Neutral Citation Number: [2022] EWHC 2430 (TCC)

Case No: HT-2020-000365

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

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

Date: 03/10/2022

Before :

Jason Coppel KC
(sitting as a Deputy High Court Judge)

- -

Between :

GOLDBERG LONDON LIMITED **Claimant**

- and -

PRIMELODGE DEVELOPMENTS LIMITED

Defendant

- -
- -

Andrew Burr (instructed by Synthesis Chambers Solicitors) for the **Claimant**
Edward Bennion-Pedley (instructed by Irwin Mitchell LLP) for the **Defendant**

Hearing date: 18 May 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 3 October 2022 at 10.30am.

Jason Coppel KC:

Introduction

1. This is an application by the Defendant, Primelodge Developments Limited ("PDL") for summary judgment in respect of (a) the claim by the Claimant, Goldberg London Limited ("GLL"), and (b) PDL's counterclaim against GLL.

2. The essential background to the proceedings may be summarised as follows:

   i) GLL and PDL are parties to a joint venture agreement dated 17 November 2015 ("the JVA") by which, according to the recital to the JVA, the parties agreed for GLL to develop land at 41 Trinity Close, London E11 ("the Property") and for "distribution of the resulting sale proceeds" in accordance with the terms of the agreement. Clause 7 of the JVA made provision for various sums to be paid out of the gross sale proceeds of the flats constructed in the Property ("the Dwellings", to use the JVA's terminology) before profits were distributed to PDL and GLL.

   ii) The Property has been developed into flats, with the development being completed in July 2019. I was informed at the hearing that all of the flats had been let, some as social housing. None of the flats has yet been sold.

   iii) The parties have been in dispute both about whether the Property should be sold and about the terms of the distribution of the proceeds of sale.

iv) By Claim BL-2018-002728, PDL sought various declarations and orders against GLL. In an Order dated 29 July 2019 ("the DMA Order"), Deputy Master Arkush granted summary judgment in favour of PDL on the entirety of its claim and made various declarations including that the JVA was valid and binding (in the face of objections by GLL that it was not) and this declaration regarding the distribution of sale proceeds (§2b):

"The Claimant is entitled to be paid 50% of the profits of the proceeds of sale of each dwelling, alternatively of the property, such profits to be calculated after deducting from the proceeds of sale the sums set out in clause 7 of the Agreement, subject to a cap of £4m in respect of any deduction permitted for repayment of the Development Loan."

v) The Deputy Master also declared that PDL had a right to enter upon and take possession of the Property, but could only exercise that right following further order of the Court granting it possession (§2d).

vi) The Deputy Master also made orders for specific performance, including of clause 2.7 of the JVA which requires GLL to make available accounting information relating to the development of the Property and of an obligation to grant PDL a 50% shareholding in the Claimant.

vii) GLL sought to appeal against the DMA Order. It was refused permission to appeal save in respect of a challenge to the §2b declaration regarding distribution of sale proceeds, where an oral permission hearing was directed. Before that hearing could take place,

the application for permission to appeal was withdrawn on the terms of a consent order dated 20 December 2019. The terms of the schedule to the consent order included a recognition by the parties that neither had any cause of action against the other in respect of all matters relating to the JVA (§10).

viii) GLL did not comply with the DMA Order and proceedings for committal of Imran Ul Haq, the controlling mind of GLL, followed. These resulted in the share transfer which had been ordered by the Deputy Master.

ix) The parties have continued to disagree about the implementation of the JVA, and the current claim is the latest manifestation of that disagreement.

Relevant legal principles

3. It was common ground before me that the legal principles which I must apply to PDL's application for summary judgment are those set out in *Easyair Limited (t/a Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch), §15 (per Lewison J (as he then was)):

"The correct approach on applications by defendants is, in my judgment, as follows:

i) The court must consider whether the [party] has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91 ;

ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63 ;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.

The reason is quite simple: if the [party]'s case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725."

The Claim

4. According to §7 of the Particulars of Claim, the purpose of the Claimant's claim is "*to establish (as a matter of principle) the precise basis upon which the parties agreed that the proceeds of sale for [the Property] should be distributed as between themselves*". A similar sentiment is expressed in §20: "*GLD has commenced these proceedings in an attempt to assist understanding of the manner in which the parties hereto ought properly to be*

able to agree upon the calculations required to be made and in order to provide a framework for any response which PDL may wish to make ..".

5. The nub of the claim is contained in §21 of the Particulars of Claim, where it is said that "*GLL .. considers that the following issues need to be addressed in order to provide clear guidance to any independent expert who may subsequently be appointed under clause [8] of the JVA*". There is then set out a series of "issues" which GLL alleges should be taken into account, presumably for the purposes of establishing the precise basis on which the proceeds of sale of the Property should be distributed (see §7). The issues set out are the following:

"21.1 The necessity to put and keep the property in good order and the need to keep the lending bank and their loan satisfied;

21.2 The fact that the units are actually being let and currently have not been sold;

21.3 The funding arrangements presently in place not being indefinite;

21.4 The timing for making a distribution of proceeds;

21.5 The distinction as between the sequence in which the proceeds of sale, or value are to be distributed and the calculation of the sums which are subsequently to be distributed.

21.6 The actual cost of the development and the construction costs incurred by GLL and GHL, and the significant changes to the original scope of the works.

21.7 Accommodating the matrix of obligations in the JVA, the order and settlement agreement and the Castle Trust Deed.

21.8 The ongoing property market turbulence in the United Kingdom caused by Corona Virus pandemic, and

21.9 To achieve a clean break between the parties."

6. §22 of the Particulars of Claim then notes that PDL may consider that there are additional issues which the parties will need to address, which – once identified - would then be added to the list of issues in §21.

7. The Prayer seeks declarations (a) "*that the relevant issues as between the parties hereto are those set out in paragraph 21*" and (b) "*that those issues ought properly to be considered and resolved by an independent expert (once confirmed by the Court)*".

8. In my judgment, this claim is misconceived on a number of levels and has no real prospect of succeeding:

   i) I accept the submission of PDL that the claim is a thinly disguised attempt to undermine the DMA Order, in particular the declaration made by the Deputy Master as to the construction of clause 7 of the JVA, contrary to the doctrine of *res judicata*. The premise of the claim is that an expert will be entitled to determine the appropriate distribution of the sale proceeds, having identified and had regard to the considerations which he considers appropriate. Yet that question is determined by clause 7 of the JVA, the correct interpretation of which was decided by the Deputy Master Arkush. GLL was quite clear about

its intentions in legal submissions before me, arguing (see §17 of GLL's Skeleton Argument):

"The order of DMA cannot possibly be binding upon a Judge of the Technology and Construction Court; not only was it wholly unreasoned .. but it also flies completely in the face of commercial reality, reasonable linguistic analysis and any semblance of good sense."

It would not be permissible for a Court at the trial of the claim to re-open the question of construction of clause 7 of the JVA which has been determined by Deputy Master Arkush. As noted above, GLL commenced an appeal against the DMA Order but did not pursue it to a conclusion. The Order compromising the appeal against it did not in any way undermine the DMA Order (and, for good measure, a declaration to that effect was contained in the Order of Miles J dated 12 May 2021 relating to the contempt proceedings against Mr Ul Haq). Accordingly, the DMA Order is binding upon the parties as to the matters which it determines. It cannot be undermined by GLL commencing fresh proceedings in the TCC.

ii) Nor can the DMA Order be undermined by GLL referring to an expert the matters of construction of clause 7 of the JVA which have already been determined by Deputy Master Arkush (still less by the Court ordering or declaring that that should be done). A referral to an expert of matters which have already been the subject of binding determination by the Courts is either impliedly prohibited by the

dispute resolution procedure or would be pointless because any decision by the expert which departed from that of the Courts would be in error of law (and so challengeable in the Courts pursuant to the terms of clause 8 of the JVA). Either way, GLL's claim that the Court should direct a referral to an independent expert of the question of the appropriate distribution of sale proceeds cannot succeed.

iii) I understand that notwithstanding GLL's claim that an expert should be appointed to determine issues regarding the scheme of distribution of sale proceeds, it has already purported to appoint an expert (see §27 of the second witness statement of Sajid Khan of PDL). Even assuming that this were a valid appointment, to determine a dispute which it was open to the expert to determine, it would be for the expert to make a ruling on the dispute, which ruling would be final save in the case of failure to observe the procedure in clause 8 or of error of law or material fact. There would be no legal basis for the Court to intervene before a decision had been taken in order to lay down the issues which must be considered by the expert. No specific cause of action is identified in the Particulars of Claim, still less one which would permit the Court to influence the expert's decision before it is made by identifying the issues which the expert should take into consideration.

iv) Even if the exercise called for by the claim were in principle legitimate, there is no realistic prospect that the Court at trial would direct the expert to determine the appropriate distribution of sale proceeds having regard to the list of issues set out in §21 of the Particulars of Claim.

Those issues do not even include, still less give priority to, clause 7 of the JVA, which must on any view be the starting point, if not also the end point, of that exercise.

The counterclaim

The claim for provision of accounting information

9. The counterclaim seeks, by §27.1, to enforce clause 2.7 of the JVA, whereby GLL agreed:

"*Throughout the period of the Scheme and upon completion of the sale of the Dwelling at [GLL]'s expense to provide [PDL] with such accounting information in relation to the Scheme and the sale of the Dwelling as [PDL] shall reasonably require.*"

10. As I have noted, the DMA Order required GLL to provide disclosure pursuant to this clause. It was not specific as to which documents required to be disclosed and could not apply to all documents created in the future, after the Order was made. PDL now seeks an order for disclosure of documents and information specified in a Schedule to the draft Order submitted with the application for summary judgment.

11. There can be no "in principle" objection to the claim for provision of information pursuant to clause 2.7 of the JVA. The Scheme is defined in the JVA as "*the development of the Property in accordance with the Planning Permission*" and it was suggested in argument that the obligation to provide information did not apply after the construction of the Property had been completed and before it was sold. That question must already have been

determined against GLL by Deputy Master Arkush, given the Order for provision of information which he made, and in any event I reject that construction of the JVA. Clause 2.7 is plainly intended to cover the entirety of the parties' relationship. It would make no commercial sense for there to be a hiatus in PDL's right to receive relevant information and every reason why PDL might wish to have such information before and not merely after the Property had been sold. Further, to the extent that there has been a gap in time between development of the Property and its sale, that has been caused by GLL's failure to market the Property as agreed in the JVA. The argument that it should be able to withhold financial information which bears upon the value of the Property to PDL, whilst refusing to market the Property for sale, is deeply unattractive and cannot have been the intended effect of clause 2.7.

12. The only remaining questions under clause 2.7 are whether the documents and information sought by PDL (a) are "accounting information", (b) are "reasonably required", and (c) have not already been provided by GLL. In light of submissions at the hearing, which clarified (a) the relevance of certain documents to PDL's financial position under the JVA, and (b) whether or not certain documents had already been provided to PDL, I will direct that the following documents are disclosed within 21 days of my Order:

    i) Copies of all tenancy agreements granted by GLL in relation to the flats in the Property (the "Dwellings", as defined in the JVA).

    ii) GLL's bank statements from 25 November 2021 to the date of my Order disposing of the application.

iii) The loan agreement dated 29 July 2016 with Assetz Capital Trust Company Limited ("Assetz") to which a legal charge dated 29 July 2016 refers.

iv) The facility letter dated 12 September 2019 made between GLL and Goldberg Homes Limited to which the Mortgage Deed dated 5 December 2019 granted by GLL to Goldberg Homes Limited refers.

v) Copies of any written loan agreements made between GLL and the following people/entities: S Bukhare, S Patel, E Ul Haq, Pyramid Properties (GB) Limited, Goldberg Properties Limited, Imram Quadar, Iram Shah, M Patel and Monolith Developments Limited. If and to the extent that GLL contend that there were any loan agreements made orally with any of those people/entities, details of their term, their repayment terms, any interest payable under them and the balance currently owing under them.

vi) Documentary evidence to explain the nature of the expenditure which GLL's bank statements refer to as payments to "Goldberg Credit CR". This seems to me to be "accounting information" in circumstances where core accounting documentation such as bank statements and the accounts themselves do not explain the basis for significant payments made by GLL.

vii) Copies of the full accounts prepared by GLL for the financial years from 2016 to 2022 (other than those for the financial year ending 28 September 2018, which have already been provided). I was informed

that only abbreviated accounts were available via the Companies House website.

viii) Information to identify the creditor referred to as "Provision Court Order" referred to as being owed £1m in GLL's abbreviated accounts for the years ending in September 2019 and September 2020.

I do not direct the disclosure of copies of the building contracts, sub-contracts, professional appointments and any other agreements relating to the development of [the Property]" under which GLL sub-contracted the construction works to Goldberg Homes Limited. This category of documents seems to me to go beyond "accounting information" to which PDL is entitled.

The claim for an order for sale of the Property

13. §27.2 of the Defendant's Counterclaim claims an order for sale of the Property in the following terms:

"An order that the Property is to be sold forthwith, that the Defendant shall have conduct of the sale and that the sale proceeds are to be distributed in accordance with clause 7 of the JVA as construed by Deputy Master Arkush, namely as follows:

27.2.1 In repayment of the Castle Trust Capital Plc charge and in meeting the costs of sale;

27.2.2 The sum of £1,050,000 to the Defendant;

27.2.3 The sum of £148, 067.51 to the Defendant;

27.2.4 An agreed provision for Corporation Tax (if any);

27.2.5 A further sum to the Defendant equivalent to 50% of sales profit after deduction of the Claimant's development costs subject to a cap of £4m;

27.2.6 The payment of the balance (if any) to the Claimant."

14. I accept without hesitation that the JVA provides both for the development of the Property and also for its subsequent sale. I have already mentioned that the recital to the JVA refers to it providing for "*the distribution of the resulting sale proceeds*". There are a number of substantive provisions of the JVA which are only explicable in light of an agreement to sell the Property after it was developed. Clause 2.7, also mentioned above, refers to "*completion of the sale of the Dwelling*" as a point in time at which information should be provided to PDL. Clause 5 deals specifically with "*selling arrangements*":

"5.1 The conduct of the sale of the Dwellings shall rest with Goldberg who shall appoint a reputable agent to be the selling agent for the Dwellings.

5.2 The Dwellings in the Property shall be marketed at a price that Goldberg and Primelodge and the appointed selling agent consider to be the market value (each acting reasonably) and which would be likely to result in a sale being agreed within [three/six] months.

5.3 The conveyancing in relation to the sale of the Property shall be carried out by Primelodge's Solicitors."

15. There is room for argument as to whether GLL's obligation under clause 5.1 to appoint a reputable agent and thereby commence the process towards sale arose immediately upon completion of the development of the Property or within some period thereafter (and if so how long was that period). It may or may not have arisen by the time that PDL agreed, when compromising GLL's attempt to appeal the DMA Order, that it had no cause of action against GLL pursuant to the JVA. There can be no reasonable doubt, however, that GLL's obligation under clause 5.1 had arisen significantly before the date of the Counterclaim (11 October 2021) and also that PDL would succeed at trial in establishing that GLL had, by that date, breached its obligation.

16. GLL's case that it had not breached clause 5.1 of the JVA rested on the proposition that the JVA had been varied by subsequent Deeds of Postponement entered into between Castle Trust Capital plc ("CTC"), PDL, GLL and Goldberg Homes Limited. GLL borrowed from CTC in order to discharge its liability to Assetz, from whom it had initially borrowed money in order to fund the development of the Property. The Deeds of Postponement were so called because they served to postpone PDL's interest in the sale proceeds from the Development behind that of CTC, and provide (amongst other things) that PDL should not be entitled to receive any money from the sale proceeds of the Development until GLL's liabilities to CTC have been discharged (§5 of the Deeds of Postponement). PDL says that it had no choice but to enter into the initial Deed of Postponement (on 5 November 2019) in order to avert Assetz taking steps to enforce its security over the Property.

17. The Deeds of Postponement provide that GLL and PDL will vary the JVA in order to make it consistent with the Deeds, and in the event of any inconsistency between them, the Deeds should prevail (§4). However, there is no clause of the Deeds of Postponement which purports to vary clause 5.1 of the JVA or – as GLL contends - to change the character of the project from one for construction and sale to one for construction and long-term rental of the flats constructed. There is no inconsistency in this respect between the JVA and the Deeds of Postponement. This is a short, and clear, point of construction which, on the approach in *Easyair*, ought to be determined summarily.

18. GLL did not seek to submit that if it was in breach of clause 5, such breach should only sound in damages and not be made the subject of an order for specific performance. In my judgment, specific performance is by far the more appropriate remedy for PDL. It cannot obtain substitute performance of the obligation breached, and claim damages for any higher costs associated with the latter. Damages caused by GLL's failure to market the Property would be difficult to assess. Further, specific performance is a common remedy where an agreement to sell land has been breached (*Chitty on Contracts*, 30th ed., §30-020), albeit that the claimant in such a case is normally the agreed purchaser of the land rather than the business partner of the vendor.

19. I will therefore grant summary judgment to PDL on the claim encapsulated in §27.2, and order that GLL, within 28 days of the date of my Order, discharge its obligation under clause 5.1 of the JVA to start the sale process by appointing a reputable agent to be the selling agent for the Dwellings. Clause

5.2 of the JVA will require GLL, PDL and the agent to agree on selling prices for the Dwellings which each considers to correspond to market value and to be likely to secure a sale within 3-6 months of marketing. It is to be expected that GLL will cooperate with, and act reasonably in relation to, this process; if it does not, and the process is delayed, the contractual dispute resolution may be invoked and, ultimately, PDL may return to Court and argue for an order for sale of the Property and/or the appointment of a receiver to sell it. PDL submits that it would frustrate the sale of the Dwellings, and so would be unreasonable, for GLL to enter into any further tenancies of the Dwellings. That may be the case, but I would not be prepared to make a ruling to that effect without evidence as to the potential effect of re-letting or renewing the letting of a flat in this particular development, on the prospects of securing a sale within 3-6 months of marketing.

20. I do not grant summary judgment in relation to the remainder of §27.2 of the Counterclaim, which seeks a further declaration regarding the method of distribution of the sale proceeds. There appears to be a measure of common ground on the pleadings as to the particular sums referred to in the sub-paragraphs to §27.2. However, there is a contradiction between PDL's position on the Claim, which emphasises the finality of the decision of Deputy Master Arkush on the construction of clause 7.2 of the JVA and the contents of §27.2, which supplement and, arguably, re-word the DMA Order. §2b of the DMA Order refers to deduction of the sums set out in clause 7 of the JVA "*subject to a cap of £4m in respect of any deduction permitted for repayment of the Development Loan*". §27.2.5 of the Particulars of Claim refers to the "*deduction of the Claimant's development costs subject to a cap of £4m"*.

There may be a material difference between these two formulations, noting that §27.2.1 of the Counterclaim calls for an initial deduction from the proceeds of sale "*In repayment of the Castle Trust Capital Plc charge"*.

21. The Development Loan referred to in clause 7.1 of the JVA and also in §2b of DMA Order, is defined in the JVA as "*a loan taken out by Goldberg with a bona fide lender*". As I have noted, GLL initially borrowed money to fund the Development from Assetz, and later re-financed that borrowing, taking out a new loan from CTC. It must be at least arguable that GLL's current borrowing from CTC is now to be regarded as the "Development Loan". PDL accepts that, pursuant to the Deeds of Postponement, the entirety of GLL's borrowing from CTC, without any cap, must be repaid as the first step in any distribution of the proceeds of sale. This was expressly provided for in clause 5 of the initial Deed of Postponement dated 5 November 2019, some months after the DMA Order, to which CTC, GLL and PDL were all party. If GLL's borrowings from CTC, which effectively incorporate the monies initially borrowed to fund development costs, are to be repaid as the first step in distribution it would appear to involve double counting to make a further deduction of up to £4m, as called for in §27.2.5 of the Counterclaim, in respect of GLL's development costs. On that footing, no further deduction of the Claimant's development costs would fall to be made in the distribution calculation following the repayment of CTC.

22. Even if that issue could be resolved, by amendment of §27.2.5, I would still be reluctant to grant a declaration, on a summary judgment application, which purported to re-visit or re-state the declaration made by Deputy Master

Arkush, at the instigation of a party which has placed emphasis upon the finality of that declaration. It may be that PDL may wish to pursue to trial its claim for a further declaration as to how the proceeds of sale are to be distributed. If so, the Court at trial will require full evidence and argument as to how any agreements between the parties subsequent to the DMA Order have affected their legal rights under clause 7 of the JVA. However, it may be more fruitful for PDL to pursue the sale of the Dwellings and seek to resolve any disputes about the distribution of the sale proceeds as and when they arise. Since the sale of the Dwellings will be handled by PDL's solicitors, so they will receive and hold the sale proceeds (see clause 5.3 of the JVA), PDL can be assured that the funds will not be dispersed until any disputes are resolved. (In that particular regard I note that clause 5.3 of the JVA refers to PDL's solicitors carrying out the conveyancing "in relation to the sale of the Property", as opposed to "the Dwellings". However, "the Property" in this context is to be interpreted as meaning "the Dwellings", for consistency with the remainder of clause 5, which sets out arrangements for the sale of the Dwellings rather than the sale of the Property as such).

Other claims made by PDL

23. I also decline to grant summary judgment on the remainder of the claims pleaded by PDL.

24. §27.3 of the Particulars of Claim seeks, in the alternative to §27.2, an order for the appointment of a receiver to manage and sell the Property. As the claim for an order under §27.2 has succeeded, the claim under §27.3 does not arise, at least on this application.

25. §27.4 of the Particulars of Claim claims as follows:

"To the extent that the sums charged against the Property by the Claimant exceed the cap of £4m, an order pursuant to clause 12.7 of the JVA requiring the Claimant to indemnify the Defendant for the balance."

26. Clause 12.7 of the JVA provides:

"Goldberg shall fully and effectively indemnify Primelodge for all costs (professional and otherwise), penalties, taxes, fees and liabilities incurred in relation to this Agreement and the obligations or liabilities arising from it over and beyond Primelodge's contribution of £2,000,000"

27. It is, at the very least, arguable that the obligation upon GLL to indemnify PDL which is imposed by this clause does not apply to GLL's liabilities to its creditors, which do not constitute liabilities incurred by PDL in relation to the JVA. If that is correct, the order sought by §27.4 could not be granted; it certainly cannot be granted summarily.

28. §27.5 of the Counterclaim seeks "*an order requiring the Claimant to indemnify the Defendant for its costs in any event*". No details are pleaded as to the costs which PDL seeks and I have not been provided with any details as to these costs, or as to any claim made to GLL for repayment of these costs. No such order can be made at this stage.

Conclusion

29. For those reasons, I grant summary judgment to PDL on GLL's claim. I also grant summary judgment to PDL in relation to (a) its claim for provision of

information and documentation, to the extent set out above, and (b) §27.2 of the Particulars of Claim, and will order that GLL appoint a sales agent pursuant to clause 5.1 of the JVA.

30. I will hear Counsel on the appropriate form of Order and on the issue of costs.