



Neutral Citation Number: [2026] EWHC 1429 (TCC)

Case No: HT-2025-000277

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: 11 June 2026

Before :

Mrs Justice O'Farrell DBE

Between :

GUNARATNAM KIRUPAKARAN

Claimant

- and -

(1) MR MAHOMED TEHSEEN IBRAHIM
(2) MRS TAZMEEN YOUSUF MOHAMMED
IBRAHIM
(3) MR AHMED ESSA
(4) CROWN BUILDERS CONTRACTORS
(5) MR TIM COOK
(6) MR DAVID RANDALL

Defendants

Gunaratnam Kirupakaran (unrepresented) litigant in person
Nigel Lewers (instructed by Clyde & Co LLP) for the First, Second and Third Defendants
James Divecha (instructed by RakLAW Solicitors Ltd) for the Fourth Defendant
Philip Byrne (instructed by Kennedys Law LLP) for the Fifth Defendant
Nicholas Higgs (instructed by DWF Law LLP) for the Sixth Defendant

Hearing date: 4th June 2026

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on Thursday 11th June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice O'Farrell:

1. Before the court are applications by each of the first to third defendants, the fourth defendant, the fifth defendant and the sixth defendant to strike out the Claim Form and the Amended Particulars of Claim and/or for summary judgment in respect of the entire claim, on the basis that the Claim Form and the Amended Particulars of Claim disclose no reasonable grounds for bringing the claim and they have no real prospect of success; further, there is no other compelling reason why the case should be disposed of at trial.

Background facts

2. The claimant, Mr Kirupakaran, is the freehold owner of property at 166 Croydon Road, London SE20 7YZ, a terraced property which comprises a retail unit at ground floor level, occupied by a fast-food business, and residential flats above.
3. MYK Properties Holding Ltd (“MYK”) is the freehold owner of an adjoining property at 164 Croydon Road, an end of terrace property, comprising a public house, “The Mitre”, at basement and ground floor levels with residential flats above.
4. The first and second defendants, Mr and Mrs Ibrahim, are directors of MYK. The third defendant, Mr Essa, is an employee of MYK. The first to third defendants are residents of the United Arab Emirates.
5. In 2024, MYK started to carry out structural works at No.164, pursuant to planning permission for the construction of third, fourth and mansard floors above the existing roof, a four-storey rear extension with basement and roof terraces, and conversion/re-configuration of the first and second floors to provide a total of 10 residential flats, with retention of the public house at ground and basement levels.
6. MYK engaged BL Architectural Design Ltd as architect for the works, Arcelle Consulting as structural engineer and the fourth defendant, Crown Builders Contractors UK Ltd (wrongly named as Crown Builders Contractors in the Claim Form) as the main contractor for the works.
7. The proposed development included works to the party wall between No.164 and No.166. Accordingly, MYK appointed the fifth defendant, Mr Cook, as its party wall surveyor, and Mr Kirupakaran appointed the sixth defendant, Mr Randall, as his party wall surveyor.
8. At the beginning of August 2024, the works at No.164 commenced. Shortly after commencement of those works, Mr Kirupakaran observed severe cracking and movement within No.166 and on 15 August 2024 he requested that the works should stop. On 19 August 2024 Mr Cook carried out an inspection of the properties, attended by Mr Kirupakaran and Mr Humayun, director of Crown Builders. Mr Cook identified cracking to both properties and agreed that repairs would be carried out at MYK’s cost following completion of the excavation, demolition and support works.
9. By 3 September 2024, it was noted that there was increased damage to No.166. On 11 September 2024 Crown Builders notified Mr Kirupakaran that the building works had stopped, save for work to secure the property. MYK instructed the installation of targets to monitor the movement of both properties, namely, No.164 and No.166. Mr Randall

instructed Mr Richard Tant, a structural engineer, to oversee works to stabilise Mr Kirupakaran's property.

10. Mr Cook and Mr Randall prepared a Party Wall Award under the provisions of the Party Wall etc. Act 1996 ("the Party Wall Act"), signed on behalf of MYK, as owner of No.164, and Mr Kirupakaran, as owner of No.166, on about 11 September 2024 ("the First Party Wall Award"). The First Party Wall Award agreed a schedule of condition of No.166 dated 10 June 2024 and governed the excavation and construction of mass concrete foundations.
11. In November 2024 Mr Cook and Mr Randall compiled a schedule of repairs, setting out the necessary reinstatement works required to No.166. On 14 November 2024, a further Party Wall Award was agreed ("the Second Party Wall Award"), setting out the agreed condition of No.166 as at 10 October 2024 and providing for underpinning and rebuilding of the party wall.
12. By email dated 21 February 2025, Arcelle, the structural engineer, advised Mr Tant that the damage and movement to the properties had increased, the works appeared to have triggered existing defects in the buildings and No.166 was not sufficiently stable to enable the underpinning works to be carried out without risk of whole or partial collapse of the flank walls.
13. By letter dated 7 June 2025, the London Borough of Bromley ("the Authority") notified Mr Kirupakaran of its intention to carry out emergency measures to deal with the dangerous condition of his property, pursuant to the Building Act 1984. By letters, dated 12 June 2025 and 18 June 2025 respectively, the Authority notified Mr Kirupakaran that the buildings at No.164, 166 and 168 were unstable and posed an imminent danger of serious harm, necessitating immediate demolition.
14. Shortly thereafter, the property at No.166 was partially demolished.

Proceedings

15. On 2 September 2025 the claimant commenced proceedings against the defendants, seeking damages of £1.4 million approximately. The claim form contained the following Particulars of Claim:

"1. The Claimant is the freehold owner of 166 Croydon Road, SE20 7YZ, a mixed use property comprising a shop and residential flats.

2. On/About 1st August 2024, the Defendants commenced [*sic*] party wall construction works at 164 Croydon Road. Within 2 weeks, severe cracking and movements were observed at the Claimant's property.

3. The damage was reported on 20th August and worsened by 3rd September 2024, leading to forced evacuation of tenants by the London Fire Brigade and the Council's Building Control.

4. The Defendants failed to carry out adequate pre-construction surveys, failed to safeguard adjoining structures, and ignored multiple warnings and formal objections.

5. On/About June 2025, the Claimant's property was partially demolished on emergency grounds due to total structural failure, resulting from the Defendants' acts and omissions.

6. As a result, the claimant has suffered - Full rebuild costs ...

7. The Claimant asserts that Defendants 2 and 3, as directors and controlling minds of MYK Property Holdings Limited, were personally involved in directing or supervising the negligent works and failed to act to prevent the damage, despite being repeatedly notified. The Claimant brings this action against them in their personal capacities for negligence and breach of duty of care.

8. The Claimant seeks general and special damages as set out in the Schedule of Losses, interest and legal costs."

16. On 24 September 2025 the first, second and third defendants filed their defence, in which a number of complaints were raised as to deficiencies in the pleaded case:

"16. As to paragraph 4, the Claimant has failed to set out his case as against the Defendants. The Claimant has failed to set out, as against each of the 6 defendants against whom he has commenced proceedings, a concise statement of the facts on which he relies.

17. Further, the Claimant has failed to set out as against the Defendants, adequate allegations of negligence and/or nuisance to enable them to understand the claim which they have to meet. The Claimant's general allegation that "*The Defendants failed to carry out adequate pre- construction surveys, failed to safeguard adjoining structures, and ignored multiple warnings and formal objections*" lacks specificity and particularisation.

18. The Claimant is invited to set out his case against the Defendants and, specifically: -

18.1 The grounds upon which he is pursuing the Defendants, as opposed to MYK;

18.2 What he says that the Defendants, either collectively or individually, did that they should not have done, or not do which they should have done;

18.3 How any loss and damage sustained (none admitted) is said to have been caused by any negligence and/or nuisance on the part of each of D1, D2 and D3 (none admitted)."

17. On 24 September 2025 the claimant filed a reply, which did not provide the details of the claim requested by the first to third defendants but contained a response to paragraph 18 of the Defence:

“The Claimant has made it expressly clear that the proceedings are against D1-D3 in their personal capacity as duty holders, not against MYK Property Holdings Ltd. The Defendants were each responsible for overseeing structural safety, compliance with CDM regulations, appointment of competent teams, and ensuring the structural integrity of adjoining properties. These duties arise independently of their corporate status and are based on direct negligence and nuisance. Evidence of failures to survey, stop works, or respond to repeated notifications has been included in the served materials.”

18. On 30 September 2025 the fifth defendant issued an application to strike out the claim and/or for summary judgment against the claimant.
19. On 13 October 2025 the sixth defendant filed his defence, raising similar complaints to those identified by the first to third defendants:

“2. The Particulars of Claim are vague, insufficiently particularised, fail to comply with significant provisions of the Civil Procedure Rules (“CPR”) and disclose no discernible grounds for a claim against the Sixth Defendant.

...

5. The Claimant has pleaded no:

5.1 particulars of any contractual, tortious or statutory duty that might be owed by the Sixth [Defendant];

5.2 particulars of the scope of any such duty;

5.3 particulars of the way in which any such alleged duty is said to have been breached;

5.4 expert evidence upon which he relies to establish either the scope of duty or breach;

5.5 particulars as to how any alleged breach of duty has caused any loss to the Claimant;

5.6 detailed particulars of the loss said to have been so caused.

6. The Claim Form and Particulars of Claim therefore disclose no reasonable grounds for bringing a claim, fail to comply with a rule practice direction or order and have no real prospects of success. ”

20. On the same date, the sixth defendant issued an application to strike out the claim and/or for summary judgment against the claimant.
21. On 21 October 2025 the claimant served a response to the sixth defendant's strike out / summary judgment application, setting out the claimant's rights under the Party Wall Act and asserting failures on the part of the sixth defendant:

“The Sixth Defendant accepted service as the Claimant's surveyor of No. 166 and engaged in multiple inspections, correspondence, and monitoring of movements of the party wall and structure. Accordingly, he cannot now disclaim all involvement. The Claimant contends the Sixth Defendant failed to identify critical risks, failed to recommend suspension of works, failed to insist on protective works or security, and thereby breached his professional and statutory duties.”

22. On 28 November 2025 the fifth defendant's application came before Adrian Williamson KC, sitting as a Deputy High Court Judge. The Judge described the claimant's pleaded case as hopeless, setting out no legal or factual basis to proceed to trial as against the fifth defendant. However, the Judge considered that the claimant, as a litigant in person, should be granted a further opportunity to replead the claim to put it on a proper footing and in accordance with CPR 16 and PD 16.
23. The Order dated 1 December 2025 provided that unless the claimant filed and served full and properly pleaded particulars of claim by 19 December 2025, the claim would be struck out.
24. On 15 December 2025 the claimant filed and served Amended Particulars of Claim, setting out the basis of the claimant's case as follows:

“1. The Claimant is the freeholder of 166 Croydon Rd SE20 7YZ (“the Property”), a mixed-use building which sustained significant structural damage due to works undertaken at the adjoining property 164 Croydon Rd, owned and/or developed by the First and Second Defendants via MYK Property Holdings Ltd (now dissolved).

...

4. The Defendants owed the Claimant statutory, common law, and professional duties which they breached individually and/or collectively, causing damage to the Property and financial losses.

5. The Claimant relies on breaches of duties under the Party Wall etc Act 1996, CDM regulations 2015, professional negligence, and the general duty of care under common law.

6. As a direct consequence of the Defendants' failures, the Property became unsafe and was evacuated on 3 September 2024. The following losses are claimed until 2 July 2025 ...
Total: £1,503,818.00.

7. The Claimant apports liability jointly and severally as follows:

First and Second Defendants - as freehold owners and developers, principal responsibility for structural collapse.

Third Defendant - as contract administrator.

Fourth Defendant – [as] director of Crown Builders Contractors, liable for construction-related failures.

Fifth Defendant - Party Wall Surveyor for 164 Croydon Rd, failed to halt works despite evident risk.

Sixth Defendant - Party Wall Surveyor for 166 Croydon Rd, failed to act impartially and protect the interests of the adjoining owner.”

25. On 22 December 2025 the first to third defendants issued an application to strike out the claim and/or for summary judgment against the claimant.
26. On 13 January 2026 the fourth defendant served its defence, raising a complaint that the claimant failed to plead what, if any, specific duty is said to have been owed by the fourth defendant, how any such duty arose, or how any alleged breach is said to have caused damage to the property or any alleged financial loss.
27. On the same date, the fourth defendant issued an application to strike out the claim and/or for summary judgment against the claimant.

The applications

28. There are now four applications before the court:
 - i) The first, second and third defendants, by application dated 22 December 2025, seek an order striking out the claim pursuant to CPR 3.4(2)(a) and/or summary judgment pursuant to CPR 24.3. The application is supported by the witness statement of Mr Philip Adamis, a partner of Clyde & Co LLP, dated 22 December 2025. The application is opposed by the claimant, as set out in his response dated 28 December 2025.
 - ii) The fourth defendant, by application dated 13 January 2026, seeks an order striking out the claim pursuant to CPR 3.4(2)(a) and/or (c) and/or summary judgment pursuant to CPR 24.3. The application is supported by the witness statement of Mr Humayun Barlas, the director of Crown Builders UK Ltd, dated 13 January 2026. The application is opposed by the claimant.
 - iii) The fifth defendant, by application dated 30 September 2025, seeks an order striking out the claim pursuant to CPR 3.4(2)(a) and/or summary judgment pursuant to CPR 24.3. The application is supported by the witness statement of Mr Jeremy Riley, a partner of Kennedys Law LLP, dated 30 September 2025 and his second witness statement dated 29 October 2025. The application is

opposed by the claimant, as set out in his witness statement dated 7 October 2025 and response dated 3 November 2025.

- iv) The sixth defendant, by application dated 13 October 2025, seeks an order striking out the claim pursuant to CPR 3.4(2)(a) and/or (c) and/or summary judgment pursuant to CPR 24.3. The application is supported by the witness statement of Ms Alexandra Cartwright, of DWF Law LLP, dated 13 October 2025 and her second witness statement dated 17 November 2025. The application is opposed by the claimant, as set out in his response dated 21 October 2025 and further response dated 20 November 2025.
29. A number of procedural issues have been raised, that I deal with very shortly because they do not go to the heart of the matter. The first to third defendants were served without any application for permission to serve out of the jurisdiction but a defence has been served, there is no challenge to jurisdiction and they have participated in the hearing of these applications. The fourth defendant is described incorrectly in the Claim Form and Amended Particulars of Claim but there is no dispute as to the identity of the contractor sued by the claimant, a defence has been served and the fourth defendant has participated in the hearing of these applications. The claimant objects to the service of witness statements by solicitors for the first to third, fifth and sixth defendants but there is no prohibition on a solicitor acting on instructions in providing a witness statement in respect of a procedural hearing.
30. The defendants produced a composite list of issues for determination at the hearing:
- i) Do the Amended Particulars of Claim served on 15 December 2025 comply with the Unless Order of Adrian Williamson KC dated 1 December 2025 or do they stand to be struck out?
 - ii) In respect of D1-3 do the Amended Particulars of Claim plead any complete claim in law in their personal capacities against the individual defendants as opposed to the company MYK?
 - iii) In respect of D4 do the Amended Particulars of Claim plead any complete claim in law against Crown Builders UK Ltd?
 - iv) In respect of D5, do the Amended Particulars of Claim plead any complete claim in law (whether contractual, statutory and/or tortious liability (particularly having regard to remoteness)) against D5 as a party wall surveyor, appointed by MYK?
 - v) In respect of D6, do the Amended Particulars of Claim plead any complete claim in law against D6 as a party wall surveyor, appointed by the Claimant?
 - vi) In respect of the Amended Particulars of Claim, has there been a failure to comply with a rule, practice direction or court order?
 - vii) In respect of each Defendant, does the Claimant have any real prospect of succeeding on the claim?

- viii) Is there any other compelling reason why the claim should be disposed of at trial?
31. The overriding objective set out in CPR 1.1 requires that, in order to deal with a case justly, the court should ensure, so far as practicable, that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence. The parties are required to help the court to further the overriding objective at all stages of civil proceedings.
32. In this case, the parties, including the claimant, submitted detailed and comprehensive written skeleton arguments. Having regard to the fact that the claimant was a litigant in person and making his oral submissions through an interpreter, counsel for each defendant presented their oral submissions in simple, plain, non-legal language, delivered at a pace that allowed for translation and absorption of each point. This enabled the claimant to understand the requirements for the pleading and the complaints made against him, so that he had an opportunity to provide a meaningful response. Notwithstanding these modifications, they did not impede the clarity or impact of their submissions. I commend counsel for this exemplary approach, which demonstrated best practice in supporting a litigant in person to participate in the hearing.

Applicable legal principles

33. CPR 16.4(1) provides that particulars of claim must include a concise statement of the facts on which the claimant relies. The claimant should state all the facts necessary for the purpose of formulating a complete cause of action.
34. In *British Airways Pension Trustees Limited v Sir Robert McAlpine & Sons Limited & Others* [1994] WL 1062346, the Court of Appeal stated at p.6 that:
- “The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it.”
35. Further guidance was given by Coulson J (as he then was) in *Pantelli Associates Limited v Corporate City Developments Number Two Limited* [2010] EWHC 3189 (TCC) at [11]:
- “CPR 16.4(1)(a) requires that a particulars of claim must include "a concise statement of the facts on which the claimant relies". Thus, where the particulars of claim contain an allegation of breach of contract and/or negligence, it must be pleaded in such a way as to allow the defendant to know the case that it has to meet. The pleading needs to set out clearly what it is that the defendant failed to do that it should have done, and/or what the defendant did that it should not have done, what would have happened but for those acts or omissions, and the loss that eventuated. Those are 'the facts' relied on in support of the allegation, and are required in order that proper witness statements (and if necessary an expert's report) can be obtained by both sides which address the specific allegations made.”

36. CPR 3.4(2) provides that:

“The court may strike out a statement of case if it appears to the court:

...

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

...

- (c) that there has been a failure to comply with a rule, practice direction or court order ...”

37. The principles to be applied are as follows:

- i) If the pleaded facts do not disclose any legally recognisable claim against a defendant, it is liable to be struck out. However, the application must assume that the facts alleged in the pleaded case are true.
- ii) The court must be certain that the claim is bound to fail; unless it is certain, the case is inappropriate for striking out: *Hamida Begum v Maran (UK) Ltd* [2021] EWCA Civ 326 per Coulson LJ at [22]-[24]; *Rushbond v JS Design Partnership* [2021] EWCA Civ 1889 per Coulson LJ at [41]-[42].

38. CPR 24.3 provides that:

“The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if –

- (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

39. The principles to be applied on such applications are well-established and can be summarised as follows:

- i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91.
- ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8].
- iii) In reaching its conclusion the court must not conduct a "mini-trial": *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 at [95]; *Okpabi v Royal Dutch Shell* [2021] UKSC 3 at [110].

- iv) 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: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550; *Okpabi* at [127]-[128].
- v) 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: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63.
- vi) If the court is satisfied that it has before it all the evidence necessary for the proper determination of a short point of law or construction and the parties have had an adequate opportunity to address the question in argument, it should grasp the nettle and decide it. It is not enough 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: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725 at [11]-[14]; *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15].

The Amended Particulars of Claim

- 40. I start by considering whether the Amended Particulars of Claim comply with the Unless Order dated 1 December 2025, which required the claimant to file and serve full and properly pleaded particulars of claim. This necessarily encompasses the key issue on the strike out applications, namely, whether the pleading discloses reasonable grounds for bringing the claim.
- 41. The defendants each raise the same, well-founded complaints as to the inadequacy of the Amended Particulars of Claim.
- 42. First, in paragraph 4 of the pleading, it is asserted that the defendants owed the claimant statutory, common law, and professional duties. There is no attempt to identify the nature or scope of the duty relied on in respect of each defendant, nor is the basis for the alleged duty explained.
- 43. Second, in paragraph 5, it is pleaded that the claimant relies on breaches of duties under the Party Wall Act, CDM regulations 2015, professional negligence, and the general duty of care under common law. There is no attempt to provide any details of the alleged breaches; there is no case set out as to what it is that each defendant failed to do that it should have done and/or what the defendant did that it should not have done.
- 44. Third, in paragraph 6, it is pleaded that as a direct consequence of the defendants' failures, No.166 became unsafe and losses were incurred. There is no attempt to set out what failures are relied on, how they caused the property to become unsafe, or how any loss and damage resulted from those failures.
- 45. Thus, on their face, the Amended Particulars of Claim do not plead any factual or legal basis of claim against any of the defendants and do not comply with the Unless Order. Mr Kirupakaran has no answer to those complaints, save that he is unable to provide

such details and puts the matter before the court. Paragraph 1.1.1 of Volume 1 of Civil Procedure (The White Book) 2026 confirms that the Civil Procedural Rules apply to all litigants, whether represented or unrepresented. Litigants in person do not form a privileged class of litigants for whom the rules are modified or disapplied.

46. The claimant has been given ample opportunity to correct the pleading deficiencies. The inadequacy of the pleaded case was stated clearly by the Judge on the strike out application before the court on 28 November 2025. Each defendant has explained, in its defence and/or in witness statements the defects in the pleaded case against it. Those inadequacies have not been addressed in the Amended Particulars of Claim. The defendants have each set out in their written skeletons the basis for their argument that there is no properly pleaded cause of action. Their complaints have not been answered satisfactorily and there is no draft amended pleading indicating that the deficiencies could be rectified.
47. The absence of a statement of case that discloses reasonable grounds for bringing the claim would be sufficient to justify an order striking out the claim. However, in the absence of any limitation issues, before determining whether the claim should be struck out, I turn to consider whether the claimant has identified in the materials before the court any potential claims against any of the defendants that could be said to have a real prospect of success.

Claim against the First to Third Defendants

48. Mr Lewers, counsel for the first, second and third defendants, submits that the Amended Particulars of Claim do not plead a complete claim in law against the first, second or third defendants in their personal capacities as opposed to MYK. The property at No.164 was owned by MYK. The Party Wall Awards were expressed to be between MYK, as owner of No.164, and the claimant, as the adjoining owner of No.166. MYK engaged the various professionals associated with the works, namely, the structural engineer, the architect, the main contractor and the party wall surveyor.
49. None of this is disputed; what is pleaded in the Amended Particulars of Claim is that No.164 was “owned and/or developed by the First and Second Defendants via MYK”. The claimant seeks to rely on an argument that Mr and Mrs Ibrahim are responsible for MYK’s liabilities as directors of the company but has failed to identify any legal or evidential basis on which the corporate veil should be lifted so as to permit a claim against them personally, rather than against the company. Further, this does not explain the case against Mr Essa, whose liability is said to be based on his role as the contract administrator, without any indication as to the legal or factual case giving rise to any duties owed to the claimant in a personal capacity.
50. Further, the claimant has failed to provide any details of breaches of the alleged duties on the part of the first to third defendants. At paragraph 7 of the Amended Particulars of Claim it is asserted that the first and second defendants are responsible for the structural collapse but no facts or documentary materials have been provided in support of such assertion; as against the third defendant it is simply stated that he was the contract administrator. No explanation has been forthcoming in the claimant’s response to the application or in the skeleton. Mr Lewers submits with justification that it is impossible to work out from these generalised claims what is alleged so as to enable them to understand the case against them and prepare a response in defence of the claim.

Claim against the Fourth Defendant

51. Mr Divecha, counsel for the fourth defendant, acknowledges that the documents produced by Mr Kirupakaran raise serious concerns about the works at No.164 and the condition of No.166, including works to the party wall. The fourth defendant was the main contractor for the works. Mr Divecha does not submit that a contractor could never owe duties in relation to works affecting an adjoining property. The difficulty in this case is that the claimant has not pleaded or identified any duty, breach, causative mechanism or recoverable loss against the fourth defendant.
52. Mr Kirupakaran has produced a number of documents in support of his case that the works carried out to, or near, the party wall gave rise to issues of structural stability. Building Control records, including site inspection records, refer to removal of large sections of the rear wall and temporary propping that was said to be inadequate to support the loads. The strongest evidence in support of the claimant's complaints are Mr Monger's written concerns regarding the inadequacy of the permanent and temporary works and the need for additional bracing, and photographs of the various stages of the works, showing the excavation and support, or lack thereof. Mr Kirupakaran has produced a report of the emergency attendance by the London Fire Brigade to the properties and correspondence from the Authority, evidencing that the condition of the properties was determined to be unsafe, resulting in partial demolition. As submitted by Mr Divecha, these documents evidence serious concern about the condition of No.166 and the works at No.164 but, absent specific legal and factual allegations, they do not evidence an actionable claim for damages against the fourth defendant.
53. The claimant has pleaded that the fourth defendant is liable for construction-related failures but has not set out what those failures comprised. Mr Kirupakaran submits that the works were carried out too close to the party wall and without adequate support but does not identify the relevant operations, the applicable statutory obligations or design standards, or how the work should have been carried out. More particularly, Mr Kirupakaran has failed to explain, in the pleaded case or otherwise, the basis on which it is said that the fourth defendant was responsible for the design of the permanent or temporary works, or the nature and extent of the construction work said to give rise to the failures.
54. As Mr Divecha submits, it is impossible to work out from the generalised allegations, whether or not pleaded, what is alleged so as to enable the fourth defendant to understand the case against it and prepare a response in defence to the claim; it is left without a pleaded or otherwise identified case to admit, deny, investigate, disclose against, obtain expert evidence on, or meet at trial.

Claim against the Fifth Defendant

55. The fifth defendant, Mr Cook, was the party wall surveyor appointed by MYK, the owner of No.164, by letter dated 11 January 2024. There was no contractual relationship between Mr Cook and the claimant. Mr Cook's position is that his role was limited to and governed by his obligations under the Party Wall Act to MYK and not to the claimant. He undertook no design or construction of the works; as a result, he had no obligations under the CDM Regulations.

56. The First Party Wall Award referred to MYK as “the Building Owners” of No.164 and Mr Kirupakaran as “the Adjoining Owner” of No.166. Mr Cook was identified as MYK’s appointed surveyor; Mr Randall was identified as Mr Kirupakaran’s appointed surveyor.
57. Clause 4 imposed the following obligations on MYK, as the Building Owner, if it commenced and carried out the excavation and foundation works, namely, that it would:
- i) execute the works at MYK’s sole cost;
 - ii) take all reasonable precautions and provide all necessary support and facilities to retain the Claimant’s land and buildings, and meet any reasonable fees for professional engineer’s advice in connection therewith;
 - iii) hold the Claimant free from liability in respect of any injury or loss of life to any person or damage to property caused by, or in consequence of, the execution of the works, and the costs of making any reasonably justified claims;
 - iv) provide and maintain or cause its contractor to provide and maintain adequate insurance against such risks;
 - v) make good all structural, decorative and horticultural damage to the Claimant’s property occasioned by the works, to the satisfaction of the surveyors;
 - vi) compensate the Claimant and any adjoining occupier for any loss or damage which resulted by reason of the works;
 - vii) carry out the construction of foundations and associated works strictly in accordance with the Engineer’s drawings, including any sequence of works.
58. Mr Kirupakaran states in his skeleton argument that the fifth defendant owed him a duty of care, citing *Caparo v Dickman* [1990] 2 AC 605 which sets out the test as: (i) foreseeability of harm; (ii) proximity; and (iii) it is fair, just and reasonable to impose a duty of care on the defendant.
59. Mr Byrne, counsel for the fifth defendant, submits that the test for a common law duty of care is not satisfied in this case. As to (i), there was no foreseeability of harm from any failures on the part of the surveyors. The purpose of a party wall award is to resolve a dispute between the building owner and the adjoining owner. Should damage result from the work undertaken under an award, the adjoining owner may claim compensation under s.7(2) of the Party Wall Act; in this case, express provision was made for such compensation as set out above. In the event of any dissatisfaction with the Party Wall Awards, it was open to MYK and/or Mr Kirupakaran to challenge them by way of an appeal under section 10 of the Party Wall Act. As to (ii), Mr Cook was not appointed by Mr Kirupakaran and his quasi-judicial role meant that there was no relationship akin to one of reliance or dependence. Therefore the necessary proximity was not present. As to (iii), it is not fair, just or reasonable to impose a duty of care on the adjoining owner’s party wall surveyor. The role of the fifth defendant as a party wall surveyor was simply that of dispute resolution. It was for the claimant and MYK

to take their own professional advice and make submissions to their respective party wall surveyor.

60. Mr Kirupakaran, in his response to the fifth defendant's application, contends that the fifth defendant was directly involved with the project since at least January 2024 and had ongoing communication with all key stakeholders; he was present for site inspections including on 19 August 2024, where damage was already manifest; he was copied into multiple risk warnings and communications from the claimant, Mr Tant, Mr Robert Monger of Building Control and the emails dated 25 February 2025 from Karl Bennett of Arcelle Consulting to Mr Essa, but failed to intervene. It is said that the fifth defendant failed to discharge his obligations under the CDM Regulations and failed to stop the works.
61. None of the points made by Mr Kirupakaran establishes an arguable case that the fifth defendant owed a duty of care at common law, under the Party Wall Act or by reason of the CDM Regulations. In particular, Mr Kirupakaran fails to address the identified limitations of the role of party wall surveyor, the disclaimers of responsibility for the design or execution of the works in the Party Wall Awards, and the disclaimer regarding CDM design.
62. The quasi-judicial role of surveyors appointed under the Party Wall Act was set out by Brightman J in *Gyle-Thomson v Wall Street (Properties) Ltd* [1974] 1 WLR 123 at p.130 and confirmed by Jackson LJ in *Gray v Elite Town Management* [2016] EWCA Civ 1318 at [38]:

“The statutory procedure is intended to be a simple, inexpensive dispute resolution mechanism. It enables reasonable and common sense solutions to be reached to the problems which inevitably arise when adjoining owners share a party wall. Whatever the surveyors decide is likely to cause some degree of inconvenience to both parties. The surveyors are not assuming a design obligation towards the adjoining owner. Both the building owner and possibly the adjoining owners may engage their own designers. They may put before the surveyor whatever submissions they wish.”

63. That analysis is reflected in the preamble to the First Party Wall Award:

“Any agreement or acceptance made by either surveyor in this Award or subsequently during works on site shall not be taken to imply any responsibility by them or their appointed technical delegates for any structural or any other insufficiency in any part of the works whether existing or executed.

Any drawings, calculations, specifications and design details either appended to this Award or provided to the Two Surveyors, are accepted in good faith and the Two Surveyors shall not be held accountable for any defective design or specification appearing in any such drawings, calculations, specifications and design details.”

64. Clause 13 of the First Party Wall Award stated:

“THAT we, being the appointed Two Surveyors, declare that insofar as the Construction (Design and Management) Regulations 2015 (CDM) may apply to the said works, we have not contributed, developed or approved any design, such matters being the responsibility of the Building Owners, the Building Owners' Designer and Principal Designer/Contractor.”

65. The claimant asserts but has not produced any evidence indicating that the fifth defendant in fact prepared or contributed to any design for the works, supervised and/or managed the same, or provided professional advice to the claimant.

66. On the material before the court, there is no real prospect of succeeding on the claim against the fifth defendant.

Issue 5 - Claim against the Sixth Defendant

67. The sixth defendant, Mr Randall, was the party wall surveyor appointed by the claimant, as the adjoining owner of No.166, in accordance with section 10 of the Party Wall Act, by a letter of appointment dated 31 January 2024. Mr Higgs, counsel for the sixth defendant, relies on the points made by the fifth defendant regarding the nature and scope of the obligations owed by surveyors appointed under the Party Wall Act.

68. Mr Higgs makes the following additional points. First, the damage to No.166 is said to result from the excavation of a lift pit adjacent to the unfounded party wall, the removal of the rear wall and its lateral restraint, and inadequate propping in the absence of any temporary works design but the sixth defendant, as party wall surveyor, did not carry out any of those construction works. Second, the sixth defendant produced the First and Second Party Wall Awards but neither award was challenged by the claimant and there is no particularised criticism of either award. Third, the claimant alleges breach of the CDM Regulations but, as set out above, the surveyors disclaimed any design responsibility for the purpose of the CDM Regulations and there are no particulars of any breaches. Fourth, section 7 of the Party Wall Act, as reflected in the First Party Wall Award, imposed on MYK an obligation to compensate the claimant for loss or damage resulting from the works.

69. In his response to the sixth defendant's application, Mr Kirupakaran has raised further allegations, that the sixth defendant (and others) failed to recognise and act on the claimant's rights under the Party Wall Act, by failing to obtain security, identify critical risks, take appropriate protective measures, and by refusing to suspend the works. Those allegations have no real prospect of success. As Mr Higgs submits, Section 12 of the Party Wall Act entitled the claimant, as the adjoining owner, to request security in respect of the works. Security in the sum of £30,000 was provided for by the surveyors by clause 9 of the Second Party Wall Award, which was not challenged by the claimant. Protective measures were provided for in both Party Wall Awards, through the agreed schedules of condition, schedules of repair and the drawings prepared by the consulting engineer. As set out in the First Party Wall Award, the surveyors did not accept any design responsibility. MYK appointed Arcelle as the consulting engineer for the work and Mr Tant was appointed as consulting engineer to

advise the claimant. The surveyors did not exercise any control over the works and did not have any power to suspend the same.

70. On the material before the court, there is no real prospect of succeeding on the claim against the sixth defendant.

Conclusions

71. For the reasons set out above, the Amended Particulars of Claim do not disclose any reasonable grounds for bringing the claim against any of the defendants. Therefore, the claimant has failed to comply with the requirements of CPR 16.4(1) and the Unless Order dated 1 December 2025. Further, the claimant has failed to articulate, or produce supporting evidence that identifies, potential claims against any of the defendants that could be said to have a real prospect of success.
72. No novel points of law or principle have been identified and there is no other compelling reason why the case should be disposed of at a trial.
73. I have considered whether the pleading defects might be cured by amendment and, if so, whether a further opportunity should be given to the claimant to plead a proper claim. In this case, the defendants raised the defects in the claim at an early stage, in their pleaded defences and in the witness statements relied on in support of the applications to strike out or for summary judgment. At the hearing on 28 November 2025, the Judge gave a clear warning to the claimant that his pleaded claim was hopeless but gave an opportunity for him to correct it. The claimant has now had a further period of six months in which to address the deficiencies in the pleaded case but has failed to plead or set out in the materials before the court the facts and legal arguments relied on that would enable him to formulate a legally recognisable claim against each defendant.
74. In those circumstances, I conclude that it would be contrary to the overriding objective to allow this claim to continue, with the attendant waste of costs and court time.
75. For the reasons set out above:
- i) the applications to strike out the claim and/or for summary judgment against the claimant are granted;
 - ii) the claimant shall pay the defendants' costs of the claim.
76. The court will hear the parties on the appropriate terms of the orders and all other consequential matters arising out of this judgment, if not agreed, on a date to be fixed following hand down.