



Neutral Citation Number: [2022] EWHC 54 (TCC)

Case No: HT-2020-000365

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

Royal Courts of Justice
Rolls Building, London, EC4A 1NL

Date: 14/01/2022

Before :

Jason Coppel QC
(sitting as a Deputy High Court Judge)

Between:

DIANE LUMLEY

Claimant

- and -

(1) FOSTER & CO GROUP LIMITED
(2) MR NICHOLAS FOSTER
(3) MRS JOANNA FOSTER
(4) FOSTER AND CO DEVELOPMENTS LIMITED
(5) FOSTER AND CO CONSTRUCTON LIMITED
(6) FOSTER AND CO LIMITED

Defendants

Anthony Edwards for the **Claimant**
Richard Alford (instructed by Portner Law Ltd) for the **Defendants**

Hearing date: 29-30 November 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 14 January 2022 at 10.30am.

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JASON COPPEL QC
(sitting as a Deputy Judge of the High Court)

Jason Coppel QC:

Introduction

1. This is a claim by the Claimant for breach of a contract whereby one or more of the Defendants agreed, in June 2016, to carry out construction works on her home in East Barnet, London (“the property”, “the contract”). The works were performed in a manner which is alleged to have been seriously sub-standard, with the result that, according to the Claimant, the property is scarcely habitable such that it has diminished in value and substantial remedial works require to be performed.
2. The Claim Form (dated 8 October 2020) named six different Defendants and the Particulars of Claim alleged that the contract had been concluded by Mr Foster, D2, on behalf of all of the Defendants (eg §11). The Defence (18 January 2021) responded that the contract was in fact concluded between the Claimant and D5 (“FCCL”). According to abbreviated accounts filed at Companies House on 1 November 2016, FCCL ceased trading on 31 October 2016 pending its dissolution, and is (according to the Defendants) in the course of liquidation. Therefore, if the Defendants were correct on the issue of the contract having been concluded with FCCL, the claim would be worthless. In her Reply (2 July 2021), the Claimant alleged that the contract was between her and Mr Foster, alternatively Mr Foster and Mrs Foster, who together traded as Foster and Co or the Foster and Co Group.
3. On 18 June 2021, Jefford J directed that there be a trial of a preliminary issue of “which of the defendants were parties to the contract formed with the Claimant in or around June 2016”. That is the only issue before me. I have concluded, for the reasons given below, that the contract was concluded between the Claimant and Mr Foster personally.
4. For convenience, I refer below to “the Defendants” collectively, and notwithstanding that (a) formally, only D1, D2 and D3 were represented at the hearing before me, (b) D1 was dissolved in June 2021, (c) the Claimant did not dispute that the entity named as D6 has never existed, and (d) there was no conclusive evidence as to the continued existence of D4 and FCCL.

The formation of the contract

5. It is necessary to start with some basic facts regarding the formation of the contract. It is common ground that the contract was concluded at a meeting at the property on 21 June 2016 which was attended by Mr Foster and the Claimant. The parties agree that the scope of the works was agreed in broad terms at that meeting as well as a contract price (£100,000). The parties agree that the works were to cover the construction of a ground floor extension and the construction of a unit in the back garden of the property; the Claimant contends, in addition, that there was to be work to renovate the interior of the property. Mr Foster’s normal business practice was to provide his clients with a formal written contract but that did not occur in this case. He alleges that he delivered a quotation to the property a few days later, on 24 June 2016, an allegation which I reject, for the reasons given in §§10-11 below.

The basic legal test

6. The question of who were the parties to the contract is one to be determined by the Court on the basis of an objective test. *“The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible”*: *Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 470, §57(ii), per Jackson LJ. I must therefore ascertain the relevant facts surrounding the meeting on 21 June 2016 and decide what a reasonable person would conclude from those facts as to the identity of the parties to the contract.

The witnesses

7. That is easier said than done, as in this case the parties were in dispute on many aspects of the meeting of 21 June 2016 and on the events which preceded it, which the Defendants rely upon as relevant to what the reasonable person would conclude regarding the meeting itself. There was some relevant documentary evidence but in many instances there was simply a conflict of oral evidence between (in particular) the Claimant and Mr Foster. Insofar as there were differences in their respective accounts, I unhesitatingly prefer the evidence of the Claimant.
8. I found the Claimant to be an honest but frustrating witness. Despite extensive guidance being given to her by her Counsel and by me as to how she should give evidence in order best to assist the Court, her primary concern throughout was to argue her case rather than to answer the questions which were put to her. She did this at an unrelenting pace, which hampered all reasonable attempts to record what she was saying. I recognise, however, that she has had a distressing experience which – whatever the correct legal analysis of events – has left her living in sub-standard conditions for more than five years. Her day in court was long-awaited, and this wait appeared to have generated an irresistible urge to say everything possible to promote her claim. In my judgment it was this, rather than any effort to be evasive in her answers, which explains her difficulty in focusing on the questions that were put to her. To the extent that she did answer these questions, I found her to be open and persuasive, and clear in her recollections. Significantly, there was no documentary evidence which contradicted any part of her testimony (and much which contradicted the competing account of Mr Foster).
9. I found Mr Foster’s evidence to be far less persuasive. It was, in parts, internally inconsistent and inconsistent with contemporaneous documentation. In one respect – whether he met the Claimant’s daughter, Hannah Lumley at the meeting on 21 June 2016 – it was inconsistent not only with the evidence of the Claimant but also with that of Miss Lumley, who was an impressive and helpful witness, whose account I preferred. That error on Mr Foster’s part in relation to a reasonably significant aspect of the 21 June 2016 meeting, calls into question his purportedly clear recollection of other aspects of that meeting, which – according to him - was one of five client meetings he conducted on that day more than five years ago.
10. The most important reason which led me to distrust Mr Foster’s evidence was his claim that he had provided the Claimant with a written quotation dated 24 June 2016. The facts in relation to this were as follows:
 - i) Mr Foster claims to have hand-delivered a written quotation dated 24 June 2016 to the property on “about 24 June 2016” (§25 of his witness statement). The

Claimant denies having received it and says that the document first came to her attention when she received the Defendants' disclosure in these proceedings.

- ii) The significance of the document is that it is the only document to which the Defendants have been able to point which concerns the works on the property and refers to FCCL, which is the entity referenced at the footer of the five pages of the quotation.
- iii) The quotation is for £100,000 and is for a "core build only for the plan numbers that are listed from Mr Steven Gray Architectural Services 165/3B, 165/2a, 165/2a and 165/1".
- iv) The quotation contains a signature page which invites signature by the Claimant and by a representative of FCCL.
- v) Despite that, there is no evidence that Mr Foster or anyone else requested that the Claimant return a signed copy of the quotation or reminded her to do so at any stage, including when he visited the property and met the Claimant again on 30 June 2016. There is no reference to the quotation in any of the communications between the parties. This is surprising given the alleged significance of the document. The document would also be unique in the communications between the parties in that it is alleged to have been delivered in hard copy only rather than sent by email.
- vi) If the quotation had been delivered as alleged, there is no reason why the Claimant would not have acknowledged it at the time. The price, and what is said to be included within the price, are consistent with her account of the discussions at the 21 June 2016 and the dispute over which entity she had contracted with did not arise until a much later stage. She was otherwise conscientious in responding to correspondence concerning the works on the property.
- vii) The Claimant had sent two drawings numbered 165/2B and 165/3B to Alana Moore, whose email footer suggested that she was an employee of the First Defendant, on 15 June 2016. Four further drawings, numbered 165/1, 165/2A, 165/2A and 165/3B were sent by Mr Gray, the architect, on 29 June 2016. One of the drawings numbered 165/2A had been available for some time on the Barnet Council planning portal because it had been submitted by the Claimant with an application for planning permission. The other was not created by Mr Gray until 29 June 2016, according to his evidence, which was supported by the document's metadata.
- viii) It follows that the quotation references documents which had not been provided to the Defendants, and in one instance had not been created, until after the date on which the quotation was prepared and the date on which it was allegedly delivered to the property. The Defendants' explanation for this, which I reject, was that the metadata for the 29 June 2016 drawing was wrong. There is no factual basis on which I could reach that conclusion and it would not explain reference to the other drawings which were only sent to the Defendants on 29 June. Under cross-examination, Mr Foster suggested for the first time that he had delivered the quotation on 30 June 2016. I also reject that suggestion, which

would not explain the date of the quotation or his previous evidence, as a belated and cynical attempt to put forward a story which might explain what were otherwise uncomfortable facts.

- ix) The Defendants were not able to point to any evidence to say that the quotation had been produced on or around the date which it bears. There is no electronic record of the document due to it having been created on an “old computer” although other contemporaneous documents do still exist in electronic form. Mr Foster stated that the quotation had been prepared by others in the office rather than by him, but there was no evidence tendered from anyone else “in the office” to support this.
11. I conclude from this evidence that (a) Mr Foster did not deliver the quotation to the property either on 24 June or on 30 June 2016 or at any other time and (b) the quotation was created by or at the behest of Mr Foster after the relevant events, in order to support his case that the Claimant had contracted with FCCL. Depending upon the point in time at which the document was created, this was a dishonest attempt either to ensure that any claim brought by the Claimant was worthless or to influence the outcome of the proceedings in the Defendants’ favour. My conclusion that Mr Foster has acted dishonestly in the presentation of evidence in these proceedings inevitably colours my assessment of his evidence on issues other than the quotation. In particular, it contributes to my view that Mr Foster was dishonest, and not merely mistaken, in his purported recollection of the meeting of 21 June, which differed very substantially from that of the Claimant, whose evidence I accept.
12. As for the other witnesses, I found Mr Gray, the Claimant’s architect, to be open and helpful in relation to the limited range of issues which were within his knowledge. Jessica Lumley, the Claimant’s elder daughter, also sought to be helpful but did not have first-hand knowledge of any of the matters which were significant to my decision. The credibility of Joanna Foster, the Third Defendant, and Mr Foster’s wife was undermined in my eyes by her robust support for her husband’s evidence, much of which I reject. In the areas where she was starkly at odds with the Claimant, namely on certain of the events at the meeting on 21 June 2016 and on whether she aggressively chased payment from the Claimant, I prefer the evidence of the Claimant, who was in my judgment fundamentally an honest witness.

The relevant facts

13. I turn now to set out the facts which are relevant to the objective question of whom the Claimant contracted with on 21 June 2016.
14. The Claimant first contacted the Defendants by telephone on 15 June 2016, having seen a flyer advertising “Foster & Co” which had been distributed to houses in her area. She spoke to Alana Moore, who answered the phone “Foster & Co”. Alana Moore is Mr Foster’s sister-in-law. I reject the Defendants’ contrary contention that the first contact was made by the Claimant walking into the Defendants’ office at 230 High Street, Barnet. This contention supported a further contention that the Claimant had informed Ms Moore that she had heard about the Defendants as a result of seeing signs in her neighbourhood which had FCCL’s name on them. The Claimant denies this, and I accept her denial. I would note that I have seen no evidence that any such signs were in existence at the material time. The only sign in evidence from this period is the sign

which the Defendants erected at the property during the works in July 2016, which bore the name “Foster & Co”. I would have attached more force to the Defendants’ contention if it had been supported by evidence from Ms Moore, who is alleged to have met the Claimant in person. Surprisingly perhaps, given the potential significance of such evidence and the family and business relationship between Ms Moore and Mr Foster, Ms Moore did not give evidence. I also reject the Defendant’s contention that Ms Moore explained to the Claimant the structure and workings of the Foster & Co Group (beyond confirming that the Group could arrange for her project to be undertaken).

15. During the initial conversation, Ms Moore asked the Claimant to send over any plans she had for the building works which she was looking to procure. This was done at 12.25 on 15 June 2016, in an email which was stated as being further to “our telephone conversation a moment ago” (a further pointer that the initial contact was indeed by telephone rather than in person). Ms Moore emailed to confirm receipt at 12.29 on 15 June. There was another conversation between the Claimant and Ms Moore on that day during which the latter confirmed that she had arranged for the Claimant to meet Foster & Co’s surveyor at 9.30am on 21 June 2016. The appointment was confirmed by email on 20 June 2016 at 1.34pm, which stated that the appointment would be with Mr Foster. That email described Ms Moore as “Marketing and Client Relations” for the Foster and Co Group. The title which was attached to her email address (alana@fosterandco.uk.com) was “The Foster and Co Group Ltd”. Foster & Co Group Ltd, which is D1, was dissolved on 22 June 2021.
16. Ms Moore’s email contained a Client Administration Pack which was an “*example pack .. intended to show you how The Foster and Group [sic] works with our Clients*”. Her email footer, which appeared, for example on her email of 12.19 on 15 June 2016 contained a graphic which referred to “F & Co Group” and four other entities which were suggested to be part of group, namely Foster & Co Developments, Cut No More, Foster & Co Windows & Bifolds and Foster & Co Lofts. None of these entities was designated as a limited company.
17. The Client Administration Pack which was sent to the Claimant contained a range of sample documents such as a quotation, a template for additional works, a credit note, a payment schedule, a receipt and a “Dear Neighbour” letter to inform neighbours of forthcoming works. Most of the documents had a footer which referenced FCDL and identified Mr Foster as “Director” and Mrs Foster as “Company Secretary”. Confusingly, the sample quotation suggested that it had been issued by Foster & Co Ltd (which has been named as D6 but which, I was informed, did not and does not exist) and contained a number of statements as to what “Foster & Co” would or would not do. The only document in the pack which referenced FCCL was the sample Dear Neighbour letter which stated that FCCL was carrying out the works, but also referred to “Foster & Co” and had FCDL named on its footer.
18. On 21 June 2016, Mr Foster arrived at the property in a car bearing the livery of “Foster & Co”. At his meeting with the Claimant:
 - i) The Claimant showed Mr Foster the property and outlined what she was hoping to achieve by the building works. She was a single woman with three children, with limited resources, living in a property which was in dire need of repair and upgrading. Mr Foster led her to believe that her expectations were much too

high given her budget but that he would be prepared to take on the project for a lower price than others would do (referencing charitable projects which he undertook each year).

- ii) Mr Foster employed various tactics to gain the Claimant's confidence, including telling her that he had recovered from cancer after being treated at the Royal Free Hospital, where the Claimant works. Although the Claimant doubts the veracity of this statement, and uses it to cast doubt on Mr Foster's credibility, no evidence was produced by Mr Foster to support it (notwithstanding that such evidence would presumably have been readily available to him).
- iii) Mr Foster made several statements to the Claimant to the effect that he would personally ensure that her project was completed. He stated that he was going to help her and her family, that she could trust him and his wife, that she should "leave it to me", that he would personally oversee her project and that his wife and sister-in-law had told him that he needed to take on the project. Mr Foster flatly denied making any of these statements. I reject his denials.
- iv) Mr Foster claims that he showed the Claimant a powerpoint presentation on a tablet which explained the functioning of the Foster & Co Group as a group of companies with different specialties. He claims that he and the Claimant looked together at FCCL's website. He also claims that he showed the Claimant a hard copy brochure about the Foster & Co Group, including a document describing FCCL as "a Family run company with a husband and wife team managing all aspects of your project". He says that he also took the Claimant through the Client Administration pack and that he left her with a file containing the hard copy brochure. I reject all of this evidence, which was in my judgment not merely a failure of recollection on Mr Foster's part but a dishonest attempt to fix the Claimant with knowledge that she would be contracting with FCCL. I accept the evidence of the Claimant that Mr Foster did not take any steps to explain the functioning of the Foster & Co Group and that there was no mention of FCCL at any stage during the meeting. The Claimant's position is supported by her account of the length of the meeting (approximately 90 minutes). Mr Foster's version – of a 45 minute meeting – was not credible when placed alongside his insistence regarding the care and time he took to go through documents and materials with the Claimant.
- v) Hannah Lumley joined the meeting at one point. Mr Foster provided reassurance in the presence of Ms Lumley that he and his wife would be taking personal responsibility for the project. I also accept Ms Lumley's evidence that Mr Foster spoke in her presence of the "Foster & Co" brand and that he did not mention FCCL or any other corporate entity. Mr Foster flatly denies having met Ms Lumley on 21 June 2016; I reject his evidence on this issue. The Claimant did write to Ms Moore on 22 June 2016 with a detailed list of requirements for the works and stating that "my children would like to meet [Mr Foster] please" but I find that that request either referred to her other two children who had not met Mr Foster on 21 June, or sought a meeting with all three children in order that they could reassure themselves that the works would be carried out as they expected.

- vi) Mr Foster offered, and the Claimant accepted his offer, to undertake her project for £100,000 including VAT. Mr Foster stated that his office would provide the Claimant with a formal written contract recording their agreement and that she would be required to pay a deposit of £15,000 plus VAT to Foster & Co.
19. I have no doubt that it was Mr Foster's normal business practice, after an initial site meeting, to issue the client with a quotation (as per the example pack) which, if accepted, would be signed and constitute the formal contract between the parties. The signed contract would be conclusive as to which entity the client was contracting with (which may have been a corporate entity such as FCCL or FCDL). It is not clear whether Mr Foster intended to provide formal contractual documents in this case, but he did not do so with the result that the contract falls to be construed on the basis of the 21 June 2016 meeting alone.
20. There are a number of matters subsequent to the conclusion of the contract which the parties rely upon as supporting their case regarding the parties to the contract. These matters can only be of limited relevance as the parties to the contract fall to be identified at the time that it was concluded. Nevertheless, if subsequent events revealed that either party's understanding was or was likely to be contrary to the case they put forward in the proceedings, that would be of some significance. Matters relied upon included the following:
- i) The Claimant was sent invoices in the name of Foster & Co, which did not mention FCCL. These were sent by Mrs Foster, in emails which identified her as Company Secretary of the Foster and Co Group.
 - ii) She paid these invoices to the account requested, which she believed was an account in the name of Foster & Co. In fact, the account was in the name of FCCL.
 - iii) The Claimant paid the invoices promptly but was telephoned repeatedly by Mrs Foster in order to ensure immediate payment. Although payments totalled in excess of £100,000, no receipts were ever issued by the Defendants.
 - iv) Works at the property had started by the end of June 2016. A sign was erected stating "Foster & Co" and the workmen deployed at the property had uniforms with "Foster & Co" livery.
 - v) The precise terms of the contract, and the extent to which the Defendants breached the contract, are not for me to decide. It is fair to say, however, that the works did not proceed in accordance with the Claimant's expectations. She was asked for payments over and above the £100,000 agreed sum, on the basis that certain items had not been included in that figure and/or that it was not realistic for certain aspects of the works to be completed for that price. The works did not proceed as quickly as had been expected and relations between the parties worsened. They had not been completed by November 2016; indeed the property remained in a state of disrepair. Eventually, the Defendants downed tools with the works incomplete and left the Claimant living in what was still a building site.

21. I would add to this list that the various dishonest attempts made by Mr Foster in these proceedings to fix the Claimant with knowledge that she would be contracting with FCCL including, most egregiously, the fabrication of the quotation dated 24 June 2016, are at least an indication that this had not been made sufficiently clear to her in advance of the contract being concluded.

Legal principles

22. I have already noted the key legal point, that the parties to this oral contract are to be identified on the basis of an objective approach. That point was eloquently made by Akenhead J in *Estor Ltd v Multifit (UK) Ltd* [2009] EWHC 2565 (TCC), §26:

“.. Where, as here in this case, one cannot ascertain from the offer and acceptance who the employing party was, it must be legitimate to consider what the parties said to each other and what they did in the period leading up to the acceptance in order to determine who that party was intended to be. It was accepted, properly, by both Counsel, that in determining a factual issue such as this, the court needs to adopt an objective approach and to consider the facts known to both parties and what was said orally or in writing between the relevant individuals. The fact that one individual went to or left a meeting, believing privately that the contract was to be with a particular party, would be of little or no weight or assistance in determining who the contract was with, unless there was reliable evidence that that belief was expressed to others at the meeting. Obviously, where there was an issue as to the identity of a party entering into a contract, if there was evidence that representatives of each party had met before the contract was signed and had said to each other that the contract was to be between X and Y, that would be admissible and relevant in determining who the parties to the contract were to be. If however the evidence about what was said and done was not as explicit and clear as that, one needs to construe or infer objectively what reasonable parties would have assumed would be the position based on what was said or done. Thus, it might well be the case that, if one party said that payments would be made by X, that would be evidence which would point, objectively albeit not necessarily conclusively, to X being one of the parties. Similarly, if X and Y in their discussions and correspondence prior to the creation of the contract only talked about X and Y in the context of their discussions, that might well be a factor which objectively pointed to those two parties being parties to the contract.”

23. Recognising the risk that I might reject the Defendants’ factual case that Mr Foster had made clear on 21 June 2016 that the contract would be with FCCL, Mr Alford also relied upon a principle of agency law to the effect that an agent can contract on behalf of an undisclosed principal, such that a contract may be formed with a party of whom the other party was not previously aware. For that to occur, however, it must be clear that the agent is acting as such, even if he does not identify his principal (*Bowstead & Reynolds on Agency*, §9-002). Where, as in *Hamid*, the issue is whether a person signing a document did so as agent for a company that person will be regarded as the contracting party unless he qualifies his signature or otherwise make it plain that the contract did not bind him personally (§64 of *Hamid*). In my judgment, that principle is also capable of application in the present context, where a contract has been concluded orally by an individual who claims subsequently to have been acting as the agent of a company.

Findings on the preliminary issue

24. The central question is whether the objective facts surrounding the meeting on 21 June 2016 indicate whether Mr Foster was entering into the contract in a personal capacity or whether he was doing so on behalf of a company. If it were clear that he was reaching agreement on behalf of a company, then I would accept that this could be a company such as FCCL which had not previously been mentioned to the Claimant.
25. The Defendants submit that Mr Foster had never worked on a self-employed basis, but had always acted through a company, and that there was no evidence to suggest that he had changed the habits of a lifetime. But even assuming it is true that Mr Foster has never acted on a self-employed basis, and had not intended to contract on a self-employed basis with the Claimant, he did not say this to her in terms and nor was any document to this effect provided to the Claimant either before or during the meeting of 21 June 2016. This factor would therefore be “of little or no weight or assistance”, in the words of Akenhead J.
26. The Client Admin pack which was sent to the Claimant before the meeting does indeed indicate that it may have been Mr Foster’s normal or intended practice to put in place a contract between a customer and FCCL (although I saw another version of the pack in which the documents did not bear a corporate footer). It is important to keep in mind, however, that Mr Foster never did take the action which would usually be taken to achieve that, namely the provision of a formal quotation or other written contractual document, and the securing of the client’s agreement to that document. In this case, therefore, the identification of the parties to the contract must be effected at a time which is only part way through a “normal” contracting process.
27. At that point in time, I find that the objective evidence does not support the proposition that Mr Foster held himself out as contracting on behalf of a company. On the contrary, he was concerned to give every impression that the Claimant was reaching agreement with him, that she could trust him and that he would be personally responsible for the project. Once Mr Foster had established rapport and trust between himself and the Claimant, multiple representations to that effect were made at the meeting on 21 June 2016 in order to induce her to enter into the contract, without any indication being given that the contract would in fact be with FCCL or any other corporate entity. In my judgment, the objective meaning and effect of Mr Foster’s representations was that he personally was reaching agreement with the Claimant. It may well be that if Mr Foster had taken reasonable steps to document and formalise the contract, it would have been made clear that the contract was with FCCL or some other corporate entity. But he did not take any such steps. I reach that conclusion without applying any presumption that the contract was with Mr Foster personally but I note that on the basis of the principle from *Hamid*, to which I have referred in §23 above, the onus was on Mr Foster to make clear that he was not contracting in a personal capacity. In my judgment, he plainly did not do so in the course of the meeting on 21 June 2016.
28. The position may have been different if there had been sufficient indication in advance of the meeting on 21 June 2016 that Mr Foster would be attending the meeting as agent for a corporate entity, and that the Claimant would be contracting with a corporate entity should she decide to proceed with him. In my judgment, however, the indications were mixed and it was far from clear that Mr Foster was attending the meeting as an agent for FCCL as he contends (or another corporate entity). On the one hand, there was evidence that Ms Moore was the employee of a company, Foster & Co Group Ltd, and that – see the Client Admin pack – there were certain corporate entities who carried out

work for the Foster & Co business, in at least one of which Mr Foster held the position of director. On the other hand, Mr Foster's *modus operandi* was to present himself as the face of the Foster & Co brand, whilst leaving opaque the network of entities, some of which at least were incorporated, who did the work which he brought in. The suspicion that that opacity was a deliberate tactic is heightened by what appears to have been a pattern of group companies ceasing to trade and/or becoming insolvent, only for other entities to be used in their place. Whatever the reason for this tactic, the fact remains that there were many respects in which Mr Foster appeared to present himself as Foster & Co, an unincorporated entity: for example, certain documents in the Client Admin pack, his car livery and - subsequently - signage, workwear and invoices. I acknowledge that it might be regarded as unconventional for a sole trader to operate on an unincorporated basis alongside corporate entities, but nothing was clear about Mr Foster's business arrangements either before or after the meeting on 21 June 2016, or about the capacity in which Mr Foster attended that meeting, when the onus lay upon him to make it so. I also recall that Mr Foster's usual practice – of concluding a written agreement with a customer which would make clear which entity the customer was contracting with – was not followed in this case.

29. Consequently, I find that, at the time of conclusion of the contract, the Claimant did not know that Mr Foster was intending to reach agreement with her as an agent for a corporate entity. That finding serves to exclude the operation of the undisclosed principal rule (see §24 above) which otherwise might have enabled the Defendants to establish that the contract had been with FCCL even though FCCL was not mentioned at the meeting on 21 June 2016.
30. The Claimant contended that Mr Foster had deliberately concealed the intended role of FCCL because the company was in financial difficulties and he was concerned that she would not contract with him if FCCL were mentioned. I do not accept that this was Mr Foster's motivation for his conduct at the meeting. There is some doubt as to what difficulties were assailing FCCL at that time and I do not think it likely that the Claimant would have checked up on FCCL's trading status, or that Mr Foster would have thought that this was a significant risk. However, this finding does not undermine the force of the Claimant's case on the preliminary issue.
31. As I have noted, the events subsequent to the meeting of 21 June 2016 are of little weight in identifying the parties to the contract which was concluded on that day. However, to the extent that they are relevant, they on balance support the analysis that the contract was with Mr Foster himself, acting as Foster & Co. I have mentioned the signage, workwear and invoices, all of which bore the name "Foster & Co", whilst there was nothing to indicate that the works were in fact being performed by FCCL or another corporate entity. I do not find anything in subsequent events which significantly undermines the Claimant's case that, as of 21 June 2016, her contract was with Mr Foster. The Defendants have pointed to various letters and emails written by or on behalf of the Claimant as relations between the parties deteriorated which refer to one or other corporate entity and do not take the point that the contract was with Mr Foster himself. I do not regard these communications as significant to my analysis: they contained unguarded comments engendered by a state of confusion which Mr Foster himself created.
32. I should record that the Claimant's primary case at the trial before me was that the contract was formed between her and both Mr and Mrs Foster. Whilst I accept that Mr

Foster referred to his wife on several occasions during the meeting on 21 June 2016, and presented her as being closely involved in the running of his business, she was not at the meeting herself and only contacted the Claimant subsequently, when the first invoice was sent. I do not think that her involvement, and Mr Foster's reliance upon her role in the business, was such as to point to her being a contracting party as at 21 June 2016.

Conclusion

33. For those reasons, I decide the preliminary issue as follows: of the Defendants, the Second Defendant alone was party to a contract with the Claimant, which was entered into at a meeting between them on 21 June 2016.