



IN THE MAYOR'S & CITY OF LONDON COURT

Case No: M20CL073

Guildhall Yard
London, EC2V 7AR

Date: 22/09/2025

Before :

HHJ PARFITT

Between :

PROVIDENCE BUILDING SERVICES LIMITED

Claimant

- and -

HEXAGON HOUSING ASSOCIATION LIMITED

Defendant

Lucie Briggs (instructed by **Clyde & Co LLP**) for the **Claimant**
Nicholas Kaplan (instructed by **Devonshires Solicitors LLP**) for the **Defendant**

Hearing dates: 16 September 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 22/9/25 by circulation to the parties or their representatives by e-mail. Copies are available from the judge's clerk / court office.

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HHJ PARFITT

HHJ Parfitt:

1. The Claimant applies for summary judgment to enforce an adjudication award dated 30 April 2025. The Defendant does not contest that application but seeks a stay of the judgment pending the Supreme Court's determination of an appeal from the Court of Appeal's decision under citation [2024] EWCA Civ 962.
2. The issue for the Supreme Court is a discrete point of construction upon which depends the validity of the Claimant's contractual termination of a building contract between the parties dated 27 February 2019. The Claimant builder was contracted to build a residential development for the Defendant social housing provider.
3. The Defendant's case for the stay is based on a straightforward application of *Wimbledon v Vago* principles ([2005] EWHC 1086): the Claimant's financial position is such that if the Defendant succeeds in the Supreme Court then the Claimant will not be able to repay the adjudication sum.
4. The Claimant's case for resisting the stay is founded on the need to avoid a manifest injustice. The Claimant says that if the stay is ordered, it will likely be faced with a winding up petition from one of its creditors with irremediable prejudice to its participation in the Supreme Court appeal. It would be wrong to give the Defendant a victory by default. It follows that far from a stay being required to avoid manifest injustice, there would be manifest injustice, in the present case, if the stay was ordered. The application for a stay should therefore be refused.
5. I have considered and relied on as relevant the following witness statements: for the Claimant, Mr Albertini of 8 July 2025 (the conventional statement in support of the enforcement proceedings by the Claimant's solicitor) and Mr Tancred of 13 August 2025 and 11 September 2025 (Mr Tancred is the sole director of the Claimant and his statements address matters relevant to the stay application); for the Defendant, Mr London of 5 August 2025 and 12 September 2025 (Mr London is the Defendant's solicitor and his evidence supports the stay). The exchange of evidence just before the hearing addressed points made in the Defendant's skeleton arising out of Mr Tancred's first statement.
6. The parties have been litigating extensively against each other in various ways since the contract was terminated (one way or the other) in the penultimate week of May 2023.
7. In this judgment I first address and summarise the relevant law and then make those findings that arise from the parties' submissions before turning to the relevant factors which inform the discretionary decision on the stay application.

The Law

8. Mr Kaplan provided a detailed summary of the law in his skeleton argument and in submissions, Ms Briggs went through this and while emphasising particular aspects, her overall position was that there was no difference between counsel on the law. I am not sure that I agree with that since, it seems to me, Ms Briggs' core argument would, if treated as of general application, undermine the general guidance given in *Wimbledon*

v Vago in favour of a regime where barely solvent claimants would be able to obtain payment if they needed it to avoid insolvency.

9. Both counsel recognised, and the courts have repeatedly confirmed, the guidance in *Wimbledon v Vago* is just that or as Coulson LJ himself put it in *Gosvenor London Ltd v Aygun Aluminium Ltd* [2018] EWCA Civ 2695 at [9]: “...it was not intended to be an inflexible list...a summary of the main points established by the cases up to that time” (the second part of that quotation is itself a quotation from an earlier case). In short, the court needs to consider all material factors without treating *Wimbledon v Vago* as necessarily determining the outcome but only if that is appropriate in the particular circumstances.
10. I use *Gosvenor* as the template for the legal summary set out below. I have limited quotations to that which is directly on point.
11. CPR 83.7(4) gives the court a discretion to grant a stay of a judgment “if the court is satisfied that – (a) there are special circumstances which render it inexpedient to enforce the judgment...either absolutely or for such period and subject to such conditions as the court thinks fit”. The touchstone is *special circumstances* which would make it *inexpedient* to enforce the judgment.
12. Ignoring appeals, a court’s judgment will determine the parties’ rights. Generally, any question of a stay will resolve itself into balancing the interests of the judgment creditor and the judgment debtor with the predominant question being whether payment can be achieved better by the court controlling the creditor’s rights to enforce (see generally the notes to the White Book for 83.7(4)).
13. The position is different in the context of adjudication enforcement because of the temporary nature of the adjudication decision. The various authorities summarised in *Wimbledon v Vago* address the problem of an impecunious claimant not being able to repay the adjudication sum, if the issue is finally determined in favour of the paying defendant.
14. The *Wimbledon v Vago* principles drawn from those authorities, provide a structured method to approach the issue of a stay. I summarise those relevant here:
 - i) Any consideration of a stay in this context must keep in mind that adjudication awards should be paid and claimants should not be kept out of their money.
 - ii) A claimant’s probable inability to repay the judgment sum might make a stay appropriate under “special circumstances” (the Claimant before me accepts that this applies – if it loses in the Supreme Court then it will need to, but not be able to, repay the money).
 - iii) This would not be the case if either (a) the claimant’s financial status was broadly what it was at the time of contracting or (b) the defendant’s failure to pay the sums in issue had made a significant contribution to the claimant’s financial position.
15. Ms Briggs’ submissions about the law focused on “manifest injustice”. It was not clear to me whether this was a free standing point, independent of the *Wimbledon v Vago*

principles, or if a more general point was being made: namely, in the particular circumstances of this case, it would be manifestly unjust to grant the stay and consequently it should be refused. It is useful to set out briefly the history of that particular expression within the bundle of authorities.

16. The earliest referred to is *Hillview Industrial Developments v Botes Building* [2006] EWHC 1365 (TCC) HHJ Toulmin CMB QC. At [33] the court said that the jurisdiction to grant a stay in adjudication enforcement cases would be limited to those cases where there would be “manifest injustice”. Toulmin J then continued to explain that if there had been a serious risk of the adjudication sum not being paid back then “sympathetic consideration” would have been given to a stay (i.e. the “manifest injustice” would have arisen from the risk of no repayment as per *Wimbledon v Vago*).
17. *Hillview* was referred to by Edwards-Stuart J in *Galliford Try Building Ltd v Estura Ltd* [2015] BLR 321 at [54] where the *Hillview* judgment was attributed to HHJ Coulson (as he would have then been) – I’ve checked on Bailii and Westlaw and HHJ Toulmin appears to have been the judge – and the quotation relied on stops at “manifest injustice” which makes it more understandable that Edwards-Stuart J said at [59] that the “overarching observations of Coulson J in *Hillview* are the ones applicable...” because HHJ Toulmin was not making any wider statement of principle beyond recognising, consistently with *Wimbledon v Vago*, that it would be wrong if “pay now argue later” left the true creditor out of pocket. Nevertheless, and importantly for present purposes, Edwards-Stuart J granted a stay of the adjudicator’s decision over and above £1.5 million plus VAT, because of the risk of “irreparable prejudice” arising from the defendant’s impecuniosity rather than the claimant’s [59].
18. “Manifest injustice” was put as a separate basis for a stay in *Bexheat Limited v Essex Services Group Ltd* [2022] EWHC 936 (TCC), O’Farrell J – also a case of Mr Kaplan vs Ms Briggs. In particular, at [88] by reference to *Hillview* and *Flexidig Ltd v M&M Contractors (Europe) Ltd* [2019] NIQB 117. In *Flexidig* Horner J indicated that if relevant (it was not given his other findings) he would have stayed a judgment because “fairness and justice” required it and referred to Coulson J in *Equitix v Bester* [2018] EWHC 177 (TCC). *Equitix* was a similar case to *Galliford Try v Estura* and a stay was given over and above £4.5 million with another £1 million to be paid into court. O’Farrell J in *Bexheat* refused the stay because she was not satisfied that there were grounds for considering that the adjudication sum would not be repaid if it needed to be and nothing further was said. This was an application of standard *Wimbledon v Vago* principles.
19. Finally, the expression was used by reference to *Hillview* as quoted in *Galliford Try v Estura* as the basis for a determination that “manifest injustice” was a ground for a stay in *J&B Hopkins Ltd v A&V Building Solutions Ltd* [2023] EWHC 2475, Roger Ter Haar KC. Conclusion number 6 of those list at [107] was that the court had a discretionary power to order a stay when to do otherwise might give rise “to manifest injustice”.
20. In my view, it would be wrong to elevate “manifest injustice” to a term of art to replace the requirement in the CPR for “special circumstances which render it inexpedient...”. At the same time the proposition that the court could grant a stay to avoid “manifest injustice” is likely saying no more than that special circumstances exist why it would be inexpedient not to stay the judgment.

21. Having said all that, for present purposes it does not matter. The gist of Ms Briggs' position must be not that "manifest injustice" is a potential and separate precondition for granting a stay (as in *Estura* or *Equitix* or *AVB v Hopkins* – which are all cases where the court considered there to be special circumstances which made it inexpedient to allow the judgment to be enforced, in whole or in part) but rather that the court should not allow *Wimbledon v Vago* to be used as a straitjacket to grant a stay in circumstances where to do so would create a manifest injustice. "Manifest injustice" is a defence to the stay here, not a ground for granting it.
22. It seems to me that at heart the point being made is that in all the circumstances of this case the court should allow the judgment to be enforced because not to do so would be unjust since the Claimant will "cease to exist" – which was how it was argued – but more accurately there is a strong prospect of one of its creditors serving a winding up petition and that would prejudice its ability to participate in the Supreme Court hearing.
23. However, this insolvency risk points to the core conceptual problem with Ms Briggs' submission. All of the cases referred to above involve the court engaging, in the context of a party's impecuniosity, with the interim nature of adjudication decisions. The unfairness addressed by the stay, both in the *Wimbledon v Vago* circumstances (Claimant's impecuniosity) and in the *Hillview* circumstances (Defendant's impecuniosity), is to the party having to make an interim payment because of "pay now argue later" in circumstances where their potential right to being paid back is perilous because of their counterparty's threatened insolvency. As explained in the authorities this would cut across the structure of the scheme in the 1996 Act: the risk in the speedy adjudication of disputes to benefit cashflow is balanced by making those adjudication orders only temporarily binding. Insolvency, formal or otherwise, upsets this structure because it removes the safety net provided by the future final resolution of the dispute – in substance the money will not be paid back even if the payor finally establishes the payment was not due.
24. The *Wimbledon v Vago* principles address the factors which will generally be in play where a claimant is impecunious – a stay is likely to be given because to do otherwise will prevent the payor having a meaningful opportunity to get its money back. Generally, if a payor has contracted into that risk or the non-payment at issue caused the impecuniosity then fairness would not require a stay because the payor would be responsible for the unfairness from which it is asking the court for protection. In other circumstances, generally, the risk of the payee's impecuniosity should lie with the payee.
25. Ms Briggs' argument cuts across this: at its essence it relies on the claimant's insolvency to refuse a stay rather than grant it. As I have said, this is not precluded by the authorities, if the particular circumstances justify it, but it is worth recognising at the outset that it is not supported by any of the authorities and is contrary to the *Wimbledon v Vago* approach.

The Relevant Facts

26. I address those matters by topic which were raised by the parties as relevant to the discretionary question at issue. I indicate those which are in dispute, although much of this is spin or inference to be drawn rather than dispute of underlying fact, and make findings where required.

The Determinative Issue

27. This section of the judgment is generally derived from the agreed statement of facts and issues for the Supreme Court.
28. The contract started on 27 February 2019, incorporated JCT Design and Build Contract 2016 terms, and provided for a contract sum of £7.2 million (“the Contract”). Under the Contract, the Claimant was to build a residential development providing 37 flats of various sizes across a number of buildings and related infrastructure.
29. The Defendant had a history of late payments. Mr Tancred exhibits a schedule of relevant dates. This shows 23 late payment dates, all of which were a breach but most of which were late by a few days (the agreed statement of facts refers to “at least 19 payments” being late). The two payments more than a few days late were payments due on 16/11/20 and 21/12/20 (in a total sum of £14,899) which were not paid until 24/3/21.
30. In respect of payment notice number 27, the Claimant served a contractual notice of specified default on 16 December 2022. Payment followed on 29 December 2022 (14 days late).
31. Payment notice 32 was due for payment by 17 May 2023. It was not paid on time. Accordingly, the Claimant exercised a contractual right to terminate based on clause 8.9.4 of the Contract because, the Claimant says, there had a repetition of a specified default – namely being late with payments.
32. The Defendant does not recognise this right to terminate and that is the dispute which is to be resolved by the Supreme Court following the hearing listed on 10 November 2025. The detail of the arguments and the history of the dispute can be found in the Court of Appeal judgment cited above and there is no need to rehearse that here.
33. The Defendant then paid the outstanding sum on 23 May 2023. There was a potential negotiation period during which the Defendant offered to discuss continuing the Contract and the Claimant was only prepared to discuss what should be paid to it on the termination account. There was no progress. There was some dispute before me as to the parties’ positions but the summary I have given is sufficient and consistent with the correspondence I was taken to.
34. On 31 May 2023, the Defendant accepted the Claimant’s purported wrongful contractual notice as a repudiatory breach and so made its own termination of the Contract. From either parties’ perspective, by 1 June 2023, the Contract was over. The parties have been in dispute ever since.
35. There have been two relevant adjudications. The first, issued by the Defendant, successfully challenged the validity of the Claimant’s termination. The Claimant issued proceedings to get a final determination of this issue and established it in the Court of Appeal. The Defendant is challenging that conclusion in the Supreme Court.
36. The second adjudication, issued by the Claimant on 17 January 2025, sought a final termination account premised on the Claimant’s right to terminate established by the Court of Appeal’s decision. Mr London’s witness statement characterised this as

“opportunistic”. I agree with Mr Tancred that this is an unfair characterisation. The Claimant was entitled to act on its success in the Court of Appeal.

37. However, because Mr Tancred explains the more recent financial difficulties of the Claimant as caused by the cost consequences of the various dispute processes, including the second adjudication, I do note and consider relevant that it was the Claimant’s choice to bring the second adjudication knowing that the Defendant’s appeal to the Supreme Court was pending. It was not unlikely, given the parties’ recent dispute history, that the second adjudication, being a termination account, would become the expensive process that it did.
38. I do not find it persuasive in the present context for the Claimant to blame the Defendant’s conduct of the second adjudication as responsible for its financial condition when given the Claimant’s obvious need to marshal its limited resources, the Claimant decided to pursue the second adjudication knowing that there was a risk any success it might achieve would be unravelled should the Supreme Court disagree with the Court of Appeal. I emphasise, again, that I do not attribute any fault to the Claimant for taking the decision it did regarding the second adjudication but what I am not persuaded of is that it can attribute relevant fault to the Defendant for the objectively predictable consequences so far as irrecoverable costs were concerned.
39. Finally, under this topic, I address Ms Briggs’ assertion that the merits of the Claimant’s case on the termination issue should be a relevant factor in the court’s analysis. It is true that under the authorities summarised above, merits, which would not be relevant when entering summary judgment in favour of an adjudication award, can be taken into account when considering to order a stay. This is most obviously apparent in the *Estura* type situation when the court is astute to ensure an impecunious defendant is not prevented from getting a final determination of a point on which its case appears strong. The present circumstances are not comparable.
40. There is no question here of comparing an interim decision with the outcome of a final determination. It is common ground that the outcome in favour of the Claimant in the second adjudication is predicated on the validity of its contractual termination. If the Supreme Court decides against the Claimant on that issue then the termination will be invalid and the second adjudication award will fall away (this was not formally conceded but it appears to me for present purposes, and without deciding the issue, that I can ignore any other outcome). So the relevant merits that this court would need to weigh is the likely outcome in the Supreme Court. I agree with Mr Kaplan that in this respect I need go no further than the permission given by the Supreme Court which will have been premised on the issue being “an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time bearing in mind that the matter will have already been the subject of judicial decision and may have already been reviewed on appeal”.
41. The Defendant must at least have a case with a real prospect of success. In considering the merits in the context of this stay application I need go no further. I reject Ms Briggs’ argument that I should conclude that the merits are a discretionary point in favour of the Claimant because it succeeded in the Court of Appeal.
42. In summary, the existence of the Supreme Court hearing is relevant for the following reasons:

- i) There is a hearing in a couple of months following which there will be a binding determination of an issue which appears essential to the adjudication award the subject of this enforcement stay application. It follows that the timescale for the potential stay is not open-ended and this is the opposite of a case where a party wants a stay pending final determination but has taken no steps to initiate such a determination (which itself would be a good ground for refusing a stay).
- ii) The possible merits of the appeal need not be based on the say-so of the party seeking the stay because the Supreme Court has given permission. This reassures this court about the seriousness of the potential appeal – this court should give weight to the Defendant’s chance of success.
- iii) In addition, the Defendant’s proposed order does not seek to keep the Claimant out of their adjudication money any longer than is the minimum necessary to achieve finality on the termination issue. The draft order includes an obligation on the Defendant to pay the Claimant the day after should the Defendant’s appeal be dismissed. The stay being sought is tailored and limited.

Financial Matters

43. It was common ground before me that if the Defendant succeeds in the Supreme Court then the Claimant would not be in a financial position to repay the judgment sum. The *Wimbledon v Vago* summary would suggest that in those circumstances a stay should be granted unless either the Claimant’s financial position was much as it had been at the time of contract because then the potential prejudice suffered by the Defendant would only be the predictable consequence of entering into the Contract in the first place, or the Defendant’s non-payment of the sum in issue was the cause of the financial difficulty.
44. When Ms Briggs went through Mr Kaplan’s summary of the law in his skeleton she said that the *Wimbledon v Vago* stay exceptions were in play in the present case. However, my impression of the submissions which followed and Mr Tancred’s witness statements was not so much that it was being said either that the Claimant’s financial position was what it always had been (it plainly is not as I set out below) or that the Defendant’s non-payment of the final account amount was the cause of the financial difficulties (Mr Tancred says in terms the recent problems are caused by the costs that have been incurred) but rather that the Claimant’s case uses the *Wimbledon v Vago* exceptions as signposts towards the type of circumstance that the court should take into account: so the “get what you contracted for” exception was the platform to point out that the Claimant was always a small business compared to the Defendant, which has substantial cash reserves and can easily absorb the potential loss of not getting the judgment sum back compared to the consequences to the Claimant; and the cause of the financial state exception pointed to the relevance of the costs having been incurred because of the Defendant disputing the final account, and other matters, in the manner which it had done.
45. At a general level I did not find this widening of the *Wimbledon v Vago* categories persuasive or helpful. The exceptions arise because it would not be inexpedient to put a defendant to risk of not recovering its interim payment in circumstances where it is substantially responsible for the position it finds itself in. The broadening of the

categories in the way in which the Defendant has put its case before the court removes the core reason why they are material exceptions.

46. Mr London's witness statement between paragraph 23 and 32 addressed the Claimant's financial position based on publicly available information and its interactions with the Defendant. Having considered what Mr Tancred responded in his own witness statements, I give no weight to the Defendant's points about the winding-up petition and the change in the accounting date. They are not persuasive.
47. Of more importance, and not contested, was that the Claimant's accounts prior to the Contract date in February 2019 show a net asset position of over £1.1 million and reveal an upward trend. Mr Kaplan also pointed out that the accounts for the year end 31 March 2019 (which would have been filed after the Contract but would reflect the position at around the time of the Contract) show a substantially higher net asset position. I remain of the view that the most recent accounts prior to the Contract are the most relevant for considering the first *Wimbledon v Vago* exception. In any event, it is apparent that the net asset value continued to grow during the contract period until the year end 31 March 2021 when it reached a value of just over £2.2 million. The falling off happened for the year end 31 March 2022 when the net asset value fell to £381,401. It has remained at broadly that level since (y/e 29 June 2024, £371,655).
48. I conclude that the Claimant is substantially less well off than at the date of the contract and that the first *Wimbledon v Vago* exception does not apply.
49. Mr Tancred wrote that the Claimant had typically taken on one or two projects a year, employing between 1 and 6 full-time members of staff. The Contract was its largest project. The witness statement addressed the Claimant's financial position and Mr Tancred's response to Mr London's statement in its sections 3 and 4.
50. In paragraph 45 of his statement Mr Tancred explained that while working on the Contract, the Claimant "did little work on other projects" and after the termination Mr Tancred's time was taken up with the disputes and so he was not able to explore new business opportunities. Two previous clients had invited the Claimant to tender but then considered that the existence of the disputes meant the Claimant would be too distracted to take on other projects. In paragraph 70 Mr Tancred said that the Claimant does not have any current ongoing projects. However, in paragraph 8 of the statement dated 11 September 2025, Mr Tancred said that the costs have been paid (presumably in part because about £350,000 of the costs have not been paid) through "smaller on-going contracts". There is no detail about these and it is not easy to reconcile the two witness statements.
51. Mr Tancred said that if the judgment sum was paid then the Claimant would use it to pay off existing creditors (substantially debts incurred as a result of the disputes) and contest the Supreme Court appeal. Mr Tancred hoped that if successful in that appeal then the Claimant would be able to look for new work (having not taken on any such work since May 2023). I agree with Mr Kaplan that it rather followed that Mr Tancred was also saying that if unsuccessful on the appeal then that would be the end for the Claimant – even if the judgment sum is received.
52. Mr Tancred says the Claimant's current net asset position, assuming that it receives the judgment sum is £168,971, but without the judgment sum there is a current deficit of

£287,091. The Claimant has cost debts related to the disputes with the Defendant of about £350,000 (by my calculation).

53. The Claimant's case before me is that there is an imminent risk of winding up because one of the debtors, "HKA", has threatened winding up proceedings. On instructions Ms Briggs said that a "draft winding up petition" had been recently sent to the Claimant by HKA. This was the platform for Ms Briggs' submission that the Claimant would not exist if the judgment was stayed.
54. I am not persuaded of this, even allowing for the hyperbole. There is, of course, a risk that HKA or another creditor might choose to act pre-emptively, but I agree with Mr Kaplan that, assuming the accuracy of Mr Tancred's account of the Claimant's finances, then the best chance of a substantial recovery for the present creditors is if the Claimant is not wound up prior to the Supreme Court hearing – this will be all the more obviously the case if the order sought by the Defendant is made because this will provide an order requiring payment of the judgment sum should the Claimant succeed in upholding the Court of Appeal order in the Supreme Court. Objectively that might be some reassurance to HKA, and the other creditors, that cash will be available albeit not immediately and that once such cash is available there would be a better outcome than might arise in an insolvency.
55. Mr Tancred alleges that the issues raised by the Defendant in the second adjudication were exaggerated and while they were rejected by the adjudicator nevertheless required substantial sums to be spent in dealing with them and so contributed to the lack of assets held by the Claimant. Before me, the Defendant has maintained the validity of the various claims made. I do not consider it appropriate for the court to determine or reach a view on such disputed claims for the purposes of weighing them in the balance as a circumstance relevant to the grant of a stay.
56. What I can say is that I am not able to conclude based on the material available that any claims by the Defendant were unreasonably brought, albeit, in my view the Claimant was plainly the more successful party by some margin in the second adjudication (in ball-park terms, based on the tabular summary at paragraph 273 of the adjudicator's decision, the money in dispute line ran from £939,000 in the Claimant's favour to just under £6 million in the Defendant's favour and the outcome was £440,587 in favour of the Claimant).
57. At paragraph 5 of Mr Tancred's witness statement he explained, with the benefit of input from the Claimant's accountant, the reasons for the fall in the net asset value of the Claimant as shown in the accounts. Save for £402,000 this was unrelated to the Contract. The £402,000 related to a project suspension for which, it appears from Mr Tancred's evidence, variations and/or extensions were put in place but there remained some residual loss to the Claimant. It is not said that that has any relevance for present purposes.
58. What is relied on are the costs caused by the dispute with the Defendant. I do not consider those are a relevant factor within the second exception to the *Wimbledon v Vago* principles. These are not directly caused by the Defendant but rather are caused by the termination of the Contract and the inevitable disputes that followed. It can be more difficult to be a vehicle for litigation than a company with ongoing trading income

– the possible financial gain only becomes certain by the end of the process and much time and cost has likely to be spent in the meantime.

59. It follows that I do not consider that the difficulties in the Claimant's position have been caused or significantly contributed to by the failure to pay the adjudication sum. These problems began when the net asset position deteriorated in 2021 / 2022 and then were driven by the nature and extent of the litigation costs. While it is true that the present creditors could / would be paid if the Claimant received the judgment sum, that, of itself, does not mean the problems have been caused by the non-payment. The relevant question can be framed as to whether the Claimant would likely have been in a position to repay the judgment sum if the net assets did not have to be adjusted and if the costs had not been incurred or, indeed, if the Claimant had been in a position to take on new work? From this overarching perspective, it is not the failure to pay the judgment sum which is the material cause of the financial problems. I emphasise, again, that this is not to attribute any fault to the discretionary decisions taken by Mr Tancred in terms of what he considered to be in the best interest of the Claimant. Those were a matter for him but for present purposes the financial risks inherent in litigating rather than building have rather come to pass.
60. There was some discussion in the hearing, and in the witness evidence, about the extent to which the Contract was unprofitable or became so after costs increased during its operation. Beyond noting the dispute between the parties in this respect, after further consideration, I do not think it a factor which is sufficiently clear in favour of the Defendant's position to make it material to this judgment.

The Discretionary Exercise

61. Ms Briggs eloquently and forcefully explained her client's position as to why a stay would be unfair: it had been rendered financially vulnerable because of the costs it has had to incur in the dispute with the Defendant to substantially vindicate its position on the termination account and if it is not paid the judgment sum it is likely to go bust and not be able to participate in the Supreme Court case. This prejudice to the Claimant far outweighs the risk to the Defendant, who is cash rich and can much better cope with not recovering the judgment sum in the unlikely event it wins before the Supreme Court. It was a powerful plea to the court's instinct to protect the vulnerable.
62. I have already held above that I am not persuaded that the necessary risk of insolvency is as great as is stated in this argument. It remains a possibility. But at its heart the point being made is that it would be better for the potential loss to be allocated to the party who can most afford it. This is tempting in some ways but is not supported by authority and is contrary to the *Wimbledon v Vago* approach for the reasons given above. It carries the substantial risk that the Defendant's interim payment will enable the Claimant to pay off its present creditors and meet its future litigation costs but, if the Defendant succeeds in the Supreme Court, leave the Defendant with no recourse save as a substantial creditor in the Claimant's subsequent liquidation. The Defendant's own money having been used to pay off creditors who would otherwise be standing in line with it for a potential limited payout. If I can use the expression, this does seem to be a manifest injustice and one which the *Wimbledon v Vago* principles are designed to avoid.

63. Pulling the threads together, I am going to grant the stay sought by the Defendant in the terms of the order it puts before the court for the following reasons:
- i) The outcome is within and best governed by the *Wimbledon v Vago* principles. I have considered Ms Briggs' suggestion that the discretionary factors in play in this case require a different outcome but I disagree with the factual premise of the submissions and its conclusion about where the balance of injustice lies.
 - ii) In short, because of the interplay of the adjudication regime and the financial difficulties of the Claimant, it would be inexpedient to allow the judgment to be enforced prior to the outcome of the hearing before the Supreme Court.
 - iii) This remains the case notwithstanding the priority to be given to the statutory scheme and the importance of enabling cash-flow within the construction industry and upholding the intention of the 1996 Act.
 - iv) The risk of the Defendant succeeding in the Supreme Court and then being incapable of recovering the judgment sum outweighs the risks associated with keeping the Claimant out of the judgment sum until the Defendant loses that hearing.
 - v) The Claimant's financial position has materially worsened between the date of the contract and the date of judgment for reasons which are not substantially caused by the Defendant but rather because of wholly unrelated matters which arose during 2021 to 2022 and the costs which have arisen following the termination of the Contract. Those costs have flowed from the existence of the disputes and are not of themselves materially caused by the Defendant (it is insufficient for this purpose that if the Defendant had agreed with the Claimant the costs would not have arisen).

Conclusion

64. I will grant the application for summary judgment but stay that judgment on the terms of the order proposed by the Defendant (subject to any points of detail about which I have not been addressed).
65. Since the circulation of this judgment in draft, the terms of the draft order have been agreed between the parties. I thank them.