

IN THE HIGH COURT OF JUSTICE

Claim No. QB-2020-003450

QUEEN'S BENCH DIVISION

Master Davison

Between

HERTSMERE BOROUGH COUNCIL

-and-

WATRET & CO LIMITED



QB-2020-003450

Defendant

ORDER

BY CONSENT between the Solicitor for the Claimant and Solicitor for the Defendant

IT IS ORDERED that:

1. ALLOCATION

The claim be allocated to the multi-track.

2. TRIAL OF ISSUES

(a) There be a trial of the issues of liability and quantum between the Claimant and the Defendant.

(b) Directions as set forth below be given in relation to such trial of the issues of liability and quantum.

3. DIRECTIONS

- (a) The following directions be given in relation to the trial of the issues of liability and quantum set forth in paragraph 2 above.

4. STAY

(a) There shall be a stay of proceedings until 25 February 2022 to enable the parties to attempt resolution of the proceedings via mediation, the parties must agree to the appointment of a mediator by no later than 4pm on 14 January 2022, in the absence of being able to agree the identity of a mediator, the parties will jointly apply to the court by way of an application attaching the CVs of four potential mediators and their fee quotes with two CVs being supplied by each of the parties. The Court shall make an order appointing a mediator from one of the four proposed mediators.

(b) The parties shall meaningfully engage in the mediation process in a genuine attempt to reach settlement of these proceedings.

(c) The mediation shall be conducted on a without prejudice save as to costs basis and either party shall be at liberty to make an application relying on evidence as to the conduct of the parties at the mediation. Either with regards to the cost consequences of that conduct or with regards to the Court deciding whether or not either party has failed to engage with the mediation process.

5. ISSUES

- (a) The Court will, when determining whether or not the Defendant is liable in relation to any of the allegations made by the Claimant, also determine the questions of the date or the approximate date of the alleged exposure for the purposes of making findings relevant to the Defendant's insurance coverage and to further the overriding objective.

6. DISCLOSURE OF DOCUMENTS
 - (a) Each party shall give standard disclosure by exchange of lists of documents by 28 April 2022.

7. INSPECTION OF DOCUMENTS
 - (a) Any requests for inspection or copies of disclosed documents shall be made within 14 days after service of the list.

8. WITNESS STATEMENTS
 - (a) Each party shall serve on every other party any witness statement of the oral evidence and/or evidence upon commission which the party intends to rely in relation to be exchanged by 28th June 2022.

9. SEPARATE EXPERTS
 - (a) Each party has permission to adduce expert evidence in the field of Occupational Hygiene, Engineering or Chemistry [limited to one expert per party].
 - (b) The experts' reports shall be exchanged by 25th January 2023.
 - (c) The experts in each field shall hold a discussion without prejudice for the purpose of:
 - (a) identifying the issues, if any, between them; and
 - (b) where possible, reaching agreement on those issues.
 - (d) The experts shall by 25th March 2023 prepare and file a joint statement for the Court showing:
 - (a) those issues on which they agree; and
 - (b) those issues on which they disagree and a summary of their reasons for disagreeing.
 - (e) There be permission to each party to call such experts to give oral evidence at trial limited to the matters on which they remain in disagreement as aforesaid.
 - (f) Any unpublished literature upon which any expert witness proposes to rely shall be served at the same time as service of his

report together with a list of published literature and copies of any unpublished material. Any supplementary literature upon which any expert witness proposes to rely shall be notified to all other parties at least one month before trial. No expert witness shall rely upon any publications that have not been disclosed in accordance with this direction without leave of the trial judge on such terms as to costs as he deems fit.

10. TRIAL AND PRE-TRIAL CHECK LISTS

(a) (a) The trial of the claim shall take place between 17th May 2023 and 9th July 2023 (“the trial window”).

(b) A copy of this sealed order will be sent to the Queen’s Bench Judges Listing Office, who will notify all parties of a listing appointment for a trial date or period within the trial window, which will usually be three weeks from the date the order is sealed. If parties have any queries in relation to the listing appointment, they should contact Queen’s Bench Judges Listing qbjudgeslistingoffice@hmcts.gsi.gov.uk

(c) The claim

(i) shall be entered in the list for trial by a Judge alone in the Non-Jury List, category “B”, with a time estimate of 2 days and

(ii) shall take place in London.

(b) The parties shall answer the Pre-trial Check List when required by the Clerk of the Lists to do so unless he or the Master dispenses with it.

(c) The parties shall inform the Court forthwith of any change in the trial time estimate.

11. DEFINITION AND REDUCTION OF ISSUES

- (a) By the 20th September 2022 the parties shall list and discuss the issues in the claim including the experts' reports and statements and attempt to define and narrow the issues.

12. TRIAL BUNDLE

- (a) The parties shall agree and the claimant shall file a trial bundle and the parties shall exchange and file skeleton arguments and chronologies not more than 7 and not less than 3 days before the start of the trial.

13. SETTLEMENT

- (a) If the claim or part of the claim is settled the parties must immediately inform the Court, whether or not it is then possible to file a draft Consent Order to give effect to the settlement.

14. OTHER DIRECTIONS

- (a) Permission to restore for further directions
- (b) The Claimant shall serve an updated schedule of loss and damage by 22nd August 2022 .
- (c) The Defendant shall serve a counter schedule by 12th September 2022.

15. COSTS BUDGETING

- (a) Both parties to file cost budgets by 27 January 2022 and a cost management conference to take place absent agreement of cost budget on the first open date after 25 February 2022 with a time estimate of 1 hour 30mins.
- (b) If the parties agree to cost budget they are at liberty to file a consent order confirming the agreed cost budget

16. COSTS

- (a) the costs of this CMC shall be in the case.

Dated this 8th December 2021