



Neutral Citation Number: [2020] EWHC 944 (TCC)

Case No: HT-2019-000416

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

The Rolls Building Fetter Lane, London, EC4A 1NL

Date: Tuesday 21st April 2020

Before :

MR ROGER TER HAAR QC

Sitting as a Deputy High Court Judge

- - - - -

Between:

BROSELEY LONDON LIMITED

Claimant

- and -

PRIME ASSET MANAGEMENT LIMITED

(TRUSTEE OF THE MASHEL FAMILY TRUST)

Defendant

- - - - -

Rupert Choat (instructed by **KT Construction Law Limited**) for the **Claimant Samuel Townend**
(instructed by **Forsters LLP**) for the **Defendant**

Hearing dates: 6 and 7 April 2020

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APPROVED JUDGMENT

Covid-19 Protocol: This judgment will handed down by the judge remotely by

circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Tuesday 21st April 2020.

Mr Roger ter Haar QC :

1.

There are before the Court (1) an application by the Claimant (“BLL”) for summary judgment to enforce an adjudicator’s decision dated 12 September 2019 for the principal sum of £485,216.17 plus VAT; (2) an application by the Defendant (“PAML”) for a stay of execution for the entire judgment sum.

2.

The Claimant’s application is not opposed by the Defendant. The argument before me was entirely concerned with the Defendant’s application.

3.

Because of the present health emergency, the hearing took place by telephone conference. The hearing started on 6 April 2020, but in large part (but not entirely) because of technical problems, the hearing was not concluded in the time allotted that day. The hearing resumed and was concluded in another telephone conference on the following day. I would like to thank all involved for making these arrangements work.

Background

4.

BLL is a small family-run construction company, registered in England, which specialises in the building and refurbishment of residential properties and listed buildings.

5.

There are two other “Broseley” companies, Broseley London Construction

Limited (“Broseley Construction”) and Broseley London Contractors Ltd (“Broseley Contractors”).

6.

PAML is the trustee of the Mashel Family Trust. In 2015 PAML bought

absolute title to the freehold of Stanley House, a grade II listed building and

dwelling at 10 Milner Street, Chelsea, London, SW3 (the “**Property**”) for a

reported £13.5m.

7.

It is common ground that PAML contracted with BLL for BLL to carry out refurbishment works at the Property (“**Works**”) for a Contract Sum of £1,485,800.95 excluding VAT (the “**Contract**”). The Works included the design and construction of temporary works, a damp proof course renewal system, public health systems, mechanical and electrical systems.

8.

The Contract was a construction contract and governed by Part II of the [Housing Grants, Construction and Regeneration Act 1996](#) (as amended by the [Local Democracy, Economic Development and Construction Act 2009](#)).

9.

There is an issue as to when the Contract was concluded. However, it is clear that from December 2017, BLL commenced work under a “Limited Letter of Authority for works at Stanley House” dated 13 December 2017. The letter authorised BLL to proceed with initial works with a total value of £81,975 plus VAT, i.e. approximately 5% of the Contract Sum of £1.5m plus VAT.

10.

On 11 July 2019 BLL made a Payment Application to PAML's Quantity

Surveyor, stating the sum that BLL considered to be due to it ("**Valuation 19**"). Valuation 19 was for the net sum of £485,216.17 plus VAT.

11.

PAML failed to give a Payment Notice and the Pay Less Notice given on its behalf was late.

12.

Accordingly, by 1 August 2019, the sum of £485,216.17 plus VAT should have been paid by PAML to BLL.

13.

On 9 August 2019 BLL commenced an adjudication to obtain a decision confirming that the sum of £485,216.17 plus VAT should have been - and

should be - paid to it.

14.

Various jurisdictional and other technical defences were run on behalf of PAML, each of which the duly appointed adjudicator (Paul Jensen) rejected in his Decision of 12 September 2019. None of these defences are now relied upon by PAML.

15.

The Adjudicator confirmed that PAML should have paid BLL the sum of £485,216.17 plus VAT by 1 August 2019, awarding interest from that date at the rate of 5.75% p.a.

16.

BLL has commenced these proceedings to enforce the Adjudicator's Decision.

17.

Since the adjudication out of which the applications before me arise, there have been two further adjudications:

i) Decision of Mr Jensen dated 1 October 2019 ("Decision 2").

Declarations were issued in respect of a Payment Certificate No. 20. ii) Decision of Mr Jensen dated 28 November 2019. BLL started this adjudication and obtained a declaration that it had lawfully terminated the Contract on 29 September 2019.

18.

Since 17 March 2020 PAML has accepted that judgment should be entered against it.

19.

However, PAML seeks a stay of execution for the entire judgment sum.

The Relevant Principles

20.

The principles set out in paragraphs 21 to 26 below were set out in the skeleton argument of Mr. Choat, for BLL, and are not in dispute between the parties.

21.

In Wimbledon Construction Co 2000 Ltd v Vago [2005] B.L.R. 374, HHJ

Coulson QC (as he then was) said the following at paragraph [26]:

“In a number of the authorities which I have cited above the point has been made that each case must turn on its own facts. Whilst I respectfully agree with that, it does seem to me that there are a number of clear principles which should always govern the exercise of the court's discretion when it is considering a stay of execution in adjudication enforcement proceedings. Those principles can be set out as follows:

a)

Adjudication (whether pursuant to [the 1996 Act](#) or the consequential amendments to the standard forms of building and engineering contracts) is designed to be a quick and inexpensive method of arriving at a temporary result in a construction dispute.

b)

In consequence, adjudicators' decisions are intended to be enforced summarily and the claimant (being the successful party in the adjudication) should not generally be kept out of its money.

c)

In an application to stay the execution of summary judgment arising out of an Adjudicator's decision, the Court must exercise its discretion under Order 47 with considerations a) and b) firmly in mind (see AWG).

d)

The probable inability of the claimant to repay the judgment sum (awarded by the Adjudicator and enforced by way of summary judgment) at the end of the substantive trial, or arbitration hearing, may constitute special circumstances within the meaning of Order 47 rule 1(1)(a) rendering it appropriate to grant a stay (see Herschell).

e)

If the claimant is in insolvent liquidation, or there is no dispute on the evidence that the claimant is insolvent, then a stay of execution will usually be granted (see Bouygues and Rainford House).

f)

Even if the evidence of the claimant's present financial position suggested that it is probable that it would be unable to repay the judgment sum when it fell due, that would not usually justify the grant of a stay if:

(i)

the claimant's financial position is the same or similar to its financial position at the time that the relevant contract was made (see Herschell); or

(ii)

the claimant's financial position is due, either wholly, or in significant part, to the defendant's failure to pay those sums which were awarded by the adjudicator (see Absolute Rentals).”

22.

In Gosvenor London Ltd v Aygun Aluminium UK Ltd [2019] B.L.R. 99, CA, Coulson LJ confirmed that, as Fraser J had decided at first instance, the above should be supplemented as follows:

“g) If the evidence demonstrates that there is a real risk that any judgment would go unsatisfied by reason of the claimant organising its financial affairs with the purpose of dissipating or disposing of the adjudication sum so that it would not be available to be repaid, then this would also justify the grant of a stay”

23.

Further principles have been stated in the authorities, including that: “The burden is clearly upon the party seeking a stay to adduce evidence of a very real risk of future non payment” (Total M&E Services Ltd v ABB Building Technologies Ltd (2002) 87 ConLR 154).

24.

With further regard to the burden of proof, Ramsey J in Farrelly (M&E)

Building Services Ltd v Byrne Brothers (Formwork) Ltd [2013] Bus. L.R.

1413, said at paragraph [91] that: “there is no general obligation on a party when seeking enforcement to disclose to the other party confidential information of its financial and business position so that the other party can consider whether there are grounds for applying for a stay of any judgment”.

25.

In LXB RP (Crown Road) Ltd v Squibb Group Ltd [\[2016\] EWHC 2669 \(TCC\)](#), Stuart Smith J, at paragraph [11], after citing the statement of principle in Wimbledon said the following:

“Without derogating from that statement of principle a decision to enforce or not is an exercise of the court's discretion, which must balance the well known interest in enforcing valid adjudication decisions — for reasons that have been repeated frequently elsewhere and do not need further repetition now — against the perceived or actual risk of future injustice if the party subsequently becomes unable to reciprocate in the payment of what it owes under the same contract”

26.

When carrying out the balancing exercise, O’Farrell J has held that “where the arguments are finely balanced ... the court should lean in favour of enforcement of the judgment” (Kersfield Developments (Bridge Road) Ltd v Bray & Slaughter Ltd (2017) 170 ConLR 40, at paragraph 110).

27.

In addition to the authorities cited by Mr Choat, Mr Townend also referred me to the decision of Weatherup J. in Sutton Services International Ltd v Vaughan Engineering Services Ltd [2013] NIQB 63. At paragraph [5] of that judgment, the learned judge said:

“The plaintiff’s financial position may be such that there will be no dispute as to the plaintiff’s financial difficulties but this issue may also arise, as in the present case, where the parties are in dispute about the plaintiff’s financial position. A number of general points might be made about an application for a stay in these circumstances.

“First of all it is important that the exercise of the discretion to grant a stay must not be used to frustrate the purpose of the adjudication scheme. The legislation was intended to provide for expeditious treatment of disputes on an interim basis to secure the circulation of finance pending final resolution of the contractual issues.

“Secondly, the onus is on the defendant to establish that the plaintiff is probably going to be unable to make the payment to the defendant should the defendant be successful in the final outcome of the contractual dispute.

“Thirdly, even if the defendant establishes that the plaintiff will probably be unable to repay the defendant, that would not usually justify the grant of a stay if:

“(i) the plaintiff’s financial position is the same or similar to its financial position at the time when the relevant contract was made; or

“(ii) the plaintiff’s financial position is due either wholly or in significant part to the defendant’s failure to pay those sums which were awarded by the Adjudicator (see Wimbledon Construction Company 2000 Ltd v Derick Vago [\[2005\] EWHC 1086 \(TCC\)](#)).

“Fourthly, the Court may take into account the diligence of the defendant in pursuing the claim against the plaintiff as the defendant’s conduct of that claim may provide a basis for refusing to grant a stay or a basis for granting a stay for a limited time to enable the Court to review the progress of the defendant’s claim against the plaintiff.”

28.

There was some discussion before me as to the extent to which practice in

Northern Ireland in respect of enforcement of adjudicators’ awards reflects the practice in the TCC in England. I do not regard Weatherup J.’s judgment as setting out any substantially different practice to that in the TCC. As to

Weatherup J.’s fourth point, this reflects the approach of the English courts as described in paragraph 17.28 of the 4th edition of Coulson on Construction Adjudication (particularly the last sentence of that paragraph):

“In AWG Construction Services Ltd v Rockingham Motor Speedway Ltd, HHJ Toulmin CMG QC observed that, whilst it was not possible to say how far an applicant had to go in putting evidence before a court in support of a stay, it should be noted that the court should not grant a stay unless, consistent with the overriding objective in the CPR, the justice of the case demanded it. In addition, the judge indicated that one matter that the court might consider is the diligence with which the defendant pursued its cross-claim or challenge to the adjudicator’s original decision. If the claimant was to be kept out of its money at all, it should be for the shortest reasonable time, so that the right approach might well be to grant a stay for a limited time originally, with extensions depending on the conduct of the parties. By contrast, a failure by the defendant to pursue its cross-claim or challenge with diligence may itself be a bar to a successful application for a stay of execution.”

29.

The principle in that last sentence is also reflected in the decision of HHJ Toulmin CMG QC in ALE Heavylift v MSD (Darlington) Ltd [\[2006\] EWHC 2080\(TCC\)](#) at paragraph [100].

The Application for a Stay

30.

As I have said, PAML does not oppose the grant of summary judgment, but

applies for a stay.

31.

The precise terms of the stay changed somewhat, but crystallised into an application for a stay of about two months in order to allow a “true value” adjudication to take place, it being PAML’s case that if a proper evaluation of the account between BLL and PAML is taken, there will be a substantial sum found due to PAML from BLL.

32.

Mr Townend makes two background points:

(1)

That there is a real dispute as to the final account between BLL and PAML; and

(2)

That the application must take into account the interconnected nature of the Broseley companies.

33.

I return to the second of these points when considering Mr Townend’s more detailed submissions.

34.

As to the first point, I am prepared to accept that there is a genuine dispute as to the amount of the final account, but I must set against that the length of time which has passed since the decision which leads to the applications before me, during which little has been done by PAML to seek to resolve the true state of accounts.

35.

Whilst I accept that PAML now has a desire to have a determination as to the state of the final account, it has been extremely slow to show any signs of any real desire to grapple with the amount of the true value of the account with BLL. In my judgment, this is a crucial factor to which I return below.

36.

In more detail, Mr Townend bases his application for a stay upon the following grounds:

(1)

The probable inability of BLL to repay the judgment sum at the end of the trial of the underlying issues between the parties;

(2)

BLL’s financial position is worse than its financial position at the time when the relevant contract was made;

(3)

BLL’s financial position is not due to PAML’s failure to pay the sum awarded by the Adjudicator;

(4)

There is a real risk that any future final judgment would go unsatisfied by reason of BLL organising its affairs with the purpose of dissipating or disposing of the adjudication sum so that it would not be available to be repaid.

How can PAML determine the value of Valuation 19?

37.

As set out above, PAML seeks a stay pending the determination of the true value of the account between it and BLL in an adjudication.

38.

As I have already commented, PAML has shown little previous enthusiasm about seeking a determination of the true value of the account.

39.

Subject to an argument with which I deal below, there is no dispute between the parties that once the application for payment in Valuation 19 had been affirmed by the Adjudicator in September 2019, the effect of the Court of

Appeal decision in *S & T (UK) Ltd v Grove Developments* [2018] EWCA Civ

2448; [2019] BLR 1 is that, PAML not having paid the amount due as held in

Adjudication No. 1, cannot itself start a “true value” adjudication as to Valuation 19 but must commence litigation in order to establish the true value, a course which it has not yet taken.

40.

As originally put forward, the stay application appeared to contemplate a stay pending conclusion of as yet uncommenced Part 7 proceedings.

41.

However, as I have already said, the application was not put before me on that basis. At the time when the application was first opened by Mr Townend, he believed that there was an extant Adjudication Notice served by BLL in respect of further sums said by BLL to be due on a final account. Upon that basis, the stay sought was until the conclusion of that Adjudication.

42.

The rug was pulled out from under Mr Townend by Mr Choat stating that BLL had decided to withdraw that referral. I have not been given sight of any documentation confirming that, but I accept that this has happened.

43.

In those circumstances, “the trial of the underlying issues” contemplated by this ground of application will be either (a) an adjudication started by PAML; or (b) Part 7 proceedings started by either PAML or BLL.

44.

This raises the question whether PAML can now raise a “true value” final account adjudication without first paying the sum awarded in Adjudication

No. 1. Mr. Townend’s answer to that question is “yes” because of Adjudication No. 3 and because the “true value” adjudication is of the final

account post-termination.

45.

As I have set out above, Decision No. 3 was to the effect that BLL had validly terminated the contract with PAML. The basis of that decision was that PAML had failed to pay sums due to BLL, particularly the amount found due in Decision No. 1.

46.

Whilst the *S & T* decision does not expressly concern the present situation, where what is suggested as the possible subject of an as yet unstarted adjudication is the determination of a notional final

account where the amount of that final account would be dependant on the validity of Decision No. 1, the ability to mount such an adjudication following upon Decision No. 3 attacking the validity of that Decision without prior payment of the amount awarded in Decision No. 1 would be a remarkable intrusion into the principle established in S & T: it would permit the adjudication system to trump the prompt payment regime, which is exactly what the Court of Appeal said in paragraph [107] of that case would not be permitted to happen.

47.

Accordingly, in my judgment it is not open to PAML to seek to challenge the conclusion of the Adjudicator in Decision No. 1 in another adjudication without first paying the amount held due in Decision No. 1.

48.

For these reasons, the basis upon which the application was put before me, for a roughly two month stay pending an adjudication, does not reflect any possible factual option in circumstances where BLL has now withdrawn its

referral.

49.

However, it seems to me that I should consider the application upon the basis suggested in the pre-hearing correspondence and in Mr Townend's skeleton argument, namely that there should be a stay pending resolution of the true value of the final account in Part 7 proceedings.

Lack of Due Diligence in Pursuing Part 7 proceedings

50.

When reviewing the authorities above, I drew attention at paragraph 28 above to the last sentence of paragraph 17.28 of Coulson on Construction Adjudication which says:

"a failure by the defendant to pursue its cross-claim or challenge with diligence may itself be a bar to a successful application for a stay of execution".

51.

This is exactly the type of case which is caught by that reference.

52.

Here the Adjudicator's Decision was issued on 12 September 2019. That

Decision was issued about two months after the application for Valuation 19

had been made. Since September 2019, no attempt has been made by PAML to obtain a ruling from this Court as to the amount due.

53.

In paragraphs 33 to 45 of his skeleton argument. Mr. Choat sets out the position as follows:

"No litigation by PAML against BLL to obtain a final determination

"33. In many of the cases in which a defendant to adjudication enforcement proceedings has sought a stay of execution, that party has commenced litigation or arbitration to try to obtain a final determination that the sum awarded by the adjudicator is not due (or a lower sum is due).

“34. That is because such litigation or arbitration is assumed to be underway by principle (d) in Wimbledon (by the words “at the end of the substantive trial”).

“35. In this regard, see Coulson, at paragraph 17.30. See also

ALE Heavylift v MSD (Darlington) Ltd [\[2006\] EWHC 2080 \(TCC\)](#) [\[2006\] EWHC 2080 \(TCC\)](#), HHJ Toulmin CMG QC, at paragraph 100:

“I must also take into account the fact that MSD has not commenced any form of proceedings to recover sums to which it claims to be entitled although it could have done so. It is therefore impossible to predict the date on which, if MSD is successful in those proceedings, ALE would be liable to repay the money and the financial circumstances in which it will be placed at that date.”

“36. BLL’s Contract with PAML provides - in the JCT Agreement completed on behalf of PAML - for litigation, by way of an English court jurisdiction agreement (JCT Agreement, Article 9 [\[1/7/61\]](#)); the Contract Particulars stated that Article 8 (Arbitration) did not apply [\[1/7/61\]](#)).

“37. PAML has taken no steps to litigate against BLL.

“38. Thus, as in ALE, it is impossible to predict the date on which PAML might be successful in obtaining a final determination that the sum awarded by the adjudicator is not due (or a lower sum is due).

“PAML chose to take other steps to try to avoid paying BLL which were inconsistent with it litigating against BLL to obtain a final determination

“39. At the start of Adjudication 3, on 16 October 2019, PAML (through its then solicitors, Costigan King) sought to persuade the Adjudicator to resign on the basis that PAML was not BLL’s Employer under the Contract, and in fact there was no contract at all [\[1/7/320\]](#).

“40. It was also suggested in Costigan King’s letter of 16 October 2019 that Adjudications 1 and 2 had not been conducted on behalf of PAML [\[1/7/320\]](#).

“41. Costigan King’s letter of 16 October 2019 [\[1/7/320\]](#) created obvious concerns for BLL who, for example, sought to engage with Gateley [\[1/7/344\]](#) to confirm who - if not PAML -

Gateley had been acting for in Adjudication 1 and Adjudication 2 - the latter having been started by the “Trust” against BLL.

“42. After Costigan King’s letter of 16 October 2019 did not succeed in obtaining the Adjudicator’s resignation, on 1

November 2019 PAML switched to arguing that Decision 2 (which it now implicitly accepted along with the Contract) somehow meant that the sum ordered due in Decision 1 should not be paid [\[1/7/373, #78\(b\)\]](#).

“43. While Adjudication 3 progressed (with Costigan King sending and receiving submissions for PAML), PAML nevertheless refused to give Costigan King authority to accept service of these proceedings. The upshot of this was that BLL would have to seek to serve PAML in North Cyprus, unless the Court ordered service by alternative means (upon Costigan King). BLL duly applied to this Court for such an order, which was granted.

“44. None of the above tactics would have been open to PAML if PAML had commenced litigation against BLL to obtain a final determination, so that it might now try to rely upon principle (d) in Wimbledon.

“45. It is submitted that given all the circumstances, it does not fall to PAML to now ask this court to exercise its discretion in favour of a stay of execution.”

54.

In my judgment, the record of events set out in those paragraphs is accurate and fair, and on the authorities justifies refusal of this application for a stay.

55.

For these reasons, the application for a stay is refused.

56.

However, because the grounds were fully argued by both parties, and in case this matter is pursued elsewhere, I set out briefly my conclusions in respect of Mr. Townend’s four grounds (see paragraph 36 above).

Is it improbable that BLL would be able to repay the judgment sum at the end of the trial of the underlying issues between the parties?

57.

This ground begs the question as to when the trial of the underlying issues would take place. I have discussed this above.

58.

PAML has adduced two reports from Ms Perks, an accountant. BLL has adduced two statements from Mr. Thursfield, a director of the Claimant.

59.

It is important to note that it is for PAML to make out this ground: the burden is firmly upon PAML.

60.

Given that it seems likely that the final determination of the issues between the parties will be in Part 7 proceedings which have not yet been commenced, it is probably not until the summer of 2021 that the trial of the issues will be concluded. I find it difficult now to predict what BLL’s financial position will

then be.

61.

However, on the basis that the determination of the issues were to be by an adjudication commencing now (on the assumption, contrary to my conclusion above, that PAML can commence such an adjudication) the best evidence I have as to BLL’s present financial position is contained in draft accounts for the year ended 31 March 2020 produced by BLL’s financial controller.

62.

These are commented upon at length by Mr. Thursfield in his second witness statement at paragraphs 37 to 50.

63.

Those accounts have been the subject of detailed analysis and attack on behalf of PAML. I take into account that BLL has had only a short time to deal with the attack upon BLL's financial position. In the circumstances I am not satisfied that those accounts are unreliable in the way suggested on behalf of PAML.

64.

I also had placed before me a list of BLL's current projects and projects BLL which has won.

65.

Leaving aside for the moment the effect of the Covid-19 emergency measures, I have no reason to doubt the bona fides of that list. The turnover suggested by that list seems to me to render it likely that if those contracts were executed BLL would be able to repay the judgment sum in its present financial position.

66.

However, I must accept that the Covid-19 emergency measures might well have an impact upon whether all these projects will continue or commence, as the case may be.

67.

This makes the assessment of BLL's position more difficult, but I cannot say whether because of Covid-19 BLL will in due course be unable to repay the judgment sum. Given where the burden of proof lies, this makes PAML's

position difficult.

68.

However, what I can say is that if PAML had moved with due diligence and in accordance with S & T, it could have had a result by adjudication of its alleged entitlements before the Covid-19 crisis blew up, and at a time when BLL would, on my findings, have been able to repay.

69.

For these reasons, I do not accept that PAML has made out the first of its grounds. This, again, is fatal to PAML's application for a stay.

70.

In those circumstances, I do not need to consider further PAML's second and third grounds.

71.

However, it is right that I should deal with PAML's fourth ground.

Is there is a real risk that any future final judgment would go unsatisfied by reason of BLL organising its affairs with the purpose of dissipating or disposing of the adjudication sum so that it would not be available to be repaid?

72.

This is a serious allegation. The leading case on the subject is Gosvenor

London Limited v Aygun Aluminium UK Limited [\[2018\] EWHC 227 \(TCC\)](#); [2018] BLR 353. In that case at paragraph [40] Fraser J. said this:

“(2) Such a feature is only likely to arise in a very small number of cases, and in exceptional factual circumstances. This addition to the principles is not intended to re-open the whole issue of the basis upon which stays of execution will be ordered in adjudication enforcement cases, or to define a specific, exhaustive and closed set of circumstances that can constitute “special circumstances” in the terms of [CPR Part 83.7\(4\)](#). In the vast majority of cases, the existing principles in *Wimbledon v Vago* will suffice and recourse to principle (g) will be extremely rare.

“(3) A high test will be applied as to whether the evidence does indeed reach the standard necessary for this principle to apply. I consider that in order to fall into this category the standard is broadly the same as that necessary to justify the grant of a freezing order (what used to be called Mareva relief).

“(4) The addition of this further principle is not designed to prevent a claimant from dealing with the adjudication sum in the ordinary course of business, or make evidence of what a claimant may be intending to do in the future, in the ordinary course of business, relevant or admissible under this head. The whole purpose of adjudications being summarily enforceable would be frustrated if all a winning party could do with any payment was to place it in an account, and not use it, to avoid the risk of a stay of execution being ordered. That is not the purpose of principle (g).”

73.

Mr. Thursfield has dealt with the inter-company affairs of the Broseley companies at paragraphs 55 to 67 of his second witness statement. In my judgment, insofar as it was incumbent upon him to give any explanation of those affairs, he has done so sufficiently. Particularly having in mind the guidance given by Fraser J., set out above, PAML has failed to satisfy the heavy burden upon it of establishing the allegation that BLL's directors would be likely to take steps to dissipate BLL's assets so as to prevent the judgment

sum being repaid.

Conclusion

74.

For the above reasons, there will be judgment against PAML for the sum of

£485,216.17 plus VAT together with interest at the rate of 5.75% from 1 August 2019 until payment is made.

75.

This draft will be made available to the parties by email on 9 April 2020. The order will be effective from that date, in that I will allow 14 days from 9 April 2020 for payment, notwithstanding that the formal version of this judgment will not be deemed to be handed down until the beginning of next legal term.