Neutral Citation Number: [2008] EWHC 2316 (TCC)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 16/09/2008

Before:

MR. JUSTICE COULSON

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Between:

GWELHAYL LIMITED

Applicant

-and-

(1) MIDAS CONSTRUCTION LIMITED

(2) THE BAILEY PARTNERSHIP **Respondents**

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Digital Transcription by Marten Walsh Cherer Ltd.,

6th Floor, 12-14 New Fetter Lane, London EC4A 1AG

Telephone No: 020 7936 6000. Fax No: 020 7427 0093

DX 410 LDE info@martenwalshcherer.com

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MR. JAMES BOWLING (instructed by **Fenwick Elliot**) for the **Applicant**

MR. JONATHAN LEE (instructed by **Michelmores**) for the **Second Respondent**

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Judgment

MR. JUSTICE COULSON:

A. Introduction

1.
On 27th August 2008 the claimant, Gwelhayl Limited ("Gwelhayl"), issued an application for pre-action disclosure pursuant to CPR 31.16. The application was originally made against two respondents, Midas Construction Limited ("Midas"), who were the contractors engaged by Gwelhayl to carry out a building project at Gull Rock in Cornwall, and Bailey Partnership Limited ("Bailey"), who were Gwelhayl's contract administrators and quantity surveyors on the same project. Very recently, Gwelhayl and Midas have agreed that the claim for pre-action disclosure against Midas will be referred to arbitration pursuant to the standard form of building contract into which they entered. Accordingly, other than issues of costs, Midas are no longer directly involved in this application.

2.

I propose to set out in section B below a summary of the principles relevant to the application under CPR 31.16 for pre-action disclosure. At section C, I analyze as best I can the nature of the proposed claim by Gwelhayl against Bailey before, at section D, setting out my conclusions on the different issues raised by the application. At section E, I then go on to deal with the separate application, made by way of amendment which I permitted today, for delivery up of the documents (or some of them) pursuant to CPR 25.

B. Principles

3.
So far as is relevant, CPR 31.16 provides as follows:

“(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started.

(2) The application must be supported by evidence.

(3) The court may make an order under this rule only where –

(a) the respondent is likely to be a party to subsequent proceedings;

(b) the applicant is also likely to be a party to those proceedings;

(c) if proceedings had started, the respondent’s duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and

(d) disclosure before proceedings have started is desirable in order to –

(i) dispose fairly of the anticipated proceedings;

(ii) assist the dispute to be resolved without proceedings; or

(iii) save costs."

4.
The parties are agreed that the principal authority dealing with these provisions is **Black and others v. Sumitomo Corporation** [2002] 1 WLR 1562. In a lengthy judgment, Rix LJ went through these provisions and explained that in general terms an applicant had to do two things: first, to demonstrate that each of the four elements of CPR 31.16(3) were in place; and secondly to persuade the court that it was appropriate in all the circumstances to exercise its discretion in favour of granting an order for pre-action disclosure.

5.
The requirement as to standard disclosure was considered by Waller LJ in **Bermuda International Securities Limited v. KPMG** [2001] Lloyds Rep PN 392 at 397 when he said:

"The circumstances spelt out by the rule show that it will 'only' be ordered where the court can say that the documents asked for will be documents that will have to be produced at the standard disclosure stage. It follows from that, that the court must be clear what the issues in the litigation are likely to be i.e. what case the claimant is likely to be making and what defence is likely to be being run so as to make sure the documents being asked for are ones which will adversely affect the case of one side or the other, or support the case of one side or the other."

6.
The requirement of desirability was addressed at paragraphs 81 and 82 of the judgment of Rix LJ in **Black**. He said:

"It is plain not only that the test of 'desirable' is one that easily merges into an exercise of discretion, but that the test of 'dispose fairly' does so too. In the circumstances, it seems to me that it is necessary not to confuse the jurisdictional and the discretionary aspects of the sub-rule as a whole. In **Bermuda**, Waller LJ contemplated that paragraph (3)(d) may involve a two-stage process. I think that is correct. In my judgment, for jurisdictional purposes the court is only permitted to consider the granting of pre-action disclosure where there is a real prospect in principle of such an order being fair to the parties if litigation is commenced, or of assisting the parties to avoid litigation, or of saving costs in any event. If there is such a real prospect, then the court should go on to consider the question of discretion, which has to be considered on all the facts and not merely in principle but in detail."

7.
The importance of the overriding discretion was the subject of paragraph 88 of the judgment of Rix LJ when he said:

"That discretion is not confined and will depend on all the facts of the case. Among the important considerations, however, as it seems to me, are the nature of the injury or loss complained of; the clarity and identification of the issues raised by the complaint; the nature of the documents requested; the relevance of any protocol or pre-action inquiries; and the opportunity which the complainant has to make his case without pre-action disclosure."

8.
In the light of the point taken by Mr. Lee on behalf of Bailey, it is important to highlight what the cases have said about the court's investigation into the merits and clarity of the underlying issues of the claim that might one day be brought by the applicant against the respondent. In that connection I note the following:

(a) The passage from **Bermuda International Securities** set out above in which Waller LJ said that the court must be clear what the issues in the investigation are likely to be.

(b) Two further passages from the judgment of Rix LJ in **Black** in which, at paragraph 71, he made the point that, for jurisdictional purposes under CPR rule 31.16(3)(a) and (b), the rules required that the parties concerned in an application were parties "who would be likely to be involved if proceedings ensued" but that that did not mean to say that the proceedings themselves had to be likely. He contrasted the jurisdictional position with the court's overriding discretion at paragraph 83 of his judgment, because there he emphasized that, whilst the jurisdictional test could be met by the prospect that costs would be saved, the crossing of that jurisdictional threshold, as he put it:

"... tells you practically nothing about the broader and more particular discretionary aspects of the individual case or the ultimate exercise of discretion. For that, you need to know much more: if the case is a personal injury claim and the request is for medical records, it is easy to conclude that pre-action disclosure ought to be made; but if the action is a speculative commercial action and the disclosure sought is broad, a fortiori if it is ill-defined, it might be much harder."

(c) In **Snowstar Shipping Company Ltd v Graig Shipping Plc** [2003] EWHC 1367 (Comm) Morison J noted that, "... the more speculative a claim the less inclined the court is to grant the application and

its weakness is a factor which I take into account when considering whether a pre action disclosure order should be made."

(d) In **Rose v Lynx Express Ltd** [2004] EWCA Civ 447; [2004] 1 BCLC 445 Peter Gibson LJ, in giving the judgment of the court, said:

"A court should be hesitant, in the context of an application for pre-action disclosure, about embarking upon any determination of substantive issues in the case. Accordingly, it would normally be sufficient to found an application under CPR 31.16(3) for the substantive claim pursued in the proceedings to be properly arguable
and to have a real prospect of success, and it would normally be appropriate to approach the conditions in CPR 31.16(3) on that basis."

I note that the test as to ‘a real prospect of success’ is therefore the same or very similar to the test relevant for the setting aside of a default judgment under CPR Part 13 and summary judgment under CPR Part 24.

(e) In **Total E&P Soudan SA v Philippe Edmonds, Andrew Groves and White Nile Limited** [2007] EWCA Civ 50, Tuckey LJ said that the judge should take a broad view of the merits of a potential claim but should not investigate in too much detail a legally complex claim or defence.

9.
Although counsel cited a number of other decisions dealing with the jurisdiction under CPR 31.12 it seemed to me that they did not add anything to the principles which I have outlined above. I therefore need say no more about them

C. The Nature of the Underlying Claim

10.
It appears that, in June 2007, Gwelhayl were becoming increasingly concerned about the costs of the ongoing project in Cornwall and they brought in Mr. Peter Stone to assist with the final account negotiations with Midas. In Gwelhayl's letter of 6th June 2007 to Mr. West of Bailey, Mr. Tyson of Gwelhayl announced the arrival of Mr. Stone and said this:

"I would like to clarify that Peter's appointment does not have any impact upon the terms of your appointment as set out in our letter of 8th September 2004 which will remain unaffected.

However, I will be grateful if you could ensure that Peter inputs into and approves any agreement you make on our behalf going forward. Please also copy Peter in on any correspondence in and out relating to this project."

11.
This afternoon, in the course of his submissions on behalf of Gwelhayl, Mr. Bowling submitted that these two paragraphs were plainly in conflict, and that their effect was indeed to modify the terms of Baileys original contract of engagement. That seems to me to be a difficult submission to make, given that the first of the two paragraphs that I have cited stated, in the clearest possible terms, that the letter and the arrival of Mr. Stone made no difference whatsoever to the terms of engagement of Bailey. It is important perhaps to note that the assumption that Bailey’s contract was modified in accordance with this letter lies at the heart of any future claim that may be brought by Gwelhayl against Bailey.

12.

Although the precise details are unclear it appears that in August 2007, and despite Mr. Stone's appointment and a critical letter to Bailey from Gwelhayl's solicitors who had been on board since at least June, Midas and Bailey reached some sort of agreement as to the measured element in the final account. The proposed agreed figure was £5,245,000. Mr. Stone had no involvement in that agreement.

13.
Since then there has been a good deal of correspondence, complaints and criticisms passing between the three parties Gwelhayl, Midas and Bailey. Both Midas and Bailey maintain that the measured element of the final account has indeed been agreed and compromised pursuant to their agreement in August 2007. I am told, however, that no sums were paid by Gwelhayl on the basis of that alleged final account settlement.

14.
On 18th July 2008 Gwelhayl's solicitors sent Bailey and their solicitors a letter outlining its claim seeking pre-action disclosure. The letter focuses exclusively on the final account and contains these important passages:

"What is, however, clear is that the final account remains very much unresolved and in these circumstances the final account documentation which both parties seem intent on preventing Gwelhayl from seeing remains very much at issue. Whilst Gwelhayl is seeking to resolve this situation without recourse to legal proceedings the actions of Midas and Bailey are making this very difficult. Midas and Bailey seem to suggest that Gwelhayl can resolve the question of a final account in the absence of final account information.

In the event that it is necessary for Gwelhayl to institute proceedings against Midas and Bailey in order to resolve matters relating to the final account then in the ordinary course of proceedings both Midas and Bailey will be bound to disclose all of the information which Gwelhayl has repeatedly requested."

15.
This dovetails with Mr. Tyson's statement dated 21st August 2008 in support of the CPR 31.12 application and which at paragraph 58 says this:

"Any proceedings which are instituted which investigate Bailey's role in the project and in particular in relation to the final account will necessarily involve an investigation of the information which was set out in the Schedule of Requests that was appended to the Fenwick Elliot LLP letter dated 18th July 2008. The information on the Schedule of Requests merely sets out the essential information that an Employer needs to see in order to fully understand the final account."

16.
The documents sought in the letter of 18th July, and now in this application, fall broadly into two categories. Category 1, which consists of items 1 to 3, relates to original tender information. Mr. West of Bailey has dealt with those in his statement and has said in clear terms that he does not believe that Bailey have any of this documentation. Indeed he goes on to say that he does not believe that Bailey ever had that documentation. The remaining documents, category 2, consist of items 4 to 10. These all relate to the final account and/or its alleged settlement, although item 10 is wide enough to encompass all delay notices and assessments of extensions of time

D. Analysis of Application

D.1. Category 1

17.
I can dispose shortly of the category 1 documents. Mr. West's evidence, set out in the preceding paragraph, is unchallenged. Accordingly, I do not propose to make any sort of order involving the documents in category 1, since the evidence before me is that they are not in Bailey's possession, and indeed may well never have been in Bailey's possession. I ought to add for completeness that, if I am wrong about that, it seems to me that the points made below in relation to category 2 will apply to these documents too.

D.2.Category 2:The Nature and Merits of Gwelhayl's Claim and its Prospects of Success

18.
In respect of category 2, my fundamental concern relates to the nature of the claim against Bailey: the clarity of the issues that may arise in that claim and whether or not such a claim can be said to have a real prospect of success. For the reasons which I set out below, I have concluded that no arguable claim of any sort has been identified by Gwelhayl against Bailey, and that in those circumstances it would be inappropriate to exercise my discretion in their favour under CPR 31.12.

19.
A claim against a professional man will focus on what he did that he should not have done, or sometimes what he failed to do that he should have done, and it will go on to explain how and why those acts or omissions have given rise to financial loss on the part of his employer. In my judgment, in the present application, one looks in vain, either in the evidence or in the correspondence, to find any such claim against Bailey arising out of the project at Gull Rock.

20.
As I have indicated, the high point of the proposed claim is the suggestion that Gwelhayl wish "to investigate Bailey's role in the project and in particular in relation to the final account". With respect, civil litigation does not consist of ‘an investigation’ simply for its own sake. The investigation carried out by the court is only that which is necessitated by the claims that are made, in order to see whether those claims are made out or not. It is therefore the underlying financial claims that matter in the present case. As I have indicated, no such claims are identified in the documents.

21.
I consider that this point can be illustrated even more clearly by considering the critical issue between the parties, namely the alleged agreement of the measured work element in the final account by Bailey with Midas. That plainly lies at the heart of Gwelhayl's inchoate dissatisfaction with Bailey's performance. A proper analysis of Gwelhayl's position against Bailey in respect of these events would, I think, run something like this:

(a) Was the alleged settlement binding on Gwelhayl such that they cannot now open it up? If so, why?

(b) If the settlement was not binding, and given that the disputes on the final account between Gwelhayl and Midas are being referred to arbitration, what possible loss can there have been as a result of Bailey's alleged breach of authority in reaching the purported settlement? It seems to me that, on the material before me, there could be no such loss.

(c) On the other hand, if the settlement was binding, what loss have Gwelhayl suffered as a result? In other words what, presumably lower, figure does Mr. Stone or Gwelhayl say represented the value of the measured work element of the final account, and how and why is that said to be the (lower) figure

that Bailey should have agreed with Midas and/or how and why is it said that Bailey should not have agreed a figure in excess of that?

22.
As to the first two questions, Mr. Bowling very fairly accepts that it is Gwelhayl's primary case that there was not a binding settlement in August 2007. Of course, if that is right, there would be no claim against Bailey, and certainly no such claim is identified in the documents here. Accordingly, on this basis, any claim against Bailey would be a contingent claim which would only arise if Gwelhayl's primary case was wrong and the settlement was, in fact, binding after all.

23.
That then brings me back to the point at paragraph 21(c) above namely, if the settlement was binding, how and why was the agreed figure too high? There is no evidence at all before me in respect of that issue, or which even hints at how or why a claim may be possible against Bailey in relation to the settlement reached. On the basis of the material before me, I have no idea whether or not there is a claim against Bailey arising out of the final account negotiations and alleged agreement.

24.
During the course of his oral submissions, Mr. Lee made the forceful point that there is no statement from Mr. Stone before the court, despite his involvement in the relevant events. He said that there was nothing from Mr. Stone, or indeed anyone else, to say what Mr. Stone had done by way of valuation and what, if this was the case, he had been prevented from doing as a result of the lack of documents. There was not a single example of an item of work which, on Mr. Stone's case, had been over-valued. I accept that submission: it makes, in another way, the point to which I have already referred, namely the complete absence of any identifiable claim against Bailey.

25.
Mr. Lee also made the point, again I consider correctly, that on the basis of the evidence it is wrong for Gwelhayl to create the impression that no documentation or copy documentation had been provided to Mr. Stone. He referred to a number of letters between the parties. It is unnecessary for me to set them all out in this Judgment. I refer to just one, the letter from Mr. West of Bailey dated 12th October 2007 to Gwelhayl's solicitors, which identified ten categories of documents, including a large number relevant to the final account, which had been provided by Mr. West to Mr. Stone. For the reasons previously noted, there is nothing to suggest that that specific documentation provided was insufficient to allow Mr. Stone or Gwelhayl to undertake their own assessment of the final account valuation.

26.
For these reasons, I put it to Mr. Bowling that Gwelhayl themselves could not say whether there was, in truth, any claim against Bailey. Mr. Bowling fairly accepted that, on the basis of the information presently available, this was indeed the case. During that discussion, Mr. Bowling made the point that there might be a claim because the figure in the purported contract settlement endorsed by Bailey was considerably higher than the sum in the original contract. That, of course, may be right, but the mere fact that there is a cost overrun does not, of itself, give rise to a claim against the professional involved: see the judgment of His Honour Judge Hicks QC in **Copthorne Hotel (Newcastle) Ltd v. Arup Associates** 12 Const LJ 402..

27.
In circumstances where:

(a) Gwelhayl’s primary case is that there is no claim against Bailey because there was no binding settlement; and

(b) Even if there was a binding settlement, Gwelhayl still do not know whether or not there will be a claim against Bailey;

I am unable to conclude that there will be a claim at all, let alone a claim with a real prospect of success. In those circumstances it seems to me that, whatever the jurisdictional position I should not permit this application under the exercise of my discretion under CPR 31.16. Indeed, my position is not dissimilar to that of Morison J in **Snowstar**. In many ways the position here is worse, because at least there the judge was able to conclude that the claim met the ‘real prospect of success’ test, even though he went on to describe it as ‘fragile’ and ‘weak’ and for that reason did not exercise his discretion in favour of the application. In this case I am unable even to go that far, for the reasons that I have set out above.

28.
For the avoidance of doubt, I should say that I reject the suggestion that the documents in question should be provided in order for Gwelhayl to work out whether they have a claim at all. It does not seem to me that that is the purpose of the provisions at CPR 31.16. It follows that I do not accept Mr. Bowling's submission that these documents are required, as he put it, ‘to break the circle’. It seems to me that, in circumstances where Bailey have provided a large amount of copy documentation, and in circumstances where, for the reasons that I have given, the alleged claim is inchoate and entirely speculative, it would be wrong to conclude that the documents should be provided before the commencement of proceedings. I do not accept Mr. Bowling's submission that, by reference to the examples drawn by Rix LJ in **Black**, this is akin to a medical negligence case. It seems to me that this is precisely the sort of speculative commercial action that Rix LJ had in mind in paragraph 83 of his judgment.

29.
Therefore, putting it at its highest, Gwelhayl may or may not have a claim against Bailey, which on their case would be contingent (because it assumes that there has been a binding settlement), and which contingent claim in any event depends on a particular reading of the letter of 6th June, which is contrary to one of the express paragraphs of the letter itself. It does therefore seem to me that this is the type of speculative case that Rix LJ had very much in mind in **Black** where the court's discretionary power should lead to the refusal of an application for specific disclosure.

30.
Mr. Lee made an additional point, namely that there were fees outstanding to Bailey and that Bailey had said that if the fees were paid, then copy documents in any missing categories would be provided. He therefore said that the provision of the documents, or the lack of provision of the documents, was a matter that could be laid fairly and squarely at Gwelhayl's door because it was they who had refused to pay the fees. It seems to me that, whilst that point is mainly relevant to the delivery up application, it is not irrelevant to the application under CPR 31.16, and in those circumstances I should add it as a further matter which I have taken into account in exercising my discretion against Gwelhayl.

31.
Other points were argued by the parties but I hope they will forgive me if I do not go into them in any great detail. It seems to me that, for the reasons that I have set out above, it is unnecessary for me to explain further why I do not exercise my discretion in favour of Gwelhayl's application for pre-action disclosure.

E. Delivery Up

32.
At the hearing this afternoon, Mr. Bowling made an application to amend the notice so as to include, for the first time, a claim for delivery up under CPR 25.1(1)(c)(i). Since this dispute had a crossover with at least some aspects of the specific disclosure application, I allowed the application to amend. However, because I accepted Mr. Lee's point that the very late amendment prejudiced Bailey, because they were not able to put in evidence relating to some of the relevant factual background, I made plain that the amendment was only allowed on the basis that no findings adverse to Bailey on the facts would be made as a result of the late amendment. I made the point at the start of the afternoon, when we were dealing with that aspect of the dispute, that it seemed to me that if the delivery up application had been the focus of Gwelhayl's solicitors' approach at the outset, it may very well be that we would not have been here this afternoon.

33.
The relevant parts of CPR 25.1 provide as follows:

"(1) The court may grant the following interim remedies – ...

(c) an order –

(i) for the detention, custody or preservation of relevant property; ...

(m) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him ..."

34.
It seems to me that the category 1 documents do not fall to be delivered up because of the evidence that Bailey do not have them and probably never had them. Accordingly, I am only now dealing with the category 2 documents, namely items 4 to 10. To the extent that those documents were created by Bailey or came into their possession in the course of their agency for Gwelhayl, it seems to me that those documents prima facie fall to be delivered up. Indeed, Bailey's letter of 11th September 2008 appears to concede as much. Therefore, in accordance with the principles set out in **Cayne v Global Natural Resources Plc** [1984] 1 All ER 255, it seems to me that, subject to the detailed points discussed below, there is a prima facie case made out for delivery up.

35.
The difficulties arise from the lien which Bailey assert in respect of the documents. There is a sum amounting to £10,555.41 outstanding to Bailey by way of fees. They say that they are entitled to exercise a lien over the documents until that sum is paid to them or, on their secondary case, paid into court.

36.
The first issue is the amount of the fees. As I have said the total is £10,555.41. Gwelhayl developed a case that only some £6,000 odd of these fees was due under the original fee agreement and, therefore, any order for payments should be limited to this figure. However, I was taken to a letter dated 13th February 2007 from Gwelhayl which said that they would pay additional fees in relation to work requested by the purchasers. In those circumstances, it seems to me that, since Gwelhayl owed all of the fees, it would be wrong to reduce the amount of any payment that I might order. Accordingly, the relevant figure for fees is £10,555.41.

37.
The second issue is whether or not there is any entitlement to fees at all. In his skeleton, Mr. Bowling made the point that because of clause 11 of the consultancy agreement Bailey failed to supply all the outstanding contractual warranties and they, therefore, failed to comply with their obligations, so that there was no entitlement to fees. He relied in this regard on **Re Southern Livestock Products Limited** [1964] 1 WLR 24.

38.
However, Mr. Bowling properly conceded that, on reflection, this was not an argument that he could in fact pursue. That is because, in the consultancy agreement, whilst clause 11 allowed a withholding of fees, clause 9 made plain that such withholding would only be permitted if there was a withholding notice under the contract. Mr. Bowling properly accepted that there was no such withholding notice and, in those circumstances, therefore, it could not now be said that the fees were not due.

39.
Finally, Gwelhayl submitted that the lien had been destroyed by conduct, because copies of some of the documents have been supplied previously. As I debated with Mr. Bowling during these exchanges, I am not persuaded that the production of copy documents by a professional man in the course of his engagement, even if that occurs when fees are outstanding, can, without more, be said to destroy the lien.

40.
I note from paragraph 7-091 of **Bowstead** that a waiver is implied whenever the conduct of the agent is such to indicate an intention to abandon the lien or is inconsistent with the continuance of it. However, there is no evidence here of any specific conduct which could be said to amount to waiver, and I do not find that the simple production of copy documents in the past has destroyed the lien. In any event I should add that, given the absence of any relevant evidence from Bailey on this point (through no fault of their own, because of the late application to amend), it is not appropriate for me to make such a finding against them on the facts. Accordingly, I do not find that their conduct has waived the lien.

41.
All of that said, it seems to me that, in view of the fact that there is at least a possible claim at some stage to be made by Gwelhayl against Bailey, it would not in the present circumstances be appropriate to require Gwelhayl to pay those fees direct to Bailey. It seems to me that Bailey must be entitled to security and I can provide that by ordering that the outstanding fees, namely £10,555.41, should be paid into court.

42.
Accordingly, I am going to order that Gwelhayl pay into court the sum of £10,555.41 and that, on receipt of notice of that payment, Bailey should release those documents belonging to Gwelhayl in category 2, items 4 to 10 above.

43.
There is one final point. As I have indicated, the documents to be delivered up are those belonging to Gwelhayl. Categories 6, 7 and 8 are widely drawn and could on their face include documents which actually belong to Bailey, for example their own calculations or other notes. I accept Mr. Lee's proposition, based on **Leicestershire County Council v. Michael Faraday and Partners** [1941] 2 KB 205, that such documents should not be included within the order for delivery up. Documents which have been prepared by Bailey for their own use in discharging their functions are and remain

the property of Bailey. It follows that I also accept the short proposition at paragraph 13-074 of the 8th Edition of **Keating on Construction Contracts,** to the effect that an employer is not, in the absence of express agreement, entitled to demand memoranda, calculations, draft plans and other documents which the professional man has prepared to assist him in carrying out his duties.

44.
Accordingly I dismiss the claim for pre-action disclosure under CPR 31.12. I allow the claimant to amend its claim for delivery up under CPR 25 and I order that the documents in category 2 that belong to Gwelhayl (but not the documents which belong to Bailey), be delivered up following payment by Gwelhayl of £10,555.41 into court. Both parties will be given liberty to apply to the court for payment out of that sum, and that application will need to be made not later than 1st November 2009. In other words, that gives the parties just over a year to resolve their differences and, hopefully, agree what should happen to the money in court. If that has not happened by that time then the court will need to make further orders.

45.
That deals with the substantive issues. I appreciate that that leaves the question of costs and the precise formulation of the order, but it may very well be that, if costs are in issue, there is not time to deal with those matters this afternoon.