,000 to seek an annual return of £36,000 against the backdrop of the grant of planning permission which permission does not require the land to be in a condition which requires the removal of the waste as the land will be remediated as part of the implementation of the permission.
71. Mr Warwick relied on the case of *Bryant and Bryant v Macklin and Macklin* [2005] EWCA Civ 762. The Court of Appeal considered the various authorities in a case where animals broke through a fence and damaged trees belonging to a neighbouring landowner. The Court set out principles established by Lord Justice Clarke in *Scutt v Lomax* (unrep 25 Jan 2000):

*“...Where trespass by the defendant has caused damage to the claimant's land, the claimant may be entitled to the diminution in the value of the land or the reasonable cost of reasonable reinstatement or in some cases a figure in between. All will depend on the circumstances of the particular case, but the authorities seem to me to establish the following general propositions:*

- 1) The Claimant will ordinarily be entitled to the diminution in value of the property unless the reasonable claimant would have reinstated the land at less cost*
- 2) The claimant who has in fact reinstated the property will ordinarily be entitled to recover the reasonable costs of doing so, even if the cost is greater than the diminution in value, unless he has acted unreasonably in reinstating the property*
- 3) Where the claimant has not yet reinstated the property (subject to 4 and 5 below) he will ordinarily be entitled to recover the reasonable cost of reasonable reinstatement even if it is greater than the diminution in value*
- 4) In assessing what is the reasonable cost of reasonable reinstatement the court will consider whether the amount awarded is objectively fair; that is fair to both parties. In particular the court will not award a sum which is out of proportion to the benefit conferred on the claimant.*
- 5) In assessing what steps it is reasonable to take by way of reasonable reinstatement the court will take account of the cost of the reinstatement. Thus it may not be reasonable fully to reinstate the property because the cost of doing so may not be justified. All will depend on the circumstances of the particular case.*

72. Applying the law to the facts, Mr Warwick submitted that it was proper to apply the restitution in integrum approach to the case. Mr Edmunds had given evidence that restitution ‘is going to be forced on us whether the option is exercised or not the owner will be forced to clear the waste’. In this context, Mr Warwick relied on an email dated 27 September 2017 from Companies House to an officer at the Environment Agency that confirmed that a strike off application had been suspended in the light of the Environment Agency's objection to the company being struck off.

This, Mr Warwick said, demonstrates the Environment Agency's ongoing commitment to calling Simple Skips Limited to account for its actions on site.

73. The measure of damages for damage to land is founded on the basic principle of *restitutio in integrum* and I do not understand this to have been in dispute between the parties:

*"The basic principle governing the measure of damages where the defendant's tort has caused damage to the plaintiff's land or building is restitution in integrum. The damages should be such as will, so far as money can, put the plaintiff in the same position as he would have held had the tort not occurred" (Taylor LJ in Dominion Mosaics v Trafalgar Trucking Co Ltd [1990] 2 All ER 246 at 249)*

74. The case of *Bryant and Macklin* makes clear that in trespass claims the measure of damage will depend on the circumstances of the particular case. Where the claimant has not yet reinstated the property he will ordinarily be entitled to recover the reasonable cost of reasonable reinstatement provided the court considers the amount awarded is objectively fair. In particular the court will take account of the cost of reinstatement and will not award a sum which is out of proportion to the benefit conferred on the claimant. The wayleave cases establish that a landowner can recover damages equal to the rent the defendant would have had to pay for a wayleave during the period that the defendant used the land without permission
75. Applying the legal principles to the facts of this case; the Claimants have not yet reinstated the land and seek damages for the cost of reinstatement. I find that the evidence supports the application of the general rule outlined in *Bryant v Macklin* that a claimant will ordinarily be entitled to recover the reasonable costs of reinstatement. I rely, in particular on; 1) the recent grant of planning permission subject to approval of a remediation scheme for the site; 2) the extant July 2016 notice served by the Environment Agency requiring removal of waste on the Mound and 3) the recent actions of the Environment Agency objecting to Simple Skips Limited being struck off the Companies Register pending completion of its investigations into waste offences.
76. The estimated cost of reinstating the land is £605,000. I find the sum to be reasonable and objectively fair to the parties. The claim for £605,000 relates only to the period from April 2015 to July 2016. No account is taken of any waste deposit by the Defendants before that date. Ms Gales' waste returns are consistent with the topographical evidence for the period April 2015 and July 2016. Moreover the returns show that 10,383 tonnes of waste arrived on site between October 2014 to March 2016 with an estimated removal cost of £1,246,039. Whilst the evidence indicates that Mr Ali moved waste onto the Mound, including plastics, I do not find it necessary to reduce the award to account for this given the evidence indicates that the claimed amount is likely to be an underestimate of the waste deposited.

### **The waste in the Bays – the Bays Licence**

77. The Claimants claim £62, 220 for unpaid licence fees arising out of a licence between Mr Reginald Hyde, acting on behalf of the executors of his brother's estate, whereby the Defendants were allowed to deposit waste in a series of bays at the western edge

of the site. The Claimants rely on contemporaneous emails and the fact that the Defendants made two payments under the licences. They say that for the purposes of the claim made it is only necessary to know whether the licence was agreed and the amount of the fee. The other terms do not matter. The Defendants accept that negotiations were entered into for the licence but deny that the negotiations concluded with agreement for a licence.

78. Drawing the evidence together from photographs, Environment Agency reports, topographical surveys; waste returns and contemporaneous emails, I make the following findings about arrangements for the bays.
79. When Simple Skips Limited started trading from the site in October 2014, they were contractually restricted to the central yard area. Mr Edmunds, on behalf of Schyde Investments Ltd was chasing Mr Ali to get the storage bays and WEEE sheds cleared so Schyde Investments Ltd could rent the area out to another tenant.
80. Photographs taken of the site on 11 November 2014, almost a month after Simple Skips Limited started trading, show the bay areas contain some waste but the timber structure of the bays is clearly visible. Some bays are less than a quarter full. Behind the bays, vegetation and trees are visible.
81. Emails in October 2014 between Mr Patel, Mr Edmunds, Mr Corney, Mr Ali and Mr Stiles show the parties discussing the possibility of Simple Skips Limited taking over the WEEE shed and Bays and paying rent of £3,660 a month, making a total of £7,500 a month for the whole site. Mr Edmunds indicated that he would be prepared to rent the bays and WEEE shed to Simple Skips on condition that four months rent was paid in advance. By email dated 24 October 2014, Mr Patel agreed to rent of £7,500 and payment of two months' rent in advance subject to removal of items of existing waste by Mr Ali. Mr Edmunds subsequently emailed Mr Patel at least twice in November asking for an update on the waste clearance. On each occasion, Mr Patel failed to provide an update or indicate that anything was amiss.
82. On 4 December 2016 two invoices were sent out, including one for two months rent payable in advance. Mr Patel replied by email dated 4 December 2014  
*“Good Afternoon Ben Thank you for sending the invoices across. The first invoice will go on tomorrow’s payment run and probably clear Monday with you as it is a first time payment, The second will go on next week’s payment run and if I could ask that the final one will be done by the week Christmas”.*
83. Despite the initial response, when being chased for payment, Mr Patel contended that Mr Ali had failed to pay for the removal of his remaining loads of wood waste and the consequent presence of the waste had caused the Defendants to resort to using the bays. Nonetheless, the Defendants subsequently made two payments under the Hyde licence, paying £3,660 on 1 February 2015 and 1 June 2015.
84. In the photographs taken in July 2015, the bays have a build-up of soil with rubble. One photo shows a pile of what looks like plasterboard. The timber sleepers that form the bays are less visible. The trees behind are now partly hidden by the mass of waste in the bays.

85. The email of 27 November 2015 states that “It is noted that Simple Skips Limited used the land since March of 2015 and have not paid any rent revenues to Schyde”.
86. The record of the all parties meeting on 27 November 2015 states that:
- The area known as the bays is located to the right hand side of the site as you walk into the Yard area from the main gates, it is noted that Simple Skips have used this land since March of 2015 and have not paid any rent revenues to Schyde*
87. Mr Patel did not demur.
88. Accordingly, I find the existence of a licence whereby the Defendants took over the remainder of the site for £3,660 a month, making a total of £7,500 payable per month. The email of 27 November 2015 states that the Defendants had been occupying the bays from March 2015 without payment so I find March 2015 to be the starting date for when rent became payable for seventeen months until July 2016. The Defendants paid two instalments leaving a total of £54,900 owing to the Claimants.

### **The Yard licence**

#### *Unpaid licence fee*

89. The Claimants claim unpaid licence fees under a written licence dated 23 May 2014 between Remarketing IT Limited, the former name of ITR Global Ltd (the third Claimant) and the Defendants in relation to the use of and clean-up of an area of the central yard area. The amount claimed is £33,720.
90. Pursuant to the licence the Defendants were entitled to engage in the business of general recycling alongside clearing part of the yard, in particular waste pile C. Remarketing IT Limited, in essence Mr Ali, was responsible for clearing two stockpiles in the central yard area (A & B) and a pile known as Wood Pile A by 1 June 2014. The licence fee was £3,840 per month (clauses 3 and 4).
91. Clause 8 sets out a list of obligations on the Licensee (the Defendants) during the Licence period, including the following:

*8 The Licensee shall undertake during the Licence Period and comply with the following conditions*

...

*8.8 not to allow or permit or suffer anything in or upon the Premises or any part thereof which may be or become a nuisance or annoyance or cause damage to the Licensor and at all times to keep the Premises in a clean and neat and tidy state and condition free from deposit of materials or refuse*

*8.14 to be responsible for and to indemnify the Licensor against all damage occasioned to the Premises or any adjacent or neighbouring premises or to any person and to indemnify the Licensor against all actions claims proceedings costs expenses and demands made against the Licensor as a result of any act, omission or negligence of the Licensee or its servants agents or invitees or any breach or non-*

*observance by the Licensee of the obligations contained in this Agreement or otherwise*

92. Clause 18 sets out the Licensor's obligations as follows:

*18 Licensor's Obligations*

*18.1 The Licensor shall:*

*18.1.1 remove all materials contained within the stock piles shown letter A and B on the Photo Plan before the 1<sup>st</sup> of June 2014*

*18.1.2 remove the wood piles marked as "wood A" on the Photo Plan before the 1<sup>st</sup> of June 2014*

*18.1.3 as soon as reasonably possible procure the transfer of all licences required for the running of the waste transfer station facility from the name of Recycle Recycle Limited to the Licensee including the Full Environmental Permit issued for the Premises*

*18.1.4 Failure to meet the obligations above will mean that the Licensee will not be due to pay the rent until such date the obligations are met. The rent the following month will be due a month from the date. The first rent is paid once the obligations are met by the Licensor*

*18.2 The Licensor shall confirm that any materials left on the Premises are not contaminated e.g asbestos or any hazardous materials and if such materials are found then the Licensor will bear the costs and be responsible for the removal of the contaminated materials from the Premises*

93. As Mr Warwick for the Claimants accepted, rent is not payable until all the conditions in Clause 18.1 are satisfied. It is common ground that the environmental permit was transferred with effect from 6 October 2014. The issue for the Court therefore is the date at which Stockpiles A and B and Wood Pile A on the licence plan were cleared.

94. Drawing the evidence together from photographs, Environment Agency reports, topographical surveys; waste returns and contemporaneous emails, I make the following findings about the clearance of waste in the central yard area and Wood Pile A.

95. The May 2014 aerial photograph shows 3 stockpiles of waste, labelled A, B and C in the central yard area as well as Wood Pile A. In an email dated 21 July 2014 from Mr Ali to Mr Stiles, Mr Patel and Mr Corney, Mr Ali states that;

*"Site is 90% cleared for you guys to get to work, my staff is on site at your discretion most of this week to finish off any minor jobs from my side  
Mani can you get the skips tipped to clear the pad and maybe put them up on the top mound for now*

96. Mr Ali's assessment of matters was however disputed by the Defendants. A letter dated 25 July 2014 from Ms Elimelech to Mr Ali states that:

*“Clauses 18.1.1 and 18.1.2 required you to clear the stock piles and wood piles by 1<sup>st</sup> June 2014. This was not done and to date very little of that waste has been removed....A large proportion of the rubbish that you were required to dispose of has merely been relocated to another part of the site which is unsatisfactory”.*

97. Around the same time asbestos was discovered in Stockpile C which meant that clearance of the stockpile of asbestos became Mr Ali’s responsibility. An email dated 4 August 2014 from Mr Stiles to Mr Ali states:

*“You confirmed that the amount of asbestos present was negligible and it was agreed that all asbestos removal will be carried out by your operatives and that you will notify the regulatory bodies as appropriate. We shall be responsible for the removal of the non-hazardous waste only, as per the Licence Agreement*

98. In practice, this appears to have meant that Mr Ali’s staff handpicked the asbestos from Stockpile C and the Defendants then moved the stockpile to Wood Pile A.

99. By email dated 12 September 2014 to the Environment Agency, Mr Ali explained that the Wood Pile A had been reduced to the:

*‘last 3 or so loads and has the mixed hard –core and topsoil from the compound area in its place, this again is the responsibility of Simple Skips \*\* Mani please confirm”.*

100. This was a change to the licence arrangements whereby Mr Ali was responsible for Wood Pile A. I have not seen an email whereby Mr Patel confirmed or disputed this position but an email from the Environment Agency dated 12 September 2014 indicates that this was also the Agency’s understanding of matters:

*As Simple have taken responsibility for the large unsorted waste mound...*

101. The email goes on to emphasise that the wood waste and loose sorted waste now on the Mound still needed to be cleared by Simple Skips Limited.

102. Accordingly by 12 September 2014, Mr Ali had complied with his obligations under the Yard licence to clear stockpiles A and B from the central yard area and Wood Pile A, down to the last 3 loads of wood and Simple Skips Limited had taken over responsibility for Wood Pile A.

103. However the last three loads of wood appear to have remained a bone of contention between the parties until March 2015. The contemporaneous emails are not clear as to which Wood Pile the parties are referring to in emails during this period but from reading through the correspondence as a whole, the dispute appears to relate to the last piles of wood from Wood Pile A which Mr Ali should have removed. The Defendants were contending that Mr Ali had agreed to provide the finance for their removal and removal could not take place until the money was paid. The wood was said to be taking up space with the result that the Defendants had to spread out their waste operations beyond the yard to the bay area. Eventually agreement was reached via a series of emails which culminate on 20 March 2015.

*“Hi Kas Upon receipt of £5k today we will be able to clear the bays and buildings handing back the site on Monday 13 April 2015”.*

*“Kas*

*We will clear the site by 13 April 2015, If not we understand that £3500 will be due to Schyde”*

*“Hi Kas. We have now received £5000 and will clear the site as agreed”*

104. Accordingly I find that whilst Mr Ali had cleared Stockpiles A, B and C by September 2014 and the permit had been transferred by 6 October 2014, the last remaining wood from Wood Pile A which Mr Ali had responsibility for was not removed until Mr Ali paid the outstanding money in March 2015 and the Defendants then said the site could be cleared by 13 April 2015. Accordingly rent became payable on 1 May 2015 for 15 months until the end of July 2016 amounting to £57,600 of which Simple Skips paid £46,920 and accordingly £10,680 remains payable.
105. Subsequent Environment Agency reports indicate that Simple Skips Limited deposited further waste on Wood Pile A. The August 2015 compliance report referred to ‘the growing wood waste pile which is entirely Simple Skips’. Plans attached to the voluntary waste plan of September 2015 and the Environment Agency’s suspension notice of 2 December 2015 indicates the Agency is referring to Wood Pile A. The Agency’s compliance report of 23 November 2015 noted that the wood waste pile had grown significantly and that only seven of the forty one loads which should have been moved under the voluntary action plan had been removed “resulting in a significant increase in the non-compliant wood stockpile”.

#### *Costs of clearing the Yard*

106. The Claimants contend that the Defendants breached clause 8.8 of the Yard licence by not keeping it clean, neat, tidy and free from the deposit of waste. Pursuant to clause 8.14 of the licence, the Defendants are liable to indemnify them for the damage. By reason of the photographic, topographic and regulatory evidence set out above I find that that the Defendants were in breach of clause 8.8 of the licence and are liable for the costs of clearing the yard by virtue of clauses 8.8 and 8.14.
107. Mr Edmunds and Mr Ali estimated that the cost of cleaning the waste would be approximately £70,000 - £80,000. This was based on an assessment of 35 – 40 bulker loads of unsorted mixed waste left in the Yard. The cost of removing unsorted mixed waste from four steel shipping containers in the yard is estimated to be £31,200 on the basis each have a capacity of 65m<sup>3</sup>. There was no challenge to the case in this regard. The still images from the drone footage in June 2017 show the yard area and shipping containers overflowing with waste. I see no reason not to award £80,000 which is the high end of the range given by Mr Edmund. In addition to the evidence referred to in this paragraph, I rely in this regard on the Environment Agency reports and notice referred to in paragraph 105 above.
108. Accordingly I award damages of £111,200 under this head of claim.

## **Damage to the Bays**

109. The Claimants also rely on Clause 8.14 of the Yard licence to claim damages for the bay areas which Mr Edmunds estimated to be £55,000. Clause 8.14 requires the Licensee to indemnify the Licensor for damage to adjacent premises. Mr Corney accepted in cross examination that the bays had been damaged. There was no serious challenge to his head of claim. Damage is evident from the stills shots of June 2017. Accordingly I award damages of £55,000

## **Stockpile C in the central yard area - Misrepresentation that asbestos was present**

110. ITR Global Ltd makes a claim for negligent misstatement on the basis that the Defendants failed to take reasonable care when representing to Mr Ali in July 2014 that a certificate from Air Surveys Limited identifying the presence of asbestos on site related to Stockpile C. The statement was false, as was said to be demonstrated by the fact that the Environment Agency found asbestos was not present in the samples it took in September 2014. The company suffered financial loss from having to take responsibility for clearing Stockpile C of asbestos. The claim is for £19,200, being lost fees under the Yard licence arising from the delay caused by dealing with the asbestos.
111. In oral evidence, Ms Gale described her recollections of the day asbestos had been found on the site. She explained that Mr Corney was running a demolition business at the time and his men were on site. Their demolition experience led them to consider the material found might be asbestos. It was evident from Ms Gale's evidence that the discovery had caused some excitement on site.
112. Shortly afterwards, on 29 July 2014, Mr Patel emailed Mr Ali to say:
- “Hi Kas. Please could you review the report and come back to John or myself. We have a problem with the pile of rubbish and findings.”*
113. The report in question from Air Surveys Limited Environmental Consultants is a curious document. It has a heading “Bulk Sample Certificate /ASL 18883”. The client is identified as Mr Gary Travers of 159 Palaunt Road Langley Surrey SL3 8BG. The site is given as 159 Parlaunt Road Langley Slough SL3 8BG. Only one sample is reported, as “B 75586 Rear Garden Cement debris in soil Content – chrysotile”.
114. On its face, the report is palpably inaccurate and inadequate for decision making at Oakfield Farm. It related to a rear back garden in Surrey of a Mr Gary Travers who worked for the Defendants. It was only one sample from a large stockpile of waste. It could do no more than indicate that asbestos was present in the one sample. Any waste professional intending to embark upon an expensive and complex asbestos clear up operation could be expected to have taken more samples. It should have raised any number of questions on the part of Mr Ali. In fact, Mr Ali explained candidly in evidence that he choose to rely on the document because he needed the area cleared as he was under pressure from the landlord and because of the Environment Agency's

recent involvement with the site. In evidence, Mr Stiles went further and suggested there was active collusion between Mr Ali and the Defendants whereby a fake address was used to avoid Mr Ali getting into further trouble with the Environment Agency. Mr Ali did not want to go to the expense of procuring his own samples. Mr Stiles said that he and Mr Corney relied on the report as much as Mr Ali did.

115. Accordingly, I am not persuaded that the Defendants failed to take reasonable care in making the representations about the asbestos and accordingly this head of claim fails.

### **Lost income**

116. The Claimants seek lost fees for renting out the central yard, the WEEE Shed and Bays on the basis the presence of the waste has prevented the site from being licenced to anyone else. The Claimants seek £53,760 in lost fees for the central yard area (based on rental income fees of £3,840 per month from August 2016 – September 2017) and £51,240 in lost fees for the WEEE shed and bays (based on rental income of £3,660 from August 2016 – September 2017). There was no challenge to this claim. As Mr Edmunds explained in evidence the Environment Agency restrictions on the site mean the Claimants “can’t touch it” until the site has been cleared. Accordingly I award £105,000 under this head of claim

### **The respective roles and contribution of D2 and D3**

117. Mr Corney and Mr Stiles entered into a joint venture arrangement in relation to the waste operations at Oakfield Farm. The broad agreement was that Mr Stiles would provide the finance and Mr Corney would use his many years of experience in the demolition and recycling business. Beyond that, the detail of Mr Corney’s role was disputed. Mr Corney maintains the agreement was that his role was to set up operations, following which he was free to engage in his demolition business venture. Mr Stiles maintains that Mr Corney left him in the lurch. The falling out between the two appears to have been bitter and little of the detail was before the Court. There were passing references in evidence to other companies forming part of the joint venture arrangements and a police investigation into Mr Corney. There is scant contemporaneous paperwork documenting the business relationship between Mr Stiles and Mr Corney. The only available paperwork demonstrates that Mr Stiles was the sole director of Simple Skips Limited and that both Mr Corney and Mr Stiles signed the Yard licence.
118. In the circumstance and doing the best I can, I make the following findings
- i) Mr Corney signed the Yard licence and is jointly and severally liable under the licence.
  - ii) Contemporaneous emails show that both men were copied into the majority of emails about operations on site between May 2014 – December 2015.

Accordingly I find that both share equal responsibility for events during this period.

- iii) It is not disputed that Mr Corney left the site in December 2015. Accordingly I find he was not responsible for waste deposited at the site after December 2015.

### **Conclusion**

119. For the reasons set out above I make the following awards:

|  |                 |
|--|-----------------|
| i) Damages for trespass                                  | £605,840        |
| ii) Unpaid licence fees under the Yard licence           | £10,680         |
| iii) Unpaid licence fees under the Bays licence          | £54,900         |
| iv) Damages for clearing the yard and repairing the bays | £166,200        |
| v) Lost income   | £105,000        |
| <b>TOTAL</b>   | <b>£942,620</b> |

120. I invite Counsel to agree a form of order and I will hear submission on any points on which they are unable to agree and any other issues either in writing or at a convenient date.