IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION
COURT (QBD)
[2021] EWHC 3547 (TCC)

No. HT-2019-00026

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 11 November 2021

Before:

MR JUSTICE WAKSMAN

B E T W E E N :

LONDON BOROUGH OF CAMDEN

Claimant/Respondent

- and -

(1) PARTNERS FOR IMPROVEMENT IN CAMDEN LIMITED (IN LIQUIDATION)

First Defendant

(2) RYDON CONSTRUCTION LIMITED

Second Defendant/Part 20 Claimant

(3) RYDON MAINTENANCE LIMITED

Third Defendant

(4) UNITED LIVING (SOUTH) LIMITED

Fourth Defendant/Applicant

(5) FAITHFUL & GOULD LIMITED

Fifth Defendant

(6) HTA ARCHITECTS LIMITED

Part 20 Defendant

J U D G M E N T

A P P E A R A N C E S

MR D. SHEARD (instructed by Trowers & Hamlin LLP) appeared on behalf of the Claimant/Respondent.

THE FIRST DEFENDANT was not present and was not represented.

MISS J. STEPHENS QC and MISS H. DENNIS (instructed by Mills & Reeve LLP) appeared on behalf of the Second Defendant/Part 20 Claimant.

MR T. COULSON (instructed by Valemus Law) appeared on behalf of the Third Defendant.

MR. A. HICKEY QC (instructed by Mayer Brown International LLP) appeared on behalf of the Fourth Defendant/Applicant.

MR R. COPLIN (instructed by CMS McKenna Nabarro Olswang LLP) appeared on behalf of the Fifth Defendant.

MR W. HARMAN (instructed by Kennedys) appeared on behalf of the Part 20 Defendant.

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MRS JUSTICE WAKSMAN:

1 This is an application which was made on 10 August this year for the trial of 12 preliminary issues. There are two sub-issues in issue 3, so 13, effectively. The application is made by the fourth defendant, United Living (South) Limited, in a multi-party action brought by London Borough of Camden against five defendants. There are Part 20 proceedings between various of them and there is an additional party which has also appeared before me today on this application.

2 The trial is set down for ten weeks to commence in January 2023. I should say that I will not be the trial judge. The application suggests, wholly unrealistically, in my judgment, at least in its first iteration, that all of these preliminary issues could be accommodated within a one-day hearing fixed for, say, February 2022. I have no doubt at all that, if all or even some of them were to be debated, it would be almost certainly four days and, if not, three days.

3 The underlying action arises in this way. This is a claim all about works which were done to five tower blocks on the Chalcots Estate, which had been subject to extensive refurbishment and maintenance as part of the PFI project which was starting in 2006. The first defendant was, as it were, the overall contractor. It has now gone into administration. There was a refurbishment contract with PFIC undertaken by RCL, Rydon Reconstruction Limited, which is the second defendant. That entity produced a collateral warranty to Camden. RML, Rydon Maintenance Limited, at one stage jointly represented with RCL but no longer, was engaged as the subcontractor to PFIC under the maintenance contract and it provided a collateral warranty to Camden as well.

4 The fourth defendant, and the applicant, United Living, was engaged as the sub-subcontractor to RCL under the internal works subcontract and it also had a separate engagement, pursuant to a heating service contract, directly with PFIC. In respect of both those contracts, it also provided collateral warranties to Camden. Very broadly speaking, the works done by the fourth defendant, so far as are material today, concern certain internal works and certain works or putative works with external and internal fire doors.

5 The fifth defendant, Faithful & Gould, was engaged as the independent certifier under the project agreement.

6 In the aftermath of the tragic fire at Grenfell, each of the tower blocks was discovered to contain various fire-safety defects and that included the form of cladding, which was similar to that used in Grenfell and, therefore, posed the same risks. Indeed, in June 2017, four of the fire tower blocks were evacuated with urgent remedial works being sought and mitigation measures put in place. The work that is the subject of this action, of course, had been done before then. The project agreement was terminated in March 2019.

7 So far as the various claims are concerned, they include not only - or indeed not mainly - the defects which are alleged as against RCL and United Living in relation to fire doors, internal and external works, but also, principally, of course, cladding defects, glazing defects and structural glazing defects, which then produced putative losses in this way. The cost of the evacuation was £6.3 million; the remedial works for the internal fire-safety defects, £12.3 million; the cost of removing the cladding, £12.5 million; replacing the fire doors, £3.9 million; fitting the protection fans, £0.6 million; mitigation measures, including a waking watch, £8.5 million; and then, and most significantly, phase three costs for future remedial works to replace the original cladding and glazing of £86 million. In total, that comes to

some £131 million, although the present claim against the fourth defendant is for about £31 million, being the direct costs of the fire-safety defect remedial works and replacement of the fire doors and then a proportion of the evacuation and waking-watch costs.

8 In addition to being sued by Camden under the warranty, the fourth defendant is also sued by RCL, which is, in effect, passing through the claim made against it by Camden over to the fourth defendant in separate Part 20 proceedings which form a part of this action.

9 Let me deal very briefly with the contractual background in relation to the fourth defendant so far as is relevant. First of all, there is the collateral warranty which has been provided to Camden, the material parts of which are as follows: "The Sub-Contractor" - that is the fourth defendant - "warrants and undertakes to the Beneficiary" - that is Camden – "that it has complied with them and will continue to comply with the terms of the Sub-Contract" - that is the underlying sub-subcontractor between RCL and it - and without prejudice to that it further warrants and undertakes that, in carrying out and completing the design of the Sub-Contract Works, it has exercised and shall continue to exercise all the reasonable skill and care, the materials will be good and workmanlike, the design of the works will comply with any performance specification and the design and execution will comply with statutory requirements. So what one has there is an initial warranty or promise that it will conform to the terms of the subcontract and then there are those four additional clauses with which I am not concerned today. Clause 3.1 is critical, it reads as follows,

> "In the event of any breach of clause 2 or any other provision of this Deed the Sub-Contractor … shall have no liability under this Deed" -

and then inserted in handwriting,

> "in relation to such breach prior to the termination of the Sub-Contract and which is greater or of longer duration than it would have had to the Beneficiary under the Sub-Contract if the Beneficiary had been a party to the Sub-Contract as joint employer."

And then there is a caveat so far as some set-off in deductions are concerned. That is all that I need to read in relation to the warranty.

10 So far as the underlying subcontract is concerned, I do need to read much of clause 56, it begins,

> Indemnities, Guarantees and Contractual Claims
>
> 56.1 Internal Works Contractors Indemnity [that is the fourth defendant]
>
> The Internal Works Contractor shall, subject to clause 56.2, be responsible for, and shall release and indemnify the Refurbishment Contractor [that is RCL] … against all liability for:
>
> 56.11 death or personal injury;
>
> 56.1.2 loss of or damage to property (including property belonging to the Refurbishment Contractor, the Contractor or the Authority …
>
> 56.1.3 breach of statutory duty; and/or

56.1.4 third party actions … (including legal expenses on an indemnity basis) which may arise out of, or in consequence of, the design or construction of the Internal Works or the performance or non-performance by the Internal Works Contractor of its obligations under this Agreement or the presence on the Contractor's or the Authority's property …"

Pausing there, whatever else this provision does, on the face of it, it is setting out a series of express indemnity provisions so as to indemnify RCL if any of the circumstances mentioned arise.

11 There is then a limitation on that liability at 56.2,

i. "Notwithstanding any other provision … [the fourth defendant] shall not be … obliged to indemnify … if" -

12 and I simply select the relevant clauses -

ii. "56.2.3 under or pursuant to the indemnity in clause 56.1 in respect of any uninsured losses in respect of any one occurrence or series of occurrences in excess of the lesser of £250,000 indexed and where and to the extent that the claim is in respect of uninsured losses for which the Contractor is liable under the Project Agreement the unutilised amount of the corresponding cap on the Contractor's liability …"

56.2.4 no liability

iii. "…under or pursuant to the indemnity … in respect of any uninsured losses in any one Contract Year in excess of … £250,000 …

iv. 56.2.5 in respect of any claims made pursuant to clause 56.1.2 [indemnity] … in respect of third-party claims which the Internal Works Contractor is required by this Agreement to insure, where the amount of any claim is in excess of the level of cover required by this Agreement …"

b. It then deals with the indemnity so far as RCL is concerned and the carve-outs for that which are not relevant.

13 At 56.12, there are what appear, at least to me, to be a series of general exclusions. 56.12.1 is dealing with consequential loss claims, effectively. Then at 56.13,

i. ".Sole Remedy

ii. Where this Agreement expressly provides for a remedy, in respect of or in consequence of any breach of contract, any negligent act or omission, death or personal injury or loss or damage to any property, such remedy shall be the exclusive remedy of either Party in relation to that matter."

14 There is a similar general clause to be found at para.82. 56.14.2, headed "Limitation of Liability" which says that the overall limit is 50 per cent of the Contract Sum for the aggregate liability. That is about £6 million. That, in turn, is subject to a number

of exceptions, at least one of which is, in theory - and, in fact, at issue here – that the limitations will not apply

> iii. "…to the extent that the fourth defendant is in receipt of proceeds from the insurances required under this Agreement in respect of that liability or would have been but for any breach by [RCL]."

15 There is a dispute about what is "in receipt of proceeds" means for present purposes.

16 What I propose to do now is just recite the individual proposed preliminary issues which have been somewhat clarified or even narrowed in the course of argument before me today. I take the one which Mr Hickey has rightly described as a threshold issue and that is issue 1.

17 The fourth defendant invokes the wording of clause 3.1 of the warranty to say that there is, in fact, no liability at all to Camden because the subcontract has not yet been terminated. It is not in dispute that the majority of it has ended, in the sense that the purported works were completed many years ago, and I think even the long defects liability period may now have expired. But there were certain other provisions I think to do with insurance that have a longstop of 15 years or something like that. At any rate, the fourth defendant's case is that, since the subcontract has not terminated, then there can be no claim. Camden has joined issue on that, saying that it does not mean that there is no claim at all, not least in circumstances where the underlying works have indeed finished, but there is no need to spend too long on the construction debate. Mr Hickey is right to say that it is a fatal point in the sense that, if his construction is correct and the court accepts that the subcontract has not terminated, there is no claim and, at least to that extent, the claimant agrees with that analysis. That is the first issue that I describe.

18 The second issue that I describe goes, in fact, to issue 6. This is one of the gateway points. The fourth defendant says that, even if the termination point does not succeed, then Camden is restricted in the form of claim that it can bring through the warranty and the underlying subcontract and, to that extent, Mr Hickey places reliance on the other part of 3.1, which says that the fourth defendant can have no liability which is greater or of longer duration than it would have had to the beneficiary under the subcontract, if it had been a party to the subcontract.

19 What that means in practice, it is said, is that clause 56 has to be read for these purposes as an exhaustive code of remedies, that the first half of it, which clearly provides for express indemnities, which the claimant is not, in fact, invoking, is the only remedy that can be invoked, so that, in the case of the claimant, it would, in fact, have no remedy at all. Although there was a promise on the part of the fourth defendant in the warranty to perform the subcontract, the claimant would have no remedy for failure to perform the contract except insofar as it could bring itself within one of the warranty claims in clause 56, which it does not do. Once more, the claimant joins issue on that and says that, effectively, there may be a set of express warranties but that does not mean that there is an inability to bring a claim under the warranty for breach of the underlying contract, which the fourth defendant had promised to perform.

20 That is also a fairly fundamental point, because, if the fourth defendant is right about that and there is no indemnity claim, then that would dispose of the present claim against it. As to that, Mr Sheard said that, if that was to be an issue and was determined and it was said that any claim would have to be made as an indemnity, otherwise there was no claim at all - and, perhaps taking a wider view of the indemnity provisions - it would simply amend to bring the claims in that way. That is where we are at the moment.

21 Now, this is an issue which does not only concern the fourth defendant. RCL has taken, broadly speaking, the same sort of point against the claimant under the warranty given by RCL. Not only that, RML takes the same point. It is not surprising that they are taking the same line here because the core of the material provisions in the underlying subcontracts are the same or materially the same. What that means is that, as far as issue 6 is concerned, if there was to be a preliminary issue, it would certainly involve two others of the parties in this litigation.

22 One then comes to issue 5, which I think has faded in some way, for this reason. Issue 5 was to the effect that any claim would be circumscribed by various limitation clauses within clause 56. The first half of them is in relation to the indemnity claim. Mr Hickey has said that, even if a claim is not made pursuant to an indemnity, then, by virtue of his interpretation of clause 3.1 of the warranty, they still somehow apply if and to the extent that a claim for breach of contract was permissible and made. That is an issue between the parties. But then the second half of 56 deals with what on their face are clearly general contractual provisions and, if one takes, for example, 56.14, although the claimant has not been as clear as it might have been in stating its position in its reply, I am satisfied, from what Mr Sheard has confirmed to me today, that the claimant accepts that that general limitation of liability, subject to certain exceptions, to £6 million is accepted as a governing clause of any claim that it would make under the warranty to the fourth defendant.

23 One then needs to jump back to issues 1 and 3(a). These are both what might be described as scope issues. The fourth defendant has taken a point that the claimant's case, as presently made against it, is that it was obliged to replace each and every one of the relevant fire doors - most of which were external but some of which were internal - regardless of their particular condition at the time that the work was being carried out. In very broad terms, the claimant says that that is because they were all non-compliant with current regulations and the fourth defendants says, "Well, that is not the proper analysis because there are many other contractual provisions which point in a different direction". Indeed, the form of preliminary issue order or list of them in sub-section (c) actually sets out all the bits of different contractual provisions which Mr Hickey says supports his client's position as far as that is concerned. That is the scope at in issue 1.

24 There is a difference in relation to leaseholder dwellings and tenanted dwellings and, on leasehold dwellings, the position appears to be that Mr Hickey seems to accept that, at least as far as they are concerned, it was replacement but that was 100 dwellings and there were another 600.

25 Issue 3(a) is a scope debate in relation to the kind of internal fire-prevention related works which had to be done. Putting it very simplistically, the claimant's case is that, wherever something needed to be attended to from a fire-prevention point of view, like a void in the wall, then that had to be done by the fourth defendant. The fourth defendant agrees that it has not done that, but said that it did not have to do that. It only had to do it, effectively, where the void appeared as a result of or in the course of some work that it was already doing. I am sure that that oversimplifies the point, but that is the kind of debate that there is here. In relation to the fire-door point, the fourth defendant accepts that it has not replaced every fire door, but goes on to say that it did not have to.

26 Now, this scope point has also been taken by RCL. It also appears to be taken by or will have an impact on the position of RML. At this point it seems that there are some factual points, as it were, floating around, because there are at least two of the agreed disclosure issues which seem to go to not simply what work was done, which, if it is post-contractual,

is not likely to be of much assistance as to what work should have been done, but possibilities of some variation after the original contracts which would be more relevant; for example, disclosure issue 17A. and also, possibly disclosure issue 25 in relation to communications at the time about replacement or otherwise of the flat entrance or communal doors.

27 Then we have issue 9, which I hope by my previous remarks, it is now clear is a non-issue.

28 We then go back to clauses 7 and 8. This is on the assumption, effectively, that, regardless of the claim that can be made, clauses 56.2.3 and 56.2.4 kick in (i.e. even if it is not an indemnity claim) and, if they do, then there are sub-issues about the meaning of certain expressions within them which are captured by para.8, in terms of the meaning of one occurrence or a series of occurrence and also in relation to uninsured losses.

29 We finally come to a group of issues dealing with the question of uninsured losses which forms part of the provisions on 56.2.5, where, if something is not insured, then it produces a cap. I have seen the professional indemnity policy taken out by the fourth defendant, as it was required to do. Its coverage is in relation to professional obligations and, if there is any doubt about what that meant in the list that is given, there is an express exclusion for any liabilities as a result of bad workmanship. Ergo, says the fourth defendant, the question of what the proper insurance cover is is important in terms of a cap on liability and to work out whether the insurance would respond or not depends on whether the works being done can properly be described as bad workmanship or bad design, to put it colloquially. Those two points are captured in issue 2 and issue 3(b).

30 As I have indicated, all the other parties have opposed this application, including those who have taken the same or similar points as the fourth defendant in the way in which I have indicated.

31 The law in this area is not in dispute and it is, of course, well known to judges of this court. Lord Neuberger's warnings in *Rosetti* and other cases are well known and it is said that there can be a siren song of agreeing preliminary issues but it should be resisted,

> iv. "…if there are … it is vital that the issues themselves, and the agreed facts …are simply, clearly and precisely formulated, and … the issues should be answered in a clear and precise way."

32 What one has to take account of is whether the issues are going to be dispositive or remain or substantial or a significant part of the underlying proceedings, but one has also to consider the effect of the ordering of any preliminary issues in relation to the progress of the underlying main proceedings themselves. All of that has been helpfully summarised in the TCC guide which says this,

> v. "The court would expect that any issue proposed as a suitable PI would, if decided in a particular way, be capable of:
>
> - resolving the whole proceedings or a significant element of the proceedings; or
>
> - significantly reducing the scope, and therefore the costs, of the main trial; or

- significantly improving the possibility of a settlement of the whole proceedings …"

33 Oral Evidence: there would be either no or relatively limited oral evidence.

vi. "When considering whether or not to order a PI hearing, the court will take into account the effect of any possible appeal against the PI judgment, and the concomitant delay caused.

vii. At the time of ordering preliminary issues, both the parties and the court should specifically consider whether … it is desirable that the trial of the main action should (a) precede or (b) follow such appeal. It should be noted, however, that the first instance court has no power to control the timetable for an appeal."

34 The Court of Appeal in the *McLoughlin* case says that it should be only decisive or potentially decisive, usually questions of law, decided on the basis of schedule of agreed or assumed facts tried or without significant delay, make full allowance for the implication of an appeal and following a case management conference.

35 There is one significant context for all of this which is the impending trial in January 2023. I say "impending", it is over a year away, but on a ten-week trial the parties are going to be heavily involved in preparing for it for some considerable time before then. I should also add that the procedural directions going forward after the case management conference of 16 September this year is that extended disclosure is to take place by 4 March, the first round of witness statements, 24 June, expert meetings, May/June 2022 and joint statements October 2022. It has rightly been said that, in litigation of this size, with a trial of this size, that is a tight timetable with which to start.

36 Looking at the individual issues, I am going to begin with the one which I think, to be fair to Mr Hickey, he was majoring on by the end of his submissions, although he does not renounce the application for preliminary issues in relation to any of them. He says that issue 4 is only about his client, and that is right, with no or no significant factual evidence needed and no expert evidence needed. He says that that single issue could be dealt with in a day or two and that is probably right, if that is the only issue that there was. He says that the context here, while recognising that it is a ten-week trial with at least six different parties and the guidelines about preliminary issues, I have also to be sensitive to a case like this where there is one party who is, effectively, a bit player who is being sued for much less than everybody else and whose active part in the trial is likely to be very small compared to everybody else.

37 Therefore, he says, if there is a way in which he can get out of this, or at least get out of it as far as the claimant is concerned, he should be entitled to do it, especially on issue 4, since no other party will need to make submissions. I am prepared to accept that he is right about the fact that no other party will need to make submissions.

38 There are two difficulties with it, however. The first is this. It will not remove him from the proceedings. He will still be in the proceedings so far as the Part 20 claim is concerned, which is going to be passing down to him the same claim, in terms of underlying breach and underlying defects, as has been alleged by Camden against RCL as well. It is going to have to be there to deal with all of those questions of the doors and the internal defects. The only answer that Mr Hickey can give is that, well, that might be right, but, if he is correct on the various contractual limitations - if he is correct - then that might mean that he is facing a

very much reduced claim. I should say that, as it is, Camden having accepted that 56.14 applies, the claim is, in fact, £6 million, subject only to the insurance proceeds point, he might have that reassurance in mind. But it is not even going to be dispositive as far as he is concerned.

39 As Mr Hickey says in relation to all of the preliminary issues, though more ambitiously in relation to some than others, this is a point which is effectively a short point of construction. He says that it needs no evidence at all, apart from looking at the relevant contractual documents, and certainly no expert evidence. Therefore, it is not right that he should not have the opportunity to extricate himself.

40 The answer to that, as I indicated to him in argument, is not to seek a preliminary issue, but, in fact, to make an application for summary judgment to dismiss the claim against him, if he has got an unanswerable point, or to strike out for the same reason. Neither I nor the parties can say that Mr Hickey cannot make that application. What a judge decides to do about it, in terms of whether the judge - it will not be me - decides that that is a short point of construction and the court will decide it either way or, in fact, that, on a closer analysis, it is not capable of summary determination or there is another reason for trial, is another matter, but, on the face of it, the sort of point that Mr Hickey is making naturally lends itself to that sort of application and not this application. I understand why it has been brought here because this is not only the preliminary issue he advances. Still, in my judgment, it is the wrong way to go about it and I am not prepared to allow that to go forward as a preliminary issue in this case.

41 So far as the other issues are concerned, if one then goes back to issue 6, again, it is a stark issue which might have the potential of getting the fourth defendant out altogether, depending on whether the claims can be reconstituted as indemnity claims, but, in this regard, that is also going to involve two other parties - RCL and RML - and there will be, in my judgment, a significant amount of documentation to go through on the whole question of express remedy or otherwise. At this stage, the disruption point comes in, because RCL and RML are both key players in the overall litigation and this is going to be, frankly, a distraction from the work they do for trial. Mr Hickey says that he has been the only one to put his head above the parapet and do what they should do, which is to seek an early determination of it. Well, that depends on whether it is considered to be appropriate or not and they have both taken a different view from him.

42 One then comes to issue 5, which, as I have said, I think is really, if anything, a subset of issue 6 and would involve, effectively, the same parties.

43 So far as issues 7 and 8 are concerned, these are really extensions of the 5 and 6 points, at least 7 is, because one is then again dealing with the exclusive remedies argument in 7. Then in 8 one is dealing with sub-arguments about one occurrence or a series of occurrences and matters of that kind, which, again, are going to involve three parties and again further in-depth contractual analysis. That is all going to take a significant amount of time, even if it be the case that there is no factual matrix evidence adduced in relation to these points at all.

44 Issue 9 is now redundant.

45 I then turn back to issue 1 and issue 3(a) which is the question of scope. The claimant says that the scope was greater of the work that had to be done and Mr Hickey says that it is lesser. It is quite plain to me, where there has been a rash of different contractual documents, where there are issues about which takes precedence over the other, that this is not going to be a short point and, indeed, there appears to be some factual issues which would have to be

raised and which have already been presaged by disclosure, for example, in relation to whether there have been variations and things of that kind. That is going to involve quite an in-depth factual analysis.

46 Now, it is perfectly true that, if the claimant does not do anything, it is going to be stuck with hoping that it succeeds on its scope arguments, because it has not an alternative case, if the fourth defendant is right about it being a narrower scope. That is the claimant's look out at the moment and it has been alerted to that particular problem. But all that means is that, if the fourth defendant is right, then, as it stands at the moment, the claimant will have no claim against it where the matter turns on the question of scope. Again, that is a serious and a significant investigation.

47 One then comes to the issues concerning insurance and I outlined what they were before. That is to the effect that, assuming that either the indemnity limitations or the general limitations come in, there is then going to be a debate, which will essentially concentrate on whether the correct way of characterising the defective works after the trial, or after the main factual findings, is then to be characterised as design defects or work defects. That is not as simple as Mr Hickey contends, in my judgment. It is all very well looking at parts of the pleading and saying, "Well, that can only relate to workmanship, what else can it relate to?" However, there are other bits that relate to design and one can only really examine that, in my judgment, once there has actually been a finding as to what the actual defects were. Well, that cannot be done in a preliminary issue. That is what is going to be done at trial. The trial judge is going to be in much the best position, having decided what the defects actually were and what went wrong and, if it is still a live issue, how best to characterise those as defective works or as defective design.

48 Issue 10 rides on the back of issues 2 and 3(b) about whether it is just a consequence of the earlier debate about design or workmanship. Well, if that debate goes, issue 10 has obviously got to go as well.

49 Issue 11 is dealing with the separate heating claim, but, in effect, it is similar to the points which have been made in respect of the internal works subcontract and Mr Hickey did not spend very much time emphasising that.

50 Issue 12 only emphasises the fact that, in relation to the question of exclusive remedies, RCL is going to have to be involved, because those sorts of points are taken against it by the fourth defendant.

51 To sum up, all of them, apart from issue 4, are simply not appropriate here. None of them are going to be dispositive even so far as the fourth defendant is concerned. A number of them are going to involve other parties and some will clearly involve factual and expert evidence. No one is suggesting that there should be a set of separate preliminary issue trials. Therefore, if I was to order all of them, they would all go in one hearing and the fact that one might be capable of being debated at shorter length than the other does not really matter, because it is going to involve at least four parties in this case for at least three days, in my judgment, possibly more, and I am afraid, with regard to the timetable of this case and disclosure, that is simply too much of a disruption. I should also add that, in relation to matters where disclosure might be relevant, for example, on the question of scope, it is very hard to see how a preliminary issues trial could take place before the extended disclosure process is completed, which only starts in March 2022.

52 As I have said, I have more sympathy with Mr Hickey so far as issue 4 is concerned, but this is the wrong forum in which to do it. If he wants to get himself out quickly on the basis that

there is no case against him, then he does so by the conventional route which is strike out or summary judgment. For all those reasons, I am refusing this application.

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CERTIFICATE

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This transcript has been approved by the Judge.