



Neutral Citation Number: [2024] EWHC 941 (TCC)

Case No: HT-2022-000022

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
Fetter Lane, London, EC4A 1NL

Date: 24th April 2024

Before :

MRS JUSTICE JEFFORD

Between :

Lloyds Developments Limited	<u>Claimant</u>
(in administration)	
- and -	
Accor HotelServices UK Limited	<u>Defendant</u>

James Bowling (instructed by **Spencer West**) for the **Claimant**
Robert Blackett (instructed by **Haynes and Boone CDG**) for the **Defendant**

Hearing dates: 22 March 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 24th April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JEFFORD

Mrs Justice Jefford:

Background

1. These proceedings arise out of the conversion of a building at Clyde Street in Glasgow into a 17 storey hotel. The claimant (“Lloyds”) was the owner of the building and, in December 2018, agreed with the defendant (“Accor”) that it would be operated by Accor as a “Tribe” brand hotel for a period of 35 years. “Tribe” was a new brand recently purchased by Accor. The parties entered into 3 agreements: the Hotel Management Agreement (“HMA”), the Hotel Consultancy Services Agreement (“HCSA”) and the Hotel Management Agreement Side Letter.
2. For the purposes of the present applications, it is unnecessary to go into any detail about the disputes that subsequently arose and form the subject matter of these proceedings. In brief, Lloyds’ case is that Accor would advise it on so-called Tribe brand standards which led to Lloyds being required, and on its case forced, to make design changes. One of the reasons given for design changes was “copyright issues”. Lloyds claims that these changes rendered it unable to progress with the construction of the hotel and caused its funders to withdraw such that by July 2019 construction had ceased.
3. Each party alleges that the other’s conduct amounted to a repudiatory breach of the HMA and HCSA. On 17 July 2020 Lloyds purported to accept Accor’s repudiatory breaches and terminate the contracts. Lloyds later proceeded with the project with an alternative hotelier, Virgin, and Accor contends that the purported termination of the contracts and engagement with another hotelier was itself a repudiatory breach and counterclaims for damages.
4. Lloyds is now in administration. Geoffrey Jacobs and Blair Nimmo, both Licensed Insolvency Practitioners of Interpath Advisory Ltd., were appointed as joint interim managers pursuant to an interlocutor of the Court of Session dated 1 December 2023. They were appointed as joint administrators on 19 January 2024. As administrators, they are independently advised by solicitors, Burness Paull LLP.

Procedural history

5. Lloyds commenced proceedings in January 2022. At a CMC in October 2022, a trial was fixed for March 2024 with a time estimate of 3 weeks. As a result of changes in Lloyds' case, at a hearing before Waksman J, Accor applied for an adjournment of the trial. Accor was successful in its application; the trial date was vacated; and the judge ordered Lloyds to pay Accor's costs of the application. By an order dated 21 December 2023 ("the December Order"), Waksman J summarily assessed Accor's costs at £120,000 and ordered Lloyds to pay by 4.00pm on 12 January 2024.
6. Lloyds failed to pay in accordance with the December Order and Accor sought an unless Order. At a hearing before Eyre J on 26 January 2024, the judge observed that the administrators needed time to decide whether they were going to "put up or shut up" but that neither that decision nor the raising of funds was straightforward. He gave them until 8 March 2024 to comply with the December Order. That was reflected in the Order dated 26 February 2024 ("the Unless Order") which was drawn up following a further hearing and which provided:

"1. The Claimant's claim shall be struck out and judgment on that claim entered unless the Claimant pays to the Defendant by 4pm on 8 March 2024 both:

 - (a) £120,000 due under Waksman J's Orders of 1 and 21 December 2023; and*
 - (b) interest on that amount at a daily rate equivalent to 8% per annum (being £26.30 per day) from 1 December 2023 up to and including the date that any payment is received or recovered."*
7. Lloyds did not pay any sum by 4.00pm on 8 March 2024. At 3.57pm, Lloyds filed on CE-file an application for an extension of time to comply with the Unless Order. At 4.26pm, Accor filed an application for judgment to be entered against Lloyds and for consequential orders.
8. Subsequently on 15 March 2024, Lloyds paid the sums ordered to be paid by the Unless Order.

Lloyds' application

9. The manner in which Lloyds made its application was undoubtedly unsatisfactory and was the cause of considerable waste of time and money in relation to both applications.

10. The application was made at almost literally the very last minute. As filed: (i) the application notice, confusingly, referred to the Orders of both Waksman J and Eyre J dated 23 February 2024; (ii) under paragraph 10 stated “witness statement to follow”; and (iii) was accompanied by a draft Order which in recitals referred to the Court having read “the witness statements of [] dated 8 March 2024”.
11. Thereafter at 12.48pm on Saturday 9 March 2024, Lloyds’ solicitors, Spencer West, submitted on CE-file a further version of the form N244 (which corrected the reference to the order of Waksman J) and was accompanied by a draft Order and a witness statement of Geoffrey Jacobs, one of the joint administrators, which had been signed on 8 March 2024. These items were submitted on CE-file under the heading “Miscellaneous”.
12. In his fourteenth witness statement, Mr Esly, of Haynes Boone CDG, Accor’s solicitors, records that Accor first became aware of Lloyds’ application when it was referred to in an e-mail from Spencer West to TCC listing on the afternoon of 12 March 2024. When Mr Esly pointed out that Accor had not been served with or had any notice of the application, Spencer West purported to provide a copy of what they had filed with the court on 8 March 2024. In fact what was provided to Haynes Boone was the versions submitted on CE-file on 9 March 2024.
13. It would have been simple, sensible and courteous for Spencer West to have explained what they had done but they did not. Mr Esly could see that what was on CE-file was different and, almost inevitably, his suspicions were aroused, inquiries were made and questions were asked. All of this could have been avoided.

The nature and timing of Lloyds’ application

14. The first issue that arises is whether Lloyds’ application should be treated as having been made 3 minutes before the deadline in the Unless Order such that it is an in time application to extend time or whether it should be treated as having been made out of time or, possibly, regarded as the wrong application.

15. Mr Blackett submitted that the application made on 8 March did not comply with the CPR and was, therefore, not a valid application. Part 23.6 provides that an application notice must state “briefly, why the applicant is seeking the order”. He submitted that the application gave no reason for seeking the order – no explanation for the failure to pay or the need for further time was offered - and to say that evidence will follow does not suffice.
16. Mr Bowling accepted that “witness statement to follow” did not amount to reasons and that there was, accordingly, a procedural error in the application made on 8 March 2024. CPR Part 3.10 provides that where there has been an error of procedure such as a failure to comply with a rule or practice direction, the error does not invalidate any step taken in the proceedings unless the Court so orders and the court may make an order to remedy the error. Mr Bowling’s submission is that the failure to provide reasons for the application is an error of procedure which will not invalidate the step taken, that is the making of the application, unless the court so orders and, in this case, that there is no reason for the court to make such an order. Mr Blackett submits that Part 3.10 is concerned only with steps in the proceedings in the sense of steps other than the application itself – for example, a procedural error in the making of an application would not invalidate an order made as a result or steps taken in compliance with that order. He further submits that in the present case there was no procedural error but rather a conscious omission of the witness statement giving reasons for the application.
17. The circumstances in which the witness statement of Mr Jacobs was not filed with the application and, in consequence, no reasons given for the application are set out in the fourth witness statement of Mr Jacobs.
18. In his third statement, Mr Jacobs set out the issues facing the administrators on their appointment, including the need to form a view as to the viability of the claimant’s claim and obtain third party funding. By 8 March 2023, heads of terms had been concluded with one funder on an undelivered basis with funding to be made available within 30 days of delivery of the heads of terms. The claimant had already provided security for costs in the sum of £900,000 but the administrators were concerned that, if an adverse costs order were made in a greater amount, there would be what was referred to as a “Potential Adverse Costs Gap” and the administrators wanted comfort from the

third party funder that they would cover that costs gap. The third party funder agreed to pay to the claimant's solicitors an amount in respect of that costs gap but that was not received until 8 March 2024. Meanwhile the overall arrangements for covering the costs gap had not been concluded. Mr Jacobs stated that as at 8 March 2024, Spencer West were in funds to pay in accordance with the Unless Order, but he sought to explain that payment had not been authorised by the administrators because, given the state of progress on the funding arrangement, the administrators needed more time "*to reach a final view on funding viability and ... to satisfy their duties to creditors and the court by preserving value in a significant potential asset without exposing the administration estate to disproportionate risk in the meantime.*" Instead, an application to extend time for compliance was made.

19. Against that background, in his fourth statement, Mr Jacobs stated that he had received a draft statement from Burness Paull at 1.14pm on 8 March 2024; he provided comments on the draft and received a revised version at 2.38pm. He approved the changes and returned the draft to Burness Paull to forward to Spencer West seeking various clarifications. After further steps were taken, he received the final version at 4.59pm after the application had been filed.
20. Firstly, in my view Part 3.10 is relevant. There is no reason to construe "a step taken in the proceedings" as meaning a step other than the step in which the procedural error was made and the court has a general power under sub-paragraph (b) to rectify the error. Further, I do not consider that an "error" has to be something accidental – the example of "error" given in the rule itself is "*such as a failure to comply with a rule or practice direction*" which is not limited to accidental failures. The facts of this case illustrate the difficulties that could arise from the more limited interpretation as it might be necessary to ask whether solicitors knew that failing to provide reasons for the application was a breach of the rules or whether they thought that saying that the witness statement would follow was good enough. The court can take the explanations given into account in deciding whether to rectify the error but should not sensibly have to determine the quality of the error.
21. On the basis that Part 3.10 is engaged, I would accept Mr Bowling's submission on the application of this provision. The failure to provide even the briefest of reasons for the

application to extend time was a procedural error. However, the statement that the witness statement would follow was not only accurate but was made in circumstances where the statement was drafted and could realistically be anticipated to follow shortly, as it did. As Mr Bowling submitted, this was not an application made just to get a foot in the door before time for compliance expired. The administrators had a settled intention to apply for an extension of time and had reasons for doing so and Mr Jacobs had set out those reasons in a draft witness statement. It is regrettable that Lloyds' solicitors did not explain what had happened and instead wrongly created the impression that what had been filed on the Saturday was what they had filed on the Friday. It is also regrettable that, in circumstances in which there was no certainty that the Unless Order would be complied with and the administrators clearly considered that they still had considerable work to do to secure funding, no steps were taken sooner to make or make ready the application. But neither of these matters whether separately or cumulatively amount to sufficient reasons why I should treat the application made on 8 March as invalid.

22. There is, however, a further element to this issue. Mr Blackett submits that Part 3.10 is not relevant at all and cannot be relied upon because it is not open to Lloyds to make an application under Part 3.1(2)(a) to extend time for compliance with the Unless Order and that any application ought to have been made under Part 3.1(7) which gives the court power to vary or revoke an order. Mr Blackett argued that, since the wrong application had been made, Part 3.10 could not validate the application and, possibly, that the court could not make an order that would remedy the error of making the wrong application.
23. The basis for this submission is to be found in the terms of the December Order and the Unless Order. The December Order set the time for payment of costs as 12 January 2024. The amount to be paid was the lump sum of £120,000 and there was no provision for payment of interest from any earlier date. Mr Blackett's submission is that the Unless Order did not extend or set time for compliance but only specified the consequences if Lloyds continued not to comply with the previous orders. In particular, the Unless Order expressly referred to the payment of the £120,000 due under the Orders of Waksman J on 1 and 21 December and provided that interest was to be payable from 1 December (which had the effect of ordering the payment of interest

from a date earlier than the date of payment ordered in the December Order, namely 12 January 2024). As I have said, Mr Blackett submitted that the Unless Order did not, therefore, provide any extended time for payment but simply specified the consequences if the previous orders were not complied with by 8 March 2024.

24. I do not accept that submission. In terms of the payment of interest, the Unless Order varied the December Order but, having made that provision for the payment of interest, it set a date for the payment of costs of £120,000 as 8 March, with the consequences of non-payment that followed. It seems to me common sense to regard the Unless Order as giving Lloyds more time to pay and setting the date for payment but seeking to compensate Accor for the delayed payment in interest. The making of that provision for interest does not mean that the date for payment remained 12 January 2024 (and indeed interest was payable before that date) and that the Unless Order set no new date for compliance.
25. For completeness, I should add that, as I understood it, Mr Blackett did not go so far as to argue that I could not treat the application before me as one to vary the Unless Order but the relevance of this submission was (i) that Part 3.10 was not engaged and (ii) that the test under Part 3.1(7) for the varying of the Unless Order was that there had been a material change of circumstances, relying on the authorities considered in the White Book at para. 3.1.17.1 including *Tibbles v SIG plc* [2012] EWCA Civ 518 and *Athena Capital Fund v Crownmark Ltd.* [2020] EWHC 2945 (Comm). Mr Blackett also relied upon the decision in *Athena* in support of his argument that the relevant rule was Part 3.1(7) but, in that case, an unless order was made without a hearing, an application was made to vary that order, the further order refusing that application was made without a hearing and an application was made (under Part 3.1(7)) to vary that order and, in effect, the previous order, which had still not been complied with. The argument in the present case did not arise.

Lloyds' "in time" application

26. It follows from the above that I find Lloyds' application to have been one made under Part 3.1(2)(a) to extend time for compliance with the Unless Order and to have been made before time for compliance expired and it is not properly to be treated as an application for relief from sanctions under Part 3.9. Rather the relevant principles are

those helpfully set out by Alexander Nissen KC (sitting as a Deputy High Court Judge) in *Everwarm Ltd. v BN Rendering Ltd.*

27. In *Everwarm*, the original order was one for the provision of security for costs, in the sum of £145,000, by BN Rendering in respect of its counterclaim. BN was ordered to provide security by 4 July 2019. On 3 July 2019, BN made an application on paper to extend time for compliance. Everwarm opposed the application but in the alternative sought an unless order. O’Farrell J made an Unless Order in terms that, unless BN provided security in accordance with the original order by 4.00pm on 11 July 2019, the counterclaim would be struck out and judgment entered for the claimant. I note that the terms of that unless order were in material respects identical to the terms of the unless order in the present case and no issue was raised that the unless order did not set a time for compliance. At 3.30pm on 11 July, BN applied for a further extension of time to comply with the Unless Order. By the time the application was heard on 19 July, BN had paid the sum of £145,000 into court.
28. The Deputy High Court Judge was referred, amongst others, to the decisions in *Robert v Momentum Services Ltd* [2003] 1 WLR 1577, *Kaneira v Kaneira* [2014] 1 WLR 3728, *Hallam Estates Ltd v Baker* [2014] EWCA Civ 661, *British Gas Trading Ltd v Oak Cash & Carry Ltd* [2016] 1 WLR 4530 and *Sinclair v Dorsey & Whitney (Europe) Ltd* [2015] EWHC 3888 (Comm). He then said:
- “36 Having considered the authorities cited above, in my judgment the position is as follows:*
- (a) An application for an extension of time allowed to take a particular step in litigation is not an application for relief from sanctions provided that the applicant files his application notice before the expiry of the permitted period: see Robert’s case and Hallam Estates.*
- (b) This is the case even if the court actually deals with the application after the expiry of the relevant period: Hallam Estates*
- (c) Although there may be little practical difference between an application made just before the expiry of the permitted period and one made just after it had expired, the law has sound practical and policy reasons for distinguishing between the two: see Kaneira and Hallam Estates.*

(d) An in-time application for an extension of time is neither an application for relief from sanctions nor is it closely analogous to one: see Kaneira ... and Hallam Estates.

(e) An unless order is an order of last resort. There is a powerful public interest in ensuring that parties recognise the importance of complying with unless orders: see Sinclair's case ...

(f) However, the power to extend time for compliance with a court order pursuant to rule 3.1(2)(a) does not distinguish between routine court orders on the one hand and unless orders on the other.

(g) Accordingly, when determining an in-time application for an extension of time for compliance with both routine court orders and unless orders, the court applies the overriding objective.

...

38 The principles I have outline above are not intended to reduce the undoubted importance which must be attached to the need for compliance with unless orders. In that sense, para. 38 of Oak Cash & Carry Ltd is directly relevant. The court is entitled to take into account the need to enforce compliance with prior order as part of the overriding objective: see rule 1.1(2)(f). It can also take unto account the need to conduct litigation efficiently and at proportionate cost because that it also a factor within rule 1.1(2) both generally and specifically within (c), (d) and (e). In the case of a failure to have complied with an unless order, the court can and ordinarily would give those particular factors considerable weight. Those are the two factors which also have particular mention in rule 3.9.

39 If an application is made in time, that determines rule 3.1(2) applies, however brief may be the period between the application for more time and the expiry of the time limit: see Kaneira. However, once the correct rule has been identified, the lateness of the application may well be a relevant matter. An in-time application made shortly after the unless order was first imposed is likely to be treated differently from one made just before the time allowed for compliance was about to expire. However, that factor may carry less significance in a case where the period for compliance was already short.

40 To conclude when applying the principles of the overriding objective in determining an in-time application made pursuant to rule 3.1(2)(a), the court is entitled to, and should ordinarily be expected to, take into account that the additional time being sought relates to an unless order, in respect of which there is always a public interest in

ensuring compliance and at proportionate cost, not because those matters are identified within rule 3.9 but because they fall within the overriding objective.”

29. I respectfully agree with the approach taken by the Deputy High Court Judge and intend to adopt the same approach. I also have regard to what was said by Coulson LJ in *Jalla v Shell International* [2021] EWCA Civ 1559 at [29]:

*“The court will grant a reasonable extension if it does not impact on hearing dates or otherwise disrupt proceedings: see *Vneshprombank LLC v Georgy Bedzhamov* [2019] EWHC 1430 (Ch), citing *Hallam Estates v Baker* (2014) 4 Costs LR at 26. The fact that a refusal to extend time would in practice mean the end of the claim is a factor to be weighed in the balance, but it cannot of itself warrant the grant of relief: see *Chartwell Estate Agents Ltd v Fergies Properties SA* [2014] 3 Costs LR 588 (CA). The need to comply with court orders was there said to be “of paramount importance”. That approach ties in with the long-standing principle that a claimant’s entitlement to sue a defendant is not an absolute right, and does not permit that claimant to fail to comply with court orders, or delay and disrupt the administration of justice: see *Leizert and Anr v Kent Structural Engineering Ltd* [2002] EWHC 942 (QB).”*

30. In this case, the fact that Lloyds’ application is to extend time to comply with an unless order is of considerable significance not only because the order was an unless order in which there is a powerful public interest in securing compliance and marking non-compliance. In this case there was a history of failure to comply with orders of the court. In his thirteenth statement, Mr Esly set out a number of such instances, culminating in Eyre J, at the hearing 26 January 2024, observing that the court had at earlier hearings described the claimant’s conduct “in scathing terms”. Nonetheless, the judge still gave Lloyds a significant period of time to comply with the unless order recognising the difficulties and complexities faced by the administrators. Further failure to comply with a court order, let alone an unless order, was thus all the more serious.
31. The application to extend time was made, as I have said, almost literally at the last minute and without a finalised witness statement, despite the fact that, on the administrator’s own evidence, it must have been obvious for some time that there was

a significant risk that such an application would need to be made and preparation for the application could and should have been undertaken.

32. Further, as Mr Blackett emphasised, it was not the case that Lloyds did not have the wherewithal to comply with the unless order. Mr Jacobs expressly confirms that Spencer West were in funds to make payment. It is, therefore, submitted that there was a deliberate decision on the part of the administrators, who are officers of the court, not to comply with an order of a court and one that, as an unless order with the consequences set out, was in terms that made plain the importance attached by the court to compliance. There is considerable weight in that last submission, and it is a strong factor militating in favour of not granting any extension of time.
33. On the other side of the equation, however, is the fact that the sums payable under the unless order have now been paid and only 7 days after the due date. Mr Bowling makes the point that, given Eyre J's recognition of the issues facing the administrators, had he been asked to make the date for payment a week later than he did, for the reasons given in Mr Jacobs' statements, he would, in all probability, have acceded to that request. There is certainly force in that submission.
34. In any case, since the unless order related to a payment of costs, it can have had no impact on the progress of the action towards a trial. Although there is a strong public interest in ensuring compliance with unless orders, the overriding objective also requires cases to be dealt with justly and that includes expeditiously and fairly. An issue to put into the balance, therefore, is whether it is just and fair to refuse an extension of time where the non-compliance has had no impact on the progress of the case and the effect of the refusal would be that judgment was nonetheless entered against the claimant.
35. Despite the force in Mr Blackett's submission that there was a deliberate flouting of the court's order, Mr Bowling submits that I should have regard to the explanations given by Mr Jacobs, an officer of the court, for payment not being made on 8 March.

(i) In his second statement, at paragraph 13, Mr Jacobs said:

"I am mindful of the administrators' statutory obligations to creditors as well as our role as officers of the Court. Against that background, I am unable to

instruct the Claimant's solicitors to make payment of the costs orders unless and until I am confident that the Claimant has secured sufficient funding to continue with the proceedings and to sufficiently mitigate any associated costs risk to the insolvent estate."

- (ii) In his third statement at paragraph 31, Mr Jacobs referred to what he had said in his first statement (paragraph 16) as to the administrators not being seen to "adopt" the conduct of the proceedings until they had analysed the proceedings and their various obligations and duties:

"... given that the result of adopting litigation may result in certain costs arising from the litigation being elevated to the rank of expenses (ie priority debts) in the administration, potentially to the prejudice of the Claimant's general body of creditors to whom the administrators' primary duties are owed ..."

- (iii) At paragraph 32, he added:

"The administrators have been careful to not (as a matter of Scottish law, advice in relation to this matter not being waived) adopt conduct of these proceedings such that adverse costs order in this case could be considered expenses in the Scottish administration."

- (iv) Those concerns formed the background to the concern about the Potential Adverse Costs Gap.

36. Mr Blackett submits that there is no merit in these explanations. He points out that paying the amount of the unless order would not have increased the costs risk to Lloyds and that the proceedings could have been discontinued at any time thereafter. That submission does not take account of Mr Jacobs' concerns about the impact of adopting the litigation. To that Mr Blackett says that that even now there is no evidence that the payment of the £120,000 has resulted in the administrators adopting the litigation with the effects Mr Jacobs' expresses concern about and, even if there is some adoption of litigation, it makes no difference because the secured claims already exceed any assets of Lloyds.

37. Mr Bowling submits that, whether or not objectively the administrators were right to be concerned about adopting the litigation and whether or not they took the right approach, I should accept that Mr Jacobs genuinely thought that he was following legal advice and adopting the right approach so far as the creditors and the Scottish Court to which he owed obligations was concerned. It is submitted that I should accept that evidence unless it is obviously wrong. It seems to me that there is merit in that submission and that, although Accor casts doubt on whether the approach of the administrators is the right one, that is not an issue that I should determine on this application. Although Mr Jacobs' reasons do not excuse the course taken by the administrators, they do to some extent ameliorate the impact of the positive decision not to pay in accordance with the unless order.
38. Balancing these various factors, I have come to the conclusion that the interests of the just and fair disposal of this litigation on balance militate in favour of, in effect, permitting this claim to proceed and, therefore, of granting the 7 day extension for compliance with the unless order that is sought. Although I would not seek to pre-empt any future decision of the court, it is right for me to observe that any further application of this nature – that is at the last minute seeking further time to comply with an unless order - is unlikely to have the same outcome.
39. I should add that, following the hearing on 22 March 2024, but before this judgment was provided in draft to the parties, Lloyds made an application to adjourn a further hearing fixed for 24 April 2024. That application was supported by a witness statement of Mr Patel of Spencer West and asserted that Lloyds was not in funds to prepare for that application. Accor opposed the application and set out its reasons in a letter from Haynes Boone dated 17 April 2024. In that letter, it was argued that the statement of Mr Patel was inconsistent with and/or undermined the evidence of Mr Jacobs. I do not accept that argument. Mr Jacobs' evidence was, in summary, that Lloyds had previously received funds and anticipated funding from a third party funder if the claim was not struck out. The fact that Lloyds does not have funds to prepare for a further hearing is not inconsistent with that and does not lead either to the inference that Mr Jacobs' evidence was untruthful or that his explanations do not hold water.

Relief from sanctions

40. For completeness, I will add that I would have reached the same conclusion had I regarded the application as out of time and as an application for relief from sanctions.

41. Applying the three stage test in *Denton v T H White* [2014] EWCA Civ 906, this was clearly a serious breach and one for which, the reasons given were, at best neutral. The relevant circumstances of the case include the matters relied on by both parties and on balance I would have concluded that the just and fair result was that Lloyds should be given more time to comply with the order as they did.

Accor's application

42. It follows that I do not deal with Accor's application to enter judgment or make consequential orders.