Neutral Citation Number: [2022] EWHC 1523 (QB)

Case No: QB-2019-004687

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2022

Before:

RICHARD HERMER QC SITTING AS A HIGH COURT JUDGE

- -

Between:

LYDIA DEANE	**Claimant**
- and –	
(1) PAUL JAMES BARKER	**Defendants**
(2) ANITA JAYNE BARKER, *née* HAMILTON	
(3) REALE SEGUROS GENERALES SA	
(4) VILLA MANAGEMENT SL	

- -
- -

Mr Matthew Chapman QC (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Mr Michael Bailey (instructed by **Tolhurst Fisher**) for the **First and Second Defendant**
Ms Lucy Wyles QC (instructed by **Weightmans LLP**) for the Third Defendant
Mr Simon Hilton (instructed by **Buckles Solicitors**) for the **Fourth Defendant**

Hearing dates: 18th, 19th, 20th & 23rd May 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.
Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time of hand-down is 2.00pm on Friday 17 June 2022

.....

RICHARD HERMER QC SITTING AS A HIGH COURT JUDGE

DHCJ RICHARD HERMER QC:

1. This is a trial of a preliminary issue in a personal injury claim. The Court is asked to determine the meaning of two clauses of Spanish building regulations and assess their application to the facts of the claim.

2. This judgment is divided into the following parts.

Part 1: The underlying claim

3. In August 2018 the Claimant and her family travelled to Spain for a holiday. The Claimant had booked a villa on the La Manga resort in Los Belones, Murcia in the south-east of Spain ('the villa'). The villa was built over two storeys and the Claimant's bedroom was situated on the first floor. The upper storey was accessed by a spiral staircase. On the evening of 13 August 2018, the Claimant was ascending the staircase together with her young grandson. The Claimant walked up the narrower section of the staircase, closest to the centre, whilst holding the hand of her grandson who ascended on the wider section of the step. The Claimant's case is that as she walked up the stairs, she lost her footing and fell backwards causing her to hit her head on a stone ledge towards the bottom of the staircase. The Claimant's case is that this caused her to sustain a very severe traumatic brain injury, leaving her with (amongst other things) cognitive impairment and an elevated risk of epilepsy.

4. The Claimant issued proceedings in December 2019. She has brought her claim against four Defendants. The First and Second Defendants are the owners of the villa. They are a married couple who are domiciled in England. The Third Defendant is the insurer of the First Defendant, against whom a direct right of action exists under Spanish insurance law, namely Article 76 of the Spanish Insurance Contract Law. The Third Defendant is domiciled in Spain. The Fourth Defendant is a company, domiciled in Spain, who manage the villa on behalf of the First and Second Defendant.

5. The parties agree that the courts of England & Wales are the appropriate forum to try the claims against all the named Defendants, each of whom has submitted without qualification to this jurisdiction.

6. The claim against the First and Second Defendant is brought under English law. This is because, although the damage complained of was sustained in Spain, both the Claimant and the First & Second Defendants are habitually resident here. Accordingly, the relevant choice of law framework in place at the time of the accident, mandates that English law will apply, per Article 4(2) of Regulation No 864/2007, more commonly known as 'Rome II'. The case against the First and Second Defendant is brought in the tort of negligence. It is alleged that they owed her a duty to ensure the reasonable safety of the Claimant. It is averred that the First and Second Defendant breached this duty of care by exposing the Claimant to a foreseeable risk of injury arising out of the condition of the staircase - it being alleged that the staircase was unsafe by virtue of its design, construction and operation. Although the claim against the First and Second Defendant falls to be decided under English law, it is accepted by all the parties that issues such as the standard of care and breach of duty will be informed by whether the staircase complied with Spanish law safety standards.

7. The First and Second Defendant deny liability. They contend that the condition of the villa, including the staircase, fully complied with all relevant Spanish construction and safety standards. They also put the Claimant to strict proof that the condition of the staircase was a material cause of the fall, noting (amongst other things) that contemporaneous records suggest she might have 'blacked out' at the top of the stairs.

8. The claim against the Third Defendant is brought under Spanish law pursuant to the presumption provided in Article 4(1) of Rome II, notwithstanding that their liability arises from that of their insured, the First Defendant.

9. The Defence of the Third Defendant admits that it may be liable for the negligence (if proven) of the First Defendant under the terms of his insurance policy but denies any liability in law for the Second Defendant. It denies that the First Defendant was in breach of any duty and avers that the accident was caused or contributed to by the Claimant's own negligence.

10. The claim against the Fourth Defendant is brought under Articles 1902 and 1907 of the Spanish Civil Code. These provide for liability in terms that appear very similar to the equivalent English tort of negligence:

Article 1902
The person who, as a result of an action or omission, causes damage to another by his fault or negligence shall be obliged to repair the damage caused.

Article 1907

The owner of a building is liable for damages resulting from the collapse of all or part thereof, if such collapse should occur as a result of a failure to make the necessary repairs.

11. In addition, a claim is pursued in contract against the Fourth Defendant, it being said that there was an implied term if the rental agreement for the villa to the effect that it would be in a safe condition. This aspect of the claim in contract is governed by Spanish law pursuant to the presumption contained in Article 4 of Regulation EC 593/2008 (more commonly known as 'Rome I') which governed the dispute at the relevant time. The

Particulars of Claim avers that the contractual obligations relied upon are in 'like terms' to the obligations owed in tort and under the civil code.

12. The Defence of the Fourth Defendant denies any liability for the accident.

13. The Particulars of Claim does not seek to differentiate between the alleged breaches in English tort law, Spanish civil code or contract – nor does it plead separate allegations of breach against each Defendant. Rather, the pleading provides a common particularisation of the breach of the legal duties contended for under the broad heading of 'Negligence/Breach of Duty and/or Breach of Contract'. This reflects to my mind the very considerable (and unsurprising) overlap between the approach that the two jurisdictions adopt in regulating private law duties to take reasonable care for the safety of people visiting properties.

14. The Particulars of Claim identify ten different ways in which it is said that the Defendants, individually and/or collectively, failed in their legal duties. All focus on the condition of the staircase and the danger that it is alleged it presented. Three of the allegations rely on asserted breaches of the Spanish Technical Building Code, in particular it is averred that there was a failure to meet regulatory requirements to place a handrail on the stairs, to ensure that the treads were sufficiently wide and to ensure that the height of all steps complied with the maximum permitted.

15. These Regulations, which I shall refer to throughout by their Spanish abbreviation, 'CTE', form the subject matter of the preliminary issue. Additional regulations and technical standards were identified in the Claimant's pleadings and expert reports as bearing on the issues before me, but at the outset of the hearing, Mr Matthew Chapman QC, counsel for the Claimant, made plain that his client's case in respect of Spanish building regulations rested solely on the CTE.

16. The introduction of the CTE postdates the construction of the villa but many of its provisions apply to a pre-existing property when it undergoes a renovation, a change of use, or extensions. The obligations under the CTE are said by the Claimant to have arisen in this case out of works carried out at the villa in 2017 which it is said amount to renovation. The works extended over much of the villa and included re-tiling of the stairs and the erection of a glass balustrade. The Claimant avers that these works amounted to 'renovation' within the terms of the CTE and therefore required the stairs to comply with its technical regulatory requirements – which, it is alleged, it did not. The Defendants aver that the works were not 'renovation' but rather 'maintenance' and thus the CTE does not apply but even it is does, the property should be classified as being of 'restricted use' giving rise to less onerous obligations than those relied upon by the Claimant.

17. The correct classification of the works and the villa under the CTE form the discrete subject matter of the dispute that the Court is asked to resolve on this preliminary issue trial.

Part 2: The Preliminary Issues

18. On 22nd June 2021, Master Thornett ordered a trial of preliminary issues in the following terms:

"*The matter be set down for a preliminary trial hearing to determine whether the index staircase was defective in construction, design and make-up as pleaded in the Particulars of Claim, and, if so, whether as a matter of legal principle, that gives rise to a breach of duty*."

19. It is noteworthy that none of the parties sought an order in these terms, indeed the Claimant and Third Defendant joined forces to argue for a trial splitting liability and quantum. This was rejected by the Court which set out consequential directions confined to the resolution of the preliminary issues including granting permission to each of the parties to rely on the evidence of two classes of experts, the first in the field of 'technical, building and architectural standards' and the second in Spanish law.

20. There were no doubt good reasons presenting themselves to Master Thornett in June 2021 justifying the order made. Unfortunately, as matters have transpired, the issues that the Court has been asked to decide at this preliminary trial are so narrow that they are incapable of determining the substantive dispute one way or the other, indeed on one view they hardly progress the litigation at all. This is all despite the trial being listed for (and lasting) four full days with the parties calling a total of seven expert witnesses, some of whom at least will need to be recalled at the next stage of trial.

21. A Court will always strive to identify the most proportionate means of resolving cases in accordance with the overriding objective. Sometimes this will inure in favour of ordering preliminary issues but very often it will not. The Courts have long recognised that real care needs to be exercised before ordering preliminary hearings because, as Lord Scarman observed in *Tilling v Whiteman* [1980] AC 1 they are too often "*treacherous shortcuts. Their price can be … delay, anxiety and shortcuts*".

22. In *McLoughlin v Grovers (A Firm)* [2001] EWCA Civ 1743, David Steele J identified the principles that should guide the court in deciding whether to order a trial of a preliminary issue. The criteria include: (i) only issues which are decisive or potentially decisive should be identified; (ii) the questions should usually be questions of law; (iii) they should be decided on the basis of a schedule of agreed or assumed facts.

23. Although it is possible to read the Order of Master Thornett as directing the trial of a potentially decisive issue (i.e., was the staircase so defective as to give rise to a breach of duty) it became apparent that the parties were approaching the trial on a far narrower basis. On review of the materials contained in the trial bundle, it appeared that the focus of the parties was directed solely to the three discrete averments in the pleadings that the stairs contravened the requirements of the CTE, rather than any wider consideration of whether the staircase was defective (i.e., irrespective of a breach of the CTE).

24. In order to clarify the position, on the eve of trial I requested that the parties coordinate to provide the Court with an agreed list of issues. These were recorded, in agreed terms, in the skeleton argument of Mr Hilton, counsel for the Fourth Defendant as being:

Issue 1

Whether the works conducted at the villa and/or on the staircase were refurbishment works (such as to trigger the application of the CTE) or merely maintenance works (such as not to trigger the application of the CTE)?

Issue 2

Whether the villa (and the staircase within it) was for general or public use (such that the material provisions of the CTE would presumptively apply) or for restricted use (such that the same provisions would not apply)?

Issue 3

Whether, if the material provisions of the CTE apply, this would in principle give rise to a breach of duty in English and Spanish law?

25. There was in fact no real dispute about Issue 3. The written reports of the experts revealed a broad consensus that, irrespective of whether the CTE applied, and whether the staircase was/was not in conformity with it, these were no more than factors that would go into the general 'mix' when assessing whether there had been a breach of duty. In other words, whatever the findings under Issue 1 and Issue 2 they were not determinative of Issue 3 but merely potentially relevant factors forming part of a broader evidential assessment as to whether there had been a breach of duty. At the outset of the hearing the parties confirmed to me that this was their common understanding.

26. In my judgment, the short chronology set out above reflects the fact that (at least with the benefit of hindsight) the preliminary issue in the terms ordered has not assisted in the proportionate resolution of the dispute. I reach that conclusion for at least these reasons:

27. Firstly, neither Issue 1 nor Issue 2 are decisive of the underlying claim. As described above, whether the CTE applies at all, (and if so, whether it was breached), are no more than factors that fall to be assessed when the court determines breach of duty under both the law of England & Wales and Spain. Although Mr Chapman QC for the Claimant argued that a breach of the CTE would be powerful evidence of breach and conversely Ms Wyles QC for the Third Defendant maintained that compliance would be fatal for the Claimants, the court was not asked to calibrate the materiality of breach/compliance on the substantive claim – nor could it have done so fairly on the basis of the evidence before it, which was primarily focused on the applicability of the CTE rather than a broader assessment of whether the condition of the staircase was actionable.

28. Secondly, it is very difficult to see how a preliminary trial on the issues as ultimately defined could be proportionate – indeed it is distinctly possible that they will lead to a considerable increase in time and costs. The trial before me took the four full days allocated to it during which I heard evidence from four architects and three experts in Spanish law. If this claim proceeds to broader consideration of the condition of the stairs (beyond compliance with the CTE) then it might be that the architectural witnesses will need to be recalled. There is also the possibility that further evidence will be needed from the legal experts dealing with such matters as causation, burden of proof and implied terms. These are all matters that could have been incorporated within the hearing before me without much additional time or expense. Indeed, it would have been relatively simple to deal with the issue of causation as well at this hearing, particularly bearing in mind the fact that the Claimant has no recollection of her accident and there were no witnesses to the fall itself, save for her infant grandson. There could therefore have been a trial of all liability issues with only a modest increase in time and expense.

29. Thirdly, had it been fully appreciated at an early stage that the focus of this hearing was only directed to the two limited issues identified above then, assuming it had been considered appropriate to determine them alone (which I seriously doubt), directions

might have been given to ensure a more proportionate means of disposal other than a four-day trial with evidence from seven experts. In particular the Court may well have declined permission for the parties to rely on the evidence of architects at all (see below) or appointed a single joint expert and might have significantly narrowed the ambit of the dispute on Spanish law.

Part 3: The Assessment of Foreign Law

30. Issues 1 and 2 turn upon two provisions of Spanish law. A striking feature of this case is that unlike many other cases involving provisions of foreign law the dispute here was not focused on the meaning/effect of a substantive legal instrument (such as a Civil Code) but rather concerned the meaning/effect of 'definitions' clauses each contained in a glossary, whose very purpose is to set out in clear terms what they mean and when they apply.

31. In these circumstances, it might be thought that unless the definition clause was inherently ambiguous, or that foreign law provided a bespoke methodology for reading or applying such definition clauses, that the application of the facts to the definition should be a straightforward task – that after all is the very purpose of most definition clauses contained in glossaries. That was not however the approach of the parties who, in accordance with the directions, served lengthy and complicated expert reports on the meaning and effect of the two disputed definitions.

32. In order to explain my approach to this evidence it is necessary to say something about the approach of courts to the reception of foreign law generally.

33. It is trite to observe that the content of foreign law is a matter of fact for the parties to prove and the court to determine. Where the parties agree, or it has been decided, that foreign law governs a claim (or an aspect of a claim) the Court would ordinarily expect to be furnished with accurate copies of the relevant laws and evidence as to the relevant foreign law rules of interpretation (or agreement that they are the same as our own). Whereas it was once thought necessary for such evidence to be received through reports of duly qualified experts, that is no longer the case (if indeed it ever truly was). In *Brownlie v FS Cairo (Nile Plaza)* [2021] UKSC 1011, the Supreme Court was asked to consider, amongst other things, the question of whether English law could be presumed to apply in the absence of evidence as to the meaning and effect of foreign law. At §148, in his judgment dealing with the issue of presumption, with which all other members of the court agreed, Lord Leggatt observed:

"*The old notion that foreign legal materials can only ever be brought before the court as part of the evidence of an expert witness is outdated. Whether the court will require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. In an age when so much information is readily available through the internet, there may be no need to consult a foreign lawyer in order to find the text of a relevant foreign law. On some occasions the text may require skilled exegisis of a kind which only a lawyer expert in the foreign system of law can provide. But in other cases, it may be sufficient to know what the text says.*"

34. In this case, there was no dispute as to contents of the relevant law – the disputed terms have been clearly identified and their translation agreed. The dispute here turns on what the two disputed clauses mean – in other words, as stated above, this is about the 'definition of the definitions'.

35. The relevant enactments having been identified, the next step, often but not necessarily with the assistance of an expert(s), is to understand the rules of interpretation or construction that a foreign court would apply in order to ascertain their meaning and application to the facts of the case.

36. One patent lacuna in the expert reports served by the parties in this case was that they did not provide any evidence at all about the relevant Spanish rules of interpretation. Each expert provided a detailed analysis of why a Spanish court would reach their proposed construction of the disputed clause but not one of them identified the actual methodology that would be applied to reach that result.

37. If the English Court is being asked to assess how a foreign court would interpret a particular provision of their law, it is axiomatic that it will need to understand what the relevant 'tools of interpretation' are. The provision of the relevant rules of construction also equips the court with the means of understanding and assessing the evidence given by the expert witness. Here the Court was presented with three detailed legal assessments from well qualified experts of what the disputed clauses in the CTE mean, applying a very broad range of interpretative sources. What was missing from the reports was any assessment of the extent to which such sources would be taken into account by the Spanish court when interpreting the disputed clauses, let alone the relative weighting that would be accorded to them – all essential evidence in order to understand and calibrate the competing analysis of the respective experts.

38. Absent such evidence it might have been open to the Court to simply adopt a presumption that the Spanish Courts would apply the same techniques of interpretation as the English Court. This was a scenario envisaged by Lord Leggatt in *Brownlie* at §151:

"*There is no principled reason why reliance on the presumption should not be prevented in such circumstances. A common example of a situation where the evidence of foreign law is incomplete and where reliance on the presumption may be entirely appropriate is where the court is provided with the text of a foreign statute but does not have evidence either of how the particular statute, or statutes in general, would be interpreted by the foreign court. In such a situation it is often reasonable for the court to presume, in the absence of contrary evidence, that the foreign court would apply similar principles of statutory interpretation to an English Court.*"

39. Here however with experts all due to attend trial (remotely) it struck me as helpful to receive evidence on Spanish rules of interpretation, not least as a means of understanding the basis for their rival conclusions. Accordingly, I considered it appropriate to notify the parties at the outset of the hearing that I would find it helpful to receive some evidence from their experts on the basic rules of interpretation that a Spanish Court would apply.

40. Further to this request, at the conclusion of the first day of the hearing, before any legal evidence had been called, the Claimant served an email from her legal expert, Mr Sanchez setting out his opinion on the interpretative approach that would be applied by the courts. Mr Sanchez started by drawing Article 3(1) of the Spanish Civil Code to Court's attention. This codifies the approach to the interpretation of Spanish law, stating:

"Rules shall be construed according to the proper meaning of their wording and in connection with the context, with their historical and legislative background and with the social reality of the time in which they are to be applied, mainly attending to their spirit and purpose."

41. Mr Sanchez opined that Article 3 was applied so that when construing a legal provision, a court will first look into the natural meaning of the words. If the words are clear, then a court will not go any further in its analysis. If the words are ambiguous the court will proceed to apply the other tools of interpretation provided by Article 3(1). Mr Sanchez explained that that this reflects the principle, adopted by Spanish Courts, of "In claris non fit interpretario." In support of this opinion Mr Sanchez attached copies of a 2006 decision of the Supreme Court of Spain and a more recent judgement of the High Court of Appeal of Valencia the latter of which included the following passage (translation provided by Mr Sanchez):

"The strict subjection of Judges to the law (and thus judicial bodies in general, including court clerks) arises from the principle of legality pursuant to article 117 of the Spanish Constitution , and also the need to respect legal security pursuant to article 9.3 of the Spanish Constitution, which are essential for democratic cohabitation and social, economic and legal relations, meaning that a judge must avoid interpretations which go beyond the literal wording of the law when such wording does not raise doubts, and no matter how much that wording may be susceptible of improvement and how well intentioned an interpretation could be, it may not oversee, ignore or substitute same"

42. In addition, Mr Sanchez supplied an article by Professor Teresa Asuncion Jimenez Paris, Professor of Civil Law at the City University of Madrid. The article was in Spanish but the following day the court was presented with a translation of it by Professor Carreras the legal expert for the Third Defendant. All three legal experts from whom I received evidence commended Professor Jimenez's article for its accuracy and clarity in expressing the law. The article sets out the various tools of construction that would be applied by a Spanish court when seeking to ascertain the proper meaning of an ambiguous law. These include endorsement of the principle of "In claris non fit interpretario."The article states:

"In claris non fit interpretatio, which means that a meaning other than that which is actually contained in a clear letter should not be given.

It has also been said "Cum in verbis nulla ambiguitas est, non debet admiti voluntatis quaestio". When there is no ambiguity in the words, there can be no question as to the intention, as to what was the mind of the legislator."

43. Professor Jimenez's article proceeded to identify the tools of construction that a Spanish Court would apply if a provision was deemed ambiguous, for example the search for a 'logical' meaning, a teleological approach, a historical approach and by analogy with similar cases or laws.

44. Mr Sanchez's email setting out the Spanish rules of interpretation together with Professor Jimenez's article formed a foundation for eliciting the views of the other experts as to the correct approach. There was a very marked degree of agreement with the approach of Mr Sanchez and broad endorsement of the views expressed by Professor Jimenez.

45. The First and Second Defendant did not call any legal expert. Professor Carreras, the legal expert called by the Third Defendant, praised the quality of Professor Jimenez's analysis. At the outset of his evidence, responding to the email of Mr Sanchez, the professor stated that if the law was not clear then the court would apply additional tools of interpretation ("when things are not simple the court has to construct the law and there are a number of elements – grammatical, logical, historical, systematic, social reality etc") an approach he described as 'applying legal common sense.'

46. At the conclusion of his evidence, I asked Professor Carreras to confirm whether or not the following proposition reflected the position in Spanish law.

If a legal instrument is capable in the eyes of the court of bearing a literal meaning, then that is the meaning that should apply, and one should only go on to other forms of interpretation if the meaning is unclear or would lead to an absurd result… is that fair?

47. Professor Carreras' answer was in these terms "*That is very fair. I totally subscribe to this description that you have made".*

48. The Fourth Defendant called Professor Martinez as their legal expert. Professor Martinez was asked whether he agreed with the evidence given by Mr Sanchez as to the Spanish rules of interpretation. Professor Martinez confirmed that he did, as well as agreeing with the contents of the article from Professor Jimenez. Professor Martinez stated that in trying to construe the proper meaning of words used one had to have regard to context because different words are capable of bearing different meanings in different contexts – it may also be relevant that some words are intended to convey a legal concept rather than a literal one. These are points that to my mind would be well understood by English and Spanish lawyers alike.

49. Drawing this evidence together I reach the following conclusions as to the correct approach to the interpretation of Spanish law derived from the effective consensus of the experts.

50. Firstly, the starting point is to seek to ascertain whether the words are clear and unambiguous, in other words whether they bear a plain meaning. If they are, then the plain literal meaning must be applied.

51. Secondly, if the words are ambiguous (including, for example, because a literal meaning would lead to an absurd outcome) then the Court can resort to additional tools of construction, here those identified in Article 3 of the Civil Code as explained and elaborated on by the experts.

52. Thirdly, these principles broadly reflect our own approach to statutory construction, not least the primary search for a 'plain meaning' which would also be recognised in very many jurisdictions. As Lord Steyn said in *R v A (No.2)* 2001 [UKHL] 25 at 41.

"*It is a general principle of the interpretation of legal instruments that the text is the primary source of interpretation: other sources are subordinate to it…*

53. Accordingly, in assessing the meaning and effect of the disputed provisions in this claim I will first seek to ascertain whether or not the words bear a plain meaning. If they do, then I will apply that meaning to the facts before the Court. Only if they do not will I seek to ascertain their proper meaning by identifying and applying other Spanish law tools of construction.

54. Before leaving the question of interpretative methodology it is necessary to make two additional observations.

55. The first concerns the limitations on the assessment of the evidence in this case. I am asked to determine the meaning and application of clauses found in two lengthy glossaries

to a regulatory framework said to extend to over a thousand pages in total. For readily understandable and sensible reasons of proportionality, I have only been provided with a very small number of translated fragments of these documents. In addition, although the expert reports referred to various Spanish cases and/or analogous regulations, I was only provided with generally unofficial translations (often partial) of a few of them. This places some limitations on the court's assessment of the evidence because it deprives the court of an opportunity to assess the evidence (including the evaluation of the competing analysis of the experts) in the context of the whole statutory scheme in which it sits.

56. If this case concerned the interpretation of a provision of English law, then it would be essential to see and understand all relevant material. The position is different where the court is asked to assess, on evidence, the contents of foreign law. The decision of the court in such circumstances is in no way declaratory of anything other than the evidential dispute before it, i.e., it has no possible legal effect save as between the parties to the particular private law claim. Thus, in this case, although the evidence as to all relevant aspects of Spanish law was incomplete (certainly in English) it does not prevent the court from deciding the issue on the evidence made available to it. As Lord Leggatt put it in *Brownlie* at §124

"*The object of adjudication is not to achieve a goal of abstract legal purity but to do practical justice between the parties. Moreover, unlike decisions applying English law which may be relied on as precedents in later cases, where foreign law applies there is no larger purpose to be served beyond reaching the correct result in the instant case.*"

57. The second observation concerns the evidence from the architects. Each party obtained a report from an architect, all of whom were called to give evidence. Some of their evidence, both written and oral concerned the condition of the stairways. The clear majority of their evidence, certainly in cross-examination, was however focused on the meaning and effect of the two disputed provisions in the annexes to the CTE. The architects sought to give evidence both as to what the clauses mean and also how they should be applied to the facts of the case. At the outset of the hearing, I queried whether evidence from architects was admissible before the Spanish courts on the meaning and effect of building law. The answer to this question would very likely determine whether it was admissible before me. This was not an answer that the parties could provide immediately but rather I was informed it was a matter that would have to be canvassed later by their legal experts. As it was, Mr Sanchez and Professor Martinez were adamant that such evidence would be inadmissible on the basis (not unsurprising to English law eyes) that interpreting the law is for judges to decide upon. Professor Carreras was a little more qualified, considering that some (but not all) judges might admit such evidence in order to see how the regulations work in practice but "*a judge would not be happy with an architect telling him what the law means.*"

58. As this was not an issue that had been considered by the parties before the commencement of trial the evidence from the legal experts on this point was somewhat limited. On the available evidence I have formed the clear conclusion that a Spanish court would not consider evidence from an architect to be relevant in construing the meaning and effect of Spanish law, certainly in respect of clauses that do not contain technical language such as specialist architectural terms. I did not take Professor Carreras to be arguing the contrary point with particular enthusiasm and in so far as his evidence conflicts on this point with that of Mr Sanchez and Professor Martinez it was a difference of only a degree, and I prefer their more unequivocal exposition. With the benefit of hindsight, it is clear that had

thought been given at an earlier stage to the relevant rules of statutory interpretation, then considerable time and cost could have been saved by (at the very least) restricting the scope of the evidence of architects. As I address below, the one issue on which their evidence would have been particularly valuable, namely the nature of the works carried out on the property, was to a considerable degree overlooked.

Part 4: The Relevant Spanish Law Framework

59. The relevant framework in which the CTE sits is as follows.

60. By way of Act 38 of 1999, the Spanish Parliament introduced the Building Development Act, which I shall refer to by its Spanish acronym as the 'LOE'. The LOE is, in part at least, what to English law eyes might broadly be understood as a form of Enabling Act permitting regulations to be made under its ambit.

61. In March 2006, pursuant to the LOE and under Royal Decree 314 of 2006, the CTE was approved by the Spanish Parliament. The object of the CTE is described in Article 1(1) as being:

"… … *the regulatory framework that regulates the basic quality requirements that must be complied with for buildings, including their fittings, to meet the basic requirements of safety and habitability, developing the provisions of the [LOE].*"

62. By Article 1(2), and pursuant to Article 3 of the LOE, the CTE established 'basic requirements' for a range of activities such as 'fire safety', 'noise protection' and 'structural safety'. The basic requirements relevant to this claim is 'Use and Accessibility'. The objective of this basic requirement is described in Article 12(1) of the CTE as being

"… … *reducing the acceptable limits of risk of users suffering immediate damage from the planned use of the buildings, as a consequence of the characteristics of its planning, construction, use and maintenance, as well as to facilitate non-discriminatory, independent and safe access and use of them by disabled people.*"

63. To further that objective, Article 12(2) stated that there would be an obligation for buildings to be "*planned, constructed, maintained and used*" in accordance with a series of basic documents setting out very detailed technical requirements for a range of building activities. These basic documents were identified in Article 12(3) of the CTE as 'DB-SUA' which:

"…. …. *Specifies objective parameters and procedures, compliance with which ensures satisfying the basic requirements and exceeding the minimum quality levels of the safety and use and accessibility basic requirements*."

64. The relevant section of the CTE identifies 9 different 'SUA' documents each governing different aspects of the 'Use and Accessibility' of buildings. The SUA relevant to this claim is SUA 1 which addresses 'Safety against risk of falls.' This provides detailed technical regulation including the requirements for handrails on stairs and the dimension of their steps.

65. The CTE includes a glossary section, at Annex III, explaining the meaning of various words used. The SUA has its own additional bespoke glossary explaining the meaning of words used, and this is Annex A to the SUA.

66. There are two disputed sets of definitions that form the subject matter of this preliminary issue trial. The first is contained in Annex III of the CTE where a distinction is made between works amounting to 'renovation' (requiring compliance with certain building standards) and 'maintenance' (which does not). The agreed translation of the relevant extracts of Annex III are:

Renovation[1]*: Any work or project on an existing building other than that carried out for the exclusive maintenance of the building.*

Maintenance*: Set of works to be carried out periodically to prevent the deterioration of a building or specific repairs to be carried out on it, with the aim of maintaining it in good condition so that, with adequate reliability, it complies with the basic building requirements established.*

67. The second disputed definition is whether the villa and its staircase fall within 'restricted use' as defined in Annex A to the SUA. If it does, then less onerous safety requirements for staircases apply. The agreed translation of the relevant clause is:

Restricted Use*: Use of circulation zones or elements limited to a maximum of 10 people who may be described as habitual users, including the interiors of dwellings and of accommodation (at one or more levels) of Public Residential use, but excluding common areas of residential buildings.*

68. Strikingly therefore, the dispute of foreign law in this case turns not on a substantive provision of a relevant statute, or regulation but rather on the meaning of phrases that are expressly defined in the glossaries to the CTE and SUA, in other words (as stated above), the dispute is about the 'definition of the definitions'.

69. I turn then to the two discrete issues that the Court is asked to decide.

Part 5: Issue 1

Whether the works conducted at the villa and/or on the staircase were refurbishment works (such as to trigger the application of the CTE) or merely maintenance works (such as not to trigger the application of the CTE)?

70. There are three aspects to the resolution of this issue.

71. The first is assessing, on the available evidence, what works were actually carried out at the property. The second is construing what 'refurbishment' and 'maintenance' mean as defined in Annex A. The third is applying the evidence about the works to the correct definitions.

The works carried out in 2017

72. The evidence of the scope of the works carried out was not (as per Steele J's recommendation in *McLoughlin v Grovers*) memorialised in an agreed schedule, indeed despite its centrality to Issue 1, there was relatively little focus in the evidence on the nature of the work actually undertaken at the villa in 2017.

73. The reports of both architects and experts proceeded on the premise that the works were performed in accordance with what was termed a 'Prior Communication' lodged with the

[1] 'Renovation' was used interchangeably with 'Refurbishment' by the parties and experts.

municipality before the works commenced. The purpose of the document was, amongst other things, to identify the amount of tax required to be paid. The document was dated 5 December 2017 and lists a series of works to the property that includes removal of floors, walls and ceiling surfaces, retiling the floors and installing replacement units in bathrooms. The list is very general in nature and does not include items detailing, for example, either work to the staircase or the installation of a new kitchen, both of which it is agreed were undertaken. The price quoted on the document is €19,443.00.

74. On the basis of this document the experts proffered their competing opinions as to whether the work was best understood as refurbishment or maintenance, albeit the focus of their analysis was primarily on the legal definition of those words rather than the nature of the works themselves.

75. On the first day of the hearing, Mr Bailey, counsel for the First and Second Defendants (the owners of the property), cross examined the Claimant's architectural expert (Mr Montero) suggesting to him that the sum of €19,000 reflected fairly modest work, far more akin to maintenance than renovation. Mr Montero disagreed but in light of the line of enquiry, I asked Mr Bailey whether his instructions were that this was in fact the sum spent or whether there was better evidence as to what works were actually carried out.

76. Mr Bailey undertook to obtain instructions on this point. The following morning he told me that the works undertaken cost approximately €90,000. This was subsequently refined in a signed witness statement from the First Defendant, served on the third day of the hearing, which provided further details of the work which were said to have cost just over €77,000. The statement provided a little more detail on the nature of the works carried out beyond those captured in the 'Prior Communication' but still not at a level that identified, for example, the sums spent on the staircase.

77. In addition to the statement I was provided, following request, with a limited number of photographs showing the condition of the villa both prior to, and following, the works.

78. There was no dispute that the question of whether works fall within the definition of 'refurbishment' or 'maintenance' is one to be judged on the basis of work actually carried out rather than prior estimate. It was also agreed that the test requires the Court to assess the totality of the works carried out in the building not just the discrete work to the staircase.

79. The only other evidential insights into the nature of the works undertaken came from the Defendants' witness statements, the contents of which were not in dispute. In his statement of 1 October 2021, the First Defendant described how in December 2017 he applied "*for permission to renovate the property*" which included the "*renovation and refurbishment*" of the internal staircase. Mr James Bennett is a joint director of the Fourth Defendant. In his witness statement dated 1 October 2021, he describes assisting the First and Second Defendant "*refurbish their villa*" following his firm obtaining permission from the Spanish authorities to rent it out for holiday purposes. There is no dispute that the Fourth Defendant advertised the villa as having been '*recently refurbished*'.

80. The photographs, although by no means comprehensive, show a very marked improvement in the state of the villa. They reveal a much more modern property which no doubt would have made it a more attractive rental proposition.

The meaning of 'refurbishment' and 'maintenance'

81. The correct analytical starting point is to ask how a Spanish Court would interpret the terms 'refurbishment' and 'maintenance'. For the reasons I have already given this first requires the court to examine the words and ask whether they bear a clear and unambiguous meaning. It is only if the words are ambiguous that one can then proceed to apply alternative tools of interpretation.

82. Mr Chapman QC for the Claimant contends that the meaning of 'refurbishment' and 'maintenance' are perfectly clear and that it would not be permissible to apply any further tools of interpretation to reach a non-natural meaning. Mr Chapman was joined in these submissions by Mr Hilton, counsel for the Fourth Defendant, who also contended that the relevant parts of Annex III were tolerably clear albeit he submitted this led to the polar opposite conclusion to Mr Chapman's when applied to the known facts.

83. Ms Wyles QC, Counsel for the Third Defendant (whose submissions on this issue were adopted by Mr Bailey for the First and Second Defendant) contended that the words used were ambiguous. The main thrust of her argument was that the words had to be read in light of the wider purpose not just of the CTE, but the LOE that underpinned it. Ms Wyles, through the evidence of her experts, sought to argue that the true distinction for the purposes of the application of the CTE was whether the works were to be defined as 'minor' or 'major'. This was, it was contended, the relevant taxonomy to be applied under the LOE and any regulations that flowed from it – there needed to be systematic coherence with the wider legislative scheme.

84. In my judgement the definitions of 'refurbishment' and 'maintenance' contained in Annex III are clear and unambiguous. This might be thought unsurprising when their very purpose is to provide a workable definition for the user. Neither definition employs complex legal or technical phraseology – to the contrary they use plain language that can be readily understood by lawyer, architect and lay reader alike. Furthermore, there is nothing in the text of the Annex or the CTE itself, that hints (let alone directs) that the words need to be accorded a meaning consistent with any other provision of Spanish law, or to be given anything other than their plain reading.

85. The definitions of 'refurbishment' and 'maintenance' are interdependent. 'Refurbishment' is defined as being all works that do not fall within the definition of 'maintenance'. 'Maintenance' is very clearly defined in Annex III, and a "*set of works*" falls within its ambit if one or both of its qualifying tests are met, namely that:

    (i) they were of a type carried out periodically to prevent deterioration of a building; or

    (ii) they were specific repairs carried out with the aim of maintaining the property in good condition in order to comply with basic building requirements.

[Emphasis mine]

86. This is plainly a narrowly drawn definition and one provided in clear and unambiguous terms.

87. As the words are clear then, as a matter of Spanish law, one cannot go on to apply additional interpretative techniques to ascertain a meaning other than the literal one. I reject the submission of Ms Wyles to the effect that consideration of the wider scheme renders the plain words ambiguous – that would be to metaphorically put the cart before the horse. In any event, on the materials that were provided to the court I am far from convinced that the application of the plain words here would be inconsistent with any of the (limited) provisions of the LOE shown to the Court which itself does not expressly distinguish between 'major' and 'minor' works, a distinction that has apparently never been applied by a Spanish court considering the CTE. It bears repeating that the disputed clauses are themselves no more than definition clauses contained in a glossary to regulations – it might be thought that something had gone seriously awry in the drafting process if they were not capable of a literal interpretation.

Application of the facts to the literal definition

88. The Court is not being asked to apply its own sense of what 'maintenance' might look like in its own experience but rather apply the clear literal definition of that term as provided by Annex III.

89. In my judgment the works that were undertaken were clearly 'refurbishment' rather than 'maintenance' as defined in Annex III. I reach this conclusion for the following reasons:

90. Firstly, there is no evidence at all from the Defendants that the works were carried out for the very limited purposes specified in the definition of 'maintenance'. There was no evidence that they were either undertaken as part of a 'periodical' programme to 'prevent deterioration' nor that they were 'specific repairs' carried out 'with the aim' of compliance with basic building regulations. It would have been open to the Defendants to assert that this was the purpose in their statements and/or supporting evidence but they elected not to – indeed the statements of both the First and Fourth Defendant point the other way. Tellingly, the thrust of the Defendant's submissions on this issue were not (save for the Fourth Defendant) primarily directed to the literal definition of maintenance in the Annex but rather their broader argument that the CTE could not apply at all to 'minor works'.

91. Secondly, there is nothing in the evidence I received about the actual nature of the works undertaken from which it is reasonable to *infer* that the works were either 'periodical maintenance' or were 'specific repairs' aimed at compliance with basic regulations'. There is little in the witness statements, 'prior communication' nor photographs capable of supporting a contention that these works must have been for the required purposes. For example, for the purposes of demonstrating that the works were 'repairs' one might have expected some evidence as to unsatisfactory state of the property prior to the works – or to identify why the works were necessary to prevent deterioration. There was little in the evidence that would support an inference that the actual works carried out fulfilled that function.

92. Thirdly, standing back and assessing the (limited) evidence as to what work was actually undertaken as a whole, not least as shown in the photographs, it would seem that this was relatively extensive works to improve the aesthetics of the villa rather than meet any of the requirements necessary to establish that is falls within the definition of maintenance. The photographs show a transformed villa from what appears to be a traditional style into something more sleek and contemporary.

93. Of course, in everyday parlance, some could describe these works as 'maintenance' but that is not the test, rather what must be applied is the definition set out in Annex III itself. Mr Bailey's reliance on the various ways that both 'refurbishment' and 'maintenance' are defined in different Spanish dictionaries is completely beside the point when the terms are defined in clear terms in the CTE – it is only that definition that counts. In this context, I have reached the clear conclusion that the works are not maintenance and that therefore they are to be classified as refurbishment. It follows from this that the CTE applied to the works.

94. This then leads to the next issue, which is whether the stairs in the villa are to be defined as being of 'restricted use' or 'non-restricted use', which will in turn determine the stringency of the regulations governing the safety of the staircase.

Part 6: Issue 2

95. The relevant definitions are contained in a separate Glossary appended to the SUA as Annex A.

96. The resolution of this issue is said to be of relevance to the substantive claim because the SUA provides different standards for the construction/refurbishment of staircases in properties dependent upon whether they are for 'restricted use' (less stringent) or 'general purposes' (more stringent).

97. 'Restricted Use' staircases are defined in Annex A as being:

"*Use of circulation zones or elements limited to a maximum of 10 people who may be described as habitual users, including the interior of dwellings and of accommodation of (at one of more levels) of Public Residential Use, but excluding common areas of residential buildings*."

98. There was no dispute that 'circulation zones' include stairways. There was also no dispute that the villa holds more than 10 guests, indeed it is advertised as having an occupancy of up to 12 persons. The reference to 'public residential use' is to a separate definition of a class of accommodation that includes hotels and tourist apartments and is one of a number of types of property expressly defined in Annex A. For the purposes of the relevant dispute it does not appear, on the face of the excerpts of the SUA provided to the Court, to matter what class of property the villa falls into as the material distinction is whether it falls within the definition of restricted use or not.

99. The Annex does not appear to provide a discrete definition of what amounts to a 'habitual user'.

100. The Claimant's case is that the words used in the definition bear a clear and unambiguous meaning, certainly as applied to the villa. A stairway in a property can only ever fall within the definition of 'Restricted Use' if the relevant use is confined to a maximum of 10 people and is thus inapplicable here where the villa sleeps up to 12 persons. Furthermore, it is submitted, short terms renters cannot be deemed as 'habitual users' as they are only temporarily at the property.

101. Ms Wyles advanced the case on this issue on behalf of all the Defendants save for some short supplemental observations by Mr Bailey.

102. Ms Wyles submitted that the definition used is 'rather tortuous and open to some ambiguity'. Ms Wyles argued that it would lead to absurdity if the interiors of all dwellings were to be included in the definition, it would mean that the interior of a home for a family of 11 would be deemed to be of 'general use' (obliging more stringent standards to apply to at least stairways if works of refurbishment were carried out) but not if the family comprised only 10 people. This approach, applied to villas such as that owned by the First and Second Defendant, would be illogical and also incompatible with a purposive, or teleological approach to the regulatory scheme, which is not to impose burdens on private home-owners.

103. All the Defendants placed considerable reliance on a commentary to Annex III provided by the General Directorate of Architecture in 2015. This was published as part of its annual guidance on the application of the CTE. In 2015 the Guidance suggested that a tourist villa should be designated as being of 'restricted use' irrespective of the number of people staying in it. The guidance stated:

"*In the case of dwellings containing a staircase, used under the tourist accommodation regulation and occupied by the same users in their entirety, the whole dwelling is considered to be the accommodation unit, the users are 'habitual' users and therefore the staircase is of restricted use whatever the number of users.*

104. Even though this text was not replicated in the subsequent guidance, including those extant at the time the work was commenced, it was submitted that it remained the authoritative guide to the interpretation of the disputed definition which would also render it consistent with the intent (and indeed reality) of a governing framework in which rental villas are treated as private homes.

105. Additionally, Mr Bailey submitted that to conclude that the staircase in the villa was anything other than 'restricted use' would lead to an absurd burden being placed upon Spanish insurance companies who would thereby face unquantifiable potential liabilities if the more stringent requirements of the CTE might turn on how many people habitually reside in a property at any given time.

106. In respect of Issue 2, the terms of the dispute as drafted and agreed by the parties is binary. Either the stairway was for restricted use or general use. That question is resolved by asking whether it falls within or outwith the definition of restricted use provided in Annex A. I can only base my conclusions on the materials that have been placed before me, including that proffered by the experts.

107. In my judgment, the stairway was not for restricted use and therefore falls to be defined as being for general use under the SUA. I have reached this conclusion for the following reasons.

108. Firstly, it is perfectly possible (and therefore appropriate), to give the definition a literal reading. Although the clause uses some specialist language (e.g., Public Residential Use) those terms are in large measure either themselves defined or obvious in the context. There is no ambiguity whatsoever to the words that mandate that a property could only be 'restricted use' if a stairway were restricted to a maximum of 10 people. As there is no dispute that the villa accommodated up to 12 people, all of whom would have had access to the staircase, then on the plain reading of the definition the villa falls outside of restricted use.

109. Secondly, although in light of this conclusion it might not be strictly necessary to decide whether those who rent the villa for a holiday are 'habitual users', in my judgment the plain meaning of those words seen in their literal context is that they are not. They do not habitually reside in the property nor do they habitually use it – they are there only for a limited, short-term, basis. It would be incongruent with the natural meaning of the words, seen in their context, if the number of 'habitual' residents varied from week to week according to the number of short-term guests who happened to rent a villa. A ready distinction can be drawn (for example) with staircases which are accessed only by (up to 10) persons who habitually use them as part of their permanent home.

110. Thirdly, even if I were to have considered it appropriate to look beyond the literal meaning of the words (which I do not), I am unconvinced that the alternative tools of interpretation advanced by the Defendants assist their case:

(i) I do not consider that a purposive or teleological interpretation takes their arguments further. If anything, an interpretation that imposes stricter safety regulations on commercially let villas, consistent with other forms of commercial accommodation, would tend to support the Claimant's case. The whole purpose of the CTE seems to be to increase safety standards generally and it is difficult to divine why there would have been an intention to carve out from its protections an exception for holiday villas let on a commercial basis.

(ii) On the materials provided to the Court it would be unsafe to place any reliance on the 2015 Guidance. There was no dispute that it is no more than guidance, incapable of displacing in itself a literal interpretation where one is available. In any event I prefer the expert evidence of the Claimant's expert that the fact that the guidance was removed means that it cannot be safely relied upon as any form of secondary tool to interpretation. Although the Defendants' experts sought to explain that the fact it was removed did not mean it was no longer applicable, I was unconvinced by their analysis not least when the preponderance of the evidence suggests that valid commentary remains in place year on year.

(iii) I do not consider Mr Bailey's plea about uncertainty in the insurance market to be well made. The impact of an interpretation on insurance markets was not a factor identified by any expert as a relevant tool of interpretation either in principle or on the facts of this case. In any event there does not appear to me to be any reason why it would be difficult to distinguish properties containing a staircase accessed by only 10 or less habitual users from those that do not. Where the CTE applies more stringent obligations on staircases to the latter category there is no obvious reason why risks from non-compliance would not be insurable in principle.

111. In any event, as set out above, I consider that Issue 2 can be resolved without the need to resort to any secondary tools of interpretation.

112. As I have decided both Issue 1 and Issue 2 by applying what I have assessed as being their plain meaning (thus giving effect to a rule of Spanish law) it has not been necessary to deal in detail with the bulk of the evidence provided by the experts which focused predominantly on secondary sources of interpretation. I would though like to record my gratitude to them for the careful and learned analysis that each of them provided in writing and for the measured evidence they proffered during the course of their evidence at trial.

Part 7: Issue 3

113. As I described at the outset of this judgment, there is no real dispute on Issue 3. On the basis of the opinions of their experts, all parties agreed that whether or not the staircase complied with the relevant provisions of the CTE is not of itself determinative of breach of duty/contract in either Spanish or English law. The compliance, or non-compliance, with the CTE is no more than a factor that falls to be assessed when determining standard and breach of duty.

114. At the conclusion of the hearing, Mr Chapman invited me to simply record in an order the 'neutral' position of the parties on Issue 3. I do not consider that would be appropriate. The parties have drafted Issue 3 in plain terms and maintained up until the morning of the trial, that it was fit for determination. The correct answer is that even though the CTE applies (per my findings on Issues 1 and 2) this does not give rise in itself in principle to a breach of duty in either English or Spanish law. As explained, it may be a relevant factor, but not a determinative one.

Part 8: Conclusions

115. In respect of each of the issues my answers are as follows.

Issue 1

Whether the works conducted at the villa and/or on the staircase were refurbishment works (such as to trigger the application of the CTE) or merely maintenance works (such as not to trigger the application of the CTE)?

Answer

The works were refurbishment and accordingly the CTE applied.

Issue 2

Whether the villa (and the staircase within it) was for general or public use (such that the material provisions of the CTE would presumptively apply) or for restricted use (such that the same provisions would not apply)?

Answer

The villa and staircase were for general use not restricted use. The provisions of the CTE governing staircases for general use apply.

Issue 3

Whether, if the material provisions of the CTE apply, this would in principle give rise to a breach of duty in English and Spanish law?

Answer

The application of the CTE does not give rise in principle to a breach of duty in English and Spanish law. It may in principle be a relevant, but not determinative, factor in the assessment of standard of care and breach of duty.

116. As the staircase falls to be defined as 'General Use' then the following conclusions flow on the basis of the agreed evidence.

117. Firstly, there was a breach of the requirement in the CTE to have a handrail on at least one side of the stairs (per §4.2.4(1) of the SUA);

118. Secondly, there was a breach of the CTE in that the maximum height of the staircase was exceeded (by 0.5cm) and were not of uniform height (per § 4.2.1(1) of the SUA. In closing, Ms Wyles sought to argue that reference in the guidance to acceptable tolerances negated a breach of the CTE. Adopting a memorable phrase of her expert, she observed that 'construction is not jewellery.' To my mind the guidance cannot impact on the mandatory terms of the CTE, whose terms are clear and make no reference to acceptable tolerances at all. This approach, according primacy to the CTE itself over any guidance, is consistent with the views of all the legal experts. That is not to preclude or prejudge an argument that the references in the guidance to tolerances are relevant to the question of standard of care and breach of duty under the Civil Code, contract and the claim against the First and Second Defendants in English law.

119. There was a dispute between the parties as to whether there was a pleaded breach of §4.2(3) of the SUA which provides minimum dimensions for the width of treads to staircases. The dispute centres on whether the pleaded allegation refers correctly to the 'depth' of the tread rather than the 'width'. In light of my conclusion that this relevant section applies to govern the staircase in the villa, and in light of the agreement reached by the architectural experts as to the actual dimensions of the stairs, this strikes me as a sterile debate, not least when width and depth of staircase are terms that can be used interchangeably. When drafting an agreed order reflecting this judgment the parties shall seek to ensure an agreed form of words to encapsulate this operation of this clause of the SUA – I would anticipate this should be the subject of ready agreement but if not then short additional submissions on the form of the order can be lodged.

120. This matter should return as soon as practicable for a further Case Management Conference. Prior to such a hearing the parties should give thought, amongst other things, as to how the outstanding issues of duty, breach and causation (in both Spanish and English law) can be proportionately resolved. In particular, the parties should work together to assess whether any further expert evidence is required to fairly resolve these issues and even if it is, whether the contents of that evidence and/or relevant facts can be narrowed or agreed. This trial having proved to be of limited utility, it behoves the parties to ensure that the next hearing is as effective as possible in resolving the dispute.