

Before Judge Richard Seymour QC : TCC : 14th August 2002

Zduc Ltd, a firm of architectural builders, contracted on JCT Minor Works 1998 standard form to carry out construction works to a property owned and occupied by Mr & Mrs Baune.. The contract included adjudication provisions.

Zduc referred a dispute for the “*settlement of the final account*” to adjudication in March 2002. During the course of the adjudication, the adjudicator received advice, in the form of a written report, from a quantity surveyor.

The adjudicator made an ruled on the final account sum and went on to order a further sum payable as damages for breach of contract by Baune.

The current action concerned :-

- 1) An application for declaration by Baune
- 2) An application for summary enforcement by Zduc

THE DECLARATION ACTION

Baune sought a declaration that the decision was neither binding nor enforceable, on the grounds that the adjudicator had acted :-

- a) in excess of jurisdiction by dealing with the breach of contract issue and
- b) breached the rules of natural justice by
 - i) taking into account advice comments and conclusions of the quantity surveyor and
 - ii) by not sharing the content of the report with the parties and seeking their comment.

The court held, regarding

- a) With regard to the dispute as referred, the adjudicator was in error and excess of jurisdiction. He had no jurisdiction to combine payment due under the contract with damages for breach of contract.
- b) Under the JCT standard adjudication rules the adjudicator as entitled to seek advice to enable him to reach conclusions in respect of materials submitted to him by the parties. Thus
 - i) There was no breach of the rules of natural justice in involving the quantity surveyor.

(It would appear that the issue as to whether or not the parties should be consulted was not addressed – though in the absence of a full transcript of the decision this may not be the case).

THE ENFORCEMENT ACTION

Since the jurisdiction issue had gone against the claimant, enforcement was declined.

Patrick Clarke (instructed by Last Cawthra Feather, Bradford) for the appellant.

Sarah Hannaford (instructed by Royds RDW) for the respondent.