

A MUST READ JUDGMENT FOR ADJUDICATION ENFORCEMENT

- ▶ Court sets out guidance that parties must follow when challenging the enforcement of an adjudicator's decision.
- ▶ This guidance has superseded the "informal approach" set out in the Technology and Construction Court (TCC) Guide.
- ▶ If a defendant does not intend to pay as ordered by the adjudicator, he should preferably at once issue CPR Part 8 proceedings for declaratory relief, rather than seek to resist enforcement proceedings, if and when they come.

What's it about?

When determining the validity of a challenge to an adjudicator's decision, the starting point is that if the adjudicator has decided the issue referred to him and has broadly acted within the rules of natural justice, his decision will be enforced (*Macob Civil Engineering Limited v Morrison Construction Limited* [1999] BLR 93).

Decisions have been upheld on this basis, even when the adjudicator has been shown to have made an error (*Bouygues (UK) Limited v Dahl-Jensen (UK) Limited* [2000] BLR 522). The reason for this is: "the need to have the 'right' answer has been subordinated to the need to have an answer quickly" (*Carillion Construction Limited v Devonport Royal Dockyard Limited* [2006] BLR 15).

It is possible to challenge enforcement proceedings if one of the following exceptions applies:

- ▶ the parties co-operate and agree what the judge will consider; or
- ▶ the defendant has a natural justice/jurisdictional challenge.

However, it has become common practice for defendants dissatisfied with the outcome of an adjudication to raise substantive arguments at enforcement proceedings in the TCC in an attempt to get the courts to overrule an adjudicator's decision (the "informal approach").

Why does it matter?

In *Hutton Construction Limited v Wilson Properties (London) Limited* [2017] EWHC 517 (TCC), Coulson J determined the proper approach where there is no co-operation between the parties.

If the above exceptions do not apply, there will be no defence to enforcement.

Instead, a defendant will have to issue prompt CPR Part 8 proceedings identifying the declaratory relief sought, or at the very least, indicate in a detailed defence and counterclaim to the enforcement claim what it seeks by way of final declarations.

CPR Part 8 proceedings are preferred as the defendant can set out in detail its challenge to the adjudicator's decision and enable the TCC to know from the outset what was going to be involved at a subsequent hearing.

The defendant must also be able to demonstrate that:

- ▶ there is a short, self-contained issue that arose in the adjudication that it continues to contest;
- ▶ the issue requires no oral evidence or other elaboration beyond that which is capable of being provided during an interlocutory hearing; and
- ▶ the issue is one which, on summary judgment application, it would be unconscionable for the court to ignore.

Now what?

Careful thought must now be given when determining whether or not to attempt to resist enforcement proceedings as a defendant who unsuccessfully raises this sort of challenge will almost certainly have to pay the claimant's costs of the action on an indemnity basis.

Who to contact

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