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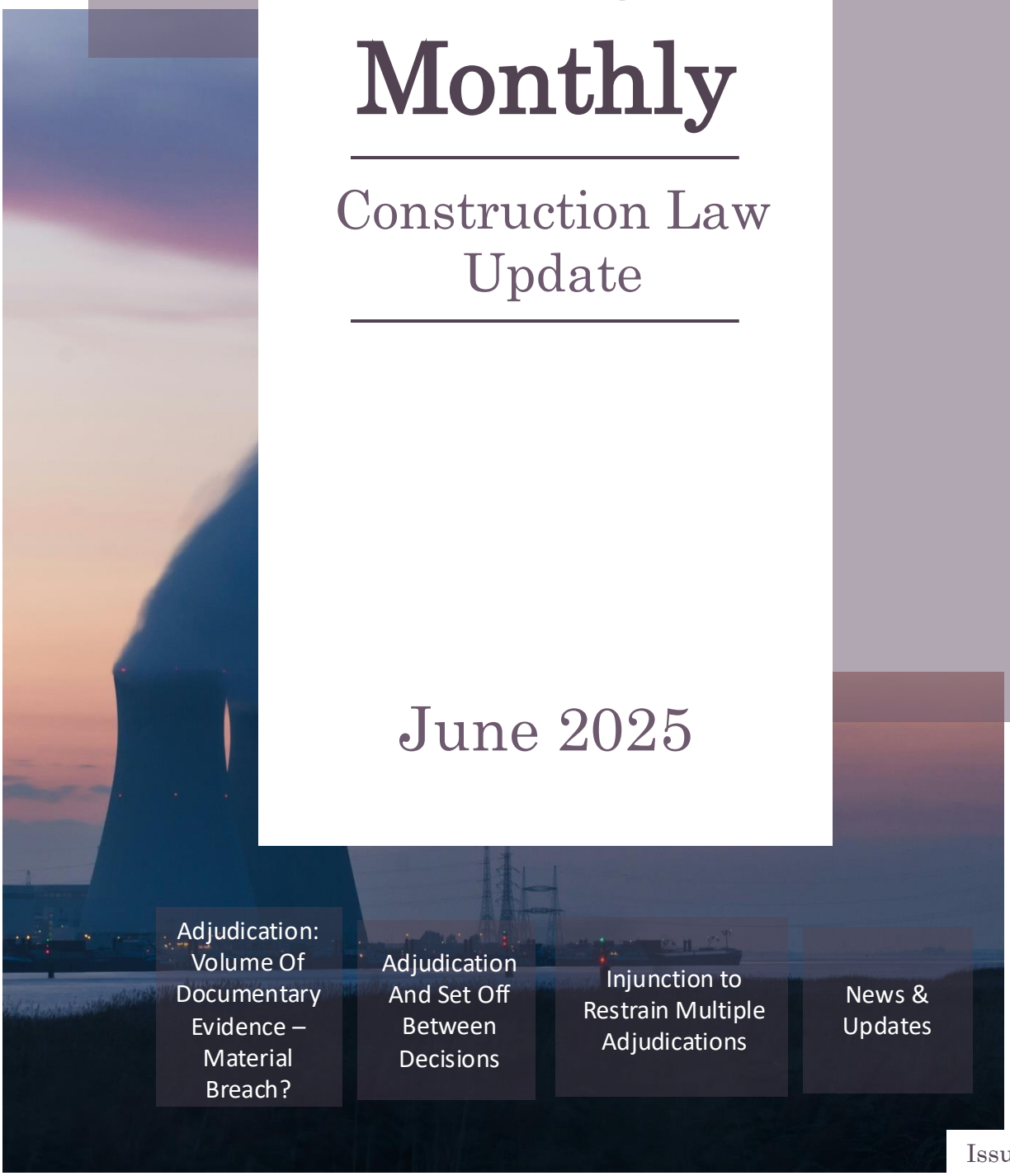
NTC Monthly

Construction Law Update

June 2025



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ADJUDICATION AND SET OFF BETWEEN DECISIONS

Introduction

Introduction
Charles Edwards, high performing Construction Barrister reviews the Technology and Construction Court case of ***CNO Plant Hire Ltd v Caldwell Construction Ltd*** [2024] EWHC 2188. This case involved the Claimant's (Subcontractors) application for summary judgment to enforce an adjudicator's decision dated 5 March 2024 in favour of the Claimant against the Defendant (the Contractor). The Defendant resists enforcement, inviting the court to exercise its discretion to set off or withhold enforcement of the Adjudicator's Decision on the basis of a second adjudication decision dated 14 April 2024. The Defendant did not assert a defence as a result of a jurisdictional challenge or a breach of natural justice against enforcement of the decision. The parties have taken part in three adjudications, two of which had relevance to the application for enforcement.

Adjudication 1 (Smash and Grab)

The first adjudication concerned a subtotal of £1,359,842.44 with the Subcontractor seeking payment of £253,425.56 plus interest plus payment of the Adjudicator's fees. The first adjudication can be referred to as what is commonly known as a 'smash and grab adjudication'. Caldwell failed to issue a Payment Notice or Pay Less Notice in response to CNO's application for payment. The Adjudicator decided that the amount stated in the application for payment by CNO of £253,425.56 was due plus interest of £2,679.88 and a daily rate of interest at £92.00. In addition, the Caldwell had to pay the adjudicator's fees of £8,190.00 plus VAT. Caldwell did not pay the sums decided in Adjudication 1 and instead referred a further dispute to adjudication (the second adjudication) seeking the "proper valuation of the final account" and repayments of any sums found to have been overpaid to Caldwell, despite failing to make payment in respect of the Adjudicator's decision no. 1.

Adjudication 2 (True Value)

The second adjudication referral asked for a valuation to be made in respect of the same items considered in the first adjudication. The Subcontractor challenged second Adjudicator's jurisdiction to deal with the second adjudication on the basis that the dispute related to the same, or substantially the same, subject matter and explained that the interim payment applications in September 2023 and December 2023 were for the same works. The Adjudicator decided he had jurisdiction to proceed with the matter. Despite the challenge, the Adjudicator issued his decision which decided amongst other things that the Contractor pay the Subcontractor £89,480.94 plus VAT. Despite the Contractor failing to make payment in respect of Adjudication no.1 and also failing to issue enforcement proceedings in respect of Adjudication no.2, it was seeking in its defence for the Court to exercise its power of set off between the two Adjudication Decisions. Further, the Contractor conceded that there was no jurisdictional or natural justice challenge to the first Adjudicators' Decision.

Key Issues for the Court to Decide

The key issues for the Court to determine as per paragraph 18 of the Judgment was as follows:

"…

(1) As the Defendant has not issued enforcement proceedings in respect of the second adjudication, should the court consider exercising its power to order a set off?

(2) Should the court permit a set off on the facts of this case?"

The Law

The Court recounted well established legal principles applicable to adjudication enforcement as set out by O'Farrell J in *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936 (TCC) at [A/9/35-39]:

"…

(1) Where a valid application for payment has been made, an employer who does not issue a valid payment notice or pay less notice must pay the 'notified sum' in accordance with section 111 of the Act;

(2) Failure to pay the notified sum entitles the contractor to seek payment of the sum by obtaining an adjudication award;
(3) Unless otherwise directed by the adjudicator, the parties are required to comply with the decision immediately;
(4) The courts take a robust approach to enforcement, regardless of errors of procedure, fact or law, unless in excess of jurisdiction or breach of natural justice;
(5) When a party is required to pay a 'notified sum', that party may embark upon a true valuation of the work done, but only after it has complied with the immediate payment obligation under section 11 of the Act." [paragraph 13 of the Judgment]

The Technology and Construction Court Judge quoted at paragraph 16 of the Judgment: the principles in respect of the set off stated by Joanna Smith J in *FK Construction Limited v ISG Retail Limited* [2023] EWHC 1042 (TCC) are as follows at [20]:

"The general position is that adjudicators' decisions which direct the payment of money by one party to another are to be enforced summarily and expeditiously … No set off or withholding against payment of that amount should generally be permitted…
There are only three limited grounds for set-off to the general position set out above.

i. a first, "relatively rare", exception will be where there is a specified contractual right to set off…
ii. a second exception may arise where it follows logically from an adjudicator's decision that the adjudicator is permitting a set off to be made against the sum otherwise decided to be payable…
iii. a third exception may arise in an appropriate case, at the discretion of the court, where there are two valid and enforceable adjudication decisions involving the same parties whose effect is that monies are owed by each party to the other…"

The Court further considered the steps which would need to be considered before a Court should permit a set off as set out in the Judgment of HS Works Ltd v Enterprise Managed Services Ltd [2009] EWHC 729 (TCC) where Akenhead J set out what those steps should be for consideration at paragraph 40:

"…

a) First, it is necessary to determine at the time when the court is considering the issue whether both decisions are valid; if not or if it cannot be determined whether each is valid, it is unnecessary to consider the next steps.
b) If both are valid, it is then necessary to consider if, both are capable of being enforced or given effect to; if one or other is not so capable, the question of set off does not arise.
c) If it is clear that both are so capable, the court should enforce or give effect to them both, provided that separate proceedings have been brought by each party to enforce each decision. The court has no reason to favour one side or the other if each has a valid and enforceable decision in its favour.
d) How each decision is enforced is a matter for the court. It may be wholly inappropriate to permit a set off of a second financial decision as such in circumstances where the First Decision was predicated upon a basis that there could be no set off."

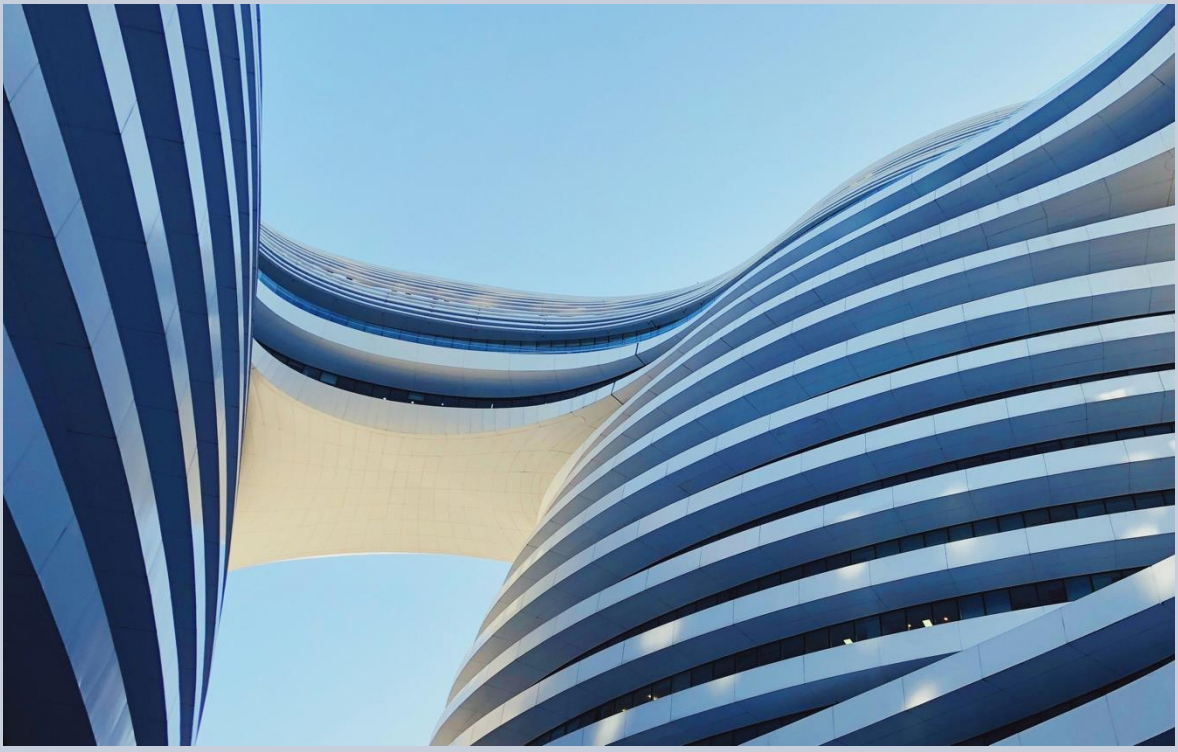
[paragraph 17 of the Judgment]

Set off is generally not permitted in respect of an adjudicator's award and the Contractor in this matter has also failed to issue enforcement proceedings with respect to the second adjudication. If an adjudication decision requires a party to pay a notified sum, and if that party fails to pay that sum it may not start a true value adjudication in respect of a dispute in the same payment cycle. The Court found the analysis from the Defendant to be too simplistic. In the circumstances, the Court decided that the dispute referred in the first and second adjudication were the same subject matter, and the sums claimed by the Subcontractor were the same and all of which were the subject of interim applications of September and December 2023. Both parties agree that the applications for payment by the Subcontractor in both September and December 2023 were for the same work arising out of negotiations and discussions in respect of the final account and therefore the Court was not prepared to accept that they were different payment cycles.

Conclusion

In conclusion, the Technology and Construction Court decided that it was not possible to consider whether the Contractor was entitled to commence a true value adjudication when an establish process to enforce a decision was available to the Contractor and the Contractor had chosen not to use it. If the Contractor had sought to enforce the second adjudication decision the Subcontractor could have responded, filed evidence and raised jurisdictional challenges. In the circumstances, the Court does not have the benefit of that evidence and detailed arguments. Finally, the Court decided that an order taking into account the second adjudicators decision without requiring payment of the notified sum in accordance with the first adjudication would seriously undermine the policy of swift enforcement of adjudicators' decisions. And therefore, in those circumstances, the Court was not prepared to order set off between the two adjudicators" decisions.

This judgment reinforces previous law on the point that there isn't a general right of set-off from one Adjudicator's Decision against another Adjudicator's Decision. This case also emphasises the importance of issuing Payment Notices and Pay Less Notices and at times the need for a defendant to seek enforcement proceedings in respect of a second adjudicator's' decision if it so wishes the Court to consider it. However, not to lose sight of the fact that the Courts are quite clear that prior to commencing a true value adjudication, the Court would expect the defendant to have paid the amount arising from the first adjudicator's decision.



ADJUDICATION: VOLUME OF DOCUMENTARY EVIDENCE – MATERIAL BREACH?

Introduction

Charles Edwards, high performing Construction Barrister reviews the Technology and Construction Court case of ***Home Group Limited v MPS Housing Limited*** [2023] EWHC 1946 (TCC) where enforcement of the adjudicator's decision (which ran to 74 pages) was challenged on the basis of a breach of natural justice due to the sheer volume of the Defendant's Referral which included a quantum expert report of 155 pages, with 76 appendices, which consisted of 202 files in 11 sub-folders, amounting to 338 megabytes of data and an additional 2,325 files in 327 sub-folders and five factual witness statements (which amounted to 88 pages, with hundreds of exhibited pages).

The Claimant ("Home Group") sought summary judgment of an adjudicator's decision dated 28 April 2023. The Adjudicator in his Decision ordered payment by the Defendant ("MPS") to the Claimant Home Group of £6,565,831.94 plus interest and 85% of his fee.
Pursuant to a JCT Measured Term Contract (the "Contract"), the Claimant engaged the Defendant to carry out maintenance and repair works to some of its properties. The Claimant claimed termination losses caused by the Defendant's repudiatory breach of a JCT Measured Term Contract. On 11 May 2022, the Defendant, pursuant to Clause 8.7.2 of the Contract, purported to terminate the Contract. The Claimant did not agree that Defendant were entitled to terminate the Contract and claimed that the Defendant's termination was a repudiation of the Contract. The validity of the termination was addressed in the first adjudication. On 25 November 2022, it was decided that the Defendant had repudiated the Contract, hence its attempted termination was invalid. The second adjudication proceeded with regards to recuperating the Claimant's losses.

On 17 March 2023, the Claimant served a Referral which included: a quantum expert report of 155 pages, with 76 appendices, which consisted of 202 files in 11 sub-folders, amounting to 338 megabytes of data and an additional 2,325 files in 327 sub-folders and five factual witness statements (which amounted to 88 pages, with hundreds of exhibited pages).
In the adjudication, the Defendant were given a timeframe of 19 days (or 13 working days) to provide its response to the Referral. Due to the sheer quantity of material, the Defendant claimed that this was an insufficient timeframe for it to respond. The Defendant argued that it was not feasible to adequately consume and respond to the quantity of material served and that this was a breach of natural justice which has led to a material difference in the result, and that as such the adjudicator's decision was not enforceable. The Defendant did not argue that the dispute was incapable of adjudication; but rather, it asserted that the Claimant should have provided a more reasonable timeframe to understand the claim, whether in advance of the Notice of Adjudication or by agreeing to an extended timetable.

After the termination of the Contract by the Defendant, but preceding the outcome of the first adjudication, on 5 October 2022, the Contract Administrator provided the parties with the Final Account issued pursuant to clause 4.6.3 of the Contract. This outlined that a total of £7,813,201.89 was due from the Defendant to the Claimant.

The calculation included a sum of £7,532,049.48 as the sum the Claimant was entitled to recover from the Defendant as a result of the Defendant's breaches of contract.

Following the termination decision, on 23 December 2022, the Claimant requested payment in the sum of £8,297,521.01 plus VAT as applicable, from the Defendant, stating that if they did not make payment by 6 January 2023, a dispute would have crystallised, and it would have no option but to recover its losses by way of a third-party tribunal. The letter did not give more than a high-level breakdown of how the sum of £8,297,521.01 had been calculated and there was no supporting analysis. The sums claimed by Claimant essentially comprised sums said to have been paid out to third parties to complete works that the Defendant ought to have completed, and the sums it would have had to pay the Defendant (plus several other heads of claim).

On 4 January the Defendant observed that despite claiming more than £8m, the Claimant had not provided either the information or level of detailed required to assess and respond to the claim, nor any supporting documents and, as a result, any reference to adjudication would be premature. The Defendant proposed a method for resolution of the claim and requested that particular documents (listed in a schedule to the letter) were issued by Claimant. It was suggested that following the receipt of the requested information, the Defendant would require 8 weeks to respond. The Claimant rejected the timetable and proposed the agreement of a random 5% sample of Orders which had been placed by Claimant with third parties for work which was required under the Contract as a representative sample. They proposed that the Defendant would attend the Claimant's office to review the information and evidence in relation to the sample. The Claimant asserted that within 7 days of Defendant's review of the information, it would require the Defendant to issue an offer of payment of the Claimant's losses. It gave a short timetable for the agreement of a sample and attendance at its office.

On 10 January 2023, the Defendant did not accept the sampling proposal, and requested a spreadsheet which showed for each work order, with eight categories of information as a minimum. On 12 January 2023, the Defendant commenced its assessment of the claim, considering the data on a spreadsheet appended in due course to its Response. The Claimant responded to the Defendant on 10 January 2023 by letter revising its claim upwards by £478,087.812 and providing eleven spreadsheets to support its claim. The Claimant asserted that the Defendant had all details for the pre-termination losses and a considerable amount of information regarding the post-termination losses. The Defendant's position was that the Claimant had still failed to provide the bare minimum of information required, arguing that the spreadsheets were insufficient.

The Claimant on 10 February 2023, issued a draft of the expert report on a "without prejudice save as to costs basis". This was the same expert report on which it would rely in the adjudication in and was provided almost two months before the Defendant would be required to serve its responsive evidence. Following this, the Claimant provided, on a without prejudice basis, revised appendices to the draft expert report; which were the same appendices served with the Referral.

On 16 February 2023, the Defendant stated that it would need until 19 May 2023 to provide a response. On 24 February 2023, after the Claimant had refused to allow an extended timeframe, the Defendant contended that, "it was impossible for us to commence any meaningful review (or ultimately for an adjudicator to properly consider the position) in the absence of a full and detailed description of the work that was undertaken against each and every work order".

The Claimant's subsequent response to this, was a reinforcement of its offer for the Defendant to attend the Claimant's office to access the systems. This offer was not accepted by the Defendant at any point before the procedure the adjudication.

Key Issues for the Court to Decide

The key issue for the Court to decide was whether due to the sheer volume of information, the Adjudicator's Decision should not be enforced because the Defendant claimed there was insufficient time for it to provide a response as it was not feasible to adequately consume and respond to the quantity of material served and that this was a breach of natural justice.

The Law

The Technology and Construction Court (TCC) reviewed the law on the matter and stated amongst other things, the following: At paragraph 36, the TCC stated:

> "Notwithstanding the way in which some of the submissions before the Adjudicator seemed to focus on the complexity of the dispute per se ,...rightly does not press a submission before me that the dispute was intrinsically so complicated or heavy that in no circumstances could it have been subjected to adjudication. Such a contention would, in any event, have failed. As pointed out by Akenhead J in HS Works Limited v Enterprise Managed Services Limited [2009] EWHC 729 (TCC), at [56] that, " Parliament provided for 'any' relevant dispute to be referable to adjudication and must have envisaged that there would be simple as well as the immensely detailed and complex disputes which can arise on a construction contract."

At paragraph 37 to 39 of the judgment, the TCC stated:

> "...
> 37. Similarly, in Amec Group Limited v Thames Water Utilities Limited [2010] EWHC 419 (TCC), Coulson J (as he then was) held:
> '60. In my judgment, therefore, the law on this subject can be summarised as follows:
> The mere fact that an adjudication is concerned with a large or complex dispute does not of itself make it unsuitable for adjudication: see CIB v. Birse ."

(b) What matters is whether, notwithstanding the size or complexity of the dispute, the adjudicator had: (i) sufficiently appreciated the nature of any issue referred to him before giving a decision on that issue, including the submissions of each party; and (ii) was satisfied that he could do broad justice between the parties (see CIB v. Birse).
(c) If the adjudicator felt able to reach a decision within the time limit then a court, when considering whether or not that conclusion was outside the rules of natural justice, would consider the basis on which the adjudicator reached that conclusion (HS Properties). In practical terms, that consideration is likely to amount to no more than a scrutiny of the particular allegations as to why the defendant claims that the adjudicator acted in breach of natural justice."

(d) If the allegation is, as here, that the adjudicator failed to have sufficient regard to the material provided by one party, the court will consider that by reference to the nature of the material; the timing of the provision of that material; and the opportunities available to the parties, both before and during the adjudication, to address the subject matter of that material."

38. At [61], the Judge stated in terms that, " size/complexity will not of itself be sufficient to found a complaint based on a breach of natural justice ". In the present case, the Adjudicator correctly kept under review the question of his ability to do broad justice between the parties, notwithstanding the substantial quantity of material he had been presented with. Having determined that he could, this Court will be extremely slow to interfere with that conclusion."

39. Instead, the question in almost all cases where the Adjudicator has considered the position but expressed the clear ability to render a fair decision, will inevitably centre upon the timing of the provision of the material to the responding party, and its ability to fairly put its case, rather than the complexity of the material per se.

The TCC considered the presumed intention of Parliament, discussed by Chadwick LJ in Carillion v Devonport Royal Dockyard [2005] EWCA 1358:
"85. The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator. The courts should give no encouragement to the approach adopted by DML in the present case; which … may, indeed, aptly be described as "simply scrabbling around to find some argument, however tenuous, to resist payment".

86. … The task of the adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case. … The need to have the "right" answer has been subordinated to the need to have an answer quickly. The scheme was not enacted in order to provide definitive answers to complex questions…

87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position. To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense — as, we suspect, the costs incurred in the present case will demonstrate only too clearly."

Further the TCC stated that the legal authorities demonstrate that arguments based upon time constraints impacting the ability to respond fairly have enjoyed little success, for example: Edenbooth Limited v Cre8 Developments Limited [2008] EWHC 570 (TCC); The Dorchester Hotel Limited v Vivid Interiors Limited [2009] EWHC 70; Bovis Lend Lease Ltd v The Trustees of the London Clinic [2009] EWHC 64; CSK Electrical Contractors Limited v Kingwood Electrical Services Limited [2015] EWHC 667 (TCC).

Conclusion

The TCC rejected the Defendant's submission that "whether by reason of the volume of material, constraints of time, and access to material, and whether taken separately or in aggregate, there has been any, or any material, breach of natural justice" to render the adjudicator's decision unenforceable.

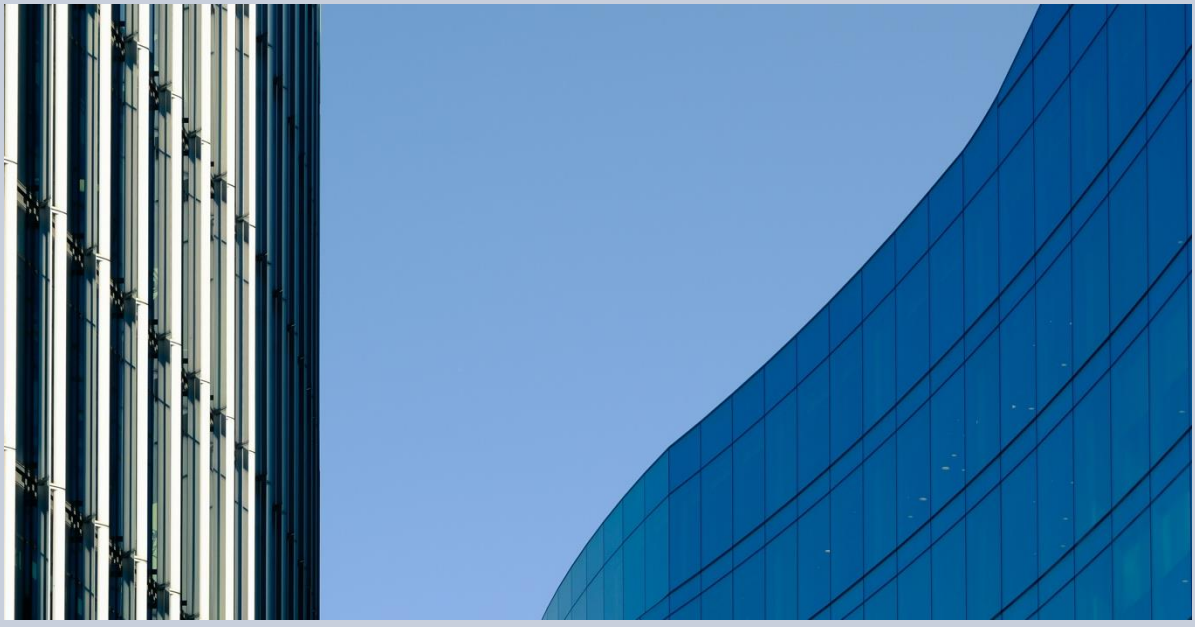
The adjudicator's decision was enforced by way of summary judgment in favour of the Claimant in the sums of:

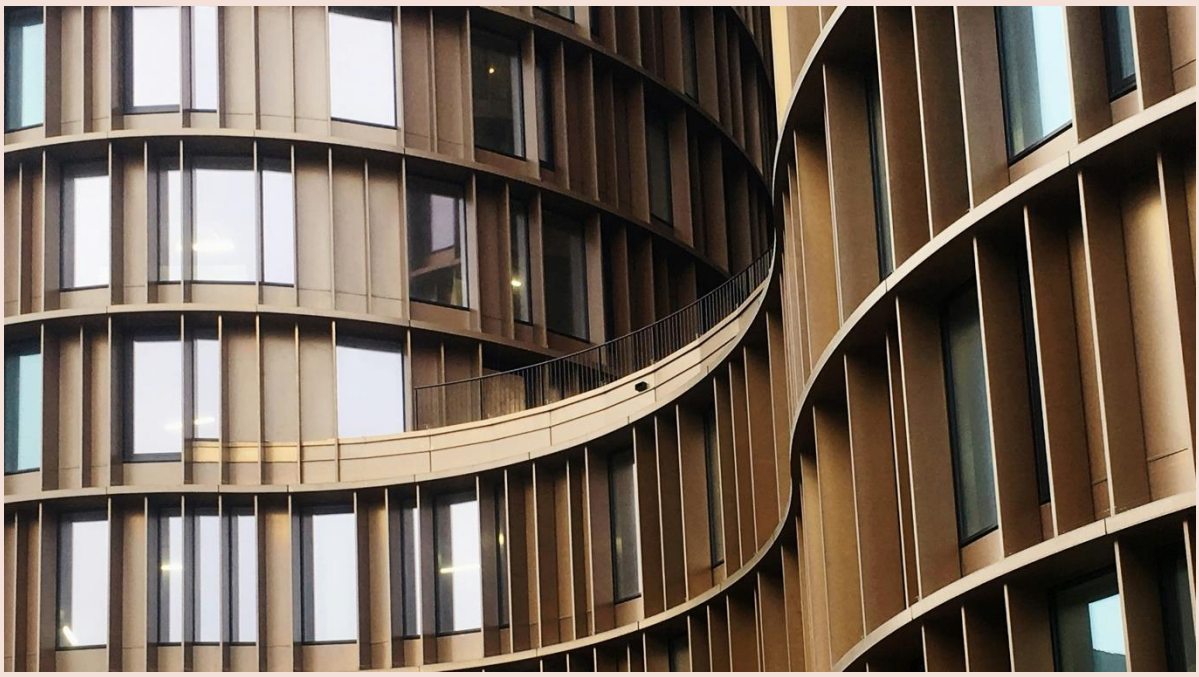
(1) £6,565,931.94

(2) Interest thereon in the sum of £197,676.51, plus £593.62 daily from the date of the Decision;

(3) £41,259.66 in respect of the Adjudicator's fees, plus interest to be calculated by the parties.

For those involved in adjudication proceedings, please note that this case demonstrates that merely pointing to a large quantity of material, some of which is seen for the first time in an adjudication itself is not of itself sufficient to succeed with a claim for a breach of natural justice. An adjudicator's decision would not be enforceable if it was in breach of natural justice, if the breach was material, causing a material difference in the outcome. However, where adjudication cases involve large amounts of data, an adjudicator was entitled to proceed by way of spot checks and/or sampling. It was not realistic for the Defendant to require the Claimant to provide detailed information on each and every line item, and to use that as a justification to disengage in analysis of the material provided through sampling.





INJUNCTION TO RESTRAIN MULTIPLE ADJUDICATIONS

Introduction

Charles Edwards, high performing Construction Barrister reviews the Technology and Construction Court case of ***Beck Interiors Ltd v Eros Ltd*** **[2024] EWHC 2084**. This case concerned an application by the Claimant for an injunction in terms set out in the Judgment at paragraph 1, as follows:

> "…
> 1) The Defendant in an intended action, that is Eros Limited, be restrained from issuing any notice of adjudication against the Claimant unless the Defendant first obtains the permission of a judge authorised to sit in the Technology and Construction Court, and
> 2) That the Defendant must forthwith withdraw the notices of adjudications dated 17 May 2024, 21 May 2024, 28 May 2024 and 30 May 2024, initiated against the Claimant."

The Claimant's application for an injunction must be treated as an interim injunction rather than a final injunction. The Court stated that if granted:

> " …the injunction would bring four extant adjudications to an end, and would prohibit the commencement of any further adjudications by Eros without the permission of the Court." [paragraph 3 of the Judgment]

Factual background

The Defendant had engaged the Claimant as a Contractor for the works at The Residence, Mandarin Oriental in Hanover Square, London. The contract was a JCT Design and Build Contract 2016 with amendments. There have been a total of 6 adjudications between the Parties.

The Court observed that there is a live dispute between Beck and Eros as to what Beck is entitled to be paid. Eros points out that the contract sum was £40.2 million. To date Eros has paid £73.2 million; and that, in its latest payment application, Beck has valued its works at £102.9 million.

The Adjudications

There had been 6 adjudications in total between the Parties. Adjudication no.1 involved extensions of time (commenced by Beck); Adjudication no.2 involved a question on contractual responsibility for the smoke extract ventilation (commenced by Beck); Adjudication no.3 involved a claim of £3.8 million by Eros; Adjudication no.4 involved a True Value Adjudication: a claim for payment of the negative sum of £5.8 million certified by PQS (commenced by Eros); Adjudication no.5 involved Eros seeking a payment of £8.6 million by way of liquidated damages; and Adjudication no.6 involved a claim of approximately £15.5 million, by Eros, in additional financing costs which it claims to have incurred because of delay in selling apartments.

Arguments for an Injunction

Beck's argument in summary in respect of the four adjudications already commenced was as follows:

1. Firstly, it is submitted that all of the claims are weak claims.
2. Secondly, that Beck cannot reasonably defend itself or fairly represent its position in these four adjudications all at once.
3. The fact that they are weak claims is relied on as bolstering the argument that it is unreasonable and oppressive for Beck to have to fight on four fronts at once.
4. These arguments, or at least those as

> to procedural fairness, have already been raised in the adjudications, not only in the jurisdictional challenges but also in the debates about progress and timetable, to the extent that one adjudicator considered that if a reasonable extension of time was not agreed, he might have to consider resignation. In effect, having failed to persuade the adjudicators that they should not proceed, Beck is now trying to succeed on the same arguments before the Court.

The Technology and Construction Court stated, at paragraph 64 of the Judgment that:

> "...
> There is an inevitable burden in having to act in four adjudications at the same time. That is the product of the right to commence an adjudication at any time."

The Court quoted Coulson J (as he then was) at paragraph 66 of the Judgment stating as follows:

> " ...
> Dorchester Hotels case. In that case, Coulson J was asked to make a declaration that an adjudication was being conducted in breach of natural justice. He held that he had jurisdiction to do so but that it was a jurisdiction that should be exercised very sparingly. Coulson J was critical of the commencement of an adjudication just before Christmas, with 37 lever arch files of material, some of it new. Nonetheless, he did not grant the declaration sought. In reaching his decision, he took account of the adjudicator's view that he could deal with the adjudication fairly. That is analogous to the position in the present adjudications."

The Statutory Regime and the Authorities

The Court stated as follows at paragraphs 46 to 52 of the Judgment:

"...

...Section 108 of the Housing Grants Construction and Regeneration Act 1996 provides at subsection (1) that:

> "A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section."

...Subsection (2)(a) provides that the contract shall include provision to enable a party:

> "To give notice at any time of his intention to refer a dispute to adjudication."

The words "at any time£ are central to the argument on this application.

...It is not in dispute that the Court has jurisdiction to grant an injunction preventing a party from pursuing an adjudication, whether that is one that has or has not yet been commenced, but it is also a jurisdiction that will rarely be exercised. That is apparent from at least the following three authorities.

...In *Dorchester Hotel Limited v Vivid Interiors Limited* [2009] EWHC 70 (TCC) at [17], Coulson J said this:

> "It will only be appropriate in rare cases for the TCC to intervene in an ongoing adjudication. It is important that, wherever possible, the adjudication process is allowed to operate free from the intervention of the Court."

...In *Michael J Lonsdale Electrical Ltd v Bresco Electrical Services Ltd* (in liquidation) [2018] EWHC 2043 (TCC) at [14], Fraser J said:

> "What these cases make clear is that although the Court has the necessary jurisdiction to grant an injunction in respect of an ongoing adjudication, it will only do so very rarely and in very clear cut cases."

...Lastly, in *Marbank Construction Ltd v G&D Brickwork Contractors Ltd* [2021] EWHC 1985 (TCC) at [12], O'Farrell J said:

> "...it is only in very rare cases that the Court will interfere in the adjudication process by way of injunctive relief..."

...A simple example where the Court might exercise that jurisdiction is where it is plain that the adjudicator would lack jurisdiction so that there could be no purpose in pursuing the adjudication to an unenforceable decision or award."

Conclusion

To summarise, Beck considers that there has nonetheless been a breach of natural justice, that is a matter that can be raised in resisting enforcement. The Technology and Construction Court subsequently refused the Claimant's application for an injunction. Rather, the total costs bill put forward by the respondent to the application, Eros, is £115,436.50.

NEWS & UPDATES:

NEC4 Contracts Now Available in Latin American Spanish

NEC4 suite of contracts has been officially translated into Latin American Spanish, following a landmark agreement between the Government of Peru, NEC Contracts, and the UK Government.

In 2024, a Memorandum of Understanding (MoU) was signed to establish NEC as the preferred contractual framework for infrastructure delivery in Peru. This translation, developed in partnership with Peru's Ministry of Economy and Finance (MEF), is part of a broader effort to strengthen project management through collaboration, transparency, and fair risk-sharing.

Updated JCT Contracts Practice Note to aligned to JCT 2024 Contracts

On 19 June 2025, JCT has released an important update to its practice note 'Deciding on the appropriate JCT contract' to align with the JCT 2024 Edition, which including the upcoming JCT Target Cost Contract. The update reinforces a critical message: amending standard form contracts can introduce legal and commercial risks if not done with care.

The revised guidance supports contract selection across main and sub-contracts and includes updated recommendations for working with BIM under the JCT 2024 framework. Key documents by the JCT include:

- Deciding on the appropriate JCT contract 2024
- Guide to selecting the appropriate JCT main contract 2024
- Guide to selecting the appropriate JCT sub-contract 2024
- Practice Note: BIM and JCT Contracts 2024

The update emphasizes that while JCT forms are designed to provide balanced, industry-accepted frameworks, improper or excessive amendment can undermine that balance—potentially increasing disputes, project uncertainty, or insurance complications.

Thomas Telford Expands Collaborative Contract Suite with FAC-1 & TAC-1 alongside NEC4

Thomas Telford Ltd (the commercial arm of the Institution of Civil Engineers) has expanded the suite of collaborative contracts by adding the Framework Alliance Contract (FAC-1) and Term Alliance Contract (TAC-1) alongside NEC4. NEC Contracts stated that:

"What FAC-1 and TAC-1 bring to NEC users

- A purpose-built framework alliance option – FAC-1 aligns clients, suppliers and advisers around shared goals, clear communication and continuous learning across multiple projects.
- A versatile term-maintenance model – TAC-1 helps long-term alliances drive better value, including integration with BIM and other digital tools.
- Proven performance – FAC-1 is strongly recommended in the UK Government's Construction Playbook and, together with TAC-1, has already underpinned programmes worth more than £45 billion worldwide."

Both FAC-1 and TAC-1 will be available to purchase alongside the existing NEC4 Suite of contracts.

Thank you for reading!

Got a topic you would like us to consider or feature in our next publication?
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