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Baltimore Wharf SLP v Ballymore Properties Ltd [2026] EWHC 312 (TCC): “Agreed” Means Nothing—If It’s Still Subject to Contract

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

Date: 16 February 2026

Judge: Recorder Singer KC

Key Words:

Subject to contract, Settlement agreements, Contract formation, Summary judgment, Implied waiver, Civil procedure, Construction disputes, Binding legal relations

Summary

This judgment concerns applications by the Defendant (Ballymore Properties Ltd) and the Part 20 Defendant (WSP UK Limited) for summary judgment or strike-out against the Claimant (Baltimore Wharf SLP) [1-2]. The applicants argued that the underlying construction dispute had been settled by a binding agreement reached via email on 24 September 2024 [2]. The Court dismissed the applications, ruling that the negotiations were conducted "subject to contract" [50]. The Judge held that the Claimant's email confirmation regarding the terms of the settlement did not remove the "subject to contract" qualification, and because the formal agreement was never signed by the Claimant, no legally binding settlement existed [46, 50].

Key Themes:

1. ***"Subject to Contract"****: The legal effect of this phrase in preventing a binding contract from arising during negotiations until a formal document is executed [38].*
2. ***Settlement Agreements****: The distinction between agreeing on the terms of a settlement and entering a binding legal contract [30(19)].*
3. ***Waiver by Implication****: The high threshold required to prove that parties have impliedly waived a "subject to contract" reservation [38].*
4. ***Summary Judgment****: The standard requiring the applicant to show the other party has no reasonably arguable defence [4].*

Background

1. **The Dispute:** The underlying claim involved damages estimated at over £2 million regarding

the collapse of a nursery roof at Baltimore Wharf in July 2023 [5].

2. **The Negotiations:** Following the commencement of proceedings, the parties engaged in settlement discussions. On 29 August 2024, the Defendant's solicitors circulated a draft Settlement Agreement marked "Subject to contract and without prejudice save as to costs" [8, 9].
3. **The Critical Emails:** On 24 September 2024, the Defendant's solicitors emailed asking if the Settlement Agreement was agreed. The Claimant's solicitor replied: "I confirm that the Settlement Agreement with WSP's amends is agreed" [12-15].
4. **The Breakdown:** Following this email, an "execution version" (without the "subject to contract" header) was circulated for signature [16-17]. However, the Claimant never signed the document, later stating that executive officers needed to review it [25-27, 36-38]. The Defendant argued the 24 September email constituted a binding deal [18-20].

Legal Issues and Analysis

The Core Issue—The court had to determine if there was a reasonably arguable defence to the contention that a binding settlement existed as of 24 September 2024 [1-2]. Specifically, did the email confirmation agreeing to the terms have the effect of removing the "subject to contract" reservation? [50].

Legal Principles

1. The court relied on *Joanne Properties Ltd v Moneything Capital Ltd* [2020] EWCA Civ 1541 [30], establishing that once negotiations begin "subject to contract," that condition remains unless expressly agreed otherwise or necessarily implied [30, 38].
2. The court noted that agreeing to terms within a "subject to contract" negotiation does not automatically create a contract; parties are often of "one mind" regarding terms before the formal exchange, but the qualification protects them until that exchange occurs [30(19)].
3. The bar for proving the "subject to contract" umbrella has been removed by necessary implication is high [38].

Judicial Analysis

1. **The Documents:** The draft agreement being discussed on 24 September contained the words "Subject to contract" on every page [9-11].
2. **No Implied Waiver:** The Judge found that the Claimant's email accepting the terms was insufficient to imply a removal of the "subject to contract" reservation . The court accepted that a reply accepting terms in a "subject to contract" negotiation cannot, by itself, create a binding agreement .
3. **Conduct:** Although the Judge noted that post-agreement conduct is generally inadmissible, he reviewed it and found it supported the Claimant's position [48-49]. For instance, the parties agreed to stay the proceedings *after* the alleged settlement date, which is inconsistent with a belief that a binding settlement was already in place . Furthermore, when the Claimant later mentioned a need for "review," the other parties did not express the surprise one would expect if they truly believed a binding deal had already been struck .

Conclusion

Recorder Singer KC dismissed the applications for summary judgment and strike-out. The court concluded that there was no implicit removal of the "subject to contract" reservation by the Claimant. Consequently, the agreement remained subject to contract and was not binding because it was never

signed. Permission to amend the Defence was also refused.

Key Takeaway:

The key takeaway is that when negotiations are conducted "subject to contract," a party confirming via email that the terms of an agreement are "agreed" does not create a binding contract. The "subject to contract" protection remains in force until a formal agreement is executed, unless the parties clearly and expressly agree to waive that protection [30(22), 38, 45-46, 49-50].

Parting Thoughts

There is something magnificently English about spending months negotiating a settlement, circulating drafts, congratulating oneself on progress—only to discover that the words "subject to contract" were not decorative.

In Baltimore Wharf SLP v Ballymore Properties Ltd [2026] EWHC 312 (TCC), *Recorder Singer KC was asked to decide whether a five-minute email exchange had conjured into existence a legally binding compromise of a £2 million construction dispute arising from the collapse of a nursery roof. The defendants argued that at 9:56 am on 24 September 2024, when the claimant's solicitor wrote, "I confirm that the Settlement Agreement with WSP's amends is agreed", the deal was done. Full stop. Pens down.*

The difficulty? Every circulating draft was emblazoned—repeatedly and unapologetically—with "Subject to contract". Not once. Not discreetly. On every page. Like a legal air-raid siren.

The defendants' case required the Court to conclude that this protective umbrella had somehow evaporated by implication. That despite months of explicitly conditional negotiations, a single email in the present tense had silently detonated the reservation. The Judge declined the invitation.

*Applying **Joanne Properties** with orthodox discipline, the Court reaffirmed the central rule: once negotiations begin subject to contract, that condition remains unless expressly removed or necessarily implied. And "necessarily" is doing a lot of heavy lifting. As the authorities make clear, courts do not lightly infer that sophisticated commercial parties have abandoned a protection they deliberately invoked.*

Crucially, agreement on terms is not the same as agreement to be bound. Parties are frequently "of one mind" immediately before exchange. That is the entire point of exchange. Until then, the law assumes they reserve the right to walk away—however inconvenient, however irritating, however late in the day.

The 9:56 am email was the defendants' high-water mark. The Judge accepted it confirmed agreement on terms. What it did not do—what it could not do, standing alone—was neutralise the express qualification stamped across the very document being "agreed". If the umbrella is up, you do not get wet merely because you say the weather looks promising.

Even the post-email conduct failed to rescue the argument. Stays were extended. Signatures were chased. "Review" by executive officers was mentioned without visible outrage. If this was a binding deal, it was a remarkably relaxed one. The absence of indignation when the claimant hesitated was, in the Judge's view, rather telling.

The Court acknowledged—almost with a raised eyebrow—that the claimant probably changed its mind after 24 September. But that is not unlawful if you have preserved the right to do so. The only question was whether it was too late. It was not.

Summary judgment and strike-out were dismissed. Permission to amend the Defence was refused.

The Verdict—If you negotiate under a banner that says "Subject to contract", the law takes you at your word. You can agree the figures. You can agree the clauses. You can even say it "is agreed."

But until the formal instrument is executed—or the reservation is unmistakably and jointly abandoned—you have agreed precisely nothing that the court will enforce.

In short: if you want the deal to bind, sign it. If you do not sign it, do not be surprised when the umbrella still works.

#ConstructionLaw, #DisputeResolution, #SubjectToContract, #ContractLaw, #SettlementAgreements, #CivilProcedure, #TCC, #LegalUpdate, #CommercialLitigation, #HighCourt #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

The "Subject to Contract" Reservation

1. ***Joanne Properties Ltd v Moneything Capital Ltd* [2020] EWCA Civ 1541**—*The leading authority relied upon to establish that once negotiations commence "subject to contract," that condition remains in force throughout the negotiations unless the parties expressly agree to its removal or it is removed by necessary implication.*
2. ***Sherbrooke v Dipple* [1981] 41 P&CR 173**—*Cited for the principle that the "subject to contract" condition contained in an opening letter is carried all the way through subsequent negotiations.*
3. ***Tevanon v Norman Brett (Builders) Ltd* [1972] 223 EG 1945**—*Established that the qualification can only be expunged by express agreement or necessary implication, and that parties being of "one mind" on terms is insufficient to create a contract while the qualification exists.*
4. ***Cohen v Nessdale Ltd* [1982] All ER 97**—*Reaffirmed the approach regarding the persistence of the "subject to contract" qualification established in Sherbrooke and Tevanon.*
5. ***Edmonds v Lawson* [2000] QB 501**—*Cited for the principle that while the intention to enter legal relations is determined objectively, "context is all important."*

Waiver by Necessary Implication

1. ***RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG* [2010] UKSC 40; [2010] 1 WLR 753**—*Emphasised that while waiver is possible (e.g. through part performance), the court "will not lightly so hold" and it depends on all circumstances, establishing the "high bar" required to prove implied waiver.*
2. ***Jirehouse Capital v Beller* [2009] EWHC 2538 (Ch)**—*Cited as an example where the "subject to contract" reservation was lifted by necessary implication due to specific conduct (standing down counsel, treating it as a "done deal"), though distinguished in this judgment as being based on "unusual facts."*
3. ***Morgan Walker Solicitors LLP v Zurich Professional & Financial Lines* [2010] EWHC 1352 (Ch)**—*Cited to demonstrate that cases depend on their own facts, noting that the judge who decided Jirehouse reached a contrary decision in this case.*
4. ***Goodwood Investments Holdings Inc v Thyssenkrupp Industrial Solutions AG* [2018]**

EWHC 1056 (Comm)—*Cited to show the application of the principle that "subject to contract" conditions persist, here in the context of an arbitration claim settlement.*

Admissibility of Subsequent Conduct

1. ***Newbury v Sun Microsystems*** **[2013] EWHC 2180 (QB)**—*Relied upon for the principle that where a contract is said to be contained in documents, the parties' subsequent conduct is not a legitimate aid in determining whether those documents gave rise to a binding agreement.*
2. ***Bieber & Others v Tethers Ltd (in liquidation)*** **[2014] EWHC 4205 (Ch)**—*Followed Newbury, affirming that post-agreement conduct is generally inadmissible for determining if a written binding agreement exists.*
3. ***Air Studios (Lyndhurst) Ltd (t/a Air Entertainment Group) v Lombard North Central Plc*** **[2012] EWHC 3162 (QB)**—*Cited within the Newbury quotation for the proposition that conduct after the date of an alleged contract is not a legitimate aid in determining if an agreement was reached.*
4. ***Nautica Marine Ltd v Trafigura Trading LLC (the Leonidas)*** **[2020] EWHC 1986 (Comm), [2021] CLC 362**—*Cited by the parties as an authority supporting the argument that post-agreement conduct is admissible.*

Legislation:

Civil Procedure

1. *Civil Procedure Rules Part 24—Relied upon as the procedural basis for the Defendant and Part 20 Defendant's applications for summary judgment, establishing the legal test applied by the Judge to determine if the defence (specifically the argument regarding the settlement) had any "real prospect of success."*
2. *Civil Procedure Rules Part 20—Identifies the specific procedural mechanism under which the claim by the Defendant (Ballymore Properties Limited) against the third party (WSP UK Limited) was brought, defining the status of WSP UK Limited as the "Part 20 Defendant" within the proceedings.*

Legal Texts & Commentary:

None were cited within the judgment.

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MATTERS ARISING

A measured conversation arising from the judgment in *Baltimore Wharf SLP v Ballymore Properties Ltd*

George and Archie discuss settlement, optimism, and the enduring force of the words "subject to contract."

GEORGE:
So this was a two-million-pound dispute about a collapsed nursery roof.

ARCHIE:
Yes.

GEORGE:
The parties negotiated.

ARCHIE:
For some time.

GEORGE:
Drafts circulated.

ARCHIE:
Several.

GEORGE:
Each marked "Subject to contract."

ARCHIE:
On every page.

GEORGE:
Then, at 9:51am on 24 September, an email:
"Is the Settlement Agreement agreed?"

ARCHIE:
Yes.

GEORGE:
And at 9:56am, the reply:

“I confirm that the Settlement Agreement with WSP’s amends is agreed.”

ARCHIE:
Those were the words.

GEORGE:
Five minutes.

ARCHIE:
Efficient.

GEORGE:
So at 9:56am, the dispute ended.

ARCHIE:
No.

GEORGE:
Why not?

ARCHIE:
Because the Settlement Agreement being “agreed” was headed “Subject to contract.”

GEORGE:
Still?

ARCHIE:
Still.

GEORGE:
But the email did not say “subject to contract.”

ARCHIE:
The document did.

GEORGE:
And that was enough.

ARCHIE:
Yes.

GEORGE:
So agreement on the terms is not a binding agreement.

ARCHIE:
Correct.

GEORGE:
Even if expressed in the present tense.

ARCHIE:
Grammar does not defeat qualification.

GEORGE:
After 9:56am, they circulated an execution version.

ARCHIE:
Yes.

GEORGE:
Without the “subject to contract” header.

ARCHIE:
Correct.

GEORGE:
They requested signatures.

ARCHIE:
They did.

GEORGE:
One party signed.

ARCHIE:
Two, in fact.

GEORGE:
The claimant did not.

ARCHIE:
It did not.

GEORGE:
Later, the claimant said its executive officers needed to “review.”

ARCHIE:
Yes.

GEORGE:
If the deal was already binding, that would be surprising.

ARCHIE:
One might expect protest.

GEORGE:
There was none.

ARCHIE:
None of note.

GEORGE:
So the claimant changed its mind.

ARCHIE:
Probably.

GEORGE:
And that was lawful.

ARCHIE:

Because it had reserved the right to do so.

GEORGE:
So to be clear:
At 9:56am, the terms were agreed.
The figures were settled.
The clauses were settled.
The parties believed they had a deal.

ARCHIE:
Yes.

GEORGE:
And yet they had no binding contract.

ARCHIE:
Correct.

GEORGE:
Because the umbrella remained open.

ARCHIE:
Umbrellas do not close themselves.

GEORGE:
So the law prefers clarity over enthusiasm.

ARCHIE:
It prefers signatures.

Satire aside, the judgment is orthodox and firm.
Once negotiations begin "subject to contract," that condition persists unless clearly and jointly removed.
Being "of one mind" is not enough.
Exchange — or execution — is the moment that matters.
Agreed at 9:56. Binding never. Yes.