Judge Davies said that the stitch plates were expressly adopted as a temporary solution to last no more than three years; on this basis, they could not be regarded as structurally safe or "in good or substantial repair". The judge held that the landlord was in breach of its repairing covenant and was required to install an alternative glazed facade.

He added that damages in lieu of an acceptable remedial scheme would not be adequate or fair. The judge also said that a detailed schedule of works was "not necessary" as long as North West Ground Rents was ordered to achieve a "clearly specified result" and could be "protected against the risk of unforeseen circumstances which render it impossible or impracticable to comply".

The judge required the landlord to "remove the stitch plates... and remove and reinstate or replace the shadow box units and their frames... so that they are securely affixed to the structure of the building", providing the same external appearance as at the date of the lease.

North West Ground Rents was allowed 18 months to implement the works. The judge noted that although this seemed generous, it was a reasonable period designed to ensure compliance on the basis that non-compliance could result in contempt of court.

Finally, Judge Davies acknowledged that there was a question mark over whether the landlord could recover costs from the tenant, under the lease's service charge provisions, or from the leasehold owners of the flats above the hotel. These are queries to be raised in a separate case.

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The Beetham Tower, Manchester, contains a Hilton hotel with luxury flats above

Davenport v Greer: 'Smash and grab' lives on

'Smash and grab' adjudications were predicted to end after last year's *S&T v Grove* ruling; the judgement had its first test case earlier this year. By **James Sargeant**

The death knell that many sounded for "smash and grab" adjudications – after a landmark case last year – may have been premature.

The term was coined for an adjudication which follows an employer's failure to serve a valid pay less notice against either a payment notice or a default notice. As a result of the employer's failure to issue a pay less notice, the contractor seeks an adjudicator's decision that the sum stated as due in the payment notice or the default notice is due by default.

Until recently, the Technology and Construction Court (TCC) had made it clear – through the *ISG v Seevic* and *Galliford Try Building v Estura* judgements – that where a smash and grab adjudication has occurred, there could not be a subsequent second adjudication by the employer to determine the "true value" of the contractor's account until its next interim application.

The Court of Appeal subsequently decided, following *Harding v Paice*, that the principles developed in *ISG* and *Galliford* were limited to interim applications only and did not apply to final accounts disputes.

Then came last year's the *S&T v Grove* ruling. The Court of Appeal upheld an earlier TCC decision that, following a successful smash and grab adjudication relating to an interim application, the employer is entitled to refer the dispute to a second adjudication to establish the true value of the contractor's account – but only after paying the sum that was awarded in the first adjudication.

But how would the decision in *S&T* be applied to final account disputes?

***M Davenport Builders v Greer* [2019] has provided the answer. Davenport, which had been delivering construction works on a building in Stockport, had made an application for final account, but Greer failed to pay by the final date for payment. Davenport launched an adjudication and was awarded the full amount claimed in its final account application.**

Greer then commenced a second adjudication to determine the true value of the account and the adjudicator decided that no sum was due to Davenport as a result of the revaluation. Davenport then began enforcement proceedings in the court and Greer sought to rely on the second adjudicator's decision that Davenport was not entitled to any money.

Judge Jeremy Stuart-Smith confirmed that, following a smash and grab adjudication, the employer is entitled to refer the true value of the contractor's final account to be decided by an adjudicator. However, as with the *S&T* decision, in the Davenport case he ruled that the employer is only able to do so after it has paid the first adjudicator's decision.

Stuart-Smith said: "The decisions... in *S&T v Grove* are clear and unequivocal in stating that the employer must make payment in accordance with the contract or in accordance with section 111 of the Amended Act before it can commence a 'true value' adjudication."

This suggests that there is still plenty of life in smash and grabs.

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