

Neutral Citation Number: [2026] EWHC 2728 (BP)

Case No: CR-2026-004880

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS DIVISION
INSOLVENCY AND COMPANIES LIST (BPD)
ELEVATE ESTATES MANAGEMENT LTD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 October 2026

Before :

ICC JUDGE AGNELLO KC

Between :

ELEVATE ESTATES MANAGEMENT LTD
- and -
FINE STAR ESTATES LTD

Applicant

Respondent

Mr Christopher McCarthy (instructed by **Ronald Fletcher Baker LLP**) for the Applicant
Mr Phillip Patterson (instructed by **Ingram Winter Green LLP**) for the Respondent

Hearing date: 12 August 2026

JUDGMENT

ICC JUDGE AGNELLO KC:

Introduction

1. On 13 July 2026, Chief ICC Judge Briggs heard an application (the original application) issued by the Applicant (Elevate) seeking to restrain advertisement of the winding up petition and for an order dismissing the petition. The petition had been issued by the Respondent (Fine Star) on 23 June 2026 seeking the

petition debt of £836,537.23. After hearing the original application, the Chief Judge dismissed the application. On 4 August 2026, the Applicant issued an application seeking an order for dismissal of the petition (the new application). On 12 August 2026, I heard the application on behalf of the Respondent seeking to dismiss the new application. The new application was challenged on the grounds that it was an abuse of process.

2. After hearing the case, I determined that the new application be dismissed on the grounds of abuse of process. That decision was handed down without attendance on 13 August 2026 on the basis that the reasons would be provided at a later date. This is the judgment setting out my reasons for the decision made by me on 13 August 2026.

Background

3. A winding up petition was presented on 23 June 2026 against Elevate seeking payment of rent arrears in relation to properties which had been let to Elevate by Fine Star. To date no sum claimed in the petition has been paid. On 30 June 2026, Elevate issued the original application seeking (1) an injunction to restrain the advertisement of the petition, (2) the dismissal of the petition, and (3) costs. It served evidence in support of its application, being the first and second witness statements of Elijah Brown. A series of interim validation orders had been granted previously and were subject to consideration before the Judge on 13 July 2026. It is common ground that the basis for the original application is that the debt claimed in the petition was disputed on genuine and substantial grounds. It is also common ground that the original application before the Court on 13 July 2026 sought dismissal of the petition. As part of the dispute, the

Applicant relied on what it submitted was a genuine and substantial cross claim against the Respondent. Both parties filed evidence. On 13 July 2026, the Judge dismissed the original application on the grounds set out in his detailed judgement. His order provided a short period in which there would be an opportunity for the Applicant to discharge the debt set out in the petition.

Factual background – summary

4. I take the summary of facts from the judgment of Chief ICC Judge Briggs dated 13 July 2026. Fine Star is the landlord under 51 leases granted to Elevate between April 2025 and February 2026. Elevate sublets and manages the properties and is obliged to pay the monthly rent regardless of its own receipts. Elevate enters into tenancy agreements to subtenants often introduced by local authorities. As at the date of presentation of the petition, the rent arrears owed to Fine Star from Elevate had increased to £1,120,586.87. The rent payments to Fine Star ceased in May 2026 with one further payment being made in May 2026 and no rent being paid thereafter.
5. Before Chief ICC Judge Briggs, Elevate asserted that Fine Star had failed to give proper credit for payments made totalling £1.76 million. This was asserted by Mr Elijah Brown in his second witness statement dated 30 June 2026. Elevate also asserted a cross claim of £334,376.23 in respect of alleged repair invoices which it asserted were due to be paid by Fine Star. The documents relied upon in relation to this claim were internal printouts. There was no evidence before the Judge that the works were carried out or that Elevate agreed to pay for them. There was no evidence that invoices were sent or chased.

6. Elevate's trading premises had been repossessed by its landlord and exhibited to one of the witness statements filed on behalf of Fine Star were photos of the forfeiture notice dated 15 June 2026.
7. The Judge considered that there was on the evidence no genuine dispute as to the petition debt. There was a liability for repairs which the Fine Star accepted, but this was de minimis in value (approximately £17,938) as compared to the petition debt. The evidence showed that 148 invoices have been raised since the petition in favour of Elevate but the Judge stated that these had not been substantiated. Even if those invoices were correct and capable of set off against the sums owed to Fine Star, there would remain a petition debt of between £500,000 and £750,000.
8. The Judge stated that Elevate had produced no evidence identifying specific payments it asserted had been omitted from Fine Star's ledgers. There were no management accounts and no books and records to demonstrate to the court that the ledgers produced by Fine Star were inaccurate due to omission. The Judge held that he was therefore not satisfied that there was any real dispute to the petition debt. In relation to the cross claim in the sum of £334,376.23 the Judge held that this was also unsupported by contemporaneous documentation. In any event, the cross claim did not equal or exceed the petition debt. In relation to the solvency position, the repossession of Elevate's premises was a significant indicator of insolvency. Additionally, the cessation of rent payments to Fine Star and the absence of any coherent plan for clearing the arrears exceeding £1 million pointed strongly to the Applicant being insolvent as it was unable to pay its debts as they fall due. The financial evidence of Elevate was unsatisfactory

alongside the unexplained discrepancy between the projected and actual bank balances and the lack of clarity regarding payments to insiders. The Judge held there was a real risk of dissipation. The Judge dismissed the application to restrain advertisement of the petition.

9. Thereafter, on 17 July 2026 Elevate sought permission to appeal the order of the Judge as well as seeking a stay of the order, effectively preventing Fine Star from advertising the petition. By order dated 17 July 2026, Mr Justice Adam Johnson granted a limited stay by way of a temporary order. This stay was due to expire on 28 July 2026. On 27 July 2026, Elevate sought a continuation of the stay before the Chancellor. The Chancellor dismissed the application seeking to extend the stay restraining the advertisement of the petition and also directed that the required number of days which had to elapse as between the advertisement and the hearing of the petition would be waived. This was to enable the hearing of the winding up petition to be effective.
10. The application for permission to appeal from Chief ICC Judge Briggs' judgment has yet to be determined by the appellate court, but there is no stay in place preventing advertisement or the petition itself being heard. It was duly advertised and came on for hearing on 5 August 2026 in the general winding up list. By that date, Elevate had issued the new application dated 2 August 2026. The grounds relied upon are that there is that the debt is disputed on genuine and substantial grounds and there was a genuine cross claim. It also asserts that a balance of some £89,000 of the petition debt, whilst accepted being owing could be paid or secured subject to order of the Court. The new application also

sought a further validation order as the earlier validation order has been dismissed by Chief ICC Judge Briggs.

The new application and the abuse of process application

11. Elevate submits that the new application is a proper invocation of the Court's jurisdiction and that it is now supported by what is said to be a materially developed evidential record, evidence of events occurring after 13 July 2026 with records recovered after the hearing on 13 July 2026 with detailed explanation of the circumstances in which that material became available.
12. Mr McCarthy on behalf of Elevate submits that the new material establishes :-
 - a. a property by property reconciliation which challenges Fine Star's rent account;
 - b. a substantial maintenance and refurbishment crossclaim supported by contemporaneous records, invoices, communications and evidence concerning the works;
 - c. a further accounting claim arising from Fine Star's direct dealings with tenants and the receipt or diversion of tenant rents;
 - d. identified disputes concerning supporting creditors;
 - e. a historically profitable trading business whose operations and cash flow were materially disrupted by the petitions and the resulting banking restrictions; and
 - f. funds available to satisfy or secure any balance which the Court identifies as

properly payable.

13. The new application therefore relies upon voluminous documentation and various witness statements in support of its case that the debt was disputed on substantial grounds and also based on the cross claim raised. This evidence was not before Chief ICC Judge Briggs. The Respondent submits that the new application constitutes an abuse of process being a repeat of the earlier application which had been dismissed by Chief ICC Judge Briggs on 13 July 2026.
14. The new evidence sets out the grounds relied upon in relation to the new evidence being admitted in Mr Brown's fifth witness statement dated 3 August 2026 and his seventh witness statement dated 10 August 2026. At paragraph 158 of his fifth witness statement, Mr Brown states, 'Elevate now relies upon the completed reconciliations, the supporting evidence for its cross claims and evidence obtained since the last hearing on 13 July 2026, the Company having had additional time to gather its records and documentary evidence.'
15. The seventh witness statement of Mr Brown states at paragraph 3, 'I understand the Court is considering whether it should hear the Company's further application and, in particular, whether the evidence now relied upon is genuinely additional evidence and why it was not properly before the Court at the earlier hearing. I therefore want to explain fully what happened, what material was unavailable or could not be properly assembled at that time what has since been recovered and obtained and why'
16. Paragraph 5 states, 'On 8 July 2026, only days before the hearing on 13 July 2026, the landlord of the Company's office attended at approximately 5.00 a.m.

and the Company was excluded from the premises. There had previously been police involvement concerning unauthorised access to the office by third parties seeking to remove us and my understanding from that attendance had been that any removal would require a proper legal basis and process. However, no such legal proceedings were undertaken.’

17. The following paragraphs state as follows:-

‘7. By that stage work had already been taking place to gather information for the Company's legal team. The material was spread across the Company's systems because it came from different parts of the business: accounts and banking information, maintenance correspondence, property records, emails, invoices, payment information and working schedules. The task was already a substantial one because the dispute covers numerous properties and a very large number of individual transactions and works.

8. When access to the office was lost, we also lost practical access to the equipment on which that work was being carried out. Material that had been collected and working documents that were being prepared could no longer simply be opened, checked and sent to the solicitors. This occurred at the worst possible point, immediately before the hearing.

9. The Company's immediate response had to be directed to protecting its information and keeping the business alive. Our IT support was asked urgently to secure what could be secured remotely and to protect Company data because physical control of the computers and devices had been lost. At the same time, we had to arrange temporary working facilities, purchase replacement computers, reinstall the systems staff required and restore access to the

information that could be recovered.

10. Those were not tasks which could be completed instantly. Even where information existed electronically, recovering access was not the same as having a court-ready evidential case. The information then had to be located again, checked against other records, matched to the correct properties and transactions, organised and put into a form which the solicitors and counsel could properly use.’

18. The witness statement goes on to say that a late change of counsel was an issue as well as a refusal by the Judge to adjourn the hearing listed for 13 July 2026.

The hearing before Chief ICC Judge Briggs

19. According to the transcript of the hearing before the Judge on 13 July 2026, Counsel on behalf of the Applicant did not commence her submissions with a request for an adjournment on the grounds set out by Mr Brown relating to the lack of access to the company premises on 8 July 2026. Counsel raised the issue that Lloyds Bank had not complied with the validation order and as such the Company had not been able to check the accounts. This was said to relate to the calculation of the cross claim. Counsel then invited the court to dismiss the petition and restrain the advertisement. Counsel relied on the freezing of the accounts relating to the validation orders and invited the court, ‘... to adjourn on that part of the application today in order to allow access to be obtained and allow further evidence to be put that needs to be put for a full consideration of the genuine nature of the dispute..’ Later in her submissions, the inter change between Counsel and the Judge is as follows(page 8 of the transcript):-

‘...And then, in respect of the legal principles, I am having recourse to Coilcolor Limited, clearly the bar is not a high one, as in the threshold itself is not high for the substantial grounds to dispute the debt, and I completely accept that in that regard, your ability to draw a conclusion is hampered by the lack of financial information from the Lloyds Bank account. And I also recognise that, I think it was anticipated by all parties concerned at the previous hearing last week, that access would be restored quickly, and that the intention would be to have put that evidence in by the end of last week in order that it might be considered today; and whilst it is deeply frustrating that that has not happened, that is not a failing of my client that that has not been possible to do, and it is for that reason that I would ask you to adjourn that substantive issue for further consideration ---

JUDGE BRIGGS: What, sorry, adjourn what substantive issue?

MS ROBERTS-WATERWORTH: If you cannot conclude your position on the restraint and advertisement today ---

JUDGE BRIGGS: So, if there is not sufficient enough evidence for me to grant your order, I should adjourn it, is that what you are saying?

MS ROBERTS-WATERWORTH: That is my invitation.

JUDGE BRIGGS: Right.

MS ROBERTS-WATERWORTH: First, I would ask that you do dismiss the petition and, therefore, we do not need to deal with the restraint and the advertisement, but if you are minded that there is not sufficient before you today in order to do so, then I would invite you to adjourn that part.

JUDGE BRIGGS: Yes, well there clearly is not sufficient evidence, is there not?

MS ROBERTS-WATERWORTH: In my opinion, no.’

20. The judgment of Chief ICC Judge Briggs did not make any specific reference to an application to adjourn, but from this interchange, the application appears to have been on the basis that if the court considered the evidence on behalf of Elevate was insufficient, then part of the application should be adjourned for Elevate to provide further evidence.

Legal principles – abuse of process- res judicata, Henderson v Henderson and Turner principles

21. Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2014] AC 160 sets out the principles relating to abuse of process and res judicata principles. It confirms

the reason for the existence of the principle of res judicata. It supports the good administration of justice in the interests of the public and the parties preventing abusive and duplicative litigation. At paragraph 17, Lord Sumption set out the various principles which have through time been given the title res judicata, estoppel and abuse of process.

‘Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is cause of action estoppel. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see *Conquer v Boot* [1928] 2 KB 336. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given on it, and the claimant’s sole right as being a right on the judgment.... Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston’s Case* (1776) 20 State Tr 355. Issue estoppel was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181, 197—198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger’

22. The effect of the different principles was dealt with in the earlier case of Arnold v National Westminster Bank PLC [1991] 2AC 488 HL(E) and summarised by Lord Sumption at paragraph 22:-

‘Arnold v National Westminster Bank plc [1991] 2 AC 93 is accordingly authority for the following propositions. (1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action. (2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised. (3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.’

23. The principle in Henderson v Henderson (1843) 3 Hare 100 was considered by the House of Lords in Johnson v Gore Wood & Co [2002] 2 AC 1. It is described as a rule of public policy based on desirability in the general interest as well as that of the parties themselves that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. As with cause of action estoppel and issue estoppel, the underlying public interest is that there should be finality in litigation and a party should not be twice vexed in the same matter.

24. At paragraph 24 of Virgin, Lord Sumption dealt with the ambits of Henderson v Henderson and expressly referred to the judgment of Lord Bingham in Johnson v Gore Wood:

‘..... The principle in Henderson v Henderson has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and should have been raised before. There was nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in the Yat Tung case [1975] AC 581. The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most important of them, Johnson v Gore-Wood & Co [2002] 2

AC 1, in which the House of Lords considered their effect. This appeal arose out of an application to strike out proceedings on the ground that the plaintiffs claim should have been made in an earlier action on the same subject matter brought by a company under his control. Lord Bingham of Cornhill took up the earlier suggestion of Lord Hailsham of St Marylebone LC in *Vervaeke (formerly Messina) v Smith* [1983] 1 AC 145, 157 that the principle in *Henderson v Henderson* was both a rule of public policy and an application of the law of *res judicata*. He expressed his own view of the relationship between the two at p 31 as follows:

”*Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.’

The rest of the committee, apart from Lord Millett, agreed in terms with Lord Bingham’s speech on this issue. Lord Millett agreed in substance in a concurring speech. He dealt with the relationship between *res judicata* and the *Henderson v Henderson* principle at pp 58—59 as follows:

Later decisions have doubted the correctness of treating the principle as an application of the doctrine of *res judicata*, while describing it as an extension of the doctrine or analogous to it. In *Barrow v Bankside Members Agency Ltd* [1996] 1 WLR 257, Sir Thomas Bingham MR explained that it is not based on the doctrine in a narrow sense, nor on the strict doctrines of issue or cause of action estoppel. As May LJ observed

in *Manson v Vooght* [1999] BPIR 376, 387, it is not concerned with cases where a court has decided the matter, but rather cases where the court has not decided the matter. But these various defences are all designed to serve the same purpose: to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions. While the exact relationship between the principle expounded by Sir James Wigram V-C and the defences of *res judicata* and cause of action and issue estoppel may be obscure, I am inclined to regard it as primarily an ancillary and salutary principle necessary to protect the integrity of those defences and prevent them from being deliberately or inadvertently circumvented.’

25. Lord Bingham continued at page 31 in *Johnson v Gore Wood* to state :

‘As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim.

While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice.’

26. A number of cases deal with another type of abuse of process which has been described as being the *Turner* principles. These apply in bankruptcy proceedings, but I do consider that they are equally applicable in corporate winding up proceedings. In the case of *Harvey v Dunbar* [2017] EWCA Civ 60, the debtor had applied to set aside a statutory demand based upon a guarantee which he had provided. The debtor relied on the ground of promissory estoppel, seeking to rely on certain representations made. The district judge dismissed the application. On appeal to the Court of Appeal, the statutory demand was set

aside on unrelated grounds. The debtor did not take the issue on promissory estoppel on appeal. Thereafter, the bank (the creditor) served a fresh statutory demand and the debtor then sought to set aside the second statutory demand on the grounds of promissory estoppel. The district judge refused the application on the basis of an issue estoppel. On the further appeal to the Court of Appeal (from HH Judge Kaye QC), the court applied the principles of public policy to prevent the debtor from being permitted to waste the court's time or the parties' money running arguments relating to his liability for the debt which had already been run and failed. That principle applied to the bankruptcy process.

27. At paragraph 36 of the judgment of Lord Justice Henderson, the Lord Justice stated:-

‘The judge conducted a valuable review of this body of authority at paras 32 to 36. As he said, at para 34, the arguments have been well trod in these previous decisions. He then set out the principles relevant to the present case which he derived from the authorities. The judge expressed the first and second of those principles as follows:

First, the court, on the hearing of a bankruptcy petition at least, has a duty to consider, on the material before it, whether the conditions for the making of a bankruptcy order are satisfied . . .

Second, on such a hearing where there has been a previous hearing on the merits, whilst the court ought always to ask itself whether the arguments have been previously run and failed, and, why arguments now advanced have not been run before, absent a change of circumstances or some other special or good reasons or circumstances, the debtor can not go back on the hearing of the petition (or for that matter on an application to annul or review under section 375(1) of the Act) to re-argue or reiterate arguments presented earlier, or which he had an opportunity to present. The basis of this principle (which has been referred to in the recent cases as the Turner principle) is that to hold

otherwise would be to encourage a waste of court time, a waste of the parties money and defeat the obvious purpose of the statutory scheme which was that arguments on whether or not there was a genuine debt ought to be raised at the earliest stage i e on the application to set aside the statutory demand . . .’

40. In the subsequent decision of this court in *Coulter v Chief Constable of Dorset Police (No 2)* [2006] BPIR 10, Chadwick LJ took the opportunity, at para 19, to point out that estoppel and res judicata had not been canvassed before the court in the *Turner* case [2000] BPIR 683. Rather, the basis of his observations in the *Turner* case had been that it would be a waste of court time and the parties money to allow a debtor, who had already failed on his application to set aside a statutory demand, to advance the same arguments by way of challenge to the petition debt on the hearing of the petition.

41 Chadwick LJ then said that the same point had been made by Neuberger J in *Atherton v Ogunlende* [2003] BPIR 21, 27 where he said:

”However, in general, it seems to me right in principle and in the public interest that, if a party has raised an argument in a proper forum, where it has been considered in connection with a particular process, in this case a bankruptcy or a prospective bankruptcy, and from which forum he had a right of appeal if he wished to exercise it, if that argument is rejected and he does not appeal, it requires exceptional circumstances before he can raise the same argument at a later stage during the same process . . .”

Neuberger J went on to say that the principle should not be abrogated simply because the party has found a better way of putting the same point, or wants to put in more evidence to support the same point”

28. At paragraph 43 the Court of Appeal again returned to the judgment of the Judge:-

‘Returning to the present case, Judge Kaye QC expressed his agreement with the district judge that Mr Harvey’s application to set aside SD2 was simply an attempt to re-litigate the same point already decided between the parties, and should therefore not be permitted: see para 38.

43 The judge continued, at paras 39—40:

39. I would add as Chadwick LJ has made clear in the Turner case [2000] BPIR 683 and the Coulter case [2006] BPIR 10, and Neuberger J made clear in the Atherton case [2003] BPIR 21, whether the result is based strictly on res judicata, issue estoppel, or the Turner principle on a second hearing on the same point in the bankruptcy process, apart from the special circumstances attending the hearing of the bankruptcy petition itself referred to above, and absent good reason, special, new, changed or exceptional circumstances (or however it might be described) the result is the same: the public interest was to avoid repeat litigation on the same point and same or similar material. Even allowing for the potentially serious consequences of bankruptcy, it would be a waste of time and money and, I would also add, the court’s resources and be inclined to delay access to the courts of other litigants . . . who had not even had a first opportunity to present their case. This cannot be in the public interest.

40. Accordingly, even if the point is not governed by issue estoppel or res judicata in the true sense, in my judgment the Turner principle at least applies to the instant case. Absent a change of, or special circumstances the debtor ought not to be permitted to raise the point again.

44 The judge then said, at para 41, that there were no special or exceptional circumstances to justify re-opening or re-arguing the promissory estoppel point. The so-called new evidence added nothing material to the case previously advanced; Mr Harvey had chosen on previous occasions, in seeking permission to appeal and on the appeals themselves, not to pursue the promissory estoppel point; and he was now seeking to re-argue it on substantially the same material and arguments as before.’

29. Lord Justice Henderson explained why the case before the Court of Appeal could not be characterised as one of res judicata or issue estoppel at paragraph 47 :-

‘In relation to this argument, I agree that the present case cannot be characterised as one of *res judicata* or issue estoppel, and I respectfully consider that the judges below were wrong to the extent that they held or suggested otherwise. The reason for this appears most clearly from a decision of this court to which Mr Schmitz drew our attention in a note supplied to us after the hearing, *P & O Nedlloyd BD v Arab Metals Co (No 2)* [2007] 1 WLR 2288. The leading judgment was delivered by Moore-Bick LJ, with whom Jonathan Parker and Buxton LJ agreed. The relevant limitation on an application for summary judgment could give rise to an issue estoppel between the same parties in circumstances where the order of the court below had been set aside by the Court of Appeal on an unrelated ground. The answer given by this court was that it could not. As Moore-Bick LJ explained, at para 29:

As a matter of principle, when an appellate court sets aside the order of a lower court that order ceases to have any effect and the decision of the appellate court alone is determinative of the issue between the parties. That is sufficient to determine the present case. Although the decision of Colman J was originally capable of giving rise to an issue estoppel, it could no longer do so once it had been set aside on appeal, regardless of the grounds on which this court made its order. Issue estoppel is a form of estoppel by record and depends, as the cases mentioned earlier demonstrate, on a decision of the court disposing of a substantive dispute between the parties. On a purely formal level it may be said that the setting aside of the order below expunges the only record from which an estoppel was capable of deriving its force. At a substantive level the setting aside of the order means that there is no longer any disposal to which the decision on the issue in question can be regarded as fundamental.

48 It does not follow from this, however, that the setting aside of SD1 had the consequence that the judgment of the district judge on the promissory estoppel point disappeared into some kind of legal black hole and thereafter had to be disregarded for all purposes. True, the judgment could no longer give rise to an issue estoppel, but I can see no reason in principle why the judgment should no

longer be capable of being taken into account when deciding whether it is an abuse of process for Mr Harvey to re-litigate the same question in the context of the bankruptcy proceedings against him founded on the same debt. As Chadwick LJ was at pains to point out in the Coulter case [2006] BPIR 10, the principle in the Turner case [2000] BPIR 683 is not based on any form of estoppel, but rather on the principles that (i) it is indeed a waste of the court's time and the parties money to rehearse arguments which have already been run and have failed, and (ii) in circumstances where the debtor wishes to run new arguments, the court will inquire why those arguments were not run at the time when they could, and should, have been run: see the Coulter case, at para 22, in addition to the passages from the judgment quoted above.

49 Contrary to the argument advanced by Mr Schmitz, I would not confine the operation of these salutary principles to cases where a debtor seeks on the hearing of a petition to resurrect, or add to, arguments which he ran on a previous application to set aside the statutory demand. It seems to me that the principles are capable of general application throughout the various stages of the bankruptcy process which I have described, because the considerations of public policy on which the principles are founded are likely to apply with equal force at whatever later stage in the process the question arises. In particular, there is in my judgment every reason why the Turner principle should apply in the circumstances of the present case, where Mr Harvey is not only seeking to rely on the same arguments as before, but he chose on three separate occasions not to pursue a possible appeal against the original decision of the district judge.

51 Mr Schmitz advanced further submissions to us based on the well known statements of principle by Lord Bingham of Cornhill concerning *Henderson v Henderson* (1843) 3 Hare 100 abuse of process in *Johnso Gore Wood & Co* [2002] 2 AC 1, 31, and on the further principle that it will often be difficult or impossible to ground an estoppel on a ruling made by the court on an interlocutory matter: see *Mullen v Conoco Ltd* [1998] QB 382, 390—391, per Evans LJ. I find it unnecessary to deal with these submissions, however, because the Turner principle is peculiar to the law of bankruptcy, and as Chadwick LJ said in the Coulter case [2006] BPIR 10, para 22, the principle is not based on estoppel whether of a *Henderson v Henderson*

3 Hare 100 nature or res judicata. Further, even if it were relevant to have regard, by way of analogy, to the learning on *Henderson v Henderson* abuse of process, I would certainly not agree with Mr Schmitz that the doctrine is confined to cases of 'unjust harassment of a party'. Although Lord Bingham used these words, and said that there will rarely be a finding of abuse in the absence of such harassment, he went on to state explicitly that application of the doctrine requires a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case: see *Johnson v Gore Wood & Co*, at p 31. I also find the supposed analogy with interlocutory proceedings unhelpful; when the clear and consistent thrust of the bankruptcy authorities is that the appropriate occasion for a debtor to put forward his case that a debt is disputed is on the application to set aside the statutory demand.'

30. The Court of Appeal then considered that the evidence did not demonstrate a change of circumstance or special or good reason and applied the *Turner* principles as set down by the Judge and dismissed the appeal.

Submissions

31. Mr Patterson submitted that the new application should be dismissed because it was a clear abuse of process in that it is:-

- (a) A cause of action estoppel as both the earlier application and the new application are the same cause of action between the same parties; and/or

- (b) An issue estoppel in relation to the determination of whether there was the debt was dispute on substantial grounds or there was a cross claim which equalled or exceeded the petition debt; and/or

- (c) an abuse of process under *Henderson v Henderson* in that the Applicant seeks to relitigate the issue on the basis of new evidence;

(d) in any event, regardless as to the type of estoppel or abuse which applied in this case, which included the abuse identified in the bankruptcy case of Harvey v Dunbar, Elevate has failed to demonstrate, on the basis of the evidence submitted by Mr Brown for these purposes, that there was any change of circumstances or special reasons as identified in the case of Harvey v Dunbar, to allow the new application to be heard and determined based on the new evidence.

32. Mr Patterson submits that cause of action estoppel applies in that the new application is the same parties and the same cause of action. The earlier application and the new application sought effectively the dismissal of the petition based on there being a substantial dispute and cross claim. The cause of action was to restrain further steps being taken, like advertisement of the petition and to obtain a dismissal of the petition based on there being a substantial dispute and cross claim. This would have the effect that regardless of whether there is a change of circumstances and or special reasons, it would be an abuse of process to allow the new application to be heard.
33. In so far as I am not persuaded that this case falls under a cause of action estoppel, then Mr Patterson submits that the evidence produced by Elevate does not support there being a change of circumstance or special reason for the purposes of allowing the case to be heard with the additional evidence. This is a necessary requirement regardless of whether the matter is considered to be an issue estoppel, Henderson v Henderson or a Harvey v Dunbar type scenario (under the Turner principles).

34. Mr Brown only dealt with the issue as to the additional evidence and its production after the hearing on 13 July 2026 in his seventh witness statement dated 10 August 2026. Mr Patterson submits that the evidence set out therein is wholly inconsistent with the evidence before the court on 13 July 2026. In particular, the evidence before the Judge on that date was that Elevate lost access to its premises on 15 June 2026.
35. The seventh witness statement of Mr Brown states that Elevate lost access to the premises on 8 July 2026. He provides no documentary evidence in support of this assertion. Mr Patterson refers to the fourth witness statement dated 9 July 2026 which was filed for the purposes of the hearing before the Judge on 13 July 2026. That witness statement is completely silent in relation to a lack of access to the premises and difficulty in accessing documentation or any need to recreate access to documents or emails from other premises. It exhibits certain emails which are relied upon in support of the invoices for repairs and maintenance. It denies that the documentation produced is insufficient to support its dispute and cross claim.
36. The arguments relating to lack of access and difficulty in obtaining the documentation or emails was not made before the Judge on 13 July 2026. Mr Patterson refers me to the transcript of that hearing, excerpts of which I have set out above. There is no reference to an adjournment being sought on the basis that Elevate had just lost access to its premises and its records.
37. Mr Patterson submits that on the basis that the evidence is contradictory, it cannot satisfy the existence of a change in circumstance or any special reason. There is also the failure to refer to the lack of access to documentation which

occurred prior to the hearing on 13 July 2026. This also leads to a lack of credibility in relation to what is being relied upon as a change of circumstance and/or special reason. There is equally a lack of evidence relating to what is said to be a remaining debt under the petition of some £89,000. That debt is not admitted, but the new evidence asserts that it can be paid or secured. No payment has been made.

38. Mr McCarthy on behalf of the Applicant submits that the principles relating to abuse of process do not apply on the grounds:-

(1) The decision of Chief ICC Judge Briggs was not a final and binding decision, but an interlocutory one;

(2) The decision of Chief ICC Judge Briggs did not determine whether the debt was disputed or the existence of the cross claim and therefore the new dismissal application could be issued and determined;

(3) If incorrect, then Elevate has demonstrated change in circumstances/special reasons.

39. In considering the issues, Elevate submits that the court needs to consider all the evidence, being the new evidence filed as the test to be applied in relation to the abuse of process required a merits based judgment.

40. An application for an injunction restraining advertisement of the petition is not the cause of action in the new application. The new application does not seek an injunction because advertisement has already occurred. This application only seeks dismissal of the petition on the basis of opposing the petition. The company is not insolvent and there is a genuine dispute in relation to the debt

as well as the cross claim. There is now substantial new evidence before the court and the court should not close its eyes to the new evidence and it needs to consider the new evidence.

41. Mr McCarthy relied upon the test as to whether the debt is disputed on substantial grounds being a summary judgement threshold. He submits that the court evaluates the evidence whilst leaving substantial conflicts of facts, questions requiring disclosure and detailed accounts for determination in ordinary proceedings. He submits that the final determination of the debt and the cross claims belongs in the ordinary proceedings. He submits that the hearing on 13 July 2026 concerned the immediate interlocutory protection against advertisement and validation relief. The issue relating to whether the debt is disputed falls to be determined at the petition hearing.
42. Reliance was placed on the case of Woodhouse v Consignia PLC [2002] 1 WLR 2558 as supporting the submission that the decision of the Judge on 13 July 2026 was an interlocutory one.
43. In Woodhouse, automatic stays had been applied to the claimants' proceedings pursuant to paragraph 19 of the Transitional Arrangements Practice Direction. After the first application made to the district judge to lift the stay was unsuccessful, the claimant made a second application for the stay to be lifted. The evidence in support had been available at the time of the first application. The district judge struck out the second application as an abuse of process without considering the merits. In the Court of Appeal, the Court considered the application to be an interlocutory one. It referred to the failure to comply being within CPR 3.9 and therefore in applying to lift an automatic stay, the judge had

to take into account the provisions of CPR 3.9. Under that provision, the Judge was instructed to consider all the circumstances of the particular case including the length of delay, alongside the other items listed in the CPR Rule.

44. Reference was specifically made to paragraph 57, but in order to place it into context, I set out below the paragraphs 55 - 58:-

‘55 The application of 8 November 2000 was undoubtedly a "second bite at the cherry". It was supported by evidence that was available at the time of the first application. There was no good reason for the failure to place that evidence before the court on the first occasion. We accept that the fact that the evidence relied on in support of the application that was made on 8 November could and should have been put before the court in support of the earlier application is material to the exercise of the discretion conferred by CPR r 3.9(1). There is a public interest in discouraging a party who makes an unsuccessful interlocutory application from making a subsequent application for the same relief, based on material which was not, but could have been, deployed in support of the first application. In some contexts, this is partly because, as Chadwick LJ said in *Securum Finance Ltd v Ashton* [2001] Ch 291, there is a need for the court to allot its limited resources to other cases. But at least as important is the general need, in the interests of justice, to protect the respondents to successive applications in such circumstances from oppression. The rationale for the rule in *Henderson v Henderson* (1843) 3 Hare 100 that, in the absence of special circumstances, parties should bring their whole case before the court so that all aspects of it may be decided (subject to appeal) once and for all is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever, and that a defendant should not be oppressed by successive suits when one would do: see per Sir Thomas Bingham MR in *Barrow v Bankside Members Agency Ltd* [1996] 1 WLR 257, 260A-D.

56 In our view, although the policy that underpins the rule in *Henderson v Henderson* has relevance as regards successive pre-trial applications for the same relief, it should be applied less strictly than in relation to a final decision of the court, at any rate where the earlier pre-trial application has been dismissed.

57 To take an example: suppose that an application for summary judgment in a substantial multi-track case under CPR r 24 is dismissed, and the unsuccessful

party then makes a second application based on material that was available at the time of the first application, but which through incompetence was not deployed at that time. The new material makes the case for summary judgment unanswerable on the merits. In so extreme a case, it could not be right to dismiss the second application solely because it was a second bite at the cherry. In those circumstances, the overriding objective of dealing with cases justly, having regard to the various factors mentioned in CPR r 1.1(2), would surely demand that the second application should succeed, and that the proceedings be disposed of summarily. In such a case, the failure to deploy the new material at the time of the first application can properly and proportionately be reflected by suitable orders for costs, and, if appropriate, interest. The judge would, of course, be perfectly entitled to dismiss the second application without ceremony unless it could be speedily and categorically demonstrated that the new material was indeed conclusive of the case.

58 In the present case, it is clear that both the district judge and the judge considered that the fact that the application of 8 November 2000 was a second bite at the cherry was decisive. In our view, they were wrong to do so. They failed to take into account the evidence of Mr Collins, and to consider how cogent the case was for lifting the stay, having regard in particular to the provisions of CPR r 3.9(1). In short, they failed to exercise their discretion at all. In these circumstances, it is necessary for us to exercise our discretion afresh.’

45. In so far as I am not persuaded by the above submissions, Mr McCarthy submitted that in accordance with Harvey v Dunbar, Elevate should be entitled to rely on the new evidence and also obtain a re-hearing of the issues before the Judge on 13 July 2026 based on the new evidence. Mr McCarthy also relied on Woodhouse for the premise that as the decision of the Judge on 13 July 2026 was an interlocutory one, the rules relating to new evidence and the rehearing of issues raised in the original application is to be applied less strictly to successive pretrial applications than a final determination. He relied on the

example provided in relation to the summary judgment set out in paragraph 57 of Woodhouse and submitted it applied equally in the case before me.

46. Mr McCarthy submits based on the above, no issue estoppel arises in the current case. The issue is whether it is an unjustified use of court process or vexing the other side. The court has to carry out an inquiry of all the circumstances rather than consider the rules as to issue estoppel and the court has to do justice
47. It is accepted that in accordance with Harvey v Dunbar, where an argument has already been determined on the merits, the debtor requires a change of circumstances or other special reason to advance it again. Mr McCarthy submits that Mr Brown's evidence establishes the change of circumstance and/or special reason to all the new evidence and thereby enables the new application to be heard on its merits.
48. The Company lost access to its office, computers working files records and external storage on 8 July four days before the hearing. It then secured its systems, obtained replacement equipment and recovered and organised underlying material. It also was locked out of its bank accounts on 13 July which was explained an adjournment was sought, which is partly the subject of the appeal as no reasons were given as to why an adjournment should have been refused, in the hearing. Replacement counsel was instructed on the Friday evening for the Monday hearing. The Company sought an adjournment, but this was refused without giving reasons. The Company was dealing with multiple applications and petitions in short order and was under pressure to restore access to its accounts to continue trading.

49. Even if I determine that the proceedings are not interlocutory, then the principles set out in Woodhouse should apply.

Discussion

General Applicable Legal Principles

50. The new application stands to be dismissed as an abuse of process (including res judicata) if it falls under one of the below categories :-

(1) It constitutes a cause of action estoppel which is absolute. The bar is absolute in relation to all points decided unless fraud or collusion is alleged such as to justify setting aside the earlier judgement. The discovery of new factual matters which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law in England permit the later to be reopened. This was reiterated by Lord Sumption in Virgin who stated at paragraph 26, ‘Where the existence of non -existence of a cause of action has been decided in earlier proceedings, to allow a direct challenge to the outcome, even changed circumstances and with material not available before, offends the core policy against re-litigation of identical claims’.(paragraphs 22 and 26 - Virgin)

(2) It constitutes an issue estoppel. The bar is not absolute in that the existence of special circumstances where it would cause injustice will allow new points to be raised. If the new point was not raised, or further material relevant to the correct determination of a point had not been adduced, then the bar will usually be absolute if it could with reasonable diligence and

should in all the circumstances have been raised or the material been adduced in the earlier proceedings. (paragraphs 21 and 22 - Virgin)

(3) It constitutes an abuse of process under the Henderson v Henderson principles. The court requires the parties to litigation to bring forward their whole case and will not except under special circumstances permit the same parties to open the same subject of litigation in respect of the matter which might have been brought forward as part of the subject in contest but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. (paragraphs 19 and 24 of Virgin).

(4) The new action is an abuse under the Turner principles as set out in Harvey v Dunbar, that (1) it is a waste of court's time and the parties money to rehearse arguments which have already been run and have failed and (ii) in circumstances where the debtor wishes to run new arguments, the court will inquire why those arguments were not run at the time when they could and should have been run. The court determines that the evidence did not demonstrate a change of circumstance or special or good reason. [paragraphs 40, 44, 48]

A. Cause of action estoppel

51. The characterisation of the cause of action has been challenged as being an interlocutory one such that it is incapable of falling under a cause of action estoppel. It is argued that the findings made on 13 July 2026 were based on limited evidence and do not create a judgment or relief which Fine Star can rely upon to establish an undisputed debt at the petition hearing itself.

52. There is no dispute that the original and new application concern the same parties. The original application was made on the grounds that the debt claimed in the petition was disputed on genuine and substantial grounds and that on the evidence there was a cross claim which equalled or exceeded the petition debt. It is an abuse to present and or prosecute a petition if the debt is disputed on substantial grounds. A cross claim which equals or exceeds the petition is treated as being effectively a disputed debt. These are well known principles which were admitted by Mr McCarthy who relied upon the well known cases of Re Bayoil SA [1999] 1 WLR 147 and Angel Group Ltd v British Gas Trading Ltd [2012] EWHC 2702 (Ch). The new application seeks a dismissal of the petition on the same grounds as the original application.
53. In my judgment, the cause of action is seeking a permanent and final injunction restraining the presentation of the winding up petition and a dismissal of the petition on the grounds that the debt is disputed (including the existence of a cross claim). This is because there is no basis upon which the petition could be presented or prosecuted if the debt is disputed. If the injunction restraining advertisement is granted, then in my judgment, this will lead to the dismissal of the petition on the grounds that the debt is disputed.
54. Interlocutory orders can be made and frequently are made by the court prior to the final hearing of the application. These restrain advertisement of the petition until the next hearing date or effective hearing of the application. The orders made prior to the final hearing of the application are interlocutory.
55. In my judgment, the proceedings before Chief ICC Judge Briggs was a final hearing of the original application. It determined that the debt was not disputed

on substantial grounds and that the cross claim had not been established. That is a final and binding decision of those issues as well as the final determination of the original application. Contrary to Elevate's submission, the issue of whether the debt was disputed on substantial grounds does not fall to be reconsidered at the petition hearing itself. The petition proceeds on the basis that there is an undisputed debt. The determination by the insolvency court is whether the debt is disputed on substantial grounds. That is the issue. If that is established, then the petition cannot proceed. Conversely, if the evidence does not establish that the debt is disputed on substantial grounds, then the petition will proceed. If a party is unhappy with the decision, it can seek to appeal.

56. It is immaterial that the original application sought an injunction restraining advertisement as well as dismissal and the new application sought merely the dismissal of the petition. In my judgment, it remains the same cause of action. The cause of action is identical, being to establish that the petition is an abuse of process and stands to be dismissed.
57. In my judgment, the case of Woodhouse provides no support to the Applicant. There are fundamental distinctions to be drawn between summary judgment proceedings and the original and new application proceedings. Unlike summary judgement proceedings, there are no underlying court proceedings which would lead to a trial if the summary judgment proceedings are unsuccessful. The original and new application are not capable of being characterised as being pre-trial proceedings. Winding up proceedings are only available when the debt is not disputed. There is no trial of the disputed debt or the asserted cross claim. The challenge to the debt being disputed is in many respects a challenge as to

the jurisdiction to present and prosecute a winding up petition. Conversely, in summary judgment proceedings, there are court proceedings which lead to a trial unless the summary judgment succeeds.

58. In my judgment, Woodhouse provides no support relating to the characterisation of the original application and the new application. Woodhouse relates to pretrial applications expressly held by the Court of the Appeal to be interlocutory. The statutory regime in Woodhouse is substantially different from the one in the current case.
59. Mr McCarthy also relied upon Harvey v Dunbar in support of his submission that cause of action estoppel and issue estoppel did not apply in this case because the current case were insolvency proceedings. In my judgment, both cause of action estoppel and issue estoppel are capable of being applied in the current case. In Harvey v Dunbar, at paragraph 47, the Court of Appeal explained why neither of those principles applied. The decision below had been set aside by the appellate court and therefore it was not capable of constituting either a cause of action estoppel or an issue estoppel. That is not the position here. The decision of chief ICC Judge Briggs has not been set aside and remains final and binding.
60. In my judgment, cause of action estoppel applies for the reasons set out above. The effect of the cause of action estoppel is that Elevate is prevented from pursuing the new application seeking dismissal of the petition. This is as set out in Virgin, an absolute bar to the new application being heard.

B. Issue estoppel

61. Alternatively, in my judgment, the new application constitutes an issue estoppel. The issue of whether the debt is disputed in substantial grounds and the raising of the cross claim are identical in relation to the original and new application. This issue was determined by the court on 13 July 2026. Elevate seeks to rely on new evidence to re open the issue. Whether Elevate is entitled to re-open the issue and re argue it based on the new evidence depends upon the existence of special circumstances relied upon by Elevate.
62. Neither party submitted that the tests of special circumstances in relation to issue estoppel, Henderson v Henderson or the Turner principles are different. The wording used in the cases refer to special circumstances, exceptional circumstances, and/or special reasons. Although this point was not argued before me, I will approach these tests as being essentially the same in that I will deal with the evaluation of the evidence relied upon by Elevate and the factual circumstances including what occurred before the Judge on 13 July 2026 after consideration of both Henderson v Henderson and the Turner principles. The public interest in not being able to pursue duplicative proceedings is relevant regardless as to whether the issue is one of issue estoppel, Henderson v Henderson or the Turner principles.

C. Henderson v Henderson

63. The principles in Henderson v Henderson apply where a point or issue which could have been raised at the hearing was not raised. In this case, Elevate seeks to rely on new evidence and to re-open the issue of whether the debt is disputed on grounds which are substantial and the existence of the cross claim. These

issues were before the Court on 13 July 2026 and were determined. In my judgement, the principles of Henderson v Henderson apply.

64. Mr McCarthy relied on the approach to Henderson v Henderson set out by Lord Bingham in Johnson v Gore Wood. The test to be applied in relation to Henderson v Henderson is not to be applied simply by asking whether the matter or evidence could have been raised at the earlier hearing as to render the raising of it at a later hearing abusive. Instead, as stated by Lord Bingham in Johnson v Gore Wood (page 31), the court takes a broad, merits based judgment which takes into account of the public and private interests involved and also takes into account the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. In my judgment, this does not mean that the court engages in carrying out some form of mini hearing by considering the new evidence and its merits as part of that exercise. In my judgment, the court focuses on the facts of the case and in particular the conduct of the party. The approach is to consider whether in all the circumstances the party's conduct is an abuse.

65. I reject Mr McCarthy's argument that the court needs to consider and assess the new evidence in determining whether there are special circumstances to enable the case to be re-opened. That is not what is set out in Johnson v Gore Wood. In my judgment, Mr McCarthy's approach would lead to a re- opening of the issue which is exactly what the party is not entitled to seek without the Court being satisfied that such a reopening is not an abuse. I have read the new evidence and it seeks effectively to invite the court to consider the new evidence

supporting the disputed debt assertion by the production of numerous documents and material which was not before the Court on 13 July 2026. There are also additional witness statements seeking also to support the existence of the asserted disputed debt and cross claim.

(D)The Turner principles – Harvey v Dunbar

66. In my judgment, the Turner principles are equally applicable here. Paragraph 41 of the judgment in Harvey v Dunbar expressly confirms that, ‘...it requires exceptional circumstances before he can raise the same argument at a later stage during the same process. Neuberger J went on to say that the principle should not be abrogated simply because the party has found a better way of putting the same point, or wants to put in more evidence to support the same point.’
67. In my judgment, this applies with equal force in the case before me. Elevate is seeking to put in more evidence to support the same point. The issue is whether there are special or exceptional circumstances to justify the re-opening or re-arguing the issue.

Change of Circumstances – special reason – party’s conduct

68. Mr McCarthy relied on Woodhouse as authority for the proposition that the court should approach the test of change of circumstances and/or special reason in a less strict way. In my judgment, that less strict approach set out in paragraph 56 related to the types of pre trial applications which were before the Court of Appeal. Paragraph 57 provided as an example a rather extreme case relating to an application for summary judgment where the new evidence made it unanswerable on the merits. Mr McCarthy did not suggest that the new evidence

fell into that type of category. A reading of that evidence makes it clear, in my judgment, that it is not the type of evidence which equates to the extreme example given at paragraph 57 of Woodhouse. I reject the approach here to be one of a less strict approach.

69. In his fifth witness statement dated 3 August 2026, Mr Brown stated that Elevate relied on the completed reconciliations, the supporting evidence for its cross claim and evidence obtained since the last hearing on 13 July 2026 on the grounds that the Company had had additional time to gather its documents and evidence. This witness statement is silent in relation to why that evidence had not been before the court on 13 July 2026. Mr Brown then filed a further witness statement, his seventh, dated 10 August 2026 which explains that on 8 July 2026, the company has been excluded from its premises. This is the reason provided by Mr Brown as to why the evidence the company now seeks to rely upon was not before the court on 13 July 2026.

70. The earlier witness statement of Mr Brown dated 9 July 2026 which was filed shortly before the hearing on 13 July 2026 is completely silent in relation to what Mr Brown set out in his witness statement dated 10 August 2026. The arguments relating to lack of access and needing further time to obtain further evidence were not raised before the Judge on 13 July 2026. I have considered carefully the transcript and the exchanges as between Counsel and the Judge. There was no reference to the exclusion from the premises on 8 July 2026. Additionally, as pointed out by Mr Patterson, the evidence before the Judge on 13 July 2026 demonstrated that Elevate was excluded from its premises on 15 June 2026, being well before the hearing on 13 July 2026. There is no

documentary support relating to the loss of premises on 8 July 2026 now relied upon by Mr Brown.

71. Even if the exclusion was on 8 July 2026, there is no explanation relating to the earlier exclusion on 15 June 2026. Additionally, the conduct of Elevate is of concern. The witness statement dated 9 July 2026, being a reply to the evidence filed in opposition by Fine Star, denies that the documentation produced by Elevate was insufficient to support its dispute and cross claim. This demonstrates that Elevate was well aware of the evidence it was relying upon and the risk that it was insufficient for its purposes. This makes a failure to deal with the lack of access to the premises now relied upon even more surprising.
72. Elevate issued the original application on 30 June 2026. Accordingly Elevate had access to all the documentation it needed to present its case at that stage. It elected to present its case in the witness statement filed in support of its application without the detailed material it now seeks to rely upon. On its own case, the exclusion only occurred on 8 July 2026.
73. In my judgment, the conduct of Elevate constitutes an abuse as defined in the cases above. The evidence relied upon does not support a change in circumstances, exceptional or special reasons. There is a failure to raise the issue of exclusion now relied upon both in the witness statement of 9 July 2026 and before the Judge on 13 July 2026. The exclusion did not form part of the application to adjourn which was made on 13 July 2026. There is the contradictory evidence relating to the evidence of the earlier exclusion.
74. The private interest of Elevate in seeking to reopen the case must be weighed against the position of Fine Star whose interests include finality after the hearing

before the Judge on 13 July 2026 and not to incur further costs. In my judgment, the public interest in this case does not allow Elevate to seek effectively a reopening of the hearing before the Judge on 13 July 2026. The courts should not allow parties to be able to utilise the court's time and resources to hear cases when there is no justification on the evidence to allow that to occur. The exchange between the Judge and Counsel as to the evidence and the proposed adjournment sought in the event that the Judge was not satisfied on the evidence before him is also relevant. Elevate was hoping its evidence was sufficient to succeed but if not, it wanted to be able to run its case again on another date. The change of counsel before 13 July 2026 in my judgment, takes the matter no further. No adjournment was sought on that basis and what is sought now is a new hearing with the new evidence.

75. In my judgment, the offer to secure or pay what Elevate now concedes may be an undisputed part of the petition debt in the sum of approximately £89,000 does not assist. It cannot constitute a change of circumstances so as to enable Elevate to reopen the hearing before the Judge on 13 July 2026. The offer to pay does not cover the entirety of the petition debt. The Judge held that there was no dispute. An offer to pay a small part of the petition debt does not entitle Elevate to reopen the hearing and present its case with all its new evidence.
76. For the reasons set out above, I dismissed the new application.