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Legal Briefing

Ted Lowery looks at a case that examines whether a settlement agreement became binding

Baltimore Wharf SLP v Ballymore Properties Ltd [2026] EWHC 312 (TCC)

In the Technology and Construction Court

Before Recorder Singer KC sitting as a Judge of the TCC

Judgment delivered 16 February 2026

The facts

Baltimore was the owner of a mixed-use development near Crossharbour DLR station on the Isle of Dogs that had been developed by Ballymore and completed during 2010. Ballymore provided Baltimore with a collateral warranty deed dated 7 January 2013. During July 2023, the roof of a nursery forming part of the Baltimore Wharf development collapsed. Relying upon the collateral warranty, in May 2024, Baltimore commenced proceedings against Ballymore claiming damages in excess of £2 million. Ballymore denied liability and during July 2024 commenced a Part 20 claim against its structural design consultant, WSP UK Ltd, where it was alleged that the nursery roof had collapsed because of the failure of the connection between the roof steel beams and the reinforced concrete frame.

The proceedings were stayed until 1 October 2024 and on 30 July 2024, on a "*Without prejudice save as to costs and subject to settlement agreement*" basis, WSP's solicitors offered Ballymore £150,000 by way of a contribution to any settlement with Baltimore.

In an email dated 29 August 2024 addressed to the solicitors to Baltimore and WSP and marked "*Without prejudice save as to costs and subject to contract*", Ballymore's solicitor set out settlement terms whereby Ballymore would pay £300,000 and WSP £100,000. The email also enclosed a draft settlement agreement which included on each page a header, "*Subject to contract and without prejudice save as to costs*". Further minor changes to the draft settlement agreement were subsequently proposed by WSP and Ballymore. In an email headed, "*Without prejudice save as to costs*" dated 24 September 2024, Ballymore's solicitor asked if the settlement agreement was agreed. Five minutes later, at 9:56 a.m., Baltimore's solicitor responded, "*I confirm that the Settlement Agreement with WSP's amendments is agreed*". Baltimore's bank account details were then provided and an execution version of the settlement agreement circulated with the "*Subject to contract and without prejudice save as to costs*" header removed.

WSP and Ballymore both issued signed copies of the settlement agreement on 25 September 2024. During October 2024, a further stay was agreed by consent. However, Baltimore never provided a signed version and during November 2024, indicated that where the settlement agreement had been marked "*Subject to contract*", no binding agreement could have come into effect unless and until the document was formerly executed by all parties. During April 2025, Ballymore and WSP issued applications seeking summary judgment/the strike-out of Baltimore's proceedings on the grounds that the claims had been settled.

The issue

Had Baltimore's claims been compromised by a legally binding settlement that came into existence on 24 September 2024?

The decision

It was common ground between the parties that once negotiations included a "*Subject to contract*" reservation, that conditionality remained in place until lifted by express or implied agreement. It was also common ground that the court would apply a high bar when scrutinising the evidence of any claimed express or implied agreement.

Ballymore and WSP contended that the "Subject to contract" reservation had been lifted by necessary implication as at 9:56 a.m. on 24 September 2024. They relied upon: (i) the email exchanges on that day not being marked "*Subject to contract*"; (ii) Baltimore's solicitor's statement in the 9:56 a.m. email that the settlement agreement "*...is agreed*"; (iii) the absence of any witness statement from Baltimore's solicitor; and (iv) the parties' subsequent conduct.

The judge disagreed, concluding that there was nothing in reality to demonstrate that Baltimore's solicitor or Baltimore had necessarily intended or implied a removal of the "*Subject to contract*" reservation. As at 9:56 a.m. on 24 September 2024, these words remained on each page of the travelling draft of the settlement agreement and there was nothing to suggest that this wording had been abandoned by Baltimore. The judge expressed some doubt as to whether the post 24 September 2024 exchanges could be admissible but anyway considered that these exchanges were at best ambiguous and otherwise supportive of Baltimore's position: in particular for example, why would a further stay be required if everything had been agreed on a binding basis?

The judge observed that where it appeared there would not be any additional factual evidence to be deployed at trial, the dismissal of the applications effectively disposed of the settlement issue raised by Ballymore and WSP.

Commentary

The general principle remains that accepting the terms of an agreement expressed to be "*Subject to contract*" will not in itself create a binding agreement unless, within the relevant exchanges, there is persuasive evidence of a consensus that the parties had foregone the preceding stipulation that an executed written agreement was required. Each case will be decided on its own facts.

Ted Lowery
April 2026