

Legal Briefing

Ted Lowery considers an unusual approach to summary judgment

Special Metals Wiggin Ltd v Corrotherm International Ltd
[2025] EWHC 2769

In the Technology and Construction Court

Before Andrew Singer KC sitting as a judge of the TCC

Judgment delivered 28 October 2025

The facts

Under purchase orders issued between July 2022 and September 2023, Wiggin manufactured and supplied Corrotherm with nickel-chromium-molybdenum steel pipes. The purchase orders incorporated Wiggin's terms and conditions. These included: clause 4 which made Corrotherm trustee for Wiggin of all monies paid by and due from any third party purchaser, should Corrotherm resell the pipes before paying Wiggin; clause 6 whereby Wiggin warranted only that the pipes would meet the agreed specification and provided that Wiggin would replace any defective pipes if notified within 10 days after discovery and the pipes were returned to Wiggin within a reasonable period from Wiggin's request; clause 7(b) which provided that clause 6 was in lieu of any condition, warranty or other undertaking as to the description, quality or performance of the pipes or as to their fitness for any particular purpose; and clause 7(c) which excluded Wiggin's liability in respect of any claim made more than one year after delivery.

Starting in March 2024 Corrotherm began to complain of staining and debris within the pipes supplied. During April and May 2024 Wiggin personnel attended Corrotherm's premises to carry out inspections and on 19 May a selection of pipes was returned to Wiggin's factory in Hereford. On 30 May 2024 Wiggin advised that the pipes complied with the specification and that there were no grounds for rejecting same. Wiggin subsequently redelivered to Corrotherm the pipes collected in May.

During 2024 Wiggin commenced proceedings claiming some £1,085,376.54 outstanding under the purchase orders. Corrotherm counterclaimed £1,257,630.29 in

respect of monies paid for defective goods as well as some £879,187.07 for lost profits under proposed further purchase orders that Wiggin had declined to place.

During April 2025 Wiggin issued an application for summary judgment in relation to five issues: (1) did clause 4 create a valid trust and if so, did Corrotherm have a real prospect of successfully arguing that it was not in breach of trust; (2) to what extent did clauses 6 and 7(b) exclude Corrotherm's defences and counterclaim; (3) what was the effect of non-compliance with clause 6; (4) was clause 7(b) unreasonable contrary to the Unfair Contract Terms Act 1977; and, (5) did clause 7(c) exclude Corrotherm's counterclaims for deliveries prior to 7 February 2024?

Corrotherm opposed the application in principle contending that Wiggin was trying to set up a number of preliminary issues for hearing rather than points that met the test for summary judgment, hence the matter should proceed to trial.

The issues

Were the issues suitable for a summary application and if so should summary judgment be granted?

The decision

Whilst noting that the application was unusual insofar as no monetary relief was claimed, the judge considered that the CPR clearly provided for summary determination of issues in appropriate cases. Therefore the real question was whether any of the issues were capable of being summarily determined: that there would be a trial on any issues not summarily decided, including the primary question of whether the pipes were defective, did not preclude a summary application.

Taking the issues in turn and applying the usual test as to whether the defence had a realistic prospect of success rather than being merely arguable and whether there was some other compelling reason not to enter summary judgment, the judge found as follows: (1) whilst it could be determined on a summary basis that clause 4 did create a valid bare trust, the question of whether the pipes were defective and accordingly whether any monies were payable by Corrotherm that could have become the subject of a trust would not be decided until trial, hence Corrotherm did have a real prospect of arguing that it was not in breach of

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trust; (2) in the absence of clear wording, clauses 6 and 7(b) did not exclude any defences but did exclude counterclaims in misrepresentation; (3) the question of the effect of non-compliance with clause 6 was reasonably arguable and the parties' submissions as to compliance with the condition precedent in clause 6 were not suitable for summary determination; (4) similarly, the question as to whether clause 7(b) was contrary to UCTA was a reasonably arguable issue that was not suitable for summary determination; and, (5) clause 7(c) only excluded claims where the first notification of a defect had not been made within one year of the delivery of the pipes.

Commentary

As the judge noted, CPR 24.3 entitles the court to give summary judgment "*...on the whole of a claim or on an issue...*" but it is unusual to see the latter option exercised during wider proceedings. Wiggin's submission that if summary judgment was to be granted on any issue this would narrow down the focus of the trial and save costs shows the overlap with preliminary issue applications. Applications for summary judgment on issues only and for the determination of preliminary issues should nonetheless remain discrete given the substantive differences in the nature of the applications and the evidence required in support of same.

Ted Lowery

November 2025