

Mek Mesfin successful in *Glovers v Fluid* [2023] EWHC 3219 (TCC)

1. On Friday 15 December 2023, HHJ Stephen Davies (sitting as a Judge of the High Court) handed down judgment following an application for reverse summary judgment brought by the defendant structural engineers in the case of ***Glovers v Fluid*** [2023] EWHC 3219 (TCC).
2. The Claimants' claims are for two types of loss: (1) expenditure wasted on legal and investigation costs, said to have been incurred because of the engineers' inadequate inspection and record keeping (the "wasted costs claim") and (2) repayment of some of the fees paid by the Claimants to the structural engineers (the "repayment claim").
3. The engineers brought an application for summary judgment and/or strike out both the wasted costs claim and the repayment claim. As to the wasted costs claim, the engineers alleged that such losses did not fall within their scope of duty. As to the repayment claim, the engineers alleged that the claimants' claim could only be made out where the professional's services were not provided at all or were worthless and that the claimants were unable to establish that on the facts.
4. The application for reverse summary judgment was dismissed in its entirety. The Court's decision relates to two areas of interest to those practicing in the areas of construction and professional liability.
5. First, it considers the scope of duty of structural engineer in performing inspection and reporting duties. Among others, the decision considers the Supreme Court's decision in *Manchester Building Society v Grant Thornton LLP* [2021] UKSC 20 and the TCC and Court of Appeal decisions in *BDW v URS* [2022] and [2023].
6. Secondly, the judge restated the conclusion reached in *Multiplex v Cleveland Bridge* [2006] EWHC 1341 (TCC) and *William Clark v Dock St* [2015] EWHC 2923 (TCC) that a party may bring a claim for repayment of a professional's fees where the services were not performed at all or were performed so poorly that they were worthless. The Judge accepted the Claimants' submission that there had not been any detailed analysis in either of those judgments as to the legal basis for the deduction or repayment claim; in particular the Judge left the door open for consideration of whether "*...it is an absolute pre-condition that there has to be a whole or substantial failure of performance in relation to the entire services under the contract or to the entire services under a discrete part of a severable contract*".

Mek Mesfin was instructed for the successful Claimants/Respondents, instructed by Peter Stockill and Jamil Sanallah at Penningtons Manches Cooper LLP.

[HT-2023-000113 Glover v Fluid approved judgment 15.12.23](#)