



Neutral Citation Number: [2025] EWHC 90 (TCC)

Case No: HT-2024-LDS-000013

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
TECHNOLOGY AND CONSTRUCTION COURT

The Business and Property Courts in Leeds
Westgate House
6 Grace Street
Leeds
LS1 2RP

Before Her Honour Judge Kelly sitting as a Judge of the High Court

Between :

NARGIS FIRDOUS

Claimant

- and -

- (1) ECCLESALL DESIGN LIMITED***
(2) ~~SUSAN ELIZABETH HUMPHREY~~
(3) ~~DEAN EMMANUELLE MILLER~~
(4) COVERYS CAPITAL LIMITED (formerly
DTW 1991 UNDERWRITING LIMITED)
(5) MONZA BUILDERS LIMITED

Defendants

Mr Muhammed Imtiaz (Direct Access Counsel) for the **Claimant**
Ms Caroline McColgan (instructed by **DWF Law LLP**) for the **Fifth Defendant**
Mr Henk Soede (instructed by **Browne Jacobson LLP**) for the **First Defendant**
Ms Lucy Colter (instructed by **Clyde & Co LLP**) for the **Fourth Defendant**

Hearing date: 4 October 2024

Date draft circulated to the Parties: 4 January 2025

Date handed down: 22 January 2025

APPROVED JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 22 January 2025.

Her Honour Judge Kelly

1. This judgment follows the hearing of the following applications:
 - a. The Fifth Defendant's written application to strike out the Claimant's claim or alternatively for summary judgment against the Claimant dated 9 May 2024;
 - b. The Claimant's written application to re-amend the Amended Particulars of Claim dated 16 August 2024; and
 - c. The oral application (or invitations to the court to order of its own motion) made by the First Defendant that the Claimant's claim should be struck-out and the oral applications (or invitations to the court to order of its own motion) made by the Fourth Defendant that the Claimant's claim should be struck out or summary judgment given in respect of the Fourth Defendant.

2. This case concerns the design and execution of building works at 1 Sandford Grove Rd ("the property"). The Claimant alleges that she is the owner of the property. The roles of the various Defendants are asserted by her to be as follows:
 - a. The First Defendant is a company specialising in the development of building projects;
 - b. The Second Defendant is a director of the First Defendant;
 - c. The Third Defendant was the sole director of Vitkoson Limited (t/a Signature Structures). Vitkoson Limited is now insolvent and no claim has been brought against that company. Vitkoson Limited proposed the use of a raft foundation, which was then used at the property;
 - d. The Fourth Defendant is the insurer of Vitkoson Limited;
 - e. The Fifth Defendant is a construction contractor which undertook building works at the property.

3. The property is situated on a site which is sloped both at street level and along the length of the site from front to back. There is a masonry retaining wall ("the retaining wall") which runs roughly along the boundary between the property and three neighbours to the right of the property, which neighbours are all at a lower level to the property. Work commenced at the property in spring 2021. Overnight between 9 and 10 May 2021, the retaining wall suffered a partial collapse. Thereafter, work

continued until around 13 June 2022 when the Fifth Defendant asserts it had completed the works it was able to complete and terminated the contract.

4. Proceedings were issued on 2 November 2023. On 22 January 2024, the Claimant discontinued against the Second Defendant. On 7 June 2024, the Claimant's claim against the Third Defendant, who was a director of Vitkoson Limited, was struck out. The Claimant claims against the First and Fifth Defendants in respect of breach of contract and/or negligence for loss and damage said to be the cost of demolishing the old building at the property, the cost of building a new property and the cost of rectifying the retaining wall. The Claimant claims against the Fourth Defendant as insurer of the Third Defendant and asserts the Fourth Defendant is thus liable for the Claimant's losses.

Background

5. Throughout this judgment, there is reference to "a JCT contract": it is abundantly clear, and I so find (for reasons set out later in this judgment), that any contract between the Claimant and the Fifth Defendant was not in any form produced by the Joint Contracts Tribunal.
6. The following chronology is of relevance to the applications:

	Date	Event
1	Early 2017	The Claimant invited the Second Defendant to visit the property and requested the First Defendant to provide services in relation to a new dwelling.
2	November 2017	The Claimant asserts that the First Defendant agreed to provide architectural and project management services in respect of the property.
3	About April 2019	The Claimant asserts that she entered into a contract with the First Defendant. The contract is said to be partly in writing and partly oral agreed during the course of meetings in or around April 2019.
4	About May 2020	The Claimant asserts that the First Defendant hired Vitkoson Limited as structural engineers. Vitkoson Limited produced

		two sets of structural reports. One proposed a raft foundation at the property.
5	About 17 February 2021	The Claimant asserts that she entered into a JCT contract with the Fifth Defendant in respect of building works at the property.
6	About February 2021	The Fifth Defendant started work at the property.
7	9 - 10 May 2021	The retaining wall collapsed. The health and safety executive imposed restrictions and then work continued at the site.
8	20 October 2021	Vitkoson Limited entered liquidation.
9	Unknown	After learning of the liquidation, the Claimant contacted the Fourth Defendant and asserts that she made a negligence claim against Vitkoson Limited.
10	1 November 2021	The Fourth Defendant declined the Claimant's insurance claim against Vitkoson Limited.
11	4 March 2022	The report of Mr Fountain, Chartered Building Surveyor, is obtained ("the Fountain Report"). The Claimant relies upon this in respect of the losses claimed.
12	About 13 June 2022	The Fifth Defendant asserts that after completing the works it was able to complete, it terminated the building contract with the Claimant.
13	11 September 2023	The Claimant sent a letter of claim to the First and Second Defendants. No letter of claim was sent to the Fifth Defendant.
14	2 November 2023	The Claimant issued her claim out of the Technology and Construction Court in the Rolls Building, London. There had been no compliance with any relevant pre-action protocol by the Claimant.
15	15 November 2023	The Claimant served proceedings. Practice Direction 57A was not complied with and the Claimant did not provide any initial disclosure with the Particulars of Claim. The Fountain report was attached to the Particulars of Claim.

16	27 November 2023	The First and Second Defendants (then acting in person) applied to strike out the claim, to remove the Second Defendant from the proceedings and for a stay of proceedings to permit compliance with the pre-action protocol.
17	29 November 2023	The Fifth Defendant's solicitors contacted the Claimant's counsel to note that the Claimant had not complied with any pre-action protocol before issuing proceedings.
18	30 November 2023	The Claimant asserted through her counsel that, as the parties had engaged in meetings during 2021 and 2022, engagement with the pre-action protocol "would be a waste of time". The Claimant did not intend to stay proceedings for compliance with the protocol "for such fruitless exercise time and again".
19	30 November 2023	The First Defendant and solicitors for the Fourth Defendant also proposed that proceedings be stayed to comply with the protocol. Solicitors for the Fourth Defendant drew attention to various deficiencies in the Claimant's pleaded case.
20	1 December 2023	The Claimant's counsel responded to the email from the Fourth Defendant's solicitors to state that the Claimant did not trust the First, Second, Third and Fifth Defendants because they had made different statements before and in meetings in 2021 and later changed their positions and therefore the Claimant "is not too keen to follow your client's purpose of PAP". In a later email the same day, it was asserted that the Claimant was "not comfortable" in engaging with the protocol process.
21	5 December 2023	The Claimant's counsel stated that the Claimant did not "want to engage in any further PAP" until all the Defendants had submitted their Defences.
22	20 December 2023	The Third Defendant filed his Defence.
23	11 January 2024	The Third Defendant applied to strike out the claim against him.
24	15 January 2024	Order of Kerr J giving permission to amend the Claim Form and Particulars of Claim.

25	19 January 2024	By email at around 13:42, the Claimant's counsel circulated a proposed Re-Amended Particulars of Claim which expanded on the allegedly defective design of the foundations and sought to make a case against the Second Defendant personally. Those proposed amendments were not agreed. Later the same day, the solicitors for the First and Second Defendants, Fourth Defendant and Fifth Defendant each filed Defences.
26	22 January 2024	The Claimant filed a notice of discontinuance against the Second Defendant.
27	15 February 2024	The Claimant filed a Reply to each Defendant's Defence.
28	9 May 2024	The Fifth Defendant applied to strike out the Claimant's claim and/or for summary judgment against the Claimant.
29	30 May 2024	The Claimant circulated an engineering report from Mr Sparkes ("the Sparkes report").
30	7 June 2024	The Claimant's claim against the Third Defendant was struck out.
	10 June 2024	The Claimant's counsel circulated a further version of a proposed Re-Amended Particulars of Claim.
31	14 June 2024	The claim was transferred to the Technology and Construction Court in Leeds.
32	10 July 2024	The Claimant's counsel circulated a further version of a proposed Re-Amended Particulars of Claim.
33	15 July 2024	The Claimant's counsel circulated a further version of a proposed Re-Amended Particulars of Claim.
34	29 July 2024	The claim was listed for a Case Management Conference ("CMC") on 4 October 2024.
35	16 August 2024	The Claimant applied to re-amend the Amended Particulars of Claim.
36	20 September 2024	The Claimant served the Sparkes report.
37	27 September 2024	After various representations from the parties, the court vacated the CMC and listed these applications for one day.

7. I have had the benefit of reading all of the witness statements contained within the bundles, together with the various documents to which I was taken during the course of the hearing and directed to in skeleton arguments.
8. The witness statements relied upon were as follows:
 - a. Ms Sophie Laura Sturgess dated 9 May 2024 and 20 September 2024 for the Fifth Defendant;
 - b. Mr Waqas Masood (the Claimant's son-in-law) dated 28 August 2024 for the Claimant in response to the application of the Fifth Defendant;
 - c. Ms Rebecca Jane Goodchild dated 17 September 2024 and 20 September 2024 for the Fourth Defendant;
 - d. Mr Nikolas Neale Carle dated 20 September 2024 for the First Defendant.
9. I do not propose to rehearse all of the arguments raised, nor all of the evidence referred to in skeleton arguments and during the course of the hearing. However, I record that I read and considered the evidence as a whole, as well as various documents within the bundle to which my attention was drawn, in addition to all the arguments before coming to my decision.

The Law

10. In respect of strike out, CPR 3.4(2) provides:

“(2) The court may strike out a statement of case if it appears to the court—

 - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
 - (c) that there has been a failure to comply with a rule, practice direction or court order.”
11. In respect of summary judgment, CPR 24.3 provides:

“The court may give summary judgment against a Claimant or Defendant on the whole of a claim or on an issue if—

 - (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
 - (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

12. The Overriding Objective provides at CPR 1.1:

- “(1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.
- (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable—
- (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly;
 - (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases;
 - (f) promoting or using alternative dispute resolution;
 - (g) enforcing compliance with rules, practice directions and orders.”

13. In respect of permission to amend a statement of case, CPR 17 provides that a statement of case may be amended with the permission of the court once the statement of case has been served. If permission is granted, further directions will be given by the court if necessary in relation to other statements of case and service of the amended pleading.

14. The parties referred me to the following authorities:

- (1) *Denton v TH White Ltd* [2014] EWCA Civ 906; [2014] 1 W.L.R. 3296
- (2) *Harris v Bolt Burdon* [2000] C.P. Rep. 70; [2000] C.P.L.R. 9;
- (3) *Ashraf v Dominic Lester Solicitors* [2023] EWHC 2800 Ch (Smith J);
- (4) *Towler v Wills* [2010] EWHC 1209 (Comm);
- (5) *Soo Kim v Young* [2011] EWHC 1781 (QB);
- (6) *Atos Consulting Ltd v Avis Europe Plc* [2005] EWHC 982 (TCC) ;
- (7) *JSC VTB Bank v Skurikhin* [2020] EWCA Civ 1337;
- (8) *Cable v Liverpool Victoria Insurance Co Ltd* [2020] EWCA Civ 1015; [2020] 4 W.L.R. 110;
- (9) *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607;
- (10) *AC Ward & Sons Ltd v Catlyn (Five) Ltd* [2009] EWCA Civ 1098; [2010] Lloyd’s Rep I.R. 301;

- (11) *Royal Brompton Hospital NHS Trust v Hammond* (No.5) [2001] EWCA Civ 550;
- (12) *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
- (13) *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725;
- (14) *MT Hojgaard A/S v E.ON Climate and Renewables UK Robin Rigg East Ltd* [2017] UKSC 59.
- (15) *Swain v Hillman* [2001] 1 All E.R. 91;
- (16) *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472;
- (17) *Three Rivers District Council v Governor and Company of the Bank of England* (No 3) [2003] 2 A.C. 1;
- (18) *Elite Property Holdings Ltd v Barclays Bank Plc* [2019] EWCA Civ 204;
- (19) *SPR North Ltd v Swiss Post International (UK) Ltd* [2019] EWHC 2004 (Ch);
- (20) *Amersi v Leslie* [2023] EWHC 1368 (KB);
- (21) *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch);
- (22) *The Front Door (UK) Ltd (t/a Richard Reid Associates) v The Lower Mill Estate Ltd* [2021] EWHC 2324;
- (23) *Sofer v Swiss Independent Trustees SA* [2020] EWCA Civ 699;
- (24) *Ward v Associated Newspapers Ltd and another* [2020] EWHC 2797 (QB);
- (25) *MT Hojgaard A/S v E.ON Climate and Renewables UK Robin Rigg East Ltd* [2017] UKSC 59;
- (26) *CNM Estates (Tolworth Tower) Limited v Simon Peter Carvill-Biggs Freddy Khalastchi* [2023] EWCA Civ 480;
- (27) *Slater & Gordon (UK) Ltd v Watchstone Group plc* [2019] EWHC 2371;
- (28) *Pearce v East and North Hertfordshire NHS Trust* [2020] EWHC 1504 (QB);
- (29) *Kawasaki Kisen Kaisha Ltd v James Kimball Ltd* [2021] EWCA Civ 33;
- (30) *Sayn-Wittgenstein-Sayn v His Majesty Juan Carlos Alfonso* [2022] EWCA Civ 1595;
- (31) *RG Carter Projects Ltd v CUA Property Limited* [2020] EWHC 3417.

15. From those authorities, the following principles can be derived:

- (1) There is a considerable degree of overlap between strike out and summary judgment. Both allow the court to dispose of claims which are obviously

- without merits or pursued in such a way as to obstruct the just disposal of a claim in a way which does not accord with the Overriding Objective.
- (2) Striking out a claim is a draconian remedy and one which is seen as a last resort.
 - (3) Strike out is generally appropriate if the statement of case raises an unwinnable case and the continuance of proceedings would waste resources on both sides.
 - (4) The claim does not necessarily have to be bad in law. However, unreasonably vague and/or incoherent statements of case drafted in such a way as to be likely to obstruct the just disposal of proceedings may also be struck out on this basis.
 - (5) The purpose of pleading a statement of case is to inform the other party what case is being brought against him. The pleading of a claim affects disclosure matters and affects the drafting of a Defence in response to it. In order for a party to be able to respond to a case properly and efficiently, it is necessary for the party (and indeed the court) to understand the Claimant's case. That requires a clear and concise statement of the facts relied upon.
 - (6) The court will always consider whether a vague and incoherent statement of case might be cured by amendment and may give the Respondent an opportunity to amend if there is reason to believe that the party will be able to amend in such a way that its case becomes clear.
 - (7) The court must balance injustice to the applicant if an amendment is refused with injustice to the opposing party and other litigants in general if amendment is permitted. The court must determine cases justly and in accordance with the Overriding Objective.
 - (8) Even if it may be possible to draft a properly particularised case against another party with appropriate legal advice, if that has not been done and further amendments are unlikely to result in the other parties or the court having a better understanding of the case, it may still be appropriate to strike out the claim.
 - (9) If a proposed amendment is a retreat from what was previously alleged, the test of real prospect of success cannot be applied to what is an abandonment of a previous position. The court should not leave in play allegations which are no longer in issue.
 - (10) An incoherent and vague pleading may amount to an abuse of the court's process or be otherwise likely to obstruct the just disposal of the proceedings. Obstruct has been construed to mean "impede to a high extent" in this context.
 - (11) The court will not strike out a case simply because it is untidy or includes some irrelevant issues. However, if the pleading is such that the usual litigation processes such as disclosure or preparation of witness evidence may be impeded, it may be struck out. This may be the case even if there has been no unlawful conduct, no breach of procedural rules, no collateral attack on a previous decision and no dishonesty or other reprehensible conduct.

- (12) A breach of a pre-action protocol where serious may amount to an abuse. The court must consider whether strike out for a breach is proportionate. If not proportionate, cost sanctions may still be imposed if a flagrant or significant disregard for the protocol has been demonstrated by a party.
- (13) For summary judgment, the party responding must show a real as opposed to fanciful prospect of success. The claim must have some degree of conviction and be more than merely arguable.
- (14) The court must not conduct a mini trial but does not have to take a party's case at face value. The court must take into account both the evidence actually placed before it and also evidence which can reasonably be expected to be available at trial. The court should hesitate to make a final decision without trial if reasonable grounds exist for believing that a full investigation into the facts would add to or alter the evidence available to the trial judge. The court is entitled to reject implausible evidence or that which is not supported by contemporaneous documents. Summary judgment may be given if, on the parties own factual case, they would not be entitled to the remedy sought.
- (15) The court is entitled to consider whether the case has been put coherently. In considering whether to permit an amendment of a statement of case, the real prospect of success test should also be applied. If that test is failed and the proposed pleading remains incoherent or does not contain properly particularised elements of the cause of action relied upon, permission to amend should not be given. The proposed amendments must also be supported by evidence which establishes a realistically arguable factual basis to meet the merits test.

The Issues

16. The issues to be determined are in my judgment in respect of each remaining Defendants:
 - a. Is the Claimant's Amended Particulars of Claim so vague or incoherent as presently pleaded that it should be struck out or summary judgment given in respect of it?
 - b. If so, does the Claimant's proposed Re-Amended Particulars of Claim cure the pleading deficiencies complained of, such that permission to amend should be given instead of striking out and/or granting summary judgment in respect of the Claimant's claim?
 - c. If not, should a general permission to re-amend be given?

The Fifth Defendant

17. The Amended Particulars of Claim runs to 15 pages. The claim against the Fifth Defendant can be summarised as follows:

- a. The Fifth Defendant was a construction contractor. In respect of the alleged contract between the Claimant and the Fifth Defendant, the First Defendant forwarded some unidentified “findings” made by the Third Defendant to the Fifth Defendant. The First Defendant prepared specification and construction drawings. The Fifth Defendant incorporated and used the findings, specification and construction drawings in its tender to perform work at the property.
- b. The contract between the Claimant and the Fifth Defendant was a JCT contract and pursuant to that JCT contract, a number of duties said to be owed by the Fifth Defendant were set out.
- c. Terms that work would be carried out with reasonable care and skill and that the work would be fit for purpose and of satisfactory quality should be implied into the contract between the Claimant and the Fifth Defendant pursuant to the Consumer Rights Act 2015, the Supply of Goods and Services Act 1982 and common law.
- d. In or around May 2021, after building work had started, the retaining wall collapsed and “since then, the First, Third, and Fifth Defendants have not attempted to rectify their mistake and/or negligent act to remedy the Claimant’s loss”.
- e. The Fifth Defendant was negligent or in breach of contract by failing to follow unidentified statutory requirements and building regulations, failing to carry out its work with reasonable care and skill such that the quality was not satisfactory nor was the property reasonably fit for purpose. It is also alleged that the Fifth Defendant failed to carry out its work “in accordance with the First Defendant’s direction. Consequently, the retaining wall was collapsed”. What directions are said not to have been followed are also unparticularised.
- f. The pleading then asserts that the current building at the property needs to be demolished and a new building erected.
- g. The loss and damage is said to be set out in the report of Mr Fountain dated 4 March 2022, a copy of which was annexed to the Amended Particulars of Claim.
- h. A request for judgment and interest pursuant to the County Courts Act 1984.

18. In its Defence dated 19 January 2024, the Fifth Defendant identified various inadequacies in the claim against it by the Claimant. Details were provided as to why it was asserted that the Claimant's claim disclosed no reasonable grounds for bringing or maintaining proceedings against the Fifth Defendant. Those matters included the following:

- a. No clear case is pleaded as to the alleged cause of the collapse of the retaining wall as against the Fifth Defendant. Various factual matters set out in the Amended Particulars of Claim in relation to the design of works at the property or the structural suitability of the ground appear to relate solely to the other Defendants.
- b. It was expressly agreed with the Claimant that the Fifth Defendant would not undertake any work to the retaining wall in any event.
- c. The contract agreed was not a JCT contract, although it was accepted that some of the clauses as pleaded were incorporated into the contract between the parties.
- d. There is no pleading to explain why or how the Claimant asserts that any works performed by the Fifth Defendant has any relevance to the collapse of the retaining wall.
- e. The broad allegations that the Fifth Defendant failed to follow directions given by the First Defendant and generally failed to exercise reasonable skill and care are simply not particularised. They are so vague and ambiguous as to be incomprehensible.
- f. No appropriate expert evidence had been obtained to support the alleged breaches of duty against the Fifth Defendant. The Fountain report was produced by a building surveyor and the scope of his instructions are wholly unclear from his report. Moreover, the conclusions in the report do not obviously support the Claimant's case and do not disclose any case for the Fifth Defendant to meet.
- g. The losses claimed include the destruction of the property and its entire rebuilding without any explanation as to why that is required. No case is set out explaining why the Fifth Defendant's breach of duty caused the losses, rather than any breach of duty established on the part of the other Defendants.
- h. There is an issue as to whether the Claimant entered the contract on her own account or as a director of Sandford House Limited ("SHL") of which

company she and Mr Masood were directors, which company dealt with a range of property interests and payments in respect of the property were made from the company's bank accounts.

- i. The Claimant failed to follow the pre-action protocol for construction & engineering disputes and commenced the proceedings against the Fifth Defendant without sending any letter of claim and any pre-action or initial disclosure without explanation.

19. In addition to the deficiencies identified in the Fifth Defendant's Defence, the first witness statement of Ms Sturgess set out other evidence and matters about which the Fifth Defendant has concerns sufficient that it asserts that the claim should be struck out and/or summary judgment given in respect of it.
20. The Claimant was invited to provide evidence about the ownership of the property given the fact that payments in respect of the property were made from the SHL company bank account. In the reply to the Fifth Defendant's Defence, the Claimant asserts that she kept "her own money" in the SHL bank account (which may be a breach of the Claimant's obligations as a director of SHL). In the Reply, various assertions are made responding to the matters raised in the Fifth Defendant's Defence. Some of those various assertions are proposed as amendments in the application to re-amend the Amended Claim Form and Amended Particulars of Claim.
21. The Claimant was invited to explain on what basis she asserts that she is entitled to seek to recover the losses claimed in a personal capacity. The Claimant herself did not provide any evidence in response to the application to strike out or for summary judgment. She relies upon the witness statement of her son-in-law who asserts that he acted on the Claimant's behalf with the Defendants at all material times. The witness statement of Mr Masood itself is brief – four pages of narrative plus 116 pages of exhibits.
22. No evidence is given in the witness statement of Mr Masood about ownership of the property and no adequate documentation concerning ownership (such as Land Registry documents) is appended to it. No explanation is given for this when such

documents must easily be available. Although documents are attached to Mr Masood's statement showing the Claimant as a registered owner from "Gov.UK", those documents also warn that if a person needs to "prove property ownership, for example, for a court case, you'll need to order an official copy of the register". Mr Masood also does not deal with the fact that a residential care home operated by SHL is also situated at the address covered by the documents provided. The address on the documents is not 1 Sandford Grove Road. The contract ostensibly between the Claimant and the Fifth Defendant is also exhibited.

23. Mr Masood asserts that the building contract is a JCT contract. It is plainly not a JCT contract. The document described as "contract for building work" appears to have been drafted by the Fifth Defendant. The terms and conditions appended to the building contract appear to be standard terms and conditions of the Fifth Defendant. The scope and description of works is set out in Schedule 1 to the contract. The works to be done do not include any design work by the Fifth Defendant. Nothing in the description of works indicates that the Fifth Defendant had any responsibility for doing any work on the retaining wall.
24. Of the proposed re-amendments which concern the Fifth Defendant, a number of additional breaches of duty are set out without any sufficient factual basis being pleaded. Further, an examination of the documentation referred to in support of the Claimant's factual claims against the Fifth Defendant demonstrate that the Claimant has no realistic prospect of success in respect of at least some of the factual matters asserted.
25. For example, at paragraph 23 the Claimant asserts that the retaining wall collapsed and then asserts that the Fifth Defendants have not attempted to rectify their "mistaken or negligent act" without any explanation as to what that the act is said to be. Instead, the Claimant appears to rely on emails sent to prove that the Fifth Defendant admitted various matters.
26. At paragraph 23(a) of the proposed Re-Amended Particulars of Claim, it is asserted that the First Defendant in an email said that the Fifth Defendant had acknowledged

negligence. In my judgment, that reading of the email cannot possibly be justified. If anything, the implication is precisely the opposite. It is asserted in the email that Rob (employed by the Fifth Defendant) had stated that for its insurer to deal with matters, he would “have to acknowledge negligence”. Although the writer of the email then expresses a view about the Fifth Defendant’s negligence, it is impossible to read the email as an admission made by the Fifth Defendant.

27. At paragraph 23(b) the Claimant notes an email from Vitkoson Limited which states that the Fifth Defendant accepted partial liability for failing to consult a structural engineer. At paragraph 23(c), the Claimant then notes an assertion from the Fifth Defendant that it worked on the calculations produced by Vitkoson Limited, as sent to them by the First Defendant.

28. The Claimant’s attitude to this case, both in the pleadings and in the skeleton arguments produced by her counsel for the applications, appears to be that something went wrong with the construction process. The retaining wall fell down. Therefore, one, some or all of the Defendants must be to blame, especially as they keep blaming each other. Therefore the Claimant is entitled to damages. The Claimant does not appear to be approaching the case with the understanding that she is obliged to prove the various elements of the causes of action upon which she relies with evidence which she obtains and calls. The Latin maxim “res ipsa loquitur” (the thing speaks for itself) cannot, in my judgment, apply in this case and in any event it is not pleaded.

29. In addition, in my judgment, the submissions made by Claimant’s counsel and pleadings drafted consistently misread (at best) and misrepresent (at worst) the effect of contemporaneous documentation cited. For example, the skeleton argument in respect of the strike out referred to an email from the Fifth Defendant to the First Defendant dated 8 June 2021. Relying on that email, it is asserted that the fact that the Fifth Defendant had reported that the wall collapsed to its insurer and the fact that a like-for-like repair may be approved is “implicitly acknowledging” a causative breach of duty. Reading the email as a whole, that interpretation simply cannot be justified. Later in the email it is stated that there “may be some ability” for the insurers of the Fifth Defendant to contribute to a proposal to be made by the First Defendant in

respect of the wall. It is further said that further meetings concerning the wall and insurance were planned.

30. Detailed complaints are set out in the witness statements of Ms Sturgess concerning the Claimant's breaches of the Civil Procedure Rules and failure to engage with the pre-action protocols. The quotes from emails from the Claimant's counsel concerning the Claimant's failure to engage with the pre-action protocol show a clear intention and a deliberate decision of the Claimant not to comply with the protocol. The Claimant had taken the view that because there were previous discussions where no amicable outcome was reached, she would not comply with it. When challenged about that view, the Claimant was said to consider compliance with the protocol to be "a waste of time". Further, there was no need to provide initial disclosure of key documents on which she relied, nor key documents to enable the Defendants to understand her case (in breach of the disclosure practice direction) because it was asserted that documents had been provided previously. I accept the submission made by the Fifth Defendant that the relevant documents are not necessarily in the possession of the Fifth Defendant as the Fifth Defendant's involvement in the project and the property started a number of years after the involvement of other Defendants.
31. In my judgment, the submissions made by the Fifth Defendant about the various deficiencies identified both in the Defence and in the witness statements of Ms Sturgess are meritorious. The Amended Particulars of Claim is vague and unclear. The factual background to the claim is not set out adequately to enable the Fifth Defendant to understand the case it has to meet.
32. The Claimant does not set out how, if established, breaches of contract by the Fifth Defendant either caused or contributed to the losses claimed. She simply claims all of the losses against all of the Defendants.
33. The Claimant's case is contradictory and/or unexplained on occasion. For example, the Claimant asserts that her losses were caused by the Fifth Defendant's failure to follow the designs or calculations produced by other Defendants. No facts are given as to how it is said the Fifth Defendant failed to follow the designs. However, in any

event, as the Claimant also alleges that the design was inadequate as against other Defendants, no case is set out as to how the failure would have been causative of the losses if, as she asserts, the designs of others were negligent and in breach of duty in any event.

34. The evidence provided in opposition to the application for strike out and/or summary judgment goes nowhere near addressing the serious failures and omissions noted in the Defence of the Fifth Defendant and in the witness statements of Ms Sturgess. The Claimant seeks to rely upon a further expert report obtained from Mr Sparkes, Chartered Civil Engineer, dated 30 May 2024 and served on the Defendants on 20 September 2024. However, this report also does not assist the Claimant's case against the Fifth Defendant. Mr Sparkes acknowledges that he did not have all of the facts and only a limited number of documents. As a result, Mr Sparkes acknowledges that he has no knowledge of what construction equipment and vehicles were used on site but then speculates that such vehicles "could have been" in close proximity to the retaining wall. If that were the position, he states that risk "should" have been considered by the Fifth Defendant and led to various proposals. Even if the factual basis for Mr Sparkes' opinion can be established, that evidence does not prove negligence or breach of contract even taken at its highest.

35. The Claimant has failed to comply with the pre-action protocol before issuing the claim against some of the Defendants including the Fifth Defendant. There is no real attempt to explain the Claimant's failure to comply with the pre-action protocol and the disclosure protocol. The Claimant asserts that there was no breach of the rules or practice directions but then gives justification for not complying with them because the other parties already have the relevant documents. Even if that statement were accurate, the stance taken by the Claimant completely misses the point. The rules should be complied with regardless of whether the Claimant thinks compliance is necessary or not. They enable efficient and fair progress in accordance with the Overriding Objective.

36. I have of course considered whether the Claimant's claim can and should be salvaged by permitting a re-amendment of the Amended Particulars of Claim. The Claimant

has applied to re-amend. Unfortunately, the proposed re-amendments do not resolve the numerous deficiencies which presently exist with the Amended Particulars of Claim. The proposed pleading remains wholly inadequate, even in its fourth version. An adequate factual basis for the cases against each of the Defendants is not set out. Some of the new facts proposed to be inserted into the Re-Amended Particulars of Claim are not justified on the evidence. There is no still adequate particularisation of alleged breaches against the Defendants. There is no still adequate particularisation of how, if proved, the alleged breaches of each of the Defendants caused the losses claimed despite the best efforts of the Fifth and other Defendants to identify the myriad problems. In short, the proposed re-amendments fail to remedy the numerous defects identified by the Fifth Defendant and still do not enable the Fifth Defendant nor the court to understand the case being brought against the Fifth Defendant.

37. It is of note that the version of the pleading for which permission to re-amend is sought is the fourth version of the pleading provided to the parties before the application was made. Although the Claimant criticises the Fifth Defendant for refusing to consent to the proposed re-amendments, in my judgment, such criticism is entirely unfounded. The proposed pleading is inadequate and, unfortunately, given the history of this case and the approach taken throughout by the Claimant and her legal representatives, I do not believe that there is any realistic prospect of an adequate pleading being provided by the Claimant to enable the Fifth Defendant or the court to understand the legal and factual basis for her claim. In those circumstances and considering the Overriding Objective, as well as the other relevant rules are set out above, I have no hesitation in deciding that it is not appropriate either to give permission to re-amend the Amended Particulars of Claim in the form proposed by the Claimant nor to give permission to re-amend in some appropriate form in the hope that an adequate pleading would be produced.

38. For all of the reasons given therefore the Claimant's claim against the Fifth Defendant is struck out. I would in any event have granted summary judgment against the Claimant for the reasons already given.

The First Defendant

39. I propose to deal relatively briefly with the Claimant's application for permission to re-amend the Amended Particulars of Claim against the First Defendant and the First Defendant's oral application that the claim should be struck out. The reason for this is that the various deficiencies identified in considering in detail the formal application made by the Fifth Defendant for strike out and/or summary judgment apply in very large part to the position of the First Defendant as well.
40. Again in its Defence, the First Defendant complained about the failure to comply with the pre-action protocol and the failure to provide documentation. It also complained that the pleading was so inadequately particularised that no legal or factual basis was set out to enable the First Defendant to understand the claim it had to meet on either breach of duty or causation. The Defence also noted that the report of Mr Fountain dated 4 March 2023 on which the Claimant relied did not provide any evidence in support of the claim against the First Defendant. Opportunities had been provided on multiple occasions in correspondence by the First Defendant (both before and after claim was issued) for the identified problems to be addressed and that had not been done.
41. It is not, in my judgment, a proportionate use of the court's time and resources to go in detail through the Amended Particulars of Claim in respect of the First Defendant and the proposed re-amended particulars of claim. The myriad deficiencies with both pleadings are in broad terms as identified in the more detailed analysis set out above in respect of the Fifth Defendant. For the same broad reasons, I am entirely satisfied that it is not appropriate to give permission to re-amend the Amended Particulars of Claim in the form applied for, nor generally to grant open ended permission to re-amend against the First Defendant. To do so would be an unjustified waste of resources both for the First Defendant and for the court. This is particularly the case against the background of the Claimant's failure to comply with the rules and practice directions and the fact that the evidence provided by the Claimant does not support the claims being brought by the Claimant even if they were coherently and properly particularised.

42. Although an explanation is given in part by the Claimant that the new pleading is sought in the light of the new report of Mr Sparkes, I accept the criticisms made by the First Defendant that as a civil engineer, it is unclear on what basis it is asserted that Mr Sparkes is qualified to comment on the project management services provided by the First Defendant. It is also clear that much of Mr Sparkes' report is based on conjecture and supposition in any event as concerns the First Defendant's duties and any alleged breach of them. That is not sufficient.
43. In all the circumstances, it is proportionate and justified to strike out the Claimant's claim against the First Defendant. In addition, I would in any event have been satisfied that for the same reasons it would have been appropriate to grant summary judgment against the Claimant for the First Defendant.

The Fourth Defendant

44. As with the First Defendant, I am also going to deal briefly with the position of the Fourth Defendant. For the same reasons, the Fourth Defendant has been prejudiced in dealing with this case. As noted by counsel for the Fourth Defendant, the claim was issued nearly a year before the applications were heard. The Fourth Defendant is still in no better position to understand the case which the Claimant seeks to bring against it. Again opportunities have been given to address the fundamental concerns and the proposed re-amendment is inadequate.
45. As observed in the Fourth Defendant's skeleton argument, the factual basis pleaded in the Claim Form is incorrect. The Fourth Defendant has declined an insurance claim in respect of the Claimant's alleged losses. However, that declinature was in respect of a claim intimated against Vitkoston Limited, and not against the Third Defendant as pleaded. The factual basis set out in the proposed re-amendment against the Fourth Defendant is demonstrably wrong. In addition, the claim is directly contrary to the claim which the Claimant previously asserted against the Third Defendant which has now been struck out.
46. In any event, no coherent cause of action is pleaded against the Fourth Defendant. Assertions previously made against the Third Defendant are now made by the

Claimant against Vitkoson Limited. Various other assertions are added incoherently against the Fourth Defendant which appear to assert that the Fourth Defendant owes a direct duty to the Claimant. No consideration is given to the fact that the claim against the Third Defendant has been struck out. The matters which remain within the proposed re-amendment relating to the Third Defendant and/or Vitkoson Limited are deficient for lack of particularisation on the same bases as were set out in respect of the Fifth Defendant. Although it is correct that the Claimant would step into the shoes of Vitkoson Limited as that company is now insolvent, there is still required to be clearly set out a basis for Vitkoson Limited being able to enforce its contract of insurance with the Fourth Defendant when the Fourth Defendant asserts breaches of the insurance policy conditions in its defence to this claim. That is not done in the proposed pleading.

47. In all the circumstances, it is proportionate and justified to strike out the Claimant's claim against the Fourth Defendant. In addition, I would in any event have been satisfied that for the same reasons it would have been appropriate to grant summary judgment against the Claimant for the Fourth Defendant.
48. Costs and any ancillary orders will be dealt with at a form of order hearing if not agreed.