

ENGLAND AND WALES / JUDGMENT

GSY Hospitality Limited v Gladstone Court Developments Limited

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number:

[2025] EWHC 3231 (TCC) Case No: HT-2025-000015 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: 11/12/2025 Between: Before: MR ROGER TER HAAR KC Sitting as a Deputy High Court Judge GSY HOSPITALITY LIMITED Claimant

- and – GLADSTONE COURT DEVELOPMENTS LIMITED Defendant James Leabeater KC and Helen Dennis (instructed by Macfarlanes LLP) for the Claimant Andrew Rigney KC (instructed by Knights Professional Services Limited) for the Defendant Hearing date: 27 November 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 11 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 Mr Roger ter Haar KC : 1. 2. The application before the Court is the Claimant’s application for summary judgment in proceedings arising out of a Determination by the late Mr. Rowan Planterose dated 8 July 2020. There was also before the Court an application by the Defendant for summary judgment, but that was resolved on the morning of the hearing before me, save in respect of issues as to the costs of that application. 3. In this judgment, the Claimant is referred to as “GSY” and the Defendant as “GCDL”.

Background

4. 5. 6. 7. 8. 9. The instant dispute concerns a project to develop a luxury hotel at 1 and 3-5 Great Scotland Yard (the “Property”). On or about 13 June 2015, GSY entered into an agreement for the sale of leasehold property (the “SPA”) with GCDL, pursuant to which GSY was to purchase from GCDL the leasehold over the Property, after the works to construct and fit out a hotel at the Property had been completed by or on behalf of GCDL. The SPA was subsequently varied by an agreement dated 16 February 2017 (the “Variation Agreement”), specifically in relation to certain sums which were to be paid by each of the parties in relation to the development of the Property into a luxury 153- bed hotel, rather than the

original 234-bed design. GSY and GCDL also entered into an operating services agreement with Hyatt International (Europe Africa Middle East) LLC (“Hyatt”) dated 16 February 2017 regarding the operation of the luxury hotel at the Property (the “AOSA”). The AOSA confirmed, among other things, an agreement that the change to a 153-key configuration for the hotel was an accepted “Buyer's Variation” under the SPA. During the project a dispute arose between the parties concerning certain terms of the SPA (as amended) and payments which had been certified by the Employer’s Agent (Peter Stone, trading as Peter Stone Partnership (“PSP”)) as payable by GSY. The dispute was referred to expert determination in accordance with the relevant provisions of the SPA. There was an issue as to how the costs of (a) preliminaries, (b) M&E subcontractor overheads and profit and (c) fire-fighting lift costs (referred to by the parties and in this judgment as “P, M and F”) were to be apportioned between GCDL and GSY (the “Apportionment Issue”). 10. In respect of the Apportionment Issue: (1) It was GSY's position that, by clauses 2.11(s) of the SPA and 2.8 of the AOSA, the parties agreed to apportion the actual costs of P, M and F in the percentages shown in the Costs Apportionment (as appended to the SPA at Appendix 3 and to the AOSA at Appendix J) (the “Costs Apportionment”). Pursuant to this Costs Apportionment, GCDL was required to bear the cost of Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 40% of any preliminaries; 25% of the overhead and profit on the mechanical and electrical subcontract design and 100% of the fire fighting lift; (2) GCDL's position was that GCDL's liability in respect of P, M and F would be capped at £800,000. 11. The dispute, including the Apportionment Issue, was referred to the late Mr Rowan Planterose for expert determination in accordance with clause 18 of the SPA.

12. Mr Planterose issued his Determination on 8 July 2020 (the “Determination”). The Determination found inter alia that the parties had, by 8 August 2017, agreed a variation (postdating execution of the Variation Agreement) that GCDL's liability in respect of the P, M and F (by way of reminder: preliminaries, M&E subcontractor overheads and profit and fire-fighting lift costs) was capped at £800,000. GSY's application 13. It is GSY's position that this aspect of the Determination was arrived at in error of law and/or based on a manifest error, and therefore was incorrect and does not bind the parties. In these proceedings, GSY challenges this aspect of the Determination and seeks declarations as to the error in the Determination and the correct interpretation of the parties' agreement in respect of P, M and F. GSY's summary judgment application concerns only the error in the Determination and not the correct interpretation of the parties' agreement. GSY says that this issue is in substance a pure issue of law and in any event suitable for summary judgment. 14. By paragraph 65.1 of the Particulars of Claim, GSY seeks three declarations as follows: Declarations in the following terms, or such terms as the Court deems fit:

- a. The Decision was, in relation to the Apportionment Issue, erroneous as a matter of law and/or contained a manifest error, and is not binding on the parties;
- b. There was no agreement between the parties that GCDL was to pay only £800,000 in respect of P, M and F;

- c. On a true construction of the SPA (as amended) GCDL is required to bear the cost of 40% of any preliminaries; 25% of the overhead and profit on the mechanical and electrical subcontract design and 100% of the fire fighting lift cost. 15. By its application dated 23 May 2025, GSY seeks summary judgment under CPR 24.3 only in respect of its claim for a declaration at paragraph 65.1(a) of the Particulars of Claim. In other words, it seeks summary judgment only on the issue that the Determination is not binding in relation to the Apportionment Issue; GSY does not suggest that the Court can, on a summary basis, determine the correct result of the Apportionment Issue. Although GSY submits that the Apportionment Issue is a Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 reasonably straightforward issue of contractual interpretation, on GCDL's case it requires or may require determination of disputed issues of fact. Key provisions of the SPA 16. 17. 18. The contractual arrangements and provisions which the parties have agreed in relation to this Project are complicated and lengthy. However, for the purposes of the Apportionment Issue, only limited contractual provisions are relevant. These are summarised and, to the extent appropriate quoted, in paragraphs 18-39 of the Particulars of Claim. I note that (a) GCDL was referred to as the "Seller" and GSY as the "Buyer" for the purposes of the SPA and (b) references to the "Hotel Operating Agreement" were to the AOSA. The key provision of the SPA for present purposes is clause 2.11(s), which was added to the SPA by the Variation Agreement, and provided as follows: As agreed between the Seller and the Buyer in the Hotel Operating Agreement in respect of the Interior Design Works and FF&E and the Buyer's Variation that are the subject of the Valid Acceptance contained in the Hotel Operating Agreement notwithstanding anything else in Clause 2.10 and this Clause 2.11 of this Agreement it is agreed the Buyer shall only be liable for reimbursing the Seller the agreed percentage set out in the Costs Apportionment in column 3 of the first table headed Cost Plan of the actual costs of the items of additional cost described in column 1 of that table and that the Seller will be responsible for the balance of such costs and further that the Seller (as opposed to the Buyer) will be liable in full for the actual costs associated with the fire fighting lift described in column 1. 19. "Costs Apportionment" was a defined term also added to the SPA by the Variation Agreement: ...the apportionment of costs schedule attached to this Agreement at Appendix 3 relating to certain costs and professional fees which are relevant to the Interior Design Works and FF&E and the Buyer's Variation that are the subject of the Valid Acceptance contained in the Hotel Operating Agreement. 20. Appendix 3 (the Costs Apportionment) is embedded below. The preliminaries are to be split 60/40; M&E subcontractor overheads and profit 75/25 and fire -fighting lift 100% to GCDL. Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 21. Clause 14.4 of the SPA included an "entire agreement" clause: The Agreement constitutes the entire agreement relating to the subject matter of this Agreement and supersedes all prior negotiations, documents, agreements, statements and understandings. 22. Clause 14.5 of the SPA included a "No Oral Modification" clause: This Agreement may only be varied or modified by a supplemental agreement which is made in writing by the parties or their solicitors and in such a form that complies with the requirements of the Law

of Property (Miscellaneous Provisions) Act 1989. 23. Clause 18 of the SPA permitted either party to refer any dispute to be determined by an expert.¹ Clause 18.1(e) provided that:

- (e) Decisions of the Specialist will be final and binding on the Parties except in the case of manifest error or in relation to questions of law. The AOSA 24. The AOSA contained similar terms to the SPA (as amended) in relation to P, M and F. Clause 2.8 of the AOSA provided: Notwithstanding clause 2.6, the Developer and GSY also agree that GSY shall only be liable for reimbursing the agreed percentage set out in the Costs Apportionment in column 3 of the first table headed Cost Plan of the actual costs of the items of additional costs described in column 1 of that table and further that the Developer (as opposed to 1 The SPA in fact refers to a “Specialist”, but the definition of that term makes it clear that he or she is appointed to act as expert. The SPA defined “Specialist” as “...a person qualified to act as an independent expert in relation to the Dispute having experience in the profession in which he practices for the period of at least ten
- (10) years immediately preceding the date of referral.” Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 GSY) will be liable in full for the actual costs associated with the firefighting lift described in column 1. 25. 26. “Costs Apportionment” was defined in the AOSA as the apportionment of costs schedule attached to the AOSA as Appendix J. This was the same document as the Costs Apportionment attached as Appendix 3 to the SPA. Clause 14 of the AOSA contained an “entire agreement” clause and clause 15 included a “no oral modification” clause: No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). Mr Planterose’s Determination 27. The Apportionment Issue arose in relation to Issue 1 considered by Mr Planterose in the Determination. In the course of reaching his Determination in respect of the P, M and F costs, Mr Planterose decided as follows (paragraph references being to the Determination): (1) (2) (3) (4) At paragraphs 19-20, Mr Planterose noted that whilst GCDL’s initial position had been that the rounded total of £800,000 was a fixed contribution towards P, M and F agreed in the Variation Agreement, from the time of the Rejoinder, GCDL had accepted that the Variation Agreement provided for splits of P, M and F to be applied to final tendered costs in the figures set out in column 3 of the Costs Apportionment (i.e. as GSY contended). At paragraph 20, Mr Planterose decided that as a matter of construction GSY’s case, which he understood to have been admitted by GCDL in its Rejoinder, was correct. Clause 2.11 (s) of the SPA (as amended by the Variation Agreement) and clause 2.8 of the AOSA both unambiguously provided that GSY would only be liable for the agreed percentage set out in the Costs Apportionment of the actual costs of P and M, and that GCDL would bear the full cost of F. In other words, the proportions identified in paragraph 20 above were agreed and binding on the parties. At paragraph 22, Mr Planterose noted that in the Rejoinder GCDL put forward a case that the split shown in column 2 of the Costs Apportionment later became an agreed final split such that GSY paid for all P, M and F less the rounded total of £800,000 shown in column 2. At paragraph 24, Mr Planterose rejected GCDL’s case that clauses 2.2.6 and 2.2.15 of the AOSA and clause 2.10(y) of the SPA obliged the parties to seek to agree P, M and F in a

fixed sum. Those provisions, he held, were aimed at all aspects of the Cost Plan, whereas clauses 2.11 (s) of the SPA and 2.8 of the AOSA specifically address P, M and F. He therefore commented that “the specific trumps the general”. There was no obligation on the parties to seek to reach any agreement under those clauses that superseded that already set out in the Costs Apportionment. Nevertheless, it seemed possible that the parties Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 could make an agreement pursuant to those clauses which addressed P, M and/or F, and which in effect superseded the agreement embodied in the Variation Agreement. (5) At paragraphs 25-31, Mr Planterose went on to consider whether the parties had later agreed a variation to the effect that GCDL's liability for P, M and F was fixed at £800,000. In particular: a) b) At paragraph 25, he noted GCDL's case that the figure of £800,000 as its liability for P, M and F had never (on the facts) been challenged in interim payments. He held that the fact the figure of £800,000 had not been challenged was consistent with GCDL's case that an agreement was made on 7 and 8 August 2017. Having referred to various times at which no challenge was made, he concluded that the “absence of challenge” was “very stark”. At paragraph 27, he noted that there was “what is best described as flimsy direct evidence of an actual agreement whether made on 7 or 8 August 2018”; c) Specifically, at paragraph 27(iv), he commented that: There is no contemporary document (or even a subsequent one) recording the agreement. Given the important nature of such an agreement to both parties and the extent of correspondence that evidently does exist about other matters, I would have expected such documentation to exist. d) At paragraphs 28-31, he nevertheless determined that, on balance and, in particular, due to the “absence of challenge”, “such an agreement did come into existence by 8 August 2017 and that it is binding on the parties. ” 28. The above analysis is taken from the analysis of the Determination put forward in GSY's counsel's Skeleton Argument for the hearing before me. They conclude at paragraph 34: To summarise, then, Mr Planterose agreed with GSY's construction of the SPA, as amended, to the effect that the parties' liabilities for P, M & F were set out in column 3 of the Costs Apportionment. However, he went on to find that the parties had agreed a variation to the SPA, to the effect that GCDL's contribution for those three elements was capped at £800,000. The evidence for that variation consisted of (a) oral evidence in the form of witness statements (which themselves referred to events taking place at meetings, and not to any written variation agreement) and (b) the absence of a challenge from GSY to interim payment applications/certificates which had shown GCDL's liability for those three elements at £800,000. 29. I agree with that analysis of Mr. Planterose's Determination. Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 The effect of a No Oral Modification clause in English Law 30. 31. 32. As set out above, Clause 14.5 of the SPA and Clause 14 of the AOSA contained what are commonly referred to as “No Oral Modification” clauses (quite often referred to by practitioners as “NOMs”). There was a conceptual debate amongst lawyers as to whether in some circumstances a later informal variation not complying with a No Oral Modification clause in a contract could be an effective agreement to vary the original agreement. This issue came for consideration and determination by the Supreme Court in *MWB Business*

Exchange Centres Ltd v Rock Advertising Ltd [2018] UKSC 24; [2019] AC 119 in which the majority of the Court upheld the efficacy of such clauses as excluding later informal or non-complying variations. Lord Sumption JSC said: 15 If, as I conclude, there is no conceptual inconsistency between a general rule allowing contracts to be made informally and a specific rule that effect will be given to a contract requiring writing for a variation, then what of the theory that parties who agree an oral variation in spite of a No Oral Modification clause must have intended to dispense with the clause? This does not seem to me to follow. What the parties to such a clause have agreed is not that oral variations are forbidden, but that they will be invalid. The mere fact of agreeing to an oral variation is not therefore a contravention of the clause. It is simply the situation to which the clause applies. It is not difficult to record a variation in writing, except perhaps in cases where the variation is so complex that no sensible businessman would do anything else. The natural inference from the parties' failure to observe the formal requirements of a No Oral Modification clause is not that they intended to dispense with it but that they overlooked it. If, on the other hand, they had it in mind, then they were courting invalidity with their eyes open. 16 The enforcement of No Oral Modification clauses carries with it the risk that a party may act on the contract as varied, for example by performing it, and then find itself unable to enforce it. It will be recalled that both the Vienna Convention and the UNIDROIT model code qualify the principle that effect is given to No Oral Modification clauses, by stating that a party may be precluded by his conduct from relying on such a provision to the extent that the other party has relied (or reasonably relied) on that conduct. In some legal systems this result would follow from the concepts of contractual good faith or abuse of rights. In England, the safeguard against injustice lies in the various doctrines of estoppel. This is not the place to explore the circumstances in which a person can be estopped from relying on a contractual provision laying down conditions for the formal validity of a variation. The courts below rightly held that the minimal steps taken by Rock Advertising were not enough to support any estoppel defences. I would merely point out that the scope of estoppel cannot be so broad as to destroy the whole advantage of certainty for which the parties Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 stipulated when they agreed upon terms including the No Oral Modification clause. At the very least, (i) there would have to be some words or conduct unequivocally representing that the variation was valid notwithstanding its informality; and (ii) something more would be required for this purpose than the informal promise itself: see Actionstrength Ltd v International Glass Engineering IN. GL. EN SpA

[2003] 2 AC 541, paras 9, 51, per Lord Bingham of Cornhill and Lord Walker of Gestingthorpe. 33. GSY says that the variation as found by Mr Planterose was not evidenced in the manner required by the two No Oral Modification clauses, and therefore that his conclusion that there was a valid and binding variation was wrong in law. Challenging an Expert's Determination or Decision 34. In Premier Telecommunications Group Ltd v Webb [2014] EWCA Civ 994; [2016] B. C. C. 439, Moore-Bick L. J. considered the circumstances in which a Court will set aside a Determination or Decision of an Expert (or, here a "Specialist").

Referring to the first instance decision, he stated:

8. Having considered the leading authorities on challenging expert valuations, including *Jones v Sherwood Computer Services Plc* [1992] 1 W. L. R. 403, *Nikko Hotels (UK) Ltd v MEPC Plc* [1991] 2 EGLR 103, *Pontsarn Investments Ltd v Kansallis-Osake-Pankki* [1992] 1 EGLR 148, the dissenting judgment of Hoffmann L. J. in *Mercury of Communications Telecommunications* [1994] CLC 1125, *Thorne v Courtier* [2011] EWCA Civ 460 and *Barclays Bank Plc v Nylon Capital LLP* [2011] EWCA Civ 826, [2012] Bus LR 542, the judge summarised the relevant principles in paragraph 40 of his judgment as follows: *Director General Ltd v* "40. Drawing the threads of the cases together, it seems to me that they support the following principles:
 - (1) Where the parties have chosen to resolve an issue by the determination of an expert rather than by litigation or arbitration, the expert's determination is final and binding unless it can be shown that he acted outside his remit.
 - (2) A distinction must be drawn between the expert who has misunderstood or misapplied his mandate with the consequence that he has not embarked on the exercise which the parties agreed he should undertake, and the expert who has embarked on the right exercise but has made errors in conducting that exercise and has come up with what is arguably the wrong answer.
 - (3) A failure of the first kind means that the determination is not binding because it is not a determination of the kind that the parties have contractually agreed should be binding. Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25
 - (4) A failure of the second kind does not invalidate the determination, but may leave the expert exposed to a claim in negligence.
 - (5) In deciding whether an expert determination can be challenged, the first step is to construe his mandate. This is ultimately a matter for the court.
 - (6) The second step is to ascertain whether the expert adhered to his mandate and embarked on the exercise he was engaged to conduct by asking himself the right question(s) and applying the correct principles.
 - (7) Once it is shown that the expert departed from his instructions in a material respect, the court is not concerned with the effect of that departure on the result. The determination is not binding.
 - (8) Where the expert has made an error on a point of law which is not delegated to him, the error means that the determination will be set aside. (It has yet to be decided whether an error by the expert on any point of law arising in the course of implementing his instructions will also justify setting aside the determination – see Lord Neuberger MR in *Barclays Bank v Nylon Capital*).

- (9) Where a procedure has been laid down (e.g. to produce a draft memorandum) the expert must follow it. However, what the procedure requires the expert to do is an aspect of the mandate, and ultimately a matter for the court."
9. Mr. Harrison for the appellants did not quarrel with the judge's formulation of the applicable principles and I am content to accept them as a helpful summary..... Only by construing the contract can one identify the matters that were referred for his decision, the meaning and effect of any special instructions and the extent to which his decisions on questions of law or mixed fact and law were intended to bind the parties. The Challenge to Mr Planterose's Determination 35. 36. In his Determination, Mr Planterose agreed with GSY's starting point which was that the parties' liabilities for P, M and F were set out in column 3 of the Cost Apportionment. Before me, Mr Rigney KC for GCDL did not disagree either with that analysis of Mr Planterose's Determination or with GSY's interpretation of the SPA as accepted by Mr Planterose.
37. Mr. Planterose then accepted that there was a variation of the SPA so as to cap GSY's contribution for those three elements at £800,000. He did not find that there was a written agreement to vary the SPA to that effect complying with Clause 14.4 of the SPA or Clause 14 of the AOSA. Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 38. 39. 40. 41. 42. In reaching that conclusion Mr Planterose did not refer to or consider those NOMs at all. He did not refer to, or, so far as can be discerned, consider the decision of the Supreme Court in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd*, to which I have referred above. GSY submits that if he had done so, he should have concluded that there was no valid variation. GCDL does not now contest that submission. Accordingly the Parties are agreed that Mr Planterose's analysis was wrong in law.
43. Mr Leabeater KC for GSY says that that is sufficient for his purposes and that the Determination in relation to the Apportionment Issue should be set aside. 44. 45. He referred me to the decision of the Court of Appeal in *Premier Telecommunications Group Ltd*, to which I have referred above, including the requirement that the first step for a court is to construe the Expert's mandate. He submits that in this case, under Clause 18.1(e) of the SPA, Mr Planterose was obliged to reach a decision which (a) contained no manifest error and (b) contained no error of law. On that basis, GSY seeks summary judgment granting a declaration that the Determination/Decision in relation to the Apportionment Issue was erroneous as a matter of law and/or contained a manifest error and therefore is not binding on the Parties. GCDL's Position
46. Mr Rigney contends that although the reasoning is open to challenge, Mr. Planterose came to the right decision, albeit for the wrong reasons, and that accordingly the Determination in relation to the Apportionment Issue should not be set aside. 47. In putting forward that submission, Mr Rigney contends that the same factual material as was placed before and relied upon by Mr Planterose establishes an estoppel by convention that GCDL's contribution would be limited to £800,000. 48. He submits: (1) (2) (3) That GSY accepts that GCDL's case as

to estoppel by convention will have proceed to trial; That, if GCDL's case as to estoppel by convention succeeds, the result will be that Mr Planterose's decision would be correct, even if his reasoning was wrong; That, moreover, even if GSY were able to establish that the reasons which Mr Planterose gave for reaching his decision were wrong, no tangible or practical benefit would, as a result, accrue to GSY because the accrual or otherwise of Roger Ter Haar KC, sitting as a judge of the TCC Approved Judgment GSY HOSPITALITY V GLADSTONE 11.12.25 such a benefit is dependent upon the outcome of the trial in relation to GCDL's case as to estoppel by convention; (4) That, accordingly, "GSY is not entitled to a declaration in the terms pleaded at paragraph 65.1(a) of the Particulars of Claim; the application for summary judgment is premature; and on top of that, any such declaration would serve no useful purpose" (paragraph 52 of Mr Rigney's skeleton argument).

Conclusion

49. 50. 51. 52. 53. 54. 55. 56. I accept GSY's submission that under Mr Planterose's mandate under Clause 18.1(e) of the SPA, he was obliged to reach a decision which (a) contained no manifest error and (b) contained no error of law. I also accept that Mr Planterose's failure to consider the two No Oral Modifications clauses and the decision of the Supreme Court in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* was an error of law, which led to his legally erroneous decision that there was a valid and binding variation. As set out above, GCDL argues that Mr Planterose's decision in his Determination can be justified on a different basis, namely that there was an estoppel by convention that GSY's contribution would be limited to £800,000. I have set out at paragraph 34 the summary of the law accepted by the Court of Appeal in *Premier Telecommunications Ltd*. Proposition (7) was as follows:
- (7) Once it is shown that the expert departed from his instructions in a material respect, the court is not concerned with the effect of that departure on the result. The determination is not binding. I have held that Mr Planterose did not ask himself the right questions and did not apply the correct principles (see paragraph 50 above). It is therefore the case that Mr Planterose departed from his instructions in a material respect. In those circumstances this Court is not concerned with the effect of that departure on the result. On that basis I am obliged to conclude that Mr. Planterose's Determination in relation to the Apportionment Issue was and is not binding. I do not accept that it would be premature to grant summary judgment as sought by GSY. Given the firm conclusion which I have reached, GSY is entitled to summary judgment reflecting that conclusion. I cannot and do not determine what the consequences of that conclusion will be. That is for determination in due course. Mr Leabeater submitted that the fact that the Determination in relation to the Apportionment Issue has been set aside will or may have consequences in respect of interest payable by one Party to the other. I do not and cannot determine whether that is right or not, but the fact that such an argument may have to be considered in due course indicates that there is present utility to granting summary judgment. 57. In those circumstances, GSY's application for summary judgment succeeds.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2025/3231>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/gladstone-court-developments-limited-ExpertDetermination-court-unknown--6a3ea5083b1caa9129803eaf>

Prepared on 23 October 2026 · Esheria