DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

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Mulalley & Co Ltd v Sto Ltd & Anor [2026] EWHC 1552 (TCC): Default Was Not a Quantum Wand and 87.5% Was Not Plucked from the Scaffolding

Mulalley & Co Ltd v Sto Ltd & Anor

[2026] EWHC 1552

Technology and Construction Court (KBD)

The Hon. Mr Justice Pepperall, 22 June 2026

Key Words

Defective cladding – Building Safety Act 2022 – contribution claims – building liability orders – default judgment – assessment of damages – remedial works – causation – reasonableness – Civil Liability (Contribution) Act 1978 – just and equitable contribution – fire barriers.

1. **Headnote**
    1. Mulalley sought to quantify a contribution claim arising from defective external cladding works at Parkside Court, Chelmsford, after Sto Limited entered administration and Mulalley pursued Sto Germany, its parent company, under the Building Safety Act 2022. [1]-[4]
    2. The court assessed damages following default judgment against Sto Germany but Mulalley remained required to prove the amount of its loss, causation, reasonableness, and the proper contribution by evidence. [4], [6.1]-[8]
    3. Pepperall J held that the reasonable remedial costs attributable to the defective Sto system were £2,025,499.62 and that Sto Germany should pay 87.5% of that sum, producing judgment for £1,772,312.17 plus interest and costs. [12]-[16], [21]-[24]
2. **Material Facts**
    1. Chelmer Housing Partnership Ltd engaged Mulalley under a contract dated 30 December 2006 to carry out refurbishment works at Parkside Court, including the design and installation of external cladding. [2]
    2. Mulalley subcontracted the cladding works and specified the StoTherm Classic System supplied by Sto Limited. [3]
    3. Following the Grenfell Tower fire, Chelmer identified defects in the cladding system, and

Mulalley entered into a settlement agreement on 22 December 2022 to remove and replace the defective cladding and make payments to Chelmer. [3]

4. Mulalley pursued Sto Limited under section 149 of the Building Safety Act 2022 and, after Sto Limited entered administration, pursued Sto Germany under section 130 of the Act. [3]
5. Sto Germany failed to defend the claim and Waksman J entered judgment in default on 8 December 2025 for damages to be assessed. [4]
6. Mulalley relied on witness evidence from its commercial personnel and expert quantity surveying evidence from Tom Taylor, while Sto Germany filed no evidence and took no part in the assessment. [5]

3. **Issues**
    1. The first issue was whether Mulalley had proved the costs actually incurred. [8.1], [9]-[11]
    2. The second issue was whether those costs had been caused by the pleaded defects in the Sto cladding system. [8.2], [12]-[13]
    3. The third issue was whether the costs had been reasonably incurred. [8.3], [14]-[16]
    4. The fourth issue was what contribution was just and equitable under section 2(1) of the Civil Liability (Contribution) Act 1978. [8.4], [17]-[21]
    5. The fifth issue was whether Sto Germany's failure to engage justified indemnity costs. [24]
4. **Decision**
    1. The court accepted Mr Taylor's assessment that Mulalley had incurred total costs of £3,431,633.53. [9]-[11]
    2. The court accepted that only £2,086,826.65 of those costs had been caused by the defective Sto system before a further deduction was made for legal costs associated with the settlement. [12]-[13]
    3. The court held that the recoverable remedial costs attributable to the defective Sto system were £2,025,499.62. [13]-[16]
    4. The court held that the costs had been reasonably incurred. [14]-[16]
    5. The court held that Sto was principally responsible for the remedial works because it had marketed and supplied an inherently defective system and because its standard detail included combustible insulation over the face of fire barriers. [19]-[20]
    6. The court assessed the just and equitable contribution payable by Sto and therefore Sto Germany, at 87.5%. [17], [21]
    7. The court entered judgment for Mulalley against Sto Germany in the sum of £1,772,312.17. [22]
    8. The court awarded interest and costs on the standard basis, with £175,000 payable on account. [23]-[24]
    9. The court refused indemnity costs because Sto Germany's non-participation did not take the case out of the norm. [24]
5. **Reasoning**
    1. The default judgment established liability but it did not relieve Mulalley of the burden of proving the amount of recoverable loss. [6.1]-[6.2]
    2. The Particulars of Claim operated as the proxy for the judgment and the assessment therefore proceeded on the basis that Sto Germany was liable for losses caused by the pleaded defects. [6.3]-[7]

3. Mr Taylor's analysis reduced the gross claim of £3,733,837.96 to £3,431,633.53 after reviewing the relevant categories of expenditure and making deductions to preliminaries, subcontractor costs, consultancy costs, and legal fees. [9]-[11]
4. The remedial works extended beyond the defective render system and Mr Taylor therefore isolated the costs caused by the Sto system by reference to the proportion of works attributable to the Sto render. [12]
5. Mr Frampton properly invited a further reduction to exclude legal costs incurred in achieving the settlement agreement and the court accepted that moderated figure. [13]
6. On reasonableness, the court treated actual expenditure as the starting point and applied the principle that courts were generally reluctant to criticise remedial expenditure with hindsight. [14]
7. The court accepted Mr Taylor's evidence that there was no evidence of unreasonable expenditure, no identified cheaper technical solution, and no commercial incentive for Mulalley to overstate or inflate the works. [15]
8. The court therefore concluded that £2,025,499.62 had been reasonably incurred in carrying out remedial works caused by the defective cladding. [16]
9. On contribution, the court applied section 2(1) of the 1978 Act by considering both the seriousness of the parties' respective faults and their causative relevance. [17]
10. Mulalley's counsel argued for a 90% contribution on the basis that Sto should be treated similarly to an architect responsible for a design defect. [18]
11. The judge accepted that courts might typically award a contribution against an architect for a design breach in the range of 67% to 80% but the court ultimately assessed Sto's contribution above that range on the facts of this case. [19]
12. The default judgment necessarily established that Sto had supplied a non-compliant and inherently defective cladding product, made misleading statements about the system, and caused the apartments to be unfit for habitation. [19.3]-[19.6]
13. The principal cause of the remedial works was Sto's marketing and supply of an inherently defective product. [20]
14. The court nevertheless stopped short of the 90% contribution sought by Mulalley, in a context where Chelmer's letter of claim had also alleged workmanship issues in respect of the fire barriers. [18], [20]-[21]
15. The fire barrier issue did not materially reduce Sto's responsibility because the primary issue with the barriers was that Sto's own standard detail included combustible insulation over the face of the fire barriers. [20]
16. That defect was the same fault described in *Martlet* as fundamentally deficient because it would have allowed fire to bypass the fire barrier in direct contradiction of the design philosophy behind fire barriers. [20]
17. The presence of workmanship allegations may explain why the court treated Sto's responsibility as principal and substantial but not total, although the judge did not identify any mathematical deduction from 90% to 87.5%. [20]-[21]
18. Taking matters in the round, the court assessed the just and equitable contribution payable by Sto and therefore Sto Germany, at 87.5%. [21]
19. The 87.5% award therefore exceeded the typical 67% to 80% range identified for architect design breaches but fell slightly below the 90% contribution sought by Mulalley. [18]-[21]

6. **Ratio Decidendi**
    1. A claimant with default judgment still had to prove quantum, causation, and

reasonableness on an assessment of damages. [6.1]-[8]

2. A defendant on an assessment of damages could not take points inconsistent with the liability established by the pleaded case and default judgment. [6.3]-[7]
3. Remedial costs were recoverable only to the extent that they had been caused by the pleaded defects and had been reasonably incurred. [7]-[8], [12]-[16]
4. A just and equitable contribution under section 2(1) of the 1978 Act required consideration of both culpability and causative potency. [17]
5. A supplier that marketed and supplied an inherently defective cladding system, made misleading statements about it, and provided defective standard details could bear the substantial majority of responsibility for remedial costs. [19]-[21]
6. A contribution of 87.5% was justified where Sto was found to be the principal cause of the remedial works but where the judge stopped short of the 90% contribution sought by Mulalley and assessed the matter in the round. [18]-[21]
7. A failure to engage in proceedings did not, without more, justify indemnity costs. [24]

7. **Disposition**
    1. Judgment was entered for Mulalley against Sto Germany for £1,772,312.17. [22]
    2. Interest was awarded at 1% above base rate for the pre-judgment period identified by the court, at 8% on the unpaid interim payment from 8 December 2025, and at 1% above base rate on the remaining balance from 8 December 2025 to judgment. [23]
    3. Costs were awarded on the standard basis if not agreed. [24]
    4. Mulalley was awarded £175,000 on account of costs. [24]
    5. The application for indemnity costs was refused. [24]

8. ***Held***
    1. *Held, that Mulalley had to prove its losses by evidence notwithstanding Sto Germany's failure to engage and the entry of default judgment. [6.1]-[8]*
    2. *Held, that the recoverable remedial costs attributable to the defective Sto system were £2,025,499.62. [12]-[16]*
    3. *Held, that those costs had been reasonably incurred. [14]-[16]*
    4. *Held, that Sto's marketing and supply of an inherently defective cladding product was the principal cause of the remedial works. [19]-[20]*
    5. *Held, that the just and equitable contribution payable by Sto, and therefore Sto Germany under the building liability order, was 87.5%. [17], [21]*
    6. *Held, that the 87.5% contribution reflected the court's overall assessment that Sto was principally responsible for the remedial works, while falling slightly below the 90% contribution advanced by Mulalley. [18]-[21]*
    7. *Held, that Sto Germany was liable to pay £1,772,312.17 plus interest and costs. [22]-[24]*
    8. *Held, that costs were to be assessed on the standard basis and not on the indemnity basis. [24]*

Comment

This judgment is a useful reminder that default judgment establishes liability but does not operate as a substitute for proof of quantum. Mulalley obtained judgment in default against Sto Germany but the assessment was not itself made "by default". Mulalley still had to prove its loss or damage by evidence. [4], [6.1]-[6.2]

That meant Mulalley had to prove what it had spent, whether that expenditure was caused by the pleaded defects, whether the expenditure was reasonable and what contribution was just and equitable. [7]-[8] The court's approach was therefore disciplined and evidential rather than decorative. It did not simply inhale the gross claim and exhale damages.

Pepperall J accepted Mr Taylor's quantity surveying evidence that Mulalley's total incurred costs were £3,431,633.53, after deductions from the pleaded gross costs for preliminaries, subcontractor costs, consultancy costs and legal fees. [9]-[11] The judge then accepted that only part of those costs was attributable to the defective Sto system because the remedial works extended beyond the defective render system. [12] After a further concession to strip out Mulalley's legal costs incurred in achieving the settlement agreement, the recoverable remedial cost caused by the defective Sto system was fixed at £2,025,499.62. [13]-[16] That is not judicial generosity. It is arithmetic wearing a hard hat.

The contribution analysis is the important feature of the judgment. The claim against Sto was for contribution under the Civil Liability (Contribution) Act 1978. Section 2(1) required the court to award such sum as was "just and equitable having regard to the extent of that person's responsibility for the damage in question". That assessment required consideration of both the seriousness of the parties' respective faults and their causative relevance. [17]

Sto was not treated as a peripheral supplier who happened to leave a box of unfortunate materials at the scene. By reason of the default judgment, the liability findings necessarily included that Sto had supplied a cladding product that failed to comply with functional requirement B4(1) and regulation 7 of the Building Regulations, had made misleading statements about the StoTherm Classic system, and had supplied a system that was inherently defective. [19.3]-[19.6] The judge found that the principal cause of the remedial works was plainly that Sto had marketed and supplied an inherently defective product. [20]

Mulalley's counsel argued for a 90% contribution, submitting that Sto should be treated similarly to an architect responsible for a design defect. [18] The judge accepted that courts might typically award a contribution against an architect for a design breach in the range of 67% to 80%. [19] But Sto was in worse territory than the ordinary design-professional defendant: this was not merely an error on drawings; it was the marketing and supply of an inherently defective cladding system, accompanied by misleading statements. [19.3]-[20]
The fire barrier issue did not rescue Sto. Chelmer's letter of claim had alleged workmanship issues in respect of the fire barriers but the judge accepted that the primary issue with the barriers was Sto's own standard detail, which included a layer of combustible insulation over the face of the fire barriers. [20] That was the very fault described in Martlet as "fundamentally deficient" because it would have allowed fire to bypass the fire barrier in direct contradiction of the design philosophy behind fire barriers. [20] In practical terms, the detail undermined the protective function that the fire barriers were intended to perform.

The judge nevertheless stopped short of the 90% contribution sought by Mulalley. The presence of workmanship allegations may explain why Sto's responsibility was treated as principal and overwhelming but not absolute, although the judge did not spell out any mathematical deduction from 90% to 87.5%. [18]-[21] Rather, "taking matters in the round", he assessed the just and equitable contribution payable by Sto and therefore Sto Germany under the building liability order, at 87.5%. [21]

The result was that Sto's contribution sat above the 67% to 80% range which the judge accepted might typically apply to an architect's design breach but slightly below the 90% advanced by Mulalley. [18]-[21] That is a careful distinction. Sto was treated as the principal cause of the loss but the court did not treat that as requiring the full 90% contribution advanced by Mulalley. [18]-[21]

The case also illustrates the practical force of building liability orders under the Building Safety Act 2022. Sto Limited's administration did not end the matter. Mulalley's claim against Sto Limited was caught by the statutory moratorium but Mulalley also pursued Sto Germany, Sto's German parent company, for a building liability order under section 130 of the Act. [3] Default judgment against Sto Germany then translated into judgment for £1,772,312.17, being 87.5% of £2,025,499.62. [21]-[22]

There was, however, a limit to the consequences of non-participation. Sto Germany's failure to engage in the proceedings and its failure to pay the interim payment ordered by Waksman J, did not justify indemnity costs. Pepperall J held that there was nothing about Sto Germany's failure to engage that took the case out of the norm. Costs were therefore to be assessed on the standard basis, with £175,000 awarded on account. [23]-[24]

In the end, Mulalley v Sto was a concise authority on post-default quantum, remedial cladding costs, causation, reasonableness, contribution, building liability orders, and the limits of indemnity costs after non-engagement. It confirmed that the court would not rubber-stamp an untested damages claim but would also not reduce responsibility artificially where the pleaded and established liability showed that the defective system made substantial remediation necessary. The judgment was measured, technical and firm. Sto Germany did not participate but the court still required Mulalley to prove the bill. [6.1]-[8], [12]-[24]

#DefectiveCladding #BuildingSafetyAct2022 #BuildingLiabilityOrders #ContributionClaims #ConstructionLaw #DefaultJudgment #RemedialWorks #CladdingCrisis #TechnologyAndConstructionCourt #MulalleyVSto #CivilLiability #FireSafety #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Assessment of damages following default judgment — Primary Theme

1. ***Strachan v Gleaner Co Ltd*** **[2005] UKPC 33, [2005] 1 WLR 3204** *— The court relied on* ***Strachan*** *for two connected principles. First, where judgment in default had been entered, the claimant obtained its right to damages from that judgment and the only live issue was the amount of damages to be awarded. Secondly, even where the defendant had failed to engage, the assessment was not made by default and the claimant still had to prove its loss or damage by evidence. [6.1]-[6.2]*
2. ***Lunnun v Singh*** **[1999] CPLR 587** *— The court relied on* ***Lunnun*** *for the principle that, on an assessment of damages, a defendant could not take any point that was inconsistent with the liability alleged in the Particulars of Claim. [6.3]*
3. ***Symes v St George's Healthcare NHS Trust*** **[2014] EWHC 2505 (QB)** *— The court cited* ***Symes*** *with* ***Lunnun*** *for the same principle that a defendant on an assessment of damages could not advance arguments inconsistent with the liability established by the pleaded case. [6.3]*
4. ***New Century Media Ltd v Makhlay*** **[2013] EWHC 3556 (QB)** *— The court relied on* ***New Century Media*** *for the proposition that the Particulars of Claim operated, in effect, as "a proxy for the judgment", setting out the basis of liability for the purposes of the assessment. [6.4]*

Contribution and just and equitable apportionment — Secondary Theme

1. ***Downs v Chappell*** **[1997] 1 WLR 426** *— The court relied on* ***Downs*** *for the principle that, when assessing a contribution under section 2(1) of the Civil Liability (Contribution) Act 1978,*

the court had to consider both the seriousness of the respective parties' faults and their causative relevance. [17]

Reasonableness of remedial works and defective cladding — Tertiary Theme

1. ***Martlet v Mulalley*** ***[2022] EWHC 1813 (TCC)*** *— The court relied on* ***Martlet*** *for two points. First, HHJ Davies had observed that courts were generally reluctant to criticise, with the benefit of hindsight, the reasonableness of a claimant's expenditure on remedial works. Secondly, the court referred to HHJ Davies' description of a fire-barrier detail as "fundamentally deficient" where it would have allowed fire to bypass the fire barrier in contradiction of the design philosophy behind fire barriers. [14], [20]*

Prioritisation Summary — Case Law

1. ***Assessment of damages following default judgment*** *was the most important theme because the judgment first identified the legal framework governing the effect of default judgment, the claimant's continuing evidential burden, and the extent to which liability was fixed by the pleaded case. [6.1]-[8]*
2. ***Contribution and just and equitable apportionment*** *was the second most important theme because the court then applied section 2(1) of the Civil Liability (Contribution) Act 1978 and assessed Sto's contribution by reference to seriousness of fault and causative relevance. [17]-[21]*
3. ***Reasonableness of remedial works and defective cladding*** *was the third theme because the court relied on* ***Martlet*** *when assessing whether the remedial costs were reasonable and when explaining why Sto's fire-barrier detail supported the conclusion that Sto was the principal cause of the remedial works. [14]-[16], [20]-[21]*

Legislation:

Contribution and apportionment of responsibility — Primary Theme

1. ***Civil Liability (Contribution) Act 1978, section 2(1)*** *— The court relied on section 2(1) as the operative statutory basis for determining the amount of Sto's contribution. The provision required the court to award such sum as was "just and equitable having regard to the extent of that person's responsibility for the damage in question", and the court applied that test by considering both the seriousness of the respective parties' faults and their causative relevance before assessing Sto's contribution at 87.5%. [17]-[21]*

Building Safety Act liability and parent-company responsibility — Secondary Theme

1. ***Building Safety Act 2022, section 149*** *— The judgment identified section 149 as the statutory basis for Mulalley's contribution claim against Sto Limited, that claim arising from Mulalley's own liability in respect of the defective cladding works. The contribution claim was then quantified by reference to the evidence of loss, causation, reasonableness, and the just and equitable assessment under section 2(1) of the Civil Liability (Contribution) Act 1978. [3], [7]-[8], [17]-[21]*
2. ***Building Safety Act 2022, section 130*** *— The judgment identified section 130 as the statutory basis upon which Mulalley pursued Sto Germany, Sto Limited's German parent company, for a building liability order after Sto Limited entered administration and Mulalley's claim against it became subject to the statutory moratorium. The provision was important because it provided the route by which Sto Germany became liable for the contribution*

assessed against Sto. [3], [21]-[22]

Building Regulations and underlying defective-system liability — Tertiary Theme

1. ***Building Regulations, functional requirement B4(1)*** *— The default judgment necessarily established that Sto had failed to supply a cladding product that complied with functional requirement B4(1). That non-compliance formed part of the pleaded and established liability which supported the court's conclusion that Sto had supplied an inherently defective system and was the principal cause of the remedial works. [19.3]-[20]*
2. ***Building Regulations, regulation 7*** *— The default judgment also necessarily established that Sto had failed to supply a cladding product that complied with regulation 7 of the Building Regulations. That finding formed part of the liability basis upon which the court assessed Sto's responsibility for the defective cladding system and its causative contribution to the remedial works. [19.3]-[20]*

Interest and costs consequences — Quaternary Theme

1. ***Judgments Act rate*** *— The court awarded interest at the Judgments Act rate of 8% on the unpaid interim payment of £1,200,000 from 8 December 2025. [23]*
2. ***Civil Procedure Rules 1998, rule 44.2(8)*** *— The court relied on rule 44.2(8) when ordering Sto Germany to pay £175,000 on account of costs. The rule was applied after the court held that Mulalley was entitled to its costs on the standard basis and rejected the argument that Sto Germany's failure to engage justified indemnity costs. [24]*

Statutory moratorium — Background Theme

1. ***Statutory moratorium*** *— The judgment stated that, after Sto Limited was placed into administration, Mulalley's claim against Sto Limited was subject to the statutory moratorium. The judgment did not identify the particular statutory provision governing that moratorium, so it should not be listed as a separate named statute or regulation beyond the judgment's own description. [3]*

Prioritisation Summary — Legislation

1. ***Contribution and apportionment of responsibility*** *was the most important legislative theme because section 2(1) of the Civil Liability (Contribution) Act 1978 supplied the legal test which directly determined the 87.5% contribution and therefore the amount of the judgment. [17]-[22]*
2. ***Building Safety Act liability and parent-company responsibility*** *was the second most important legislative theme because sections 149 and 130 explained the statutory route by which Mulalley pursued the contribution claim against Sto and then against Sto Germany as parent company. [3], [21]-[22]*
3. ***Building Regulations non-compliance*** *was the third most important legislative theme because the established failures to comply with functional requirement B4(1) and regulation 7 formed part of the liability findings that supported the conclusion that Sto supplied an inherently defective product. [19.3]-[20]*
4. ***Interest and costs consequences*** *were consequential rather than central because the Judgments Act rate and CPR rule 44.2(8) were applied only after the court had assessed damages, contribution, interest, and costs. [23]-[24]*

Legal Texts & Commentary:

No legal texts, practitioner works, textbooks, journal articles, academic commentary, or other secondary legal sources were cited in the judgment. The judgment relied only on cited case law, statutory provisions, regulations, procedural rules, and the expert/factual evidence before the court.

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
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