Neutral Citation Number: [2026] EWHC 1552 (TCC)

Case No: HT-2024-000427

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

Rolls Building
Fetter Lane, London EC4A 1NL

Date: 22 June 2026

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

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Between :

MULALLEY & CO. LIMITED

Claimant

- and -

(1) STO LIMITED
(2) STO SE & CO. KGaA

Defendants

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James Frampton (instructed by **Charles Russell Speechlys LLP**) for the **Claimant**
There being no appearance for or by the Defendants

Hearing date: 1 May 2026

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Approved Judgment

This judgment was handed down remotely at 2pm on 22 June 2026
by circulation to the parties by email and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. This judgment concerns the proper quantification of a contractor's contribution claim against the supplier of an unsafe external cladding system in the wake of the tragic fire at Grenfell Tower in June 2017.

BACKGROUND

2. By a contract dated 30 December 2006, Chelmer Housing Partnership Ltd engaged Mulalley & Company Ltd to design and build various refurbishment works at the site of its residential tower block known as Parkside Court in Chelmsford, Essex. In particular, Mulalley was contracted to demolish an existing structure and build a new podium comprising 27 new flats and to refurbish the 54-flat tower block. The works included the design and installation of external cladding.

3. Mulalley subcontracted the cladding works specifying the use of the StoTherm Classic System. Following the Grenfell fire, Chelmer identified that the cladding system was defective. On 22 December 2022, Mulalley entered into a settlement agreement by which it agreed to remove and replace the defective cladding and pay certain sums to Chelmer. By these proceedings, Mulalley seeks to recover the cost of the remedial work and the sums paid to Chelmer. Its action is brought against Sto Limited ["Sto"], the British company that supplied the cladding system, for a contribution arising from its own liability pursuant to s.149 of the Building Safety Act 2022. On 17 January 2025, Sto was placed into administration and Mulalley's claim against it is subject to the statutory moratorium. A claim is therefore also pursued against Sto's German parent company, Sto SE & Co. KGaA ["Sto Germany"], for a building liability order pursuant to s.130 of the Act.

4. Sto Germany has failed to defend this claim and, on 8 December 2025, Waksman J entered judgment in default against the company for damages to be assessed.

5. In preparation for this hearing, Mulalley has served witness statements from Stuart Watson and Stephen Hawkridge, its Commercial Director and Associate Commercial Director respectively, and Steven Carey, its solicitor in respect of costs. In addition, Mulalley relies on an expert report from Tom Taylor, a chartered quantity surveyor. Sto Germany has not filed any evidence and has again failed to take any part in the proceedings.

THE PROPER APPROACH TO THE ASSESSMENT OF DAMAGES

6. In assessing damages in this case, I keep the following principles in mind:

   6.1 Mulalley obtains its right to damages from the default judgment and the only live issue is the determination of the amount of the damages that should be awarded: Strachan v. Gleaner Co. Ltd [2005] UKPC 33, [2005] 1 W.L.R. 3204, per Lord Millett, at [16].

   6.2 Notwithstanding Sto Germany's failure to engage, the assessment is not made by default and Mulalley must prove its loss or damage by evidence: Strachan, at [16].

6.3 It is not open to a defendant on an assessment of damages to take any point that is inconsistent with the liability alleged in the Particulars of Claim: Lunnun v. Singh [1999] CPLR 587, per Clarke LJ; Symes v. St George's Healthcare NHS Trust [2014] EWHC 2505 (QB), Simon Picken QC, at [38].

6.4 The Particulars of Claim are, in effect, "a proxy for the judgment, setting out the basis of liability": New Century Media Ltd v. Makhlay [2013] EWHC 3556 (QB), per Carr J, at [30].

7. It follows that I must assess damages on the basis that Sto Germany is liable to compensate Mulalley for the cost of carrying out the remedial works and for the settlement sum paid to Chelmer insofar as they were caused by the pleaded defects.

8. The pleaded claim is put at £2,403,846. On this assessment, the live issues are:

8.1 what costs were in fact incurred;

8.2 whether those costs were incurred in relation to the pleaded defects;

8.3 whether the costs incurred were reasonable; and

8.4 what is the just and equitable contribution to such loss and damage that Sto Germany should be ordered to pay.

THE COSTS INCURRED

9. The costs incurred by Mulalley were proved by Mr Hawkridge and then independently analysed by Mr Taylor. In considering the pleaded claim for total gross costs incurred of £3,733,837.96, Mr Taylor reviewed a representative sample of the costs claimed. Over 62% of the total claim concerned Mulalley's subcontractor costs. Mr Taylor reviewed all of the documents in respect of the claimed costs of the six subcontractors who, between them, accounted for nearly 97% of the subcontractor costs. The largest single subcontractor cost was inevitably the cladding subcontractor, PS Fixing Ltd. Mr Taylor was able to confirm the sum claimed in respect of PS but properly deducted the main contractor's discount.

10. Mr Taylor assessed the total costs incurred at £3,431,633.53; a reduction of a little over £302,000 that arose from his reductions in the sums allowed for preliminaries, subcontractor costs, and consultancy and legal fees.

11. I accept this evidence and find that the total costs incurred were £3,431,633.53.

CAUSATION

12. The remedial works extended, however, beyond the work necessary to remedy the defective render system. Mr Taylor therefore considered the costs further in order to strip out those costs that were not caused by Sto's breach of duty. He assessed that the Sto render accounted for 85.83% of the works required to the external walls of the tower and 69.03% of the overall development. Applying these percentages,

he calculated that the total remedial costs incurred by reason of the defective Sto system were £2,086,826.65.

13. Mr Frampton very properly invited the court to reduce this sum further to £2,025,499.62 to strip out Mulalley's legal costs incurred in achieving the settlement agreement. Again, I accept Mr Taylor's evidence as further moderated by Mr Frampton's concession.

REASONABLENESS

14. In Martlet v. Mulalley [2022] EWHC 1813 (TCC), His Honour Judge Davies rightly observed, at [422], that the courts are "generally reluctant to criticise, with the benefit of hindsight, the reasonableness of the claimant's expenditure on remedial works." I therefore take the actual costs incurred as my starting point but then also consider the available evidence, and in particular Mr Taylor's expert evidence, as to the reasonableness of such costs.

15. Mr Taylor reported that he could find no evidence that the costs were improperly or unreasonably incurred and that he was not aware of any alternative technical solutions that could have been adopted at less cost. He made the telling point that Mulalley was a contractor rectifying defects pursuant to a settlement agreement. The company plainly had no interest in gold plating the works and indeed had a direct financial interest in ensuring that the works were conducted efficiently and at reasonable cost. Further, he considered that the preliminaries, scaffolding and subcontractor costs were each within the range that he would have expected.

16. Again, I accept Mulalley's evidence and I am satisfied that total costs totalling £2,025,499.62 have been reasonably incurred in carrying out the remedial works caused by the defective cladding works.

CLAIM FOR CONTRIBUTION

17. The claim against Sto is of course for a contribution pursuant to the Civil Liability (Contribution) Act 1978. Section 2(1) of the Act provides that the amount of the recoverable contribution shall be such sum as may be found by the court to be "just and equitable having regard to the extent of that person's responsibility for the damage in question". The assessment requires me to consider both the seriousness of the respective parties' faults and their causative relevance: Downs v. Chappell [1997] 1 W.L.R. 426 at p.445, per Hobhouse LJ.

18. This case involves a contribution claim made by a contractor against the manufacturer and supplier of a defective cladding system. In assessing the contribution, Mr Frampton argues that the court should adopt a similar approach to that between a contractor and an architect on the basis that Sto, like an architect, was responsible for any design defect. He submits that the just and equitable contribution in this case is 90%.

19. I accept Mr Frampton's submission that the court might typically award a contribution against an architect in respect of a design breach of between 67% and 80%. Here, I accept that the liability findings by virtue of the default judgment necessarily include that:

    19.1 Sto would have produced or provided a version of its standard specification for the StoTherm Classic System for this project although that document has been lost;

    19.2 the specification in this case was for the StoTherm Classic K;

    19.3 Sto failed to supply a cladding product that complied with the functional requirement B4(1) and regulation 7 of the Building Regulations;

    19.4 Sto made misleading statements about the StoTherm Classic system;

    19.5 the system was inherently defective; and

    19.6 the misleading statements and the inherently defective nature of the StoTherm Classic system were the causes of the apartments being unfit for habitation.

20. In my judgment, the principal cause of the remedial works was plainly the fact that Sto marketed and supplied an inherently defective product. In its letter of claim, Chelmer also alleged workmanship issues in respect of the fire barriers although I accept that the primary issue with the barriers was that Sto's standard detail included a layer of combustible insulation over the face of the fire barriers. That was the very fault which Judge Davies in the Martlet case, at [188], observed was "fundamentally deficient" and which "would have allowed any fire to bypass the fire barrier in direct contradiction of the design philosophy behind the specification of fire barriers". Accordingly, the fire barriers had to be replaced in any event because of such infill panel defects.

21. Taking matters in the round, I conclude that the just and equitable contribution payable by Sto, and therefore Sto Germany pursuant to the building liability order in this case, is 87.5%.

OUTCOME

22. I therefore give judgment for Mulalley against Sto Germany in the sum of £1,772,312.17, being 87.5% of £2,025,499.62.

23. I award Mulalley interest at 1% over base, being a reasonable commercial rate, from 1 October 2023 (being the midpoint of the major part of the remedial works) until 8 December 2025 when judgment was entered in this case. Sto Germany was then ordered to pay an interim payment of £1,200,000 but failed to do so. Interest has therefore accrued on the sum of £1,200,000 at the Judgments Act rate of 8% since 8 December 2025. On the balance of the judgment now entered, I award further interest at 1% over base from 8 December 2025 until the date of this judgment.

24. Mulalley is plainly entitled to its costs but I reject Mr Frampton's argument that costs should be assessed on the indemnity basis because of Sto Germany's failure to engage in these proceedings and to pay the interim payment ordered by Waksman J. There is, in my judgment, nothing about Sto Germany's failure to engage with this case that takes the case out of the norm such that indemnity costs should be awarded. Costs will therefore be assessed by detailed assessment on the standard basis if not agreed. Meanwhile, I award the sum of £175,000 on account pursuant to r.44.2(8) of the Civil Procedure Rules 1998.