



Neutral Citation Number: [2024] EWHC 1890 (TCC)

Case No: HT-2022-000352

and

Case No. HT-2023-000041

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

Royal Courts of Justice
Rolls Building
London, EC4A 1NL

Date: 24/07/2024

Before :

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

BDW TRADING LIMITED

Claimant

- and -

(1) URS CORPORATION LIMITED

**(2) AECOM INFRASTRUCTURE &
ENVIRONMENT UK LIMITED**

Defendants

David Sheard (instructed by **Osborne Clarke LLP**) for the **Claimant**
Ronan Hanna (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the
Defendants

Hearing date: 12 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 24th July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ROGER TER HAAR KC

Mr Roger ter Haar KC :

1. This case came before me on 12 July 2024 for a Costs and Case Management Conference. In the event all directions were agreed before the hearing save for two points concerning disclosure.
2. The points are, firstly what initial search terms the Claimant should use; and, secondly, which custodians' emails should be searched.

Background

3. These proceedings are part of a much larger set of disputes between the Barratt Homes group of companies ("Barratt", of which the Claimant is a part) and the AECOM group of companies (of which the Defendants are part).
4. In 2019, Barratt discovered cracking in the concrete structure of a high rise building in Croydon, known as "Citiscap". The First Defendant in these proceedings had produced the structural design for Citiscap. In late 2019, Barratt decided to undertake an investigation of the structural design of all of the buildings which it had developed and for which a company within the AECOM group had provided the structural design. Barratt termed that investigation "Project Ashby".
5. The result of the Project Ashby investigation is that Barratt alleges that many developments designed by an AECOM company suffer from structural defects. It is further alleged that the defects are similar in nature across the developments. Apart from the two actions with which I am concerned, there are four other associated disputes before this Court. In addition, I am told, there are further disputes in relation to other developments which are at various stages of pre-action correspondence.
6. The present actions are the only Project Ashby matters that have so far progressed to a CMC. The other sets of proceedings are at various early stages: pleadings have been served in some, but not all, of them.
7. Apart from the present set of proceedings, all the other cases before the Court have been stayed pending a hearing in one of the actions in an appeal to the Supreme Court.
8. By a consent order made on 8 May 2024 steps in the proceedings have been agreed. The trial has been listed to begin on 1 July 2026. Pleadings have closed, and the next step in the proceedings is exchange of lists of documents on 17 January 2025.
9. There have been fruitful discussions between the solicitors concerning the Disclosure Review Document culminating in a letter from the Claimant's solicitors, Osborne Clarke, on the eve of the CCMC, 11 July 2024.

Initial Search Term

10. The first issue before me relates to the search terms to be used to identify sources of data to be extracted.

11. The Claimant has put forward a number of search terms covering a number of developments. One such term is “Barrier Park”, which reflects the fact that the blocks of flats which are the subject of these actions were within the Barrier Park East development.
12. The Defendants wish an additional search term to be deployed, namely “Project Ashby”. The reason for this is that, as set out above, the programme of investigations and remedial works concerning the Defendants’ structural designs, was conducted under that name.
13. It is the Claimant’s position that this search term would be likely to substantially increase the number of documents to be disclosed causing unnecessary, but considerable, expense. Unnecessary, because any relevant documents would, it submits, be caught by the “Barrier Park” search.
14. The Defendants submit that the use of AI disclosure software will substantially reduce the amount of duplication which would have occurred without the use of such software.
15. In my judgment, the additional search term is likely to produce additional work for a relatively limited return. I have considered the issues identified in the DRD, which are generally (and properly) directed primarily at the Barrier Park development.
16. The general Project Ashby documentation will be relevant, for example as explaining why the Claimant chose to carry out remedial work which, on the Defendants’ case, it was not legally liable to carry out. There are other issues. However, I would expect those to be revealed by the Barrier Park search term.
17. If, however, such documentation as relevant board minutes, or communications between Barratt and the Government, are not revealed, their absence will be pretty obvious, and can be the subject of correspondence and, if necessary, applications for specific disclosure.
18. Accordingly, I decline to order the use of the additional search term.

Custodians

19. The Claimant’s position is that the appropriate custodians are Mr Kirk, the Senior Operations Director of Barratt’s Building Safety Unit, who was in charge of the operational aspects of Project Ashby, and Mr Champion, Barratt’s Development Director who had charge of Project Ashby from a claims perspective.
20. Explanation during the hearing assisted in clarifying one matter: the Defendants were concerned that there was no custodian who controlled documents relating to the Building Safety Unit, but it is now clear that Mr Kirk and/or Mr Champion are likely to be custodians of any relevant Building Safety Unit documents.
21. For the Defendants it was submitted that three further custodians should be added to the list: Mr Thomas, Barratt’s Chief Executive Officer; Mr Boyes, Barratt’s Chief Operating Officer and Mr Ennis, manager of London and Southern region of Barratts’ business.

22. In my judgment, it is reasonable to add Mr Boyes and Mr Thomas to the list: they may well have high level documents which would not be available to others in the Barratt companies. I would not expect either of them to have large volumes of documents responding to the search terms discussed above: insofar as there is duplication, the AI software will limit the disclosure.
23. On the other hand it seems to me unlikely that Mr Ennis would have any documentation of significance not caught by a search of the Boyes/Thomas files on the one hand or the Kirk/Champion files on the other hand.
24. Accordingly Mr Boyes and Mr Thomas will be added to the list of custodians.