Case No: FJ11-2021

IN THE ROYAL COURTS OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

BEFORE:

MASTER BROWN

BETWEEN:

AURA COMMUNITIES LTD **APPLICANT**

- and -

HUDDINGE KOMMUN, GYMNASIE-OCH ARBETSMARKNADSFORVALTNINGEN **RESPONDENT**

Legal Representation
Mr Stuart Cribb (Barrister) on behalf of the Applicant
Mr Neil Henderson (Barrister) on behalf of the Respondent

Other Parties Present and their status
None known

Judgment

Judgment date: 21 April 2021
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

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Master Brown[1]:

[1] I have left some matters in square brackets to denote possible uncertainty.

1. This is an application made pursuant to CPR 74.7B, 74.7C and CPR 83.7, and Articles 38, 44 and 51 of the Recast Regulations. It is an application to stay payment due under a judgment made by a Swedish court. I am grateful to both advocates, who provided me with detailed skeleton arguments and helpful oral submissions. As a result of that, and having formed a clear view, I am able to give an *ex tempore* judgment.

2. The background can be shortly stated. Aura, the Applicant, is a company registered in England, incorporated on 25 August 2016, with registered offices in London. It is involved in housing or real estate projects which include, as I understand it, sustainable public housing projects. Huddinge Kommun, the Respondent, is the local authority for the city of Huddinge in east central Sweden. In November 2017 it sought tenders for a public procurement contract for the rent of a modular building for transitional temporary accommodation.

3. Aura tended for the development. It was one of three potential suppliers. It was awarded the contract in February 2018, after the original winning supplier recalled its tender. In July 2018 Huddinge then withdrew the contract citing Aura's failure to comply with unconditional insurance requirements. Aura sought judicial review of the withdrawal in the Administrative Court and then appealed the decision to the Administrative Court of Appeal. The Appeal Court held that the withdrawal by Huddinge was a breach of Swedish public procurement laws.

4. On the basis of that finding, Aura commenced a claim against Huddinge before Södertörn District Court for what is said to be expectation damages, economic loss, and its Administrative Court costs. That resulted in a judgment whereby Aura's claim was refused and Huddinge were awarded its costs. Judgment was handed down on 18 June 2020. That judgment, which I have considered, ordered the Claimant, Aura, to pay the sum of about Swedish Krona 2,557,000 plus interest, approximately £137,399.73.

5. There was an application also to the lower district court on behalf of Huddinge to, as it were, pierce the corporate veil as a matter of Swedish law and to seek to impose liability for the costs on the directors. That was refused by the lower court.

6. On 17 September 2020 permission was granted by the Svea Court of Appeal for the appeals of both Aura and Huddinge Kommun: Aura appealing the refusal of its claim, and Huddinge appealing the decision in respect of its application. It is said, I think, that the test for the grant of permission to appeal is not high in Sweden. Be that as it may, it is accepted by Huddinge, on a pragmatic basis, as I understand it, that the appeal of Aura is considered to be one that is arguable.

7. Huddinge issued its application to enforce the judgment in the High Court of England and Wales on 19 January 2021. Master McCloud initially made an order on 29 January 2021 without a hearing, granting the application and registering the judgment as a judgment of the Queen's Bench Division. The order of Master McCloud did not include the necessary provisions setting out Aura's ability to stay or set aside the order. This was subsequently corrected with a substituted order by Senior Master Fontaine.

8. There are three provisions within the (inaudible) Recast Regulations that are relied upon. It is not necessary for me to set them out in complete detail. They have been adequately set out in the skeleton arguments.

9. Article 51 provides that the court, to which an application for refusal of enforcement is submitted, may stay the proceedings.

10. Article 38 provides that the court or authority, before which a judgment given in another member state is invoked, may suspend the proceedings in whole or in part, if the judgment is challenged in the Member State of origin.

11. And Article 44 provides that in the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in a Member State addressed may, on the application of the person against whom the enforcement is sought, suspend either wholly or in part, the enforcement proceedings.

12. Initially, two grounds of substance were advanced by Aura in support of its application. Firstly, it was said that an appeal lodged in Sweden had good prospects of success in succeeding and therefore overturning the judgment which Huddinge sought to enforce. That specific ground of contention is not pursued. It is accepted that it is not open to this Court to consider the merits of the judgment of the lower of the Swedish courts. The second ground on which the application has been advanced is that, so it is contended, if the judgment is enforced, this would cause irredeemable harm to Aura, as it would be likely to lead to their insolvency and thereby barring or preventing Aura from being able to pursue the appeal in Sweden.

13. I am reminded, as I think it is put by Mr Cribb, that too liberal use of the powers under the sections, which provide the court with a discretion, would frustrate the objective of the Regulations themselves. Reference is made to Recital 6 of the Regulations which states:

> "*In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable*."

14. I take that matter into account.

15. It is common ground that Master Yoxall correctly described the nature of discretion in *Zauli v Lughi Zauli* [2020] Lexis Citation 282. He said as follows:

> **"**How should the discretion be exercised? I accept the claimant's submission that judgment of the Court of Appeal (of Bologna) must be enforced as if it were a judgment of this court. As a starting point I accept the Claimant's submission that the normal position is the judgment creditor is entitled to the fruits of the judgment. This is the starting point even where an appeal is pending. The court's discretion to grant a stay is unfettered, but solid grounds have to be put forward by the party seeking the stay. Those reasons are usually of some form of irremediable harm if no stay is granted…"

16. The Master referred to two leading decisions of the Court of Appeal: *DEFRA v Downs* [2009] EWCA 257 220 and *Contract Facilities Limited v Estate of Rees (deceased)* [2003] EWCA Civ 465.

17. In *DEFRA v Downs,* Sullivan LJ said:

> "A stay is the exception rather than the rule, solid grounds have to be put forward by the party seeking a stay, and, if such grounds are established, then the court will undertake a balancing exercise, weighing the risks of injustice to each side if a stay is or is not granted.
>
> It is fair to say those reasons are normally of some form of irremediable harm if no stay is granted…."

18. In *Contract Facilities Limited v Rees*, Waller LJ said at paragraph 9:

> "The real question in this case accordingly, is whether refusal of a stay would risk stifling the appeal. As already indicated, the point about prejudging the issue seems to me not to be a legitimate point.
>
> On the question as to whether there might be a stifling of the appeal, again a further paragraph of *Agrichem* is material. That is paragraph 18. All I need to quote from that paragraph is that the court made it clear that where somebody seeks to stay orders what they need to do is:
>
> *'...produce cogent evidence there is a real risk of injustice if enforcement is allowed to take place pending appeal.'*
>
> The court was, of course, recognising in that context, which should be stressed, the principle that it is not just a question whether the actual party to the appeal can raise the money. The question is whether money can be raised from its directors, shareholders, other backers or interested persons. This was made clear, in the context of a security for costs application, by Peter Gibson LJ in *Keary Developments v Tarmac Constructions."*

19. Waller LJ then referred to the application's evidence in that case at paragraph 11:

> "What is the evidence about the possibility that this appeal might be stifled? The answer appears from paragraph 11, and paragraph 11 alone, of Mr Shuck's affidavit. What he says there is:
>
> > '*I would find it very difficult to come up with the costs of the Court below for the Company and could not readily do so. The reason I entered into funding arrangements on behalf of the Appellant in the Court below was that I could not afford to advance the monies necessary to fund the action alone. I do have an income but I cannot keep funding this case. I will provide the £20,000 Security for Costs of the Appeal and I also have to pay Counsel's brief for the hearing to which this witness statement relates as well as the brief fee for the Appeal itself -- this will amount to around a further £15,000. My personal liability for costs will be determined after the appeal, should it prove unsuccessful, following the Order of HHJ Weeks QC in Bristol. The Respondents estimate their costs at around £130,000. The Respondents had their opportunity to obtain security for costs, knowing they were in litigation against a company with no assets. As mentioned above they obtained £15,000'*."

20. Particular reference is made by Mr. Cribb to the following passage in the judgment:

> "It seems to me that that is exceedingly weak evidence that this appeal will be stifled if a stay is not granted. The normal position is that somebody is entitled to the fruits of the judgment below. A stay will not be granted, unless there is cogent evidence that the appeal will be stifled. As it seems to me, there is no cogent evidence that there would be a stifling of this appeal if this stay is not granted."

21. Mr Cribb relies upon this analysis on the facts of this case as being a reason why I should not be satisfied that there is cogent evidence in this case.

22. Drawing from the above Mr. Cribb says that the following principles, set out in his skeleton, apply to this application:

    (1) The starting point is that Huddinge Kommun is entitled to the fruits of the Judgment, irrespective of the fact that Aura's Appeal is pending. A stay would be an exception to that normal rule;

    (2) Aura is, therefore, required to put forward solid grounds in support of its application for a stay, in the form of irremediable harm;

    (3) To establish such irremediable harm, it must put forward cogent evidence that the Appeal would be stifled if the stay is not granted;

    (4) In considering that issue, it is not just a question whether Aura has the money to pay the Judgment Debt. The question is whether it can raise that money from its directors, shareholders, other backers or interested persons; and

    (5) If Aura is able to establish such irremediable harm, the Court must then undertake a balancing exercise, taking account of the risk of irremediable harm to Huddinge Kommun in not being able to recover the Judgment Debt, if the stay is granted, but the Appeal is later dismissed.

23. There seems, to me, no substantial dispute in relation to those principles. I bear in mind even if satisfied, that there is going to be irremediable harm, but nevertheless I have a discretion that I must exercise, having regard to all the relevant circumstances.

24. Reference was also made to the following passages in the case of *Goldtrail Travel Ltd v Onur Air Tasimacilik AS* [2017] 1 WLR 3014. At [17] where the party:

> "appears to have no realisable assets of its own . . . [an appeal will not be stifled] if it can raise the required sum . . ."

And at [19] the party alleging stifling must establish:

> "on the balance of probabilities that no such funds will be available to it, whether by its owner or some other closely associated person, as would enable it to satisfy the requested condition."

25. I will come on later to a distinction that Mr Cribb wished to make with the decision of *Goldtrail*, which related the further point he made concerning comity arising in relation to the Regulations. He submits however that the relevant question is whether Aura has established, on the balance of probabilities, that no such funds would be made

available to it, whether by its owners or other interested persons, to enable payment. In any event, it is submitted that there is no real difference between the decision in that and the analysis by Waller LJ in *Contract Facilities Limited v Rees*.

26. Aura asserts that it does not have the assets to meet this judgment. The company is in its infancy and it has no assets, as demonstrated by its accounts. Aura is unable to raise the funds from its shareholders or third parties or directors and has applied for and sought funding by third parties, but that has been refused. Mr Hurst and Mr Segerstrom, who are Aura's directors and shareholders, are unable, either individually or collectively, to provide the funds to enable Aura to pay the judgment debt or to pay the judgment debt on Aura's behalf.

27. Huddinge Kommun, in this application, says the true financial position of Aura is unclear. It does not accept that Aura would be unable to pay the judgment debt such that an enforcement of the judgment would stifle the appeal.

28. I have seen the accounts produced up to or dated 31 August 2019 in support of Aura's case. Essentially it is said that it is a dormant company on the basis of those accounts. For Huddinge, it is noted they are two years out of date, but further, it is said, that there are essentially five, or perhaps six, points, as they were developed in oral submissions, which it is said should result in concluding that there is no cogent evidence supporting Aura's assertions.

29. Firstly, it is said that there was an agreement to pay the sums due in February of this year, which undermines the assertions.

30. Secondly, it is said that the concerns that have been raised by Aura are unrealistic and should not be accepted in the light of the litigation between Aura and Huddinge, in particular a total of three cases in the Administrative Court in Sweden. Aura, it is said, claims to have incurred substantial costs in those three sets of proceedings, which it later sought to recover before Södertörn District Court. As the judgment of the court makes clear, Aura claims to have incurred Swedish Krona to a value of about £34,000 in [two?] of the proceedings, and approximately £57,000 in another set of proceedings. Further it is said that Aura has submitted legal expert opinions in support of both its claims, which, it is assumed, cost a substantial amount of money. Huddinge also relies upon the instructions of English solicitors in relation to these proceedings. Although it is suggested that there were other claims in relation to other public bodies, this is refuted in the evidence that I have before me. In any event it is said it has been able to fund lengthy and extensive litigation, which is said to be inconsistent with it having no assets. Either it has assets of its own or it has assets which it can draw upon from others, such as directors and shareholders. There is no reason to believe that, given the value of the claim that Aura makes in the Swedish court, approximately £13,000,000 and its assumed belief in the prospects of success in its appeal, that it would not be able to raise the sums that are due to meet this debt, whoever it says has been funding its litigation.

31. Thirdly, as to its trading, it is noted that it is said that Aura remains in its infancy until the period leading up to the last accounts; it has actively operated but not traded. This is said to be inconsistent with Aura's position before the Swedish courts, where it claimed that its business was a substantial one. Reference is made to the judgment of the Södertörn District Court, referring to detailed information that shows examples of Aura's other projects and evidence that shows involvement in projects outside Sweden,

and a reference to both Aura's financiers and to Aura itself having looked for and looking for properties to buy in Estonia to renovate.

32. Fourthly, it is said that the case that is now being put is inconsistent with what Aura's own website said, which describes Aura's team having worked with many prestigious development projects worldwide, including the 2012 London Olympics construction project in the UK and Sweden and commercial and residential projects in Spain, and the development of urban design projects for the World Bank and the UN, as well as projects for private developers in China. It is said that this is simply not a description of a business in its infancy.

33. Further, Aura has, it is said, relied upon assertions that it stands to gain from contracts which it has negotiated or is about to negotiate. A complaint was initially made that there was no evidence of this to be found in the earlier statements. I have however been provided with further evidence in relation to these matters. In relation to one in particular, that has been negotiated for a sum of about €15,000. It is said that I have not seen [any formal contract], but I have been shown some further evidence in relation to the other projects, substantial projects. One for, I think it is something like 520 units, and another for 200 units in in Nigeria and Namibia, I think, but in any event, in various other countries.

34. Further, it is said by Mr. Cribb, relying upon what was said by Waller LJ in relation to the shareholders' position, that the evidence that I have received in the form of evidence from the directors and shareholders, that they do not have the assets to meet these judgments is simply insufficient. It amounts, as it were, to a broad refusal. Essentially Mr Cribbs' contends that it is too broad to be properly relied upon.

35. Starting with that final submission, it does seem to me that I have to see the evidence of the two directors in its general context. As I understand it, Mr Cribb acknowledged the difficulties that if the directors and shareholders were required to give details of all their assets: if that were the case, once they had started giving such details they would have to complete it. Recognising the difficulty of such an approach and any such obligation, he says that it is really a question of deciding whether or not the representations made by the directors fit properly within the pieces of the puzzle, I think is the way that it is put, or whether the pieces of the puzzle properly fit together. He says they do not.

36. I am satisfied however, considering all the circumstances, that the pieces do fit together and that I do have sufficient evidence to be satisfied that if the judgment were to be enforced now, it would cause irremediable harm and ultimately stifle the appeal. I am also satisfied, having looked at the accounts and noting what was said in the judgment of the lower courts and Aura's assertion, that it was essentially without financial substance and it seems to me, on the basis of the evidence that I have be provided within the accounts, this piece does fit within the puzzle.

37. I am also satisfied that what I have been told by Aura in relation to the finances of shareholders and directors and as to funding also fits within the puzzle and is cogent evidence.

38. In relation to the first point and the question as to whether or not there was an agreement to pay the judgment sums, I have been taken though this by Mr Henderson.

39. I refer to the account which is set out in the witness statement of Mr Wahlberg, and the documents exhibited to his witness statement. I note that on 9 February 2001 the solicitors for Huddinge wrote to Aura confirming the service of relevant documents, and they asserted they are entitled to enforce the judgment. They also served a copy of the order of Master McCloud and stated its intention to make an application to enforce the judgment on 12 February 2021 or thereabouts. Aura confirmed by email that it was now mobilised to settle a debt due under the judgment. A payment would be made within 60 days. I think Aura also sought to reserve their rights beneath that email. On 16 February, CMS, that is the solicitors for Huddinge, responded to confirm that Huddinge was prepared to temporarily withhold making an application to enforce the judgment, provided that Aura agreed to pay the judgment debt by 12 April 2021. The end of that letter invited Aura to confirm that the above terms were agreed. On 22 February 2021 Aura agreed to the above proposal, it is said by Mr Wahlberg, by an email which stated:

> "Acknowledged/agreed."

40. It is said that this is the basis for the assertion that there was an agreement. There are essentially a number of points that are made on the back of this. The first point is, as it were, an evidential point: Aura would not be making such an agreement or statement if it were the case that they lacked the assets to pay. Other points are made in relation to this matter and I will deal with those at the appropriate point, but I am not satisfied on the evidence that this does undermine the cogency of the evidence that I have considered.

41. It seems, from the background to this matter, that the representation "now mobilised to settle the debt" is not an indication that there were no difficulties in settling that debt. At the time Aura was not represented by solicitors, and the order that had been presented to them was the order of Master McCloud, which did not include the necessary provision setting out Aura's ability to stay or set aside the order. Whether this was because Huddinge's lawyers had not included the necessary paragraph in their draft orders sent to the court is controversial between the parties. In any event what was presented to Aura was an order in that form. It appears however, having looked at the fuller explanation or context, that attempts were then being made to obtain funding. There were two attempts to obtain funding. It is not conclusively stated when the second refusal was received, whether it was before the 22 February email saying "Acknowledged/agreed" or whether it was after this. I am nevertheless satisfied that that final email does provide me with sufficient a basis to be able to rely upon the evidence of Aura. I am satisfied that the attempts to obtain funding failed and that the evidence is cogent in relation to this matter.

42. As to the second point relating to the history of the litigation. This matter has been dealt with in greater detail in the second witness statement of Mr Hurst [?than his first statement]. It appears that the legal costs that were claimed in the lower courts were what have been referred to as time costs or 'sweat' costs- being based on the time spent by Mr Hurst and Mr Segerstrom themselves in pursuing this litigation in Sweden; this litigation, as Mr Henderson' has pointed out, has lasted a significant amount of time. That seems to be consistent with what I am told about the lack of other funding. Similarly, I am told and accept that the expert evidence of Professor [? Lundin] was provided on a pro bono basis. The actual costs were dealt with by way of loans, by the directors to Aura for litigation in Sweden to date amount to approximately only £16,000. The anticipated further costs of the appeal of approximately £34,000 will be

paid out of [?revenue] received by Aura, and any shortfall will be paid by way of further loans by the directors.

43. Mr Cribb referred also to the translation costs, sums which would have had to have been paid. I am told by Mr Henderson (and I use the word 'told' advisedly) that they were costs that were to be deferred, and he undertook to provide a witness statement to confirm that that was the case and to provide further assurance on that matter.

44. Reference is also made to the costs, as I say, that have been incurred in relation to resisting this application. I take all those matters into account. I accept what Mr Henderson says, that the judgment sum is a totally different order of magnitude of the legal costs that they have had to pay. Mr Cribb did not effectively come back to me in relation to the translation costs, but it seems to me that the point that Mr Henderson makes about the order of magnitude remains good taking these into account: these are of a wholly different order of magnitude. I am also satisfied on the basis of the assurances that I have been given of the position in relation to the translation costs.

45. In relation to points three and four, the further points in relation to Aura being in its infancy, and the alleged inconsistencies with Aura's position before the Södertörn District Court and its website. I accept, that much of what was said by Aura in the District Court was in response to an allegation that Aura was simply a suit process company, which I understand to mean a company which is set up in order to pursue litigation but essentially otherwise hollow. In response to that, evidence showed that Aura was engaged in projects, none of which have come to fruition. Reference was also made to potential property purchases in Estonia.

46. The references in the website are to: "*Our team*." The references were involvement by the constituents of the team, not to the company itself. That, it seems to me, is clear on its face, at least in relation to the London Olympics, which predates the incorporation of Aura.

47. I accept Mr Henderson's case that both representations are consistent with the company being in its infancy, and not trading in the sense of achieving revenues.

48. I have considered all the circumstances all the points made. This being an *ex tempore* judgment it may be that I do not cover expressly all the points which have been made, but I have considered all the points that have been made by Mr Cribb and Mr Henderson. If I do not specifically mention them, it is because I am not satisfied that they are central to the conclusions. In any event none of them, to my mind, prevent me from reaching the conclusions that I do, in relation to this point.

49. I might add, by way of fortification of the views, it is significant that Huddinge has appealed the judgment on the basis that two directors should be jointly and severally liable to pay their costs. The inference naturally arising is that it would only do so if it believed Aura itself could not pay the judgment debt. Of course that only deals with one aspect of the financial position I have to consider because of course, as per the decisions that I have read out, I do have to consider the financial positions of all connected persons, as it was put by Mr Cribb, which I do in reaching my conclusion.

50. In all the circumstances, and accepting Aura's case on this point, I have formed the view, on the basis of the evidence that I have, that, on a balance of probabilities, irremediable harm to Aura would follow if I were not to grant this application.

51. I now deal with other arguments which are being put forward independently of the irremediable harm point.

52. Firstly, it is said that Aura, having agreed, as it is put, to pay the judgment debt, the application itself was issued in breach of contract and Huddinge Kommun would be entitled to an injunction to a stay, Aura in persisting in that breach. Further, that Aura is estopped from pursuing the application by agreeing to pay the judgment debt. Aura's representatives did not then seek to stay enforcement and Huddinge Kommun relied, to its detriment, on that representation in refraining from taking immediate action, or its agreement or admission that the judgment debt is due and payable and that it is in fact able to pay it. After all, Huddinge says that is what is said in the letter of 12 February. Aura Communities had then mobilised to settle the debt. Existence of the agreement means the Court should dismiss the application in the exercise of its discretion,

53. I am not satisfied that this is an agreement which should prevent me exercising my discretion in order to achieve a just result in relation to this matter. I have already referred, in my judgment above, to the difficulties that arose not merely in respect of the incorrect order, but I am not satisfied in any event, even if there were a contract or an agreement, that this of itself would be a sufficient basis to prevent me exercising my discretion in a way that I considered to be appropriate. It is a matter that, of course, I can take into account, but I think Mr Henderson is right in his broad point, that if this were a bar to an exercise of discretion, it would apply in all cases. When this proposal was put forward by the lawyers to Huddinge, Aura were unrepresented in the case, and it seemed to me that it was clear that they were not in a position to consider the consequences of what they were doing or being asked to do.

54. There was argument by Mr Cribb that they must have appreciated that Master McCloud's order was incorrect or otherwise appreciated that, under Article 38 or other provisions of the regulations, they had a right to set aside this order. He says so by reference to the email correspondence including with the funders. I am not however satisfied that whatever representations were made, whatever agreement may have been made, is a binding agreement that ultimately prevents me from reaching what is, to my mind, the right and proper result. If it were otherwise, it would be open to represented parties to seek to obtain such an agreement, and thus bar any appropriate response by a respondent. On the basis of all the facts and all the background matter, it seems to me that this cannot be a decisive matter. Further, in the circumstances, I do not accept that these matters would amount to an estoppel rendering it unjust for Aura now to contend that they should not have to meet this judgment debt or seek a stay in relation to the judgment. It is not to my mind unjust for them to do so.

55. The second further point is what is referred to as the comity point. It is asserted Mr Wahlberg, who is a [Swedish lawyer or legal associate[2]] for Huddinge, in his witness statement that, as a matter of Swedish law, Aura could not rely upon the appeal as the sole reason for seeking a stay upon payment.

56. In the course of argument, I drew attention to my concern about the use of the word 'sole' in this witness statement. It suggested that, combined with other factors, a stay might nonetheless be ordered. Mr Cribb offered an undertaking that Mr Wahlberg

[2] He is described in his witness statement as a legal assistant. In the oral judgment I mistakenly referred to him as a solicitor.

would provide a witness statement essentially removing the word 'sole', in other words asserting that as a matter of Swedish law, the position that Aura could not rely upon the appeal as a reason for seeking a stay upon payment. Normally one would expect to see independent expert evidence to support an assertion of foreign law. Accepting that Mr Wahlberg would indeed provide a witness statement to correct the position and clarify the matter, and I do not think that Mr Henderson was objecting substantially to that (in the same way that Mr Cribb did not object to matters of clarification being dealt in this way with by way of counsel), nevertheless, I am bound to say I thought there was considerable force in the concerns of Mr Henderson that I should accept this as a proposition of Swedish law, particularly given the way it was advanced without supporting documentation and references substantiating Swedish law. Mr. Wahlberg is not, of course, an independent expert, and on the face of it there seemed to be a clear basis for concern that Swedish law would be as claimed, given that it does not seem to be consistent with Article 6 of the European Commission on Human Rights.

57. It is not however necessary for me to make findings in relation to this matter because it seems to me that even if that were the position in Swedish law and there were such a bar this application for a stay, nonetheless I do not accept the fundamental proposition which is being advanced here, that in the circumstances it is a breach of proper comity for me to accede to this application.

58. I have already read the recital to the relevant regulations. The Regulations provide that the Swedish judgment is to be treated as a judgment of this Court, the High Court. As is illustrated by the fact that it was necessary, in effect, to withdraw the first ground upon which the application was advanced, it is clear that the Regulations limit the case that can be put by a party facing a judgment in this country; a party cannot rely upon the merits of the appeal in Sweden under these Regulations. It seems to me, however, that it cannot properly be a matter for this Court to take into account Swedish law in determining the exercise of its own discretion which takes place, as it seems to me, under the Regulations. It seems to me that if this were right, it would be a very surprising interpretation with obvious practical problems. Indeed if that were intended, one might have expected the Regulations to provide for this expressly. Fundamentally I do not accept the contention made here that any law, to the effect that Mr Cribb has relied upon, would prevent me exercising my discretion in an appropriate way in this jurisdiction.

59. Some of the other points which were raised in Mr Cribb's skeleton argument have, understandably, as it were, been repackaged or reconstituted. Another point that was advanced by Mr Cribb is the assertion that Huddinge has a right and duty to recover the judgment sums. It is a public authority and is generally under an obligation to recover all monies owed to it in order that the money can be added to the public coffer and applied, as he put it, in the discharge of its various duties. It seems to me that in a number of respects, this is the position also for private companies which are under an obligation to recover sums due to it for its shareholders. I think Mr Henderson is right to say there is no priority given to public bodies. It is a point, of course, I bear in mind in the exercise of my discretion, that Huddinge is a public body and that the monies that are due, if paid, would be payable for the public purse. When pressed in argument, however, it seems to me that Mr Cribb's point is one more by way of reinforcement to his final point, that a stay of enforcement will prejudice Huddinge Kommun.

60. As to that point, it is said that judgment debt, having been due since June 2020 and because litigation is a lengthy process and final judgment not expected until at least

the autumn of 2021, on a best case scenario, it would mean, if the stay were granted, that Huddinge Kommun would be deprived of these monies for some 10 months. Any stay of enforcement would further prejudice Huddinge as there were concerns about the solvency of Aura, it being said that Aura is precariously close to insolvency. It is desirable, while Aura is still a going concern, that there should not be any further risk in respect of what is, in effect, an unsecured creditor and that a liability to pay interest would not compensate Huddinge for the delay in being able to enforce judgment if Aura were to become insolvent in the meantime.

61. I am satisfied that Mr Henderson is correct to say that the accounts and the information do not reveal that Aura is unable to meet debts as they fall due, save for the judgment sum in this matter. There are, as I have already indicated, contracts Aura either already has or are expected. One that has been signed of a relatively small sum but other contracts which it is hoped and expected will be signed soon. I am not satisfied that there is any substantial risk of the sort asserted by Huddinge.

62. It seems, in the context of this contention there is the further point in relation to the general delay here: that it has taken some time for Huddinge to pursue its claim by seeking to register its judgment in this jurisdiction.

63. I take all these matters into account. The existence of irremediable harm is a consideration. The starting point in the exercise of my discretion, I accept, is that Huddinge is a body which is entitled to the fruits of their judgment, as Master Yoxall made clear. I also have to balance all the matters in considering how to exercise my discretion in this case.

64. I take into account all the points that Mr Cribb has advanced. I am satisfied, as I have already indicated, the Claimant would suffer irremediable harm as to its claim in Sweden, where it is seeking substantial damages, and this would be thwarted if I were not to grant the stay. But also that it would potentially lose out on potentially lucrative contracts. Conversely, it seems to me, taking into account all the points that Mr Cribb has made, that the prejudice to Huddinge set against that is minimal or modest. It is anticipated the appeal in Sweden will be resolved within the next six months but potentially sooner perhaps. In any event the timescale, it seems to me, is of that order.

65. Mr Henderson makes the point that Aura may well be, in any event, in a better position to meet the judgment sum if it fails in an appeal later in this year if those contracts do eventuate. In the light of that evidence, he asked me to infer that the real reason for the resistance to this stay is that Huddinge do wish to stifle this appeal. It is not necessary for me to make any determination as to the motive behind Huddinge's position, but there does seem to be some force in that suggestion. In any event I am satisfied, even ignoring that, that exercising my discretion, I should grant this application.