



Neutral Citation Number: [2026] EWHC 2681 (TCC)

Case No: HT-2024-000089

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20/10/2026

Before :

THE HONOURABLE MR JUSTICE CONSTABLE

Between :

MULALLEY & CO LIMITED

Claimant

- and -

(1) STO LIMITED
(2) STO SE & CO KGAA

Defendants

James Frampton (instructed by **Pinsent Masons LLP**) for the **Claimant**

Hearing date: 16 October 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Constable:

A. Introduction

1. This short judgment deals with a point of principle arising on the application of the Claimant ('Mulalley') for default judgment against the Second Defendant ('Sto Germany'). The underlying claim involves issues under the Building Safety Act 2022 ('the 2022 Act'), including liability for past defaults relating to cladding products under section 149 and an application for a building liability order under section 130.
2. In 2005, Mulalley was engaged as the design and build contractor for refurbishment works to the Towers, which included overcladding the concrete external walls of the Towers with external wall insulation and an overcoat of render. The First Defendant ("Sto UK") provided the specification and materials for the external wall system installed by Mulalley on the Towers, known as the StoTherm Classic System. The StoTherm Classic System contained combustible expanded polystyrene (EPS) insulation and an organic render. The owner of the Towers was Martlet Homes Limited.
3. Investigations following the Grenfell Tower fire revealed that there were defects in the overcladding works. This gave rise to a dispute. Following an 8-day trial in the TCC in March 2022, HHJ Stephen Davies gave a judgment dated 14 July 2022 in Martlet's favour: Martlet Homes Ltd v Mulalley & Co Ltd [2022] EWHC 1813 (TCC), 203 ConLR 125. At [259] he held that the StoTherm Classic System did not comply with requirement B4(1) of the Building Regulations:

"In my judgment, given that as at the time the defendant supplied and installed the StoTherm Classic system: (i) there was no evidence that it had satisfied the Annex A performance criteria through a BS 8414-1 test; and/or (ii) there was no evidence that it satisfied all of the general and system specific design principles found in BRE 135 (2003); and (iii) the BBA Certificate then in force for the system did not in fact demonstrate or seek to demonstrate compliance with these requirements, the system failed to satisfy functional requirement B4(1)."

4. Mulalley was ordered to pay Martlet £10,799,982.33 including damages, interest and Martlet's costs.
5. Mulalley brought a claim against Sto UK for a contribution under the Civil Liability (Contribution) Act 1978 ('the 1978 Act') based on Sto UK's liability to Martlet, for the same damage, under section 149 (liability for past defaults relating to cladding products) of the 2022 Act. Paragraph 44 of the Particulars of Claim defined 'the Judgment Sum' by reference to its constituent parts, totalling £10,799,982.33. Paragraphs 62 to 64 of the Particulars of Claim then set out the claim as follows:

"62. Sto UK is (or would have been) liable to Martlet in respect of the same damage which Mulalley was found liable to Martlet for in the Judgment, namely that the Cladding Works were defective and required remedial works and/or there was a diminution in value of the Towers ("Damage")."

63. Mulalley is entitled to and hereby claims from Sto UK a contribution under the Civil Liability (Contribution) Act 1978, in the amount found to be just and equitable by the Court having regard to Sto UK's responsibility for the Damage.
 64. The Damage includes and the contribution is claimed in respect of the entire Judgment Sum, including the sums paid by Mulalley to Martlet for its legal costs and interest on damages and costs. The full Judgment Sum, including the sums for legal costs and interest, was paid in respect of Mulalley's liability for the damage to Martlet."
6. On 17 January 2025, Sto UK entered administration and the claim against Sto UK became subject to a statutory moratorium. Mulalley therefore applied for permission to amend its claim and join Sto Germany to the proceedings. Sto Germany is the parent company and sole shareholder of Sto UK. This permission was granted on 16 July 2025. The claim against Sto Germany seeks a Building Liability Order under section 130 of the 2022 Act in respect of Sto UK's liability to Mulalley.
 7. Service on Sto Germany was effected through the Foreign Process Section. As evidenced by the Third Witness Statement of Neal Morris dated 13 August 2026 and the documents appended thereto, on 4 February 2026, the Foreign Process Section confirmed that service had been completed on 20 January 2026. The deadline for filing an acknowledgment of service was 10 February 2026. Sto Germany did not do so; nor has it served a Defence.

B. The Application

8. On 13 August 2026, Mulalley applied for judgment in default of an acknowledgement of service or a defence. The Application seeks, in the alternative, two different orders for default judgment. Mulalley's primary case is that it is entitled to default judgment for a specified amount of money. In the alternative, Mulalley has applied for default judgment with damages to be assessed, along with directions to a quantum hearing to assess those damages and an interim payment.
9. A hearing was listed in order for the Court to consider which order was appropriate.
10. I am extremely grateful to Mr Frampton, whose submissions on the points of principle traversed below were not only extremely focussed and helpful, but advanced always with due regard to the fact that he was unopposed, and the additional burden that places on counsel when providing assistance fairly to the Court.

C. Discussion

11. CPR12.4 states:

"(1) Subject to paragraph (3), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for—

(a) a specified amount of money (Form N205A or N225);

(b) an amount of money to be decided by the court (Form N205B or N227)...

(3) *The claimant must make an application in accordance with Part 23 if they wish to obtain a default judgment—*

(a) on a claim which consists of or includes a claim for any other remedy...

12. CPR 12.12(1) states:

“Where the claimant makes an application for a default judgment, the court shall give such judgment as the claimant is entitled to on the statement of case.”

13. CPR 12.12(6) states:

“Both on a request and on an application for default judgment the court must be satisfied that -

(a) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence);

(b) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired;

(c) the defendant has not satisfied the claim; and

(d) the defendant has not admitted liability to pay all the money claimed but has requested time to pay.”

14. Mulalley has not, in this case, filed a request on Form N205A or Form N227; in circumstances where it has sought another remedy as well, namely a Building Liability Order, Mr Frampton submitted it was appropriate to make an application in accordance with Part 23. I agree.

15. On the basis of the evidence of Neal Morris, the Court is satisfied of the matters set out in 12.12(6).

16. The question before the Court is whether it is appropriate to give default judgment by way of Building Liability Order in a specified amount of money, or with the amount of the contribution to be assessed along with directions to that end.

17. The White Book, at 12.4.3, states:

“The term “specified amount of money” is wider than the old term “liquidated sum” and appears to cover any case where the claimant puts a figure on the amount of their claim, whether it is a claim for a debt, damages or any other sum. The term “specified amount of money” is used not only in r12.4 but throughout the CPR...”

18. It goes on to describe a common example arising out of a road traffic accident where no personal injury ensued. Claiming the cost of e.g. repairs and/or hire-car charges as “a specified amount of money” enables a claimant to obtain default judgment for that sum, which the editors describe as ‘better practice’ in such cases. The White Book then references two authorities: Merito Financial Services Limited v Yelloly [2016] EWHC 2067 (Ch) and Edward v Okeke [2023] EWHC 2932 (KB).

19. In *Merito*, the pleadings alleged that the defendant had dishonestly invented unauthorised transactions with clients resulting in the wrongful payment of commission, had misappropriated monies from the claimant, had withdrawn various sums as unauthorised and unlawful loans, and had submitted false claims for business expenses and secretly diverted business away from the Claimant, for which he had received payment. Default judgment in a specified amount was sought under each category of claim; the defendant argued that judgment ought to be entered with damages to be assessed. Master Matthews reviewed pre- and post- CPR authorities, identifying the fact that under the RSC, a distinction was drawn for the purposes of default judgments between claims for a liquidated demand, and claims for unliquidated damages, a distinction which went back at least as far as the Common Law Procedure Act 1852. As is clear from the wording of CPR12, the old terms “liquidated demand” and “unliquidated damages” are no longer used.
20. Relying in part on the notes to the then current White Book which were in materially similar terms to that set out in paragraphs 17 and 18 above, the judge concluded that:
- “36. *In my judgment, the notion of a claim for "a specified amount of money" is prima facie apt to cover the case of a claimant who in his particulars of claim alleges, with full particularity, that the defendant negligently caused him pain and suffering to the value of £X, loss of earnings in the sum of £Y, and damage to property in the sum of £Z, and then claims the specific sum of £(X+Y+Z).*
- ...
41. *It is not necessary for the Claimant actually to prove his case. The nature of a default judgment is that his allegations are unchallenged, and therefore must be accepted as true for the purposes of the judgment: CPR 12.11. It is therefore necessary to examine the particular allegations made, to see if they amount to a claim for "a specified amount of money", or on the other hand an allegation of a breach of some duty which requires loss and quantum to be assessed before the court can award damages or equitable compensation.*
42. *There are three aspects to this enquiry. One is how the claim is formulated in summary terms in the Claim Form. The second is how it is set out in detail in the body of the particulars of claim. The third is what remedy is or remedies are sought in the prayer at the end of the particulars of claim. Each of these must be considered. I have already set out the substance of the claims in the Claim Form (see para 2 above). In my judgment it is not necessary that the prayer itself should contain an express claim to a specific sum of money, as long as the statements of case taken together do so. It is simply a question of what the Claimant's "statement of case" appears to the court to justify.”*
21. The judge then distinguished between claims where the pleaded facts themselves established an entitlement to a specified sum and claims where further inquiry was necessary to determine the amount recoverable. The claims for misappropriated monies, repayment of the unauthorised loan and false expenses identified particular sums which, on the pleaded facts, were immediately due by way of restitution or repayment; they therefore supported default judgment for specified amounts. By contrast, the claims

concerning the unauthorised client transactions and diversion of business did not establish a presently ascertainable sum, so that the claims required damages or equitable compensation to be assessed, at which assessment the defendant could contest causation and quantum provided he did not contradict the liability established by the default judgment.

22. In Edward v Okeke, Johnson J dismissed the claimant's appeal against the decision of Master Dagnall, who had declined to follow Merito in the following terms:

"66. ...I am... not persuaded by [the reasoning in Merito]. Master Matthews proceeded on the basis that the Civil Procedure Rules had decided not to express themselves in terms of liquidated and unliquidated sums and therefore should be read as meaning something very different from what is conveyed by those expressions. However, it seems to me that it is perfectly consistent with the language used in the Civil Procedure Rules that the same concepts were being identified, but simply in more modern and up-to-date language which would be more easily understood by court users.

67. Secondly, ...although Master Matthews was perfectly correct to say that case law under the Rules of the Supreme Court is not of direct importance in construing the Civil Procedure Rules, it still seems to me that it identifies the same point, and it would be somewhat surprising if the Civil Procedure Rules were designed to enable claimants simply to obtain default judgments for damages for whatever sum they had sought to identify.

68. Thirdly, it would result in a major change in practice with regards to claims for personal injury and also defamation. Those claims are invariably the subject matter of damages assessments..."

23. Johnson J noted that the Particulars of Claim described the claimant as having sustained "enormous financial and psychological damages because of the Defendant's breach of duty and breach of contract." That indicated that the claim was for damages for (among other matters) personal injuries. The judge explicitly agreed with Master Dagnall that a claim for personal injuries was not (or at least not ordinarily) a claim for a specified amount of money. Johnson J continued:

"If the claimant had intended to seek, by way of remedy, a specified amount of money (rather than damages to be assessed by the court, up to a specified limit) then he needed to make that clear.

The Particulars of Claim state that the claimant is seeking £100,000 in general and special damages, and then lists items of special damage that amount, in total, to £20,000. That does not make it clear that what is being sought is a specified amount of money, as opposed to damages to be assessed by the court in a sum of up to £100,000..."

24. Having determined the outcome of the appeal based on his analysis of the manner in which the claim had been framed within the Claim Form and Particulars of Claim, the judge did not, in circumstances where the matter was not fully argued because one party was unrepresented, find it necessary or appropriate to determine the difference between

Master Dagnall and Master Matthews flowing from their different conclusions as to whether the change in language in the Civil Procedure Rules was intended as the use of more modern expressions to reflect the liquidated claim/unliquidated damages distinction in the Rules of the Supreme Court, or whether it was intended to introduce an entirely different approach.

25. It is necessary next to address the judgment of Pepperall J in Mulalley & Co Limited v Sto Limited and Sto SE & Co KGaA [2026] EWHC 1552 (TCC) ('Mulalley 1'). That was a case between the same parties as the present case, relating to a different development. Similarly, following the discovery of defects in the cladding system which had included the use of the StoTherm Classic System, Mulalley entered into a settlement agreement by which it agreed to remove and replace the defective cladding and pay certain sums to the Employer, Chelmer Housing Partnership Ltd. Mulalley sought to recover the cost of the remedial work and the sums paid to Chelmer. Its action was initially brought against Sto UK for a contribution arising from its own liability pursuant to s.149 of the 2022 Act. When Sto UK was placed into administration and Mulalley's claim against it made subject to the statutory moratorium, a claim was therefore also pursued against Sto Germany, for a building liability order pursuant to s.130 of the Act. Sto Germany failed to defend the claim and, on 8 December 2025, Waksman J entered judgment in default against the company for damages to be assessed. He did so without the benefit of detailed submissions as to whether, as Mr Frampton pressed for before me today, judgment should be entered in a specified amount, rather than for damages to be assessed.
26. Pepperall J assessed damages, identifying first that in doing so the assessment is not made by default and Mulalley must prove its loss or damage by evidence (Strachan v. Gleaner Co. Ltd [2005] UKPC 33, [2005] 1 WLR 3204). Mulalley relied upon an independent expert in respect of costs incurred, who (from the face of the judgment) appeared to support an amount slightly below the pleaded sum. A further adjustment was recorded, on the basis of the expert's evidence, to account for the fact that the remedial works in fact undertaken extended beyond the work necessary to remedy the defective render system. Mr Frampton, who also represented Mulalley on that occasion, pointed out that this reduction merely reflected the pleaded acceptance that only those costs attributable to the use of the StoTherm Classic System were recoverable.
27. Finally, and perhaps most pertinently in the present case, the judge noted that the claim against Sto was 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". Pepperall J therefore considered that the assessment required him to consider both the seriousness of the respective parties' faults and their causative relevance. Mr Frampton had, in that case, submitted that in assessing the contribution, 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, and that the just and equitable contribution in this case should be 90%. Concluding that the principal cause of the remedial works was plainly the fact that Sto marketed and supplied an inherently defective product, but noting that Chelmer also alleged workmanship issues in respect of the fire barriers, Pepperall J determined that the just and equitable contribution

payable by Sto, and therefore Sto Germany pursuant to the building liability order in that case, is 87.5%.

28. Mr Frampton sought in his written submissions to contend that the present case was distinguishable from Mulalley 1 in that the language within the Particulars of Claim for each claim was different, such that only in the present case could it be said that the Particulars identified a specified amount of money for the purposes of achieving a default judgment in that sum. As Mr Frampton fairly accepted, this submission was not on analysis sustainable. In my judgment, the Particulars of Claim in both Mulalley 1 and the present case expressly set out with precision the specific sum in respect of which Mulalley claimed a contribution.
29. Whilst I was initially attracted to Mr Frampton's argument that the effect of paragraph 64 of the Particulars of Claim (in the present case: "The Damage includes and the contribution is claimed in respect of the entire Judgment Sum" (Mr Frampton's emphasis)) could be read as, in effect, a pleaded assertion that the contribution *is* the whole Judgment Sum, and that there is therefore a specified amount to which judgment in default could attach, I have upon reflection concluded that that is wrong. It is necessary to consider the substance of the claim, which goes beyond whether simply the particulars identify a specific sum. That much is clear from the fact that in Merito one of the categories of loss in respect of which the Master refused to give judgment in default in a specified amount had a specific loss pleaded in respect of it. In reality, it is necessary to separate the Judgment Sum from the contribution sought in respect of it. The former is fixed and identifiable: it is a specified amount. However, the claim for a contribution against Sto UK (which must be established in order to constitute a liability in respect of which the BLO may attach), both by reference to the language in the pleading and substantively by reference to the nature of the claim in law, is such amount as the Court finds just and equitable. This question is not answered by reference to the fact that the Judgment Sum is a specified amount. There is, moreover, a distinct question under section 130 of the 2022 Act whether it is just and equitable to make the relevant liability of Sto UK also a liability of Sto Germany. That is ordinarily an evaluative judgment for the Court and does not follow merely from Sto Germany's default. It is unnecessary for present purposes to determine whether the section 130 question could in principle be determined before the amount of Sto UK's contribution has been assessed. The application before the Court seeks an order fixing both the relevant liability and the monetary extent of the liability to attach to Sto Germany, and for the reasons already given the latter cannot presently be determined.
30. Even if I am wrong about this, and the pleading can be read as containing a specified amount of money for the purposes of CPR 12.4 (or, insofar as additionally relevant, CPR 12.12), it does not follow that the Court should enter judgment in that amount and make the BLO sought. As identified at [57(9)] and [57(10)] of the judgment of Johnson J in Edward:
 - (1) Although CPR 12.5 and 12.10 contemplate that a default judgment for a specified amount (or for damages to be assessed) is entered administratively without a hearing (and without the involvement of a judge), that does not exclude the possibility of a hearing. Nor does it exclude the power under CPR 3.1(2) to hold a hearing or to take any other step to further the overriding objective.

- (2) The Privy Council in Lux Locations Ltd v Yida Zhang [2023] UKPC 3 makes clear that the entry of default judgment by a Court officer is an administrative act and that, ordinarily, a court does not enquire into the veracity of the facts asserted in a claim before deciding whether to enter default judgment. But nothing in Lux prohibits a judge from exercising the general power to hold a hearing where that is necessary to further the overriding objective.
31. In circumstances where the application for default judgment was made under Part 23 rather than by request, the application falls to be determined by a judge rather than as an administrative act by a court officer (with or without consultation with a judge). That does not, of course, preclude the judge from concluding on the papers that there is a specified amount of money for which it would be appropriate to enter default judgment. A hearing nevertheless remains appropriate in my judgment, even on this alternative analysis, because the monetary liability relied upon is a statutory contribution under the 1978 Act, the amount of which is expressly made by s.2(1) a matter for the Court, applying the statutory test of what is just and equitable having regard to the extent of the person's responsibility for the damage in question. Further, the relief sought against Sto Germany is itself an order which s.130 of the 2022 Act empowers the Court to make where it considers it just and equitable to do so. I therefore consider that, even on this alternative analysis, the nature of the statutory exercises which the Court is required to undertake makes it appropriate, in furtherance of the overriding objective, to follow the same course as that adopted by Waksman J in Mulalley 1: to enter default judgment but direct an assessment of the amount of the contribution before determining the monetary extent of the liability to attach to Sto Germany.

D. Conclusion

32. In the circumstances, judgment is to be entered, with the amount of Sto UK's contribution under the 1978 Act to be assessed. The hearing is to be listed on the first available date convenient to those concerned after 1 December 2026. The Order will provide the directions by which Mulalley will provide disclosure (Model B) and/or witness evidence in support of its claim within 28 days. In light of possible enforcement issues in Germany, Mr Frampton did not pursue the interim payment. However, he did seek a direction that any application by Sto Germany to set aside the default judgment must be made within 28 days of service of the Order. In light of the benefit of certainty in the context of enforcement in another jurisdiction, I consider there is justification for requiring Sto Germany to exercise any entitlement to seek to set aside the Order within 28 days of service.
33. It is therefore unnecessary to resolve the broader disagreement identified in Edward as to whether the CPR's use of the expression 'specified amount of money' was intended substantively to depart from the former distinction between liquidated and unliquidated claims. For materially the same reasons as Johnson J, I express no concluded view upon that question.