

Neutral Citation Number: [2024] EWHC 1243 (Ch)

Case No: BL-2022-002112

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Royal Courts of Justice  
7 Rolls Buildings  
London EC4A 1NL

Date of trial: 8-10 May 2023

**Before:**

**DEPUTY MASTER SCHER**

**Between:**

**GLENEA CONTRACTS LIMITED**

**Claimant**

**- and -**

**PHILIP JOSEPH FRIEL**

**Defendant**

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**MR M MARENBON (C)** (instructed by **Anchor LLP**) for the **Claimant**

The **Defendant** appeared in person

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**JUDGMENT**  
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**DEPUTY MASTER SCHER :**

**Introduction**

1. The Claimant, Glenea Contracts Limited, is a civil engineering and groundworks business. It was represented by Mr Marenbon of counsel, and Anchor LLP solicitors.
2. The Defendant, Philip Friel, represented himself before me, although he had the benefit of a legal team until shortly before trial.
3. Mr Friel was employed by Glenea as its Commercial Manager from September 2011 until February 2022, when he left to work for another company in the same line of business.
4. This is Glenea's claim for remedies in respect of £566,707.11 which, it says, Mr Friel transferred to himself over and above his salary entitlement between 2014 and 2022.
5. Mr Friel is, sadly, a gambling addict. He was recovering from that addiction when his employment began, but began gambling again in about 2014. He admits to taking money from the company to fund his addiction. He repeatedly expressed remorse for this. He said, as his primary defence in closing submissions, that he always intended to pay it back, and also that some of the money he took was for legitimate reasons.
6. Glenea also seeks remedies for alleged misuse of confidential information. It says that Mr Friel sent various data and documents to his new employer shortly before his departure from Glenea. Mr Friel admits sharing some confidential information.

**Structure**

7. In this judgment, I adopt the following structure:
  - i) The factual background
  - ii) The factual issues
  - iii) The evidence and witnesses
  - iv) Resolving issues of fact
  - v) Legal principles and decisions on causes of action
  - vi) Quantum

**The factual background**

8. Glenea's sole director is James Doogan. His wife, Jenny Doogan, is the company secretary. Together they own the company. Mr Friel is Jenny Doogan's cousin. He joined Glenea in September 2011. He was employed as Commercial Manager.
9. There is no written contract of employment, but Mr Friel's net salary entitlement was not in dispute. Mr Friel recalls an assurance that he would gain a share in the company or its profits: this is disputed. He also says that he was contractually entitled to overtime payments: this too is disputed.
10. His work included (among other things) procurement, paying suppliers, and invoicing. It is common ground that he had access to Glenea's bank account, and was the person responsible for making payments from that account.
11. Mr Friel worked with Selvan Chandiran, known as Sellappah Selvacandiran, who was Glenea's internal accountant. Mr Friel describes him as Accounts Manager, but Mr Doogan calls him the bookkeeper. Mr Chandiran describes his role as looking after all the accounts, suppliers and customers, using Quickbook software. This included reconciling bank statements with the Quickbook records. There was an issue as to whether Mr Chandiran was Mr Friel's subordinate, or whether they were equals in the office (two of the four managers, as Mr Friel put it).
12. Mr Friel liaised with John McIntyre of McIntyre Irwin, the company's external accountant. Mr McIntyre says the Mr Friel was his main point of contact in Glenea; Mr Friel says that he merely compiled information as requested.
13. Mr Friel's use of the bank account included making payments in accordance with Mr Chandiran's schedules. For example, when workers (acting as private contractors) needed to be paid each week, Mr Chandiran would prepare the figures, and Mr Friel would log into Glenea's bank account and make the payments.
14. There is an issue as to whether Mr Friel's role included approving expenses. Mr Friel says that Mr Doogan approved all expenses. Glenea says that Mr Friel approved his own expenses, and others.
15. Mr Chandiran occasionally queried Mr Friel's own expenses. He would ask Mr Friel himself about them, and would be told that Mr Doogan knew everything. Mr Chandiran was satisfied with this.
16. As I said, it is common ground that Mr Friel had total access to Glenea's bank account and its records. There is an issue as to whether Mr and Mrs Doogan also had access to the account, and the extent to which Mr Doogan checked the bank statements.
17. The level of trust that Glenea placed on Mr Friel is in issue. Mr Friel was not a director. But it is said by Glenea that the level of trust placed in him in relation to the bank account (for example) meant that he owed fiduciary duties to Glenea. The

existence of fiduciary duties will be relevant to the remedy and to the question of limitation, a possible defence.

18. In 2014, Mr Friel relapsed into gambling. In January 2014, he made the first allegedly wrongful payment to himself. He continued to do so until February 2022. There is an issue as to how much of the money paid into Mr Friel's account was paid wrongfully.
19. In 2021, Mr Friel began sending confidential information to Novaseven, another civil engineering business. Mr Friel began working at Novaseven in about March 2022.
20. On 28 January 2022, Mr Friel gave in his notice. Mrs Doogan began to take over his responsibilities. She became suspicious when she noticed the number of payments out to Mr Friel. She asked him what his salary was, so that she could pay him at the end of February. He said he did not know, which made Mrs Doogan more suspicious. It became clear that Mr Friel had been paying himself significantly more than he was entitled to.
21. On 28 February 2022, Mr Doogan met with Mr Friel. He recorded that meeting, and a short extract was played to the Court. It was evidently a difficult meeting for both parties. One key exchange included Mr Friel saying:

*“I know it’s a debt I’ve got. I’m really sorry about it. It’s on me, I’ve got a problem...I’m so sorry James, I know you trusted me.”*
22. After attempts to resolve the matter out of court, this claim was commenced in December 2022.

### **The factual issues**

23. The key factual issues are therefore:
  - i) Was Mr Friel contractually entitled to overtime payments?
  - ii) To what extent was Mr Friel responsible for Glenea's finances?
  - iii) To what extent did Mr Doogan access the bank account or review bank statements?

### **The evidence and witnesses**

24. There were five witnesses of fact, each of whom provided one witness statement which stood as their evidence in chief. I will note in this section certain evidence that they gave on the key issues of fact.

*Mr McIntyre*

25. First, Mr John McIntyre, Glenea's external accountant, who prepared the end of year accounts.
26. His evidence was that Mr Friel was Mr Doogan's "Number 2", his main contact, and the person responsible for "back office functions". In response to the question "Did Glenea keep an eye on my expenses?", he said that Mr Friel was "completely trusted in Glenea", and therefore Mr McIntyre also trusted him to a certain extent.
27. Mr McIntyre is an independent witness. His evidence was internally consistent, consistent with that of Glenea's other witnesses, and consistent with contemporaneous documents. I find his evidence reliable.

*Mr Chandiran*

28. Secondly, I heard from Mr Chandiran. Under sustained cross-examination on the question of whether he was subordinate to or equal to Mr Friel in the company, he consistently said that he had to report to Mr Friel.
29. I note that Mr Chandiran was difficult to hear and understand at times, as he spoke very quietly and away from the microphone. I took steps to ensure his evidence was properly understood by asking him to repeat when necessary, having the microphone moved, encouraging re-examination (and some limited further cross-examination), and asking for clarification. I am satisfied that I have sufficiently understood Mr Chandiran's oral evidence.
30. His evidence was also consistent internally, with the documents and with other witnesses. I consider it reliable.

*Mrs Doogan*

31. Thirdly, Mrs Doogan gave evidence. Her witness statement focussed on events in February 2022. However, the questions she was asked concerned more Mr Friel's time at Glenea, and a staff member called Dean Shields who worked at Glenea for (Mr Friel said) approximately nine months.
32. She was not challenged directly on how she obtained Mr Friel's emails or his email password. The allegation of wrongful hacking was not put to her. I accept her written evidence that Mr Friel left himself logged on to his private email when he left, but little turns on this issue.
33. At times, Mrs Doogan did not focus on answering Mr Friel's questions, but rather raised grievances with Mr Friel. For example, a question about Mr Doogan's understanding of the back office, and about IT, led to a long answer concerning the tidiness of Mr Friel's desk and his apparent inability to follow instructions. Nevertheless, I consider that her evidence was essentially reliable on the fundamental issues.

*Mr Doogan*

34. Fourthly, Mr Doogan gave evidence. His written evidence was generally consistent internally, and with the documents, and with other witnesses.
35. Mr Doogan said that he never (he repeated: never) looked at bank statements, and that as soon as he saw the bank's logo, he would hand it to Mr Chandiran or Mr Friel. That is somewhat surprising, as the sole director of a business who received the bank statements. However, it is consistent with his approach to the business as stated elsewhere in his evidence, and supported by the evidence of Mrs Doogan and Mr McIntyre. He spent his time out and about on site, working six day weeks, and employed Mr Friel specifically to take care of back office functions. He occasionally asked about the bank balance, which was generally high. Mr Friel emphasised that Mr Doogan logged on to the bank account at least once: Mr Doogan said that he never did.
36. Mr Doogan gave his oral evidence in generally rather short, curt answers. He spoke quietly, in a dismissive way, when asked questions by Mr Friel, looking away from the questioner. When he addressed me, he was much more clear, focussed, and courteous. However, I place no real weight on his demeanour. I am conscious that, in his perception at least, Mr Doogan was being questioned by someone who stole half a million pounds from his company. Some degree of discomfort and distaste is understandable. I did not see signs of such strong animosity as would prevent Mr Doogan's evidence from being generally reliable, particularly where it is consistent with other evidence.

*Mr Friel*

37. Finally, Mr Friel gave oral evidence, questioned by Mr Marenbon.
38. His evidence was not always internally consistent. He said in his witness statement that he "did not think that he was using confidential information", but later admitted that the reason he told the recipient to "print rather than forward" was because he was breaching confidence. He gave evidence that Mr and Mrs Doogan had their own fob to access the bank account, but then, under pressure, said that he had "it" (one fob) 95% of the time, and Mr Doogan had it a few times. He said that Mr Doogan was responsible for financial affairs, but said elsewhere that Mr Doogan was reluctant to get involved in the year end accounts.
39. Mr Friel's evidence was also contradicted by the contemporaneous documents. For example, he proactively sought a meeting with Mr Doogan and Mr Shields on 13 March 2017, to "have a review of where we are and see how we can improve the business going forward", particularly in respect of costs and efficiency. Mr McIntyre would send him and Mr Chandiran emails seeking information about finances. He would also send Mr Friel the accounts to review. There is also an email conversation

with a Mr Kaur of HMRC, concerning supply chain fraud, where Mr Doogan told HMRC that Mr Friel had the Company's authority to act. All of these documents contradict Mr Friel's evidence that he was not responsible for the administration of Glenea's financial affairs.

40. Mr Friel admitted to taking money. Initially he admitted to taking around £50,000, but in closing submissions he said it was around £200,000. While the admission does him credit, it is inconsistent and does not imply more general reliability.
41. Overall, while he conducted his defence with commendable dignity, I treat Mr Friel's evidence with caution. There are too many instances of it being demonstrably inconsistent (both internally and with contemporaneous documents) for me to rely on it without corroboration on the key factual issues.

*Expert evidence: Mr Paley*

42. Mr Simon Paley, a jointly instructed expert, reviewed Glenea's bank statements, and identified all sums paid to Mr Friel. I have considered his written report, and his answers to questions. He did not give oral evidence. During the trial, Mr Friel accepted Mr Paley's analysis and his maths. In summary:
  - i) Mr Friel's net salary entitlement over the period 2014-2022 was £394,864.
  - ii) The sum paid to Mr Friel's Halifax bank account, at the end of each month and identified by Mr Paley as in the nature of salary payments, was £411,332.69. However, they fluctuated in amount, above and below Mr Friel's net salary entitlement.
  - iii) These "salary" payments were therefore overstated by £16,468.69 (unless they incorporated overtime, bonus payments, or similar).
  - iv) Further, two salary payments were duplicated. They were paid twice: one payment to the Halifax bank account and the other payment to a different bank account of Mr Friel's. That totalled another £8,603.31. Mr Friel accepts these were wrongfully made to him.
  - v) Next, payments described as "advances" were made, totalling £31,289. Again, Mr Friel admits these were wrongfully made.
  - vi) Next, payments described as "expenses" were made. These totalled £209,419.94. Of this sum, there is evidence that £742 related to tyres, and that £4,221.25 was paid to DVLA in about 20 payments. Mr Paley's opinion is that these may well have related to Glenea. He says that other payments may also relate to Glenea, but there is no evidence of this, and he could not speculate. Mr Friel says that more of these "expenses" were legitimate, but some were

not. However, he has not provided any particulars, or any documentary evidence (such as receipts) supporting legitimate expense claims.

- vii) Finally, payments described as “other” were made, totalling £309,926.17. These payments were, Mr Friel said, a mixture of legitimate and illegitimate. Again, however, there are no particulars and no documentary evidence.
43. The total amount he received from Glenea in the period was £961,571.11, of which £394,864 was his net salary entitlement. As I explain later, if any of the remainder was paid to him legitimately, Mr Friel must prove it.

### Findings on the factual issues

44. The key factual issues are:
- i) Was Mr Friel contractually entitled to overtime payments?
  - ii) To what extent was Mr Friel responsible for Glenea's finances?
  - iii) To what extent did Mr Doogan access the bank account or review bank statements?

#### *Was Mr Friel contractually entitled to overtime payments?*

45. Mr Friel says that he was contractually entitled to payment for overtime work, and that this justifies some of the money that was taken from Glenea.
46. The contract of employment was oral. There is a dispute as to its terms, agreed some 13 years ago. Mr Doogan and Mr Friel gave competing evidence about its terms.
47. The only evidence for Mr Friel’s allegation that there was an agreement that he was entitled to overtime pay or significant bonuses is his own witness evidence of a remembered conversation with Mr Doogan in 2011. Mr Friel said in his witness statement that *“My contract with ICM provided that I was to receive my salary, be paid overtime, which was at time and a half, have a company pension and to have 25 days' holiday plus bank holidays. I was also to be reimbursed for any expenses I incurred for Glenea. Mr Doogan agreed to those terms. In the first six months I asked Mr Doogan on several occasions for a written contract, but Mr Doogan said 'you don't need one of those'. Mr Doogan had said that I would be rewarded if Glenea became successful. I had expected to get a large bonus or possibly shares in Glenea as discussed with Mr Doogan before I joined Glenea.”*
48. Mr Doogan said in his written evidence: *“I know Philip has said in this claim that we agreed to profit share... but that was never the case. ... There was no overtime arrangement, he had a good salary to do the work, but I know that he did sometimes come in on Saturdays and stay late at night. I told him there was no need to do that and I didn't really want him being there on his own. I don't know why he continued to*



*do so and there was no need for him to. He used it to suit his own needs as often when he'd been in late one day he wouldn't come in at all the next day so he was just working the hours needed at a different time."*

49. There is no documentary evidence at all supporting Mr Friel's case that he was entitled to overtime or indeed a profit share (although that latter point was no longer really pursued at trial). In particular, I would have expected Mr Friel to keep records of any overtime worked, and some kind of calculation of how much he should therefore be paid. He says that he only did so on scraps of paper which were then discarded. It seems unlikely, however, that over the course of 10 years there would not be a single surviving electronic or physical record of overtime claimed, or of the 'time and a half' calculations.
50. Taking into account the inherent unlikelihood of an entitlement to overtime with no records kept, and my caution regarding Mr Friel's evidence generally, I find that on the balance of probabilities he had no entitlement to overtime.

*To what extent was Mr Friel responsible for Glenea's finances?*

51. The question of whether Mr Friel owed fiduciary duties involves an analysis of his responsibilities at Glenea.
52. Glenea's Particulars of Claim say that he had responsibility for administering Glenea's financial affairs. Mr Friel's Defence says that he only administered certain of Glenea's financial affairs.
53. Mr Friel's evidence was that he was of equivalent status to Mr Chandiran. He processed payments he was asked to make. Mr Chandiran would calculate the payments to be made, and Mr Doogan retained responsibility for Glenea's financial affairs.
54. It is common ground that Mr Friel had unrestricted access to the bank account, and was responsible for making all payments on behalf of the company. He even did so on his holidays.
55. Mr Doogan says that he entrusted the office side of the business to Mr Friel, including paying bills, paying wages, invoicing, transport management, and everything needed for the office to operate.
56. Glenea's position is supported by Mr McIntyre, who liaised primarily with Mr Friel. It is supported also by Mr Chandiran, who described working under Mr Friel's instruction, and by Mrs Doogan (although she was more distanced from the business during the relevant period). It is supported by the contemporaneous documentary evidence, including the emails I referred to in paragraph 39 above between Mr Friel and Mr McIntyre, and Mr Friel and HMRC, and Mr Friel and Mr Doogan and Mr

Shields. I have seen no contemporaneous documentation which suggests that Mr Friel had the more limited role he claims.

57. I note that there was a period of perhaps 9 months where Mr Shields is said to have been interposed as a manager above Mr Friel, but I have not seen or heard evidence that this reduced Mr Friel's financial duties or his access to the bank account. Even if this demonstrates some reduced trust, as Mr Friel argued, it was only for a short time.
58. Mr Friel's current evidence contradicts his stance during the recorded meeting in February 2022. Then, he seemed to accept that he had been trusted absolutely. At trial, he tried to explain this earlier position away as having been expressed in a state of shock: however, I consider the earlier position was likely to have been frank and unguarded.
59. For all these reasons, I consider it more likely than not that Mr Friel had the responsibility of administering Glenea's financial affairs, and that Mr Chandiran reported to him. This included approving expenses. I find that Mr Friel was in a position of great trust and confidence at Glenea in respect of his control of the bank account and its financial affairs more generally. I find that, contrary to Mr Friel's Defence, he was entrusted with practical control of the operation of Glenea's bank accounts.

*To what extent did Mr Doogan access the bank account or review bank statements?*

60. Mr Friel's Defence includes the allegation that Mr and Mrs Doogan had their own access to the bank accounts, and that Mr Doogan reviewed all bank statements every month.
61. Mr Doogan says that he never reviewed bank statements, and that if he opened an envelope and saw the bank's logo, he handed it straight to Mr Chandiran or Mr Friel. He went further in his oral evidence than in his written evidence, which only said that "generally I would just open the envelope and see it was for Glenea and hand it to Philip to sort".
62. He also says he never used the fob, which I understand to be shorthand for accessing the online banking system.
63. It does seem inherently unlikely that a director of a company to whom bank statements were sent would never, ever have looked at them. Mr Doogan has said that he occasionally wanted to know the bank balance: I doubt he would not have checked occasionally, if a bank statement was in his possession. It seems more likely than not that he did occasionally look at the bank statement. His oral evidence seems to me to

have been slightly exaggerated in that respect. However, I do not consider it at all likely that he reviewed them every month as alleged by Mr Friel in his Defence. Glenea employed Mr Friel to do that.

64. As for online banking, Mr Friel says that he gave the fob to Mr Doogan a few times. Mr Doogan said that Mr Friel was the only person with the fob and the password. I accept Mr Doogan's evidence on this, for reasons I have given. Moreover, I do not think it likely that, having employed Mr Friel for the purpose, Mr Doogan would involve himself with online banking. I find on the balance of probabilities that Mr Doogan did not access the online bank account during the period.

### **Legal principles and decisions on causes of action**

65. Glenea's case in respect of the money has been refined during the course of the trial. It can be summarised as follows. Mr Friel was in practical control of the bank account and owed fiduciary duties in respect of it. He was therefore a "quasi-trustee" of the bank account. He paid himself money from that account, which was trust property, in breach of trust, and converted it to his own use. Glenea seeks recovery of that trust property or its proceeds, and a declaration that it was held by Mr Friel as constructive trustee. Glenea also relies on s21(1)(b) Limitation Act 1980.
66. Glenea's alternative causes of action include that the money Mr Friel paid to himself was paid in breach of his contractual duties as employee, and a claim in damages to compensate for the lost money. Glenea relies on s32(1) Limitation Act 1980 to delay the start of the limitation period.

### *Breach of fiduciary duties*

67. On the question of whether Mr Friel owes fiduciary obligations, I was referred by the Claimant to *Snell's Equity* at 7-005. The key question is whether the circumstances in which Mr Friel undertook to operate Glenea's bank account and financial affairs generally gave rise to a relationship of trust and confidence. Fiduciary duties are imposed by law in particular where one person assumes responsibility for the affairs of another, and where there is a relationship which gives rise to a legitimate expectation which equity will recognise that the fiduciary will not utilise his or her position in such a way as is adverse to the interests of the principal. It is an objective analysis, and the question of whether a fiduciary considers him or herself as such is irrelevant.
68. I was referred to Floyd J's statement in *Cobbets LLP v Hodge* [2009] EWHC 786 (Ch) at [89] and Elias J's statement in *Nottingham University v Fishel* [2000] ICR 1462 (QBD) to the effect that employment is not a fiduciary relationship as such, but it can provide the context in which fiduciary duties arise from the surrounding circumstances.

69. The case of *Nottingham University v Fishel* analysed the principles which enable the court to determine whether or not fiduciary obligations arise. The key feature is an obligation of loyalty: p1490.
70. I have made factual findings as to the extent of Mr Friel's responsibilities and his level of control over the company's financial affairs, and the trust which Glenea placed in him. See paragraph 59 above. Applying the principles summarised in *Snell* and the authorities I mentioned, I find that in those circumstances there was a relationship of trust and confidence, and a legitimate expectation that he would not use his position, or at the very least his control of the bank account, in a way which was adverse to Glenea's interests. Mr Friel therefore owed fiduciary duties in respect of Glenea's bank accounts in particular, and its financial affairs more generally. His intention to pay back the money is no defence.
71. Mr Marenbon next argued that because Mr Friel was a fiduciary with control of the bank accounts for Glenea, he was in the position of "quasi trustee", a term used in *Keown v Nahoor* [2015] EWHC 3418 (Ch) and in the textbook *Lewin on Trusts* at 8-018, which I now quote:

*In a similar position is a director of a company or other fiduciary with possession or control of the property for someone else. Such fiduciaries are not true trustees, because the property is not vested in them, but are in an analogous position, as they claim no personal interest in it, and are treated in many ways as if they were true trustees, including their accountability for abusing the trust and confidence reposed in them, and for the purpose of imposing proprietary and personal liability in equity in respect of unauthorised profits they make from their position or the property, or by reason of self dealing, or in respect of property transferred in breach of trust. They too were called express trustees before 1890, and for the purposes of the Limitation Act 1980 they are in the same position as trustees duly appointed with the trust property vested in them.*

72. I do not think that the description of Mr Friel as a quasi trustee is necessary in this case. In breach of fiduciary duties, he took property belonging to Glenea over which he had control for his own use. That renders him a constructive trustee of that property following the "first class" of cases categorised by Millett LJ in *Paragon Finance v D B Thakerar & Co* [1999] 1 All ER 400. He becomes a "true trustee" of such property, according to Millett LJ. This is distinguishable from the "second class" of cases, where one may be held liable to account as constructive trustee due to (for example) knowing receipt of trust property.
73. The distinction is important when it comes to limitation. Millett LJ observed that:

*The Court of Chancery had developed the rule that, in the absence of laches or acquiescence, such a trustee was accountable without limit of time. ...*

*The rule... did not depend upon the nature of the trustee's appointment, and it was applied to trustees de son tort and to directors and other fiduciaries who, though not strictly trustees, were in an analogous position and who abused the trust and confidence reposed in them to obtain their principal's property for themselves. Such persons are properly described as constructive trustees.*

74. His reasoning was approved in the Supreme Court case of *Williams v Central Bank of Nigeria* [2014] AC 1189, which is authority that s21(1) Limitation Act 1980 does not apply to the type of constructive trust which arises from knowing receipt or dishonest assistance, but does apply to the type of constructive trust arising when a fiduciary is in control of property belonging to another.

75. Glenea relies on s21(1)(b) Limitation Act 1980:

*No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—*

*... (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.*

76. Mr Friel took money from Glenea's bank account in breach of fiduciary duty. I find that Mr Friel is a constructive trustee of all sums which were paid to him by Glenea which cannot be justified as his net salary or as bonuses or expenses.

77. Mr Friel has the burden of justifying payments made to him, either by showing he was entitled to them or because he had Glenea's informed consent. This is clear from the case of *Keown* at [36], and also *Cobbetts v Hodge* [2009] EWHC 786 (Ch) at [108].

78. I am not satisfied that he has discharged that burden. With the exception of payments for tyres and to the DVLA identified earlier, the only evidence that any of the payments were justified is his own witness evidence. There are no receipts or similar for any of the other payments so far as I have seen. I have already found that there was no agreement for overtime. I find that on the balance of probabilities, Mr Doogan did not approve of any of the other expenses, or advances, or other payments made to Mr Friel. They were not made with Glenea's informed consent. Mr Doogan might, he said, have turned a blind eye to the odd penny, but he did not, because this is not the odd penny. On the balance of probabilities, only Mr Friel's net salary entitlement, a discretionary annual bonus (as to which see paragraph 98 below), and a further £4,963.25 were authorised. The remaining payments were held by Mr Friel as constructive trustee, and he must account for them accordingly.

#### *Breach of contract*

79. As an employee, Mr Friel owed duties to Glenea, including the well established duty of fidelity. Clearly those duties were breached to the extent that Mr Friel was not

entitled to the money he transferred to himself.

80. Some of those sums were paid more than 6 years before the claim was issued. A claim for breach of contract has a limitation period of 6 years.

81. Glenea relies on s32(1) Limitation Act 1980 to delay the start of the limitation period. That provides:

*(1) Subject to subsections (3), (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—*

*(a) the action is based upon the fraud of the defendant; or*

*(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or*

*(c) the action is for relief from the consequences of a mistake;*

*the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.*

82. Glenea relies on deliberate concealment to the extent that Mr Friel disguised the payments to himself as salary, expenses, and so on. However, Glenea must show that the concealment could not “with reasonable diligence” have been discovered until six years before the claim was issued.

83. I have some difficulty with the argument that Glenea was reasonably diligent. It is common ground that the sole director Mr Doogan knew that Mr Friel had suffered from a gambling addiction, and that Mr Friel had told him at the start of the employment that he no longer gambled. As it happened, Mr Friel was able to persuade both Mr McIntyre and Mr Chandiran that his expenses and withdrawals had been approved by Mr Doogan. Nevertheless, I agree with Mr Friel’s submission that an enhanced level of vigilance by Mr Doogan would have been reasonable in these circumstances.

84. The test of reasonable diligence was not explored in any depth before me, perhaps because it is only relevant if Glenea’s primary case fails. Applying the plain words of the statute, I am not satisfied that s32 assists Glenea, as I consider that with reasonable diligence the concealed facts (that Mr Friel was not entitled to the sums received) could have been discovered without delay by simply looking at the bank statements, and noticing the number of and size of payments to Mr Friel. Accordingly, I find that s32(1) operates to delay limitation of the claim for breach of contract only until the date of the next bank statement after any given payment, which is likely to average around 15 days.

*Theft*

85. In a further alternative case, again for the purpose of limitation, Mr Marenbon argued that Glenea can prove theft, that is, the dishonest appropriation of property belonging to another with intention permanently to deprive.
86. Notwithstanding Mr Marenbon's efforts to persuade me otherwise, there is no sufficiently pleaded case to that effect. The elements of the cause of action (if indeed it can be called such) are not particularised. This is particularly important in respect of the allegation of dishonesty. I am therefore not prepared to make findings on the issue of whether Mr Friel, a gambling addict who took money in the mistaken belief (on his case) that he would be able to repay it with winnings, should be considered as having behaved honestly (to the extent relevant, I doubt it) or as having lacked the intention permanently to deprive (again, I doubt it). These issues have not been sufficiently pleaded or argued, and do not fall to be decided.

*Confidential information*

87. I can deal with this shortly, as it is no longer strongly disputed. I accept that to establish the tort of breach of confidence in respect of information allegedly shared by Mr Friel: (1) The information must have the necessary quality of confidence about it. (2) The information must have been imparted in circumstances importing an obligation of confidence. (3) There must be an unauthorised use or disclosure of that information. (Clerk & Lindsell 25-06). The question of whether detriment or damage is also necessary is not yet settled.
88. I find that each of the three main elements of the tort of breach of confidence has been admitted by Mr Friel or made out on the balance of probabilities in respect of the three documents considered at trial. However, Glenea has not pleaded in detail (even after disclosure) what precise documents were wrongly disclosed to third parties, nor what damage arose.
89. There were three documents discussed in evidence:
- i) An invoice and timesheets, sent with a cover email to Novaseven asking for it to be printed rather than forwarded;
  - ii) A tender quotation and price specification; and
  - iii) A database of Glenea's workers, including their personal information and many of their bank details.
90. Mr Friel initially argued that the information was not confidential.

- i) The invoice, he said, was just to show the recipient a template, and had had itself been adapted from a previous business's invoice;
- ii) The tender quotation was unrealistically high, and shared as a matter of course, to help raise the market price for the work; and
- iii) The database did not contain confidential information.

91. I do not accept any of these explanations:

- i) Mr Friel eventually accepted that the invoice was confidential, and that he had sent it with a note saying to print it rather than forward it because he knew he was breaching confidence;
- ii) The tender quotation was, because of the nature of the tender process, confidential. There was nothing in the evidence to support Mr Friel's serious allegation of corrupt market practices (something which would naturally involve a lot of similar correspondence with other recipients too). It is more likely than not that this was in fact shared with his future employer for their benefit; and
- iii) The database was obviously confidential, including as it did the workers' personal details and bank details. Mr Friel conceded this in closing submissions.

92. Mr Friel received all of that the above information in the course of his employment, where he would have the usual duty to keep his employer's information confidential: Clerk and Lindsell at 25-14.

93. I accept Mr and Mrs Doogan's evidence about their discovery of these emails, and find that the disclosure was unauthorised.

94. The tort of breach of confidence is established in principle in respect of the three documents analysed at trial. I will consider the appropriate remedy in consequential, if the parties cannot agree.

### **Quantum**

95. Finally I must calculate the amount held by Mr Friel as constructive trustee.

96. The starting point is that Mr Friel received a total of £961,571.11.

97. Of that total, £394,864 was his net salary entitlement. Glenea makes no claim about that sum. However, £411,332.69 was paid in the nature of "salary", that is, £16,468.69 more than the net salary entitlement (see paragraph 42(ii) above). This would need to be justified, for example, as expenses, bonuses or overtime.



98. I have already found there was no entitlement to overtime. However, there was a practice of giving a discretionary annual bonus when circumstances warranted it. Mr Doogan said was usually up to £1,500. The Claimant conceded that seven bonus payments were made of between £1,000 and £1,500, and that the median of £1,250 could be used for present purposes. On this basis, I consider £8,750 to have been authorised as bonus payments.
99. There is some difficulty in identifying precisely which payments were made in satisfaction of the bonus entitlement. In some years, the December “salary” payment was higher than usual, by approximately the right amount (say £1,000). In other years, it was not. It will be for the inquiry (which I will order consequential to my judgment) to identify which payments satisfied the entitlement to bonus payments and were therefore authorised, if the parties cannot agree.
100. Of the “expenses”, I accept Mr Paley’s evidence that £4,221.25 and £742 may well have related to legitimate expenses paid to DVLA and for tyres, and consider them to have been properly authorised.
101. Mr Friel has not persuaded me that he has any entitlement to any of the remaining money. He admits to wrongfully taking much of it, and has not convinced me that any of the remainder was legitimately paid to him. In particular:
- i) I do not accept that Mr Doogan agreed to turn a blind eye to any wrongful expenses. It is more likely that he meant, in February 2022, that he could have turned a blind eye to pennies, but not tens of thousands. (It was even worse than that, of course.)
  - ii) I have seen no evidence other than what I have mentioned that any of the remaining hundreds of thousands of pounds related to expenditure genuinely for the benefit of Glenea.
102. I therefore find that Mr Friel wrongfully paid himself £552,993.86.
103. This is an approved note of my judgment given orally after trial, incorporating minor points of clarification. I am grateful to Mr Marenbon and to Mr Friel for their assistance in conducting the trial.