Case No: HT-2023-000322

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF
ENGLAND AND WALES
TECHNOLOGY & CONSTRUCTION COURT (KBD)

7 Rolls Buildings
Fetter Lane
London,
EC4A 1NL

Date: 20th November 2025

Before:

ADRIAN WILLIAMSON KC
(Sitting as a Deputy Judge of the High Court)

- -

Between:

ENDEAVOUR PARTNERSHIP TRUST	**Claimant**
- and -	
PULLMAN CONTRACTING LIMITED	**Defendant**

- -

MISS GAYNOR CHAMBERS (instructed by Palmers Solicitors) appeared for the **Claimant**

MISS LUCIE BRIGGS (instructed by DAC Beachcroft LLP) appeared for the **Defendant**

- -

APPROVED JUDGMENT

- -

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ADRIAN WILLIAMSON KC:

1. By an application dated 11th March 2025, the defendant seeks to strike out the claimant's claim or obtain summary judgment against the claimant. I will refer to the parties as "Endeavour" and "Pullman" respectively.

2. This judgment is organised as follows:

(a) The application
(b) The background
(c) Should the claim be struck out?
(d) Summary judgment generally
(e) The contractual claim
(f) The tortious claim
(g) The breach of warranty claim
(h) Conclusions

(a) The Application

3. The application seeks an order that:

> "1.The claimant's amended particulars of claim be struck out under CPR 3.4(2).
>
> 2. In the alternative the defendant be granted summary judgment under CPR Part 24 against the claimant … because the claim discloses no reasonable grounds for bringing the claim; the claim has no real prospect of success for the reasons set out in the witness statement of Kai von Pahlen dated 11 March 2025; and there is no other reason for the case to be disposed of at trial".

4. This application is problematic in two respects.

5. The first is that the application ("the application") does not specify which limb of CPR Part 3.4(2) is relied upon. However, it appeared from the skeleton argument of Miss Briggs, who represents Pullman, that the relevant ground was sub-paragraph (a), namely that the statement of case discloses no reasonable grounds for bringing the claim.

6. That being so, it seems to me that Pullman's application must be limited to the question of whether the amended particulars of claim on its face and without more discloses reasonable grounds for bringing the claim.

7. The second problem is that Pullman – rather than specifying in the application what is wrong with Endeavour's claim so as to warrant judgment under CPR Part 24 – cross-refer to a lengthy and argumentative witness statement from Mr von Pahlen, their solicitor. That is unsatisfactory, but Endeavour have dealt with those matters in their submissions. However, it does seem to me that Pullman must be strictly limited to the matters set out by Mr von Pahlen.

(b) The Background

8. Endeavour is a multi-academy Trust providing education facilities, including a school in Greenwich, the subject matter of the present claim ("the school"). Management of the school was transferred to the Trust on 1st April 2021.

9. There is a dispute between the parties as to the basis of their contractual arrangements. However, for present purposes the contractual case advanced by Endeavour may be assumed to be correct.

10. Endeavour's case is that certain asbestos and roofing works were carried out to the school pursuant to an informal contract entered into in 2016. Endeavour say that these works were completed in about September 2016.

11. On 5th May 2017, Pullman submitted a quotation for further works at the school in the total amount of £364,000. This quotation included asbestos removal, electrical works, suspended ceiling and general works as well as the roof works, the subject matter of the present claim.

12. The quotation provided as to the roof works that a

> "… minimum 15 year guarantee [was] required".

As to time, the quotation stated:

> "All works to be completed in normal working hours during the school summer break. All works to be completed in this period excluding roof works which will continue for a further three weeks".

13. Endeavour say that this quotation was accepted and gave rise to a variation of the 2016 contract so that there was single contract between the parties. Pullman dispute this analysis but accept that for present purposes there can be assumed to be a single contract between the parties. I therefore refer in this judgment to the 2016 and 2017 works collectively as "the contract works".

14. The further works set out in the May 2017 quotation were carried out in the summer of 2017. As to when they were completed, there is a dispute between the parties to which I will need to return.

15. Unfortunately, Endeavour say that the works were carried out defectively by Pullman. They say that by 2021 there was serious water ingress causing significant damage. They allege that the roof had to be completely replaced in 2021-2022 at a cost of circa £800,000.

16. These proceedings were issued on 6th September 2023. It is obvious that this date was, on any view, close to the expiry of the limitation period. It is this which has provoked the current application.

(c) Should the claim be struck out?

17. I can deal shortly with this point.

18. As I have explained, the application is limited to the contention that the amended particulars of claim on its face discloses no reasonable grounds for bringing the claim.

19. As Ms Chambers, who appears for Endeavour, accepts, the amended particulars of claim is not a very impressive pleading. It is rambling, repetitive and hard to follow; however, it does disclose a number of causes of action.

20. Moreover, Pullman's complaint is not that the amended particulars of claim as it stands fails to set out causes of action. Rather, they say, it is obvious that this claim has been brought too late and must fail on limitation grounds. But in my judgment that is not obvious, either on the face of the amended particulars of claim or at all. It may be that Pullman have an unanswerable defence of limitation once the evidence is considered; however , that is a matter for CPR Part 24, not for striking out under CPR Part 3.4(2)(a).

21. I therefore dismiss this part of the application.

(d) Summary judgment generally

22. CPR Part 24.2 provides that:

> "The court may give summary judgment—
>
> (a) against a claimant on the whole of the claim or on a particular issue if:
>
> (a) it considers that:
>
> (i) the claimant has no real prospect of succeeding on the claim or issue … and
>
> (ii) there is no other compelling reason why the case or issue should be disposed of at a trial".

23. In *Easyair Limited v Global Telecom Limited* [2009] EWHC 339 (Ch) Lewison J (as he then was) summarised the applicable principles at para.15 of his judgment. And that paragraph is deemed to be set out in my judgment:

> "The correct approach on applications by defendants is, in my judgment, as follows:
>
> i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91 ;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman;*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be

> available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725".

24. Although the court therefore should not conduct a mini-trial, the Court of Appeal made clear recently in *Akintunde Giwa v JNVX Limited & Ors* [2025] EWCA Civ 96 at para.32, that the court may have to embark on a detailed examination of the evidence before it. Nugee LJ noted at para.33 of the judgment that the court is:

> "… not only entitled but obliged to do this … with a view to assessing whether there is any real substance in the suggested defence (or claim as the case may be) or were, on the other hand, it is fanciful".

25. However, whilst I am of course bound to follow this guidance, I would add that the purpose of this investigation is not to try the case or decide questions of fact. It is merely to see whether the case advanced exhibits the "absence of reality" which, the authorities say, warrants summary judgment.

(e) The contractual claim

26. Pursuant to s.5 of the Limitation Act 1980, an action founded on a simple contract may not be brought after the expiration of six years from the date on which the cause of action accrued. The cause of action for breach of contract accrues on the date of breach.

27. In a construction contract the date of breach was explained by Ramsey, J in *The Oxford Architects Partnership v The Cheltenham Ladies College* [2006] EWHC 3156 at paras.22 and 23:

> 22 "In principle a cause of action for breach of contract accrues on the date of breach and the cause of action for negligence accrues when a breach of the duty of care gives rise to relevant damage. The application of those principles to obligations under construction contracts or agreements for the engagement of construction professionals has caused a number of difficulties. In terms of a cause of action for breach of contract it is sometimes said that contractors and Architects owe a continuing contractual duty up to at least Practical Completion. There is, however, in my judgment, a distinction to be drawn between the position of the contractor and the position of a professional such as an architect.
>
> 23 The position of a contractor of course depends on the terms of the Contract but generally there is an obligation to "carry out and complete" the works. Thus, there will be a cause of action for a failure properly to complete the work by the date for completion. If those circumstances a cause of action will accrue right up to Practical Completion if the contractor fails to complete the works properly, see Chitty on Contracts (29th edition) paragraph 28-054 and Keating on Construction Contracts (8th edition) paragraph 15-012. There may then, depending on the defects liability provisions in the contract, be a further cause of action after Practical Completion".
>
> (Emphasis added)

28 One has to be careful, however, with the concept of practical completion for at least three reasons:

> (i) This is a term of art in sophisticated contracts made upon, for example, a JCT standard form but in the present case there is no such standard form, and the contract is quite informal.
>
> (ii) Even in a JCT type contract, practical completion is, "perhaps easier to recognise than to define": see per Coulson LJ in *Mears Limited v Costplan Services* [2019] EWCA Civ 502 at para.74.
>
> (iii) In a JCT type contract the achievement of practical completion does not mean that the contractor is relieved of further obligations. On the contrary, the contractor has extensive express obligations during the defects liability period. In a simple contract such as the present, the contractor has, it seems to me, no

> further primary obligations once completion has occurred, albeit he may have a secondary obligation to pay damages.

29 For all these reasons, I think that the date of completion of the works in an informal contract such as the present may well not be as clear-cut as under a JCT form or equivalent. I turn therefore to consider the facts of the present case.

30 It is clear in the light of the contractual provisions agreed between the parties and set out above that the completion date for the 2017 works was – at least reasonably arguably – 25 September 2017. In view of the observations of Ramsey J cited above, it seems to me that Endeavour have real prospects of showing that a claim of the present kind in contract does not accrue until the agreed completion date of the relevant works. If that is so, then Endeavour had six years from 25 September 2017 to bring their claim, and the present proceedings were begun in time.

31 As to this point, Ms Briggs submitted that it could not be right that a claim against a contractor only arose once the completion date had arrived, even if the works in question had in fact been completed earlier. However, neither counsel was able to point me to any authority which dealt in terms with this question. At first blush it seems to me at least reasonably arguable that in this situation the contractor is not yet in breach of contract until the completion date has arrived. Up to that point the works are incomplete, but the contractor has both the right and the obligation to complete them in a non-defective fashion.

32 Since this is an application under CPR Part 24, I need say no more than that these respective arguments each have real prospects of success. That, it seems to me, is sufficient to dispose of the application insofar as it relates to the accrual of the cause of action in contract. This is not a case where it would be appropriate for me to "grasp the nettle" and decide a novel point of law on assumed and unclear facts.

33 Nonetheless, Pullman have assembled evidence from a number of witnesses who say that the roofing works were physically completed before the children returned to school on Monday 4th September 2017. Endeavour's responsive evidence on this point is vague and unconvincing.

34 Despite this evidential position, it seems to me that Endeavour have real prospects of showing that the contract works were not in fact completed until the end of September 2017. On that basis this contractual claim would have been brought in time, even if the relevant date is the actual as opposed to the contractual completion of the contract works.

35 I say this for a number of reasons.

36 First of all, I think that it is reasonably arguable that Pullman's obligations included the provision of a warranty (as to the terms of which see further below at section (g)). It is not in dispute that the warranty was not provided until about 22nd September 2017 and so it is reasonably arguable that Pullman did not achieve completion of all their obligations with regard to the works until then.

37 Secondly, the evidence of Mr Heasman of the roofing sub-contractors is that his company attended site on 18 September 2017, "… with a lorry to clear the site (remove excess materials and waste)". Site clearance seems to me to be an activity which needs to be carried out before works can be said to be complete or handed over.

38 Thirdly, the warranty provided by Alumasc, the roofing materials suppliers, states on its face that the "completion date" was 18th September 2017 and this is the date inserted on the warranty application signed by Mr Heasman. It is true that Mr Craydon(?) of Pullman says as follows in his witness statement in support of the application, but that is exactly the sort of point which needs to be explored in evidence at trial:

> "I am told that the roof sub-contractor (Heasman) stated on its application for a warranty that the roof works were completed on 18 September 2017, but that is not correct. When I spoke to their director, Malcolm Heasman, about this on the telephone, he said that 18 September 2017 was the date when Heasman returned to the school to remove their excess materials and waste"

39 For all these reasons I have concluded that Endeavour have a realistic and not fanciful prospect of defeating the limitation defence advanced by Pullman in relation to the contractual claim.

(f) The tortious claim

40 In the light of my conclusions as to the accrual of the cause of action in contract, I can deal with this point relatively shortly.

41 It is trite law that a cause of action in tort accrues when the relevant damage is suffered. That is when the six year period prescribed by statute for bringing such claims begins. In a construction context, damage will usually occur when the defective building in question is handed over (see *New Islington v Pollard Thomas* [2001] BLR 74 at para.41).

42 In this case, for the reasons already expressed, Endeavour have real rather than fanciful prospects of showing that the contract works were handed over/completed at the end of September 2017. There are therefore real prospects of showing that the claim in tort was brought in time.

43 Ms Chambers sought to develop a relatively sophisticated argument to the effect that the damage in this case was "contingent". She submitted that damage did not occur until 2021 when, she said, water ingress led to physical damage.

44 This submission gave rise to an interesting debate between counsel as to whether the damage in question might be said to be damage to "other property" or whether this was an impermissible attempt to revive the "complex structure" theory discredited by the House of Lords in *Murphy v Brentwood District Council* [1991] AC 398. These are deep and dark waters, and I do not think it is necessary for me to venture into them for the purposes of deciding the present application given the views I have expressed above.

45 For these reasons the CPR Part 24 application fails in relation to the tort claim.

(g) The breach of warranty claim

46 Endeavour's case on this aspect is pleaded at para.112(h) of the amended particulars of claim – namely that Pullman failed to provide a,

> "… written 15 year guarantee for the contracted roof works, instead only providing a manufacturer's guarantee in relation to latent defects in the roof overlay".

47 Ms Briggs sought to advance submissions to the effect that this claim was hopeless on the merits given that a warranty had been provided – which, she said, fulfilled Pullman's obligations in that regard.

48 However, it does not seem to me that this argument is open to Pullman on this application given that Mr von Pahlen states in his first witness statement, which is said to set out the basis of the CPR Part 24 application, as follows:

> "42 The reality is that Pullman discharged its duty to provide a 'minimum 15 year guarantee' in respect of the roof. If the school (and/or the claimant) had chosen to do so they could have brought a claim under the warranty. However, as noted above, they would have been hampered by the same issue the claimant is now, the fact that evidence was not secured prior to the remedial works being carried out to the roof … in any event the provision of the warranty or the date on which it was provided is simply not relevant to the date upon which the claimant's cause of action accrued in respect of the alleged defects either in contract or tort and as such is not relevant for the purposes of this application".

49 In any event I think that:

1 The warranty claim as pleaded has real prospects of success;

2 The warranty claim provides some "other compelling reason why the case or issue should be disposed of at a trial" within the meaning of CPR Part 24 since it might provide (as contingently pleaded at present) an answer to Endeavour's limitation difficulties in the contract and tort claims referenced above insofar as they arise.

(h) Conclusions

50 For the reasons set out above, I have concluded that Pullman's application falls to be dismissed.

51 I should add two footnotes to this conclusion.

52 Firstly, my decision is simply that this is not a case where the court should conclude that Endeavour's amended particulars of claim discloses no reasonable grounds for bringing the claim, or that Endeavour has no real prospect of succeeding on the claim. Save to that extent I express no view on the merits of the claim and, although I was invited to do so by Pullman, make no findings of fact.

53 Secondly, Pullman made an application dated 23rd October 2025 to rely on a further witness statement from a Mr Oliver to respond to evidence filed on behalf of Endeavour by Mr Davis. It does not seem to me that Mr Oliver's further evidence took the relevant matters any further forward. Neither party has placed any material reliance on the further statement. I therefore dismiss this application.

I will now hear counsel on any consequential matters that may arise.

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(This Judgment has been approved by the Judge.)

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