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Providence v Hexagon [2025]: Adjudication Enforcement Stayed Pending Supreme Court Appeal

Providence Building Services Ltd v Hexagon Housing Association Ltd [2025]

Date: 22 September 2025

Judge: HHJ Parfitt

Key Words:

Adjudication enforcement, Summary judgment, Stay of execution, CPR 83.7(4), Special circumstances, Wimbledon v Vago, Gosvenor London v Aygun, Manifest injustice, Balance of prejudice, Impecuniosity / financial impecuniosity, Inability to repay, Risk of non-recovery, Causation of financial decline, Contract termination dispute, Supreme Court appeal, Temporary nature of adjudication, Enforcement vs insolvency, Creditor pressure / winding-up petition, Cash-flow vs irrecoverable loss, Judicial discretion

Summary

The Claimant sought summary judgment to enforce an adjudication award dated 30 April 2025 [10]. The Defendant did not dispute judgment but applied for a stay pending the Supreme Court appeal on termination validity [1]. Its case was that the Claimant could not repay if the Defendant succeeded [3]. The Claimant resisted, citing risk of winding up and “irremediable prejudice” [4].

Applying Wimbledon v Vago, the court found the Claimant’s finances had materially worsened since contracting. The Defendant’s risk of irrecoverability outweighed the Claimant’s insolvency risk. Summary judgment was granted but immediately stayed on terms as enforcement would be inexpedient before the Supreme Court appeal [61–65].

Key Themes:

1. **Enforcement of Adjudication Awards (Wimbledon v Vago Regime):** Adjudication awards should generally be enforced immediately (“pay now, argue later”) [13, 14(i), 17, 23].
2. **Stays of Execution:** CPR 83.7(4) gave discretion to stay enforcement where “special circumstances” rendered it inexpedient [11, 63(ii)].
3. **Impecuniosity & Non-Recovery Risk:** Probable inability to repay may justify a stay [14(ii), 43, 62–63(iv)].
4. **Manifest Injustice:** The court held it was not a freestanding principle, but part of “special

circumstances" [15–22].

5. **Adjudication & Appellate Process:** Pending Supreme Court appeal on termination impacted enforcement of the termination account [32–35, 40–42, 63(ii), (iv)].
6. **Balance of Prejudice:** Claimant's winding-up risk was outweighed by Defendant's irrecoverable loss risk [22, 53–54, 61–62, 63(iv)].

Background

1. **Contract:** Builder contracted under JCT DB 2011 to deliver 37 flats and related works for £7.2m [2, 28].
2. **Termination:** Contract terminated in May 2023; dispute followed [6, 34].
3. **Late Payments:** Defendant had history of late payments totalling £14,899 [29].
4. **Adjudications:**
    1. First: validity of termination, challenged by Defendant, now before the Supreme Court [1].
    2. Second: final termination account award, the subject of this application [1, 36].
5. **Claimant's Finances:** Net assets dropped from £2.2m (2021) to £381k (2022) and £168,971 (2024) [47].

Legal Issues and Analysis

Governing Law

CPR 83.7(4) gave discretion to stay judgment if "special circumstances" made enforcement inexpedient [11–12].

Wimbledon v Vago and Gosvenor London confirmed adjudication awards must usually be enforced but stays may be justified if repayment risk exists [8–9, 13–14(ii)].

Analysis of Financial Position

1. **Impecuniosity:** Claimant's finances had materially worsened since contracting [13, 17, 23–24, 43, 47–48, 63(iv)–(v)].
2. **Causation:** Decline arose from unrelated matters and termination costs, not Defendant's non-payment [57–59, 63(v)].
3. **Wimbledon Exception:** Did not apply; Claimant was "less well off than at the date of the contract" [43–45, 47–48, 63(v)].
4. **Manifest Injustice:** Court rejected it as a free-standing basis. Paying creditors with Defendant's money would be contrary to *Wimbledon v Vago* [15–22, 53–54, 61–62].

Balance of Prejudice

The Defendant, described as "cash rich," faced irrecoverable loss if successful in the Supreme Court, outweighing Claimant's insolvency risk [22, 53–54, 61–62, 63(ii), (iv), (v)].

Conclusion

The stay was granted on terms [64–65] because:

1. Outcome was consistent with *Wimbledon v Vago* [63(i)].
2. Enforcement before the Supreme Court appeal would be inexpedient [63(ii)].

3. Defendant's irrecoverability risk outweighed Claimant's insolvency risk [63(iv)].
4. Claimant's decline was not substantially caused by Defendant [63(v)].

Summary judgment was granted but stayed.

Key Takeaway:

Where a claimant is financially compromised, the risk of non-repayment constitutes "special circumstances" under CPR 83.7(4), justifying a stay — even if this pushes the claimant toward insolvency. This prevents adjudication from becoming a one-way subsidy.

Parting Thoughts

Adjudication remains "pay now, argue later" — not "pay now, never see it again." Providence's balance sheet collapse meant enforcement would subsidise creditors and litigation with no prospect of repayment. "Manifest injustice" was not a silver bullet; it merely repackaged "special circumstances."

The stay was inevitable: (1) Wimbledon still rules; (2) insolvency risk made enforcement inexpedient pre-Supreme Court; (3) Hexagon's irrecoverability risk trumped Providence's hardship; and (4) Providence's decline was self-inflicted.

Yes, Providence technically won — but the money is frozen until the Supreme Court decides who actually ended the contract. In construction law, winning can look a lot like losing — only more expensive.

#ConstructionLaw #Adjudication #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal #AdjudicationEnforcement #SummaryJudgment #StayOfExecution #CPR8374 #JudicialDiscretion #WimbledonvVago #GosvenorLondon #ManifestInjustice #Impecuniosity #InabilityToRepay #RiskOfNonRecovery #BalanceOfPrejudice #CausationOfFinancialDecline #InsolvencyRisk #CreditorPressure #TerminationDispute #SupremeCourtAppeal #ConstructionContract #CashFlowInConstruction #PayNowArgueLater

Authorities

Case Law:

A. Adjudication Enforcement and Impecuniosity (The Core Regime)

1. *Wimbledon v Vago* [2005] EWHC 1086 (TCC) – *Framework for stays; repayment risk justified stay; exceptions rejected [3, 8–9, 13–14, 17, 20–25, 43–45, 47–48, 58–59, 63(i), (v)].*
2. *Gosvenor London Ltd v Aygun Aluminium Ltd* [2018] EWCA Civ 2695 – *Confirmed Wimbledon principles were guidance not inflexible [9–10].*

B. Defining and Applying "Manifest Injustice" as a Basis for Stay

1. *Hillview Industrial Developments v Botes Building* [2006] EWHC 1365 (TCC) – *Stay limited to "manifest injustice" [16].*
2. *Galliford Try Building Ltd v Estura Ltd* [2015] EWHC 412 (TCC) – *"Manifest injustice" not separate; partial stay granted [17, 39].*
3. *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936 (TCC) – *Manifest injustice raised but*

stay refused [18].

4. *Flexidig Ltd v M&M Contractors (Europe) Ltd* [2019] NIQB 117 *– Stay if fairness required [18].*
5. *Equitix v Bester* [2018] EWHC 177 (TCC) *– Stay with partial payment into court [18].*
6. *J&B Hopkins Ltd v A&V Building Solutions Ltd* [2023] EWHC 2475 (TCC) *– Discretion to stay preserved [19].*

C. Discretionary Framework for Stays

White Book Commentary on *CPR 83.7(4) – While not a reported judgment, the court referred to commentary explaining that the central question was whether special circumstances rendered enforcement inexpedient.*

This provided the statutory underpinning for the discretionary analysis.

Legislation:

1. ***CPR 83.7(4):*** *Court may stay if "special circumstances" render enforcement inexpedient; test not displaced by "manifest injustice" [11–12, 20, 63(ii)].*
2. ***Housing Grants, Construction and Regeneration Act 1996:*** *Adjudication provides interim, temporarily binding decisions; insolvency risk undermines repayment safeguard [23].*

Legal Texts & Commentary:

White Book Commentary on CPR 83.7(4): *Key question was whether special circumstances made enforcement inexpedient; commentary supported court's discretion [12].*

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CIArb Arbitration Panel Member since 2006
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