Neutral Citation Number: [2024] EWHC 251 (TCC)

Case No: HT-2023-000145

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: 09/02/2024

Before :

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

WOL (LONDON) LLP

Claimant

- and –

(1) CROYDON INVESTMENTS LIMITED
(2) RGB P&C LIMITED (In Liquidation)
(3) STROMA BUILDING CONTROL LIMITED

Defendants

Timothy Polli KC and Peter Brogden (instructed by **Kingsley Napley LLP**) for the **Claimant**
Dr Timothy Sampson (instructed by **Hill Dickinson LLP**) for the **First Defendant**
The Second Defendant was not represented

Jennie Gillies (instructed by **Beale & Co. Solicitors LLP**) for the **Third Defendant**

Hearing date: 30 January 2024
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Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 9th February 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. The application before the Court is the First Defendant's application as follows:

> The Claimant's Amended Particulars of Claim be struck out as against the First Defendant pursuant to CPR Part 3.4(2)(a) as the claim discloses no reasonable grounds for bringing the claim. And/or
>
> The First Defendant is entitled to summary judgment against the Claimant pursuant to CPR Part 24 because the Claimant has no real prospect of succeeding on its Amended Particulars of Claim (as against the First Defendant) for the reasons set out in the witness statement of Matthew Thomas Cookson dated 25 August 2023 and there is no other reason for the claim against the First Defendant to be disposed of at trial.
>
> Further to the above, the First Defendant also seeks a stay on the filing of its defence pending the determination of the present application, in accordance with CPR 24.4(2) (the Defence currently being due to be served on the 22 September 2023).

Background Facts

2. The First Defendant ("Croydon") is an investment company.

3. By a building contract dated 22 December 2015 ("the Building Contract"), Croydon engaged the Second Defendant ("RGB") to carry out and complete the works to convert an office complex into 82 residential apartments at 5 Bedford Park in Croydon ("the Property"). The Contract Sum was £7,120,564.82.

4. Croydon engaged the Third Defendant ("Stroma") as its Building Regulations Approved Inspector.

5. On 5 December 2016, the Employer's Agent certified that the Works had achieved practical completion and provided an "on-going Defects Liability Schedule" (essentially, a snagging list). Under the terms of the Building Contract, the Rectification Period was to last 12 months from the date of practical completion of the Works.

6. Shortly thereafter, by a Sale and Purchase Agreement dated 16 January 2017 ("the SPA"), the Claimant ("WOL") agreed to purchase the Property from Croydon for the sum of £22,958,621. The sale was completed on 23 January 2017.

7. It is WOL's case that it wanted to ensure that the building it had just purchased would be free from defects. WOL says that it achieved this by agreeing terms in the SPA under which, essentially, Croydon would continue to administer the Building Contract as employer, would procure that RGB complied with its obligations under the Building Contract, and would not issue the Notice of Completion of Making Good Defects until all outstanding defects were made good. The parties disagree as to the meaning to be attached to the relevant parts of the SPA, and the intention behind that agreement.

8. It is WOL's case that, in the event, Croydon did nothing after it had divested itself of the Property; that it made no attempt to procure the rectification of the defects; and that it made no attempt to issue the Notice of Completion of Making Good.

9. WOL's case is that, after purchasing the Property, it discovered that the Property contained very substantial defects, including problems with the ventilation system, the hot and cold water supply, the external cladding system and the fire compartmentation.

10. WOL's case is that it paid significant sums of money to rectify some, but not all, of these defects. Thereafter, instead of pursuing an expensive programme of further rectification works, WOL decided to sell the Property at its true value, including the defects. On 14 December 2022, WOL sold the Property for £8,300,000 to Bedford Park Ltd. On WOL's case, the sale was an arms-length commercial transaction to an independent third party with no links to or association with WOL.

11. WOL says that by reason of the defects in the Property, it has lost £16,264,980. This comprises the difference between the price paid for the Property and the price realised upon its eventual sale (£14,658,621), sums paid to rectify the snagging defects (£165,176), sums paid to rectify defects in the ventilation system (£85,583), the costs of investigating and managing the fire defects (£704,074) and the loss of rent as vacant possession of the flats was obtained (£1,285,193).

12. WOL has brought these proceedings against:

    i) Croydon, for breach of the SPA;

    ii) RGB, under its collateral warranty, for breach of the Building Contract; and in respect of alleged breaches of s.1 of the Defective Premises Act 1972; and

    iii) Stroma, under its collateral warranty, for breach of its Appointment.

The Sale and Purchase Agreement

13. The SPA is dated 16 January 2017. It is between Croydon (defined as "Seller One") and another company defined as Seller Two, on the one hand, and "LHIF (5) LLP" as buyer. As I understand the position, LHIF (5) LLP is the same entity as WOL, renamed since the SPA was concluded.

14. Clause 23 of the SPA provides:

> **ENTIRE AGREEMENT**
>
> 23.1 This Contract and the documents annexed to it constitutes the entire contract between the parties and supersedes any previous agreement relating to the subject matter of the Contract. It may only be amended in writing by the parties or their authorised representatives and stating that the Contract is amended in the manner specified.
>
> 23.2 The Buyer acknowledges that:

> 23.2.1 except for the written replies made by the Seller's Conveyancers to formal written pre-contract enquiries made by the Buyer's Conveyancers and statements and disclosures made in the Certificates of Title, it has not relied on, or taken into account, any statement or representation made by or on behalf of the Seller (whether written or oral) in deciding to enter into this Contract ....

15. Schedule 5 is headed "Construction Schedule", and Schedule 5A is headed "Bedford House Property".

16. Paragraph 1 of Schedule 5A contains Definitions, including:

> **Defects** snagging, defects, shrinkages and other faults in the Works or any part thereof

17. Paragraph 4 of Schedule 5A provides:

> **4. DEFECTS**
>
> 4.1 Seller One hereby warrants that it shall comply with the terms of and carry out and fulfil its duties and obligations under the Building Contract including but not limited to the issue of any relevant schedule of Defects during the Rectification Period and the issue of the Notice of Completion of Making Good. Seller One shall issue such schedule(s) of Defects to the Contractor in accordance with the following time scales:
>
> 4.1.1 in cases where a Defect is a threat to the health and safety of any member of the public or occupier of the Bedford House Property, within such period of time as specified by the Buyer as the circumstances may require;
>
> 4.1.2 within the Rectification Period, in relation to any Defects other than those mentioned at sub-paragraph 4.1.1. Seller One shall procure that the Contractor will attend to such Defects as soon as possible after Seller One issues the relevant schedule of defects.
>
> 4.2 Seller One shall procure that the obligations of the Contractor under the Building Contract are complied with up to the issue of the Notice of Completion of Making Good and Seller One shall not waive, vary, alter, assign or novate or otherwise change the obligations of any party under the Building Contract without obtaining the Buyer's prior written approval (such approval not to be unreasonably withheld or delayed).
>
> 4.3 Seller One shall procure that the Employer's Agent prepares a schedule listing any Defects pursuant to the Building Contract and supplies a copy thereof to the Buyer and the Buyer's Surveyor not earlier than fifteen Business Days or later

than ten Business Days before the expiry of the Rectification Period. The Buyer and/or the Buyer's Surveyor may make representations to the Employer's Agent by listing any Defects which they have observed and Seller One shall procure that the Employer's Agent shall have due regard to such list provided that nothing in this paragraph 4.3 shall fetter the Employer's Agent's independent discretion.

4.4 Prior to the issue of the Notice of Completion of Making Good, Seller One shall provide the Buyer and the Buyer's Surveyor with not less than five (5) Business Days prior written notice of its intention to carry out an inspection of the Works with a view to issuing such notice, so that the Buyer, the Buyer's Surveyor and their representatives may attend such inspection (and, where appropriate, re-inspections). Seller One shall procure that the Buyer and the Buyer's Surveyor may make representations to the Employer's Agent and/or Seller One (either at the time of the inspection or within five (5) Business Days following such inspection) and Seller One shall procure that the Employer's Agent shall have due regard to such representations, provided that nothing in this paragraph 4.4 shall fetter the Employer's Agent discretion to issue the Notice of Completion of Making Good.

4.5 Seller One shall ensure that the Notice of Completion of Making Good is issued only when all Defects have been made good in accordance with the Building Contract.

18. Paragraph 5.1 of Schedule 5A provides:

RECTIFICATION OF DEFECTS BY THE BUYER

5.1 If Seller one fails to comply with its obligations under paragraph 4.1, the Buyer may carry out such temporary or permanent works as may be necessary to protect the health and safety of any member of the public or occupier of the Bedford House Property or rectify the relevant Defect.

19. Paragraph 4 refers to obligations under the Building Contract. The Building Contract incorporated the terms of the JCT Design and Build 2011 Conditions subject to some bespoke alterations. As thus amended, Clauses 2.35, 2.35A and Clause 2.36 provided:

Schedule of defects and instructions

2.35 If any defects, shrinkages or other faults in the Works or Section appear within the relevant Rectification Period due to any failure of the Contractor to comply with his obligations under this Contract:

1. such defects, shrinkages and other faults shall be specified by the Employer in a schedule of defects which he shall deliver to

> the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period;
>
> 2. notwithstanding clause 2.35.1, the Employer may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this Clause 2.35.2 shall be issued after delivery of a schedule of defects more than 14 days after expiry of the relevant Rectification Period.
>
> Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no costs to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If he does so otherwise instruct, an appropriate deduction shall be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.
>
> 2.35A In cases where a defect is a threat to health and safety the Employer may require any matter notified under **clause 2.35** to be made good within such period of time specified by the Employer as the circumstances require.
>
> **Notice of Completion of Making Good**
>
> 2.36 When the defects, shrinkages or other faults in the Works or a Section which the Employer has required to be made good under clause 2.35 have been made good, he shall issue a notice to that effect (a 'Notice of Completion of Making Good') That notice shall not be unreasonably delayed or withheld, and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that notice. Provided that the Employer shall not be required to issue any Notice of Completion of Making Good any earlier than the expiry of the relevant Rectification Period.

20. Part 1 of the Contract Particulars to the Building Contract provided that the Rectification Period was 12 months from the date of practical completion.

The Collateral Warranties

21. Until 2018 Stroma was known as BBS Building Control Ltd. In that name it entered into a Collateral Warranty by Clause 1 of which it gave a warranty as follows:

> The Consultant warrants to the Beneficiary that:
>
> 1.1 In respect of all services performed and to be performed by the Consultant in connection with the Appointment it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified

> professional consultant, who is where necessary a specialist and experienced in carrying out such services for projects of a similar size, scope, nature, complexity and value; and
>
> 1.2 It has complied and will continue to comply with the terms of the Appointment and has fulfilled and will continue to fulfil its duties and obligations under the Appointment.

22. Broadly speaking, Stroma's task was to attempt to ensure compliance by RGB with the Building Regulations.

23. The second collateral warranty to which I have been referred is between WOL and RGB. This is dated 5 November 2018 and provides:

> **2 CONTRACTOR'S WARRANTIES**
>
> 2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Contract in accordance with the Contract.
>
> 2.2 The Contractor further warrants that it has exercised and will continue to exercise the standard of skill and care required by the Contract in relation to the following (so far as the Contractor is responsible for them):
>
> 2.2.1 the design of the Works;
>
> 2.2.2 the selection of goods, materials, equipment or plant for the Works; and
>
> 2.2.3 the satisfaction of any performance requirement or specification of or for the Works.

24. Both collateral warranties required the warrantor to take out insurance. There was some discussion before me as to whether RGB was required to take out insurance wider in cover than a standard professional indemnity policy. Whilst I have considerable reservations about this, I assume for the purpose of this judgment that RGB was required to take out insurance to cover any liability it had under the Building Contract for workmanship as well as design or specification errors.

The First Defendant's Application

25. Croydon's application has three limbs:

(1) That on the true construction of the SPA, Croydon has no liability to WOL insofar as the costs of rectification of such defects in the Property as are proved to exist is within the collateral warranties with RGB and Stroma;

(2) That on the true construction of the SPA, Croydon's liability is limited to rectification of snagging defects or the like, not the substantial latent defects alleged by WOL in this action;

(3) That WOL has not pleaded against Croydon a sustainable case as to causation.

26. Before examining these submissions, it is appropriate to set out the test which must be satisfied if the application is to succeed and the proper approach to construction of the SPA.

The Principle to be applied in deciding this Application

27. In his skeleton argument, Dr. Sampson, appearing for Croydon, drew my attention of the guidance given by Lewison J. in *Easyair Ltd v Opal Telecom* [2009] EWHC 339 at paragraph [15]:

> 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… ;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable… .
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial"… .
>
> 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 … .
>
> 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 … .
>
> 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….;
>
> 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 …

28. I accept that that guidance is applicable.

29. Insofar as this application requires me to construe the SPA, Mr Polli KC, for WOL, submits that the following observations from the judgment of Lord Neuberger PSC in *Arnold v Britton* [2015] UKSC 26; [2015] AC 1610 at paragraphs [17] to [22] are applicable:

> 17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in *Chartbrook* [2009] AC 1101, paras 16—26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.
>
> 18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the

> drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.
>
> 19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. Judicial observations such as those of Lord Reid in *Wickman Machine Tools Sales Ltd v L Schuler AG* [1974] AC 235, 251 and Lord Diplock in *Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios)* [1985] AC 191, 201, quoted by Lord Carnwath JSC at para 110, have to be read and applied bearing that important point in mind.
>
> 20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.
>
> 21. The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties.

30. Again, I accept that that guidance is applicable to the exercise of construction which I must carry out.

The Admissible Evidence

31. Before going further, I should deal with a threshold evidential point.

32. Croydon submitted a witness statement from Mr Asif Aziz, Chief Executive Officer of Criterion Capital Ltd, which is the managing agent for Croydon. The important part of the witness statement sought to put into evidence certain emails prior to the conclusion of the SPA passing between the solicitors for the parties to the SPA which were said to be relevant to construction of the SPA.

33. I indicated during the hearing that I was not willing to admit this evidence: firstly because it was evidence of the parties' negotiations which many decisions at the highest level (including *Prenn v Simmonds* [1971] 1 WLR 1381 and *Chartbrook v Persimmon Homes* [2009] UKHL 38) have determined is inadmissible as an aid to construction of written agreements; and secondly because the entire agreement clause (clause 23) renders such exchanges irrelevant even if the general law did not do so.

The Relevance of the Collateral Warranties

34. Although I have separated out the two limbs of argument (as to (1) the relevance of the collateral warranties and (2) as to the scope if defects for which Croydon could be held liable), I recognise that in Croydon's approach these are cumulative points rather than separate and distinct points. Nevertheless, as a matter of analysis it seems to me helpful to consider the strands separately.

35. Mr. Polli for WOL described this part of the argument as Croydon's three legged stool argument, i.e. that it was an argument that WOL has three separate routes to recover damages for defects: under one or other of the collateral warranties, or under the SPA.

36. In support of his argument, Dr Sampson points to the probability that at the time of entering into the SPA, the parties thereto believed that the warrantors had substantial assets or means of satisfying any liability – in the case of RGB from its own assets as a successful business or from insurance, and in the case of Stroma from insurance.

37. I am willing to accept that that may have been the expectation of the parties, but that would not preclude an agreement that Croydon was accepting a primary liability in respect of defects in the Property which was additional to that accepted by the two warrantors. Such an acceptance by Croydon would be entirely normal in development and construction industries.

38. In my judgment the obligations accepted by Croydon in paragraph 4 of Schedule 5A are arguably clear on their face and are not interrelated with the scope of the collateral warranties.

39. Paragraph 4.1 requires Croydon to comply with its duties and obligations under the Building Contract: these included making sure that any defects were remedied by RGB.

40. The position is arguably even stronger under paragraph 4.2 which requires Croydon to "procure" that the obligations of RGB under the Building Contract are complied with.

41. I keep in mind that at this stage in respect of this application I do not have to decide what was the true construction of the SPA, but only whether WOL's construction is properly arguable.

42. I have no doubt that WOL's case as to the proper construction of the SPA as effectively meaning that Croydon has an obligation close to a guarantee to ensure that RGB would comply with its obligations under the Building Contract is well arguable – Mr Polli referred to authority which lends substantial support to his client's case (*Barnicoat v Knight* [2004] EWHC 330 (Ch); and *Nearfield Ltd v Lincoln Nominees Ltd* [2006] EWHC 2421 (Ch)).

43. Thus, as a matter of construction WOL has a well arguable case that the existence of the collateral warranties does not restrict the scope of Croydon's liability in the event that RGB does not remedy defects in the Property.

The Defects for which the First Defendant is liable

44. The second limb of Croydon's application asserts that the scope of defects for which Croydon can be held liable is limited to defects of a snagging nature or similar.

45. Croydon does not rely upon any express language of the SPA to reach this conclusion. What it does is to submit, firstly, that a comparison needs to be made between the definition of "defects" in Schedule 5A (which includes the word "snagging") and the scope of "defects" referred to in Clauses 2.35 to 2.36 of the Building Contract where no reference is made to "snagging" as a category of relevant defects.

46. Secondly, Croydon places considerable reliance upon the nature of defects which had been identified by the time the SPA was concluded, and the relatively limited retentions permitted by the SPA from the purchase price to allow for defects which might have to be rectified.

47. In considering these submissions, I have to keep firmly in mind the exercise in which I am engaged, namely considering whether there is a case for Croydon that its construction of the SPA is beyond any realistic contradiction.

48. I conclude that Croydon cannot discharge that heavy burden. Firstly, it seems to me that the definition of "defects" in paragraph 1 of Schedule 5A is well arguably capable of encompassing all the defects alleged by WOL in the Amended Particulars of Claim: insofar as the wording is different in the SPA from the Building Contract, it is well arguable that the draftsman of the SPA intended to describe a wider definition than that contained in the Building Contract in order to avoid the argument that a "snagging" item was not a "defect". I do not need to decide that point: I only need to determine, as I have done above, that the definition of "defects" in paragraph 1 of Schedule 5A is well arguably capable of encompassing all the defects alleged by WOL in the Amended Particulars of Claim.

49. Secondly, as to the point as to what the parties' understanding was at the time of entering into the SPA as to the scope of defects, this seems to me to be a matter upon which evidence is necessary. As the respective submissions of Mr Polli for WOL and Ms Gillies for Stroma demonstrated, there is at present considerable doubt about who knew what about the state to the Property. Certainly I could not form a view at this stage that there was a joint understanding of the state of the Property such as to form a common factual matrix upon the basis of which the parties entered into the SPA such

as to assist the Court at this stage in construing the SPA. Of course, this may change by the time evidence has been adduced and tested at a trial.

Causation

50. Croydon argues that on the pleadings WOL fails to make out an arguable case against it as to causation.

51. The case is pithily put at paragraph 65 of Dr Sampson's skeleton argument:

> It is notable that the Amended PoC makes express allegations that RGB and Stroma were causative of the losses now suffered … Whilst no such express allegation is made in respect of D1.

52. This point is then developed in the following paragraphs.

53. In my judgment this argument is valid, in that the Amended Particulars of Claim the claim against Croydon is not expressly set out, particularly in the section headed "Causation" starting at paragraph 69. Similarly paragraphs 66 to 67 and 68 to 68E set out cases of breach against RGB and Stroma but there is no equivalent case pleaded against Croydon.

54. That said, it seems to me tolerably clear from the pleading and from the argument before me what is the nature of the case against Croydon which WOL wishes to put forward. However Croydon is entitled to have the case properly pleaded against it.

55. Accordingly, this seems to me to be a case where an order striking out the claim would be inappropriate. However, it seems to me that WOL should be required to provide a re-amended pleading clearly setting out the case relied upon by it against Croydon.

Conclusion

56. I invite submissions from the parties as to the order which I should make to reflect the conclusions I have reached in this judgment.