

**Before His Honour Judge David Wilcox.** TCC. 22<sup>nd</sup> March 2002.

A self confessed “unqualified interior designer” undertook the role of contract administrator for refurbishment works on JCT Intermediate Form terms. A dispute arose about payment on an intermediate certificate. The contractor successfully referred the dispute to adjudication and subsequently sought enforcement.

The adjudicator decided that the employer should pay the contractor the certified sum. The employer had failed to serve any notice of intention to withhold payment under section 111 of the Housing Grants, Construction and Regeneration Act 1996.

In the meantime, the contract administrator at last sought and obtained advice from professionals and produced a final certificate based on his final account which showed that there was a sum due to the employer by way of repayment which exceeded the sum awarded to the contractor. This was because earlier documentation and reports the contract administrator had produced were inaccurate. The contract administrator had initially relied heavily upon figures produced by the contractor and had been misled by the contractor. He had only been able to produce accurate figures once he had received independent advice. The contractor’s final account included “claims” that were unspecified and bore little relationship to the JCT contract. Valuation methods used did not accord with the JCT.

The employer, in the absence of grounds to challenge the validity of the certificate and the correctness of the decision, sought a stay of action pending the resolution of a final account dispute, on the basis that on balance the contractor was indebted to the employer. The employer asserted that the contractor has already received sufficient funds to protect his cash flow but by contrast the contractor’s accounts were in a precarious position and further noted that the adjudicator’s decision was based on a consideration of the contract mechanism not on the merits of the contractor’s claim.

His Honour Judge David Wilcox refused to order a stay on the grounds that the defendant has failed to adduce evidence that in the event that the final account action was successful, the contractor would be unable to repay. Whilst the adjudicator’s decision did not deal with whether or not the sum claimed by the contractor was due that was not determinative proof that the sum was not due (N.B. *issue of the certificate indicates that the employer had at one stage deemed the sum was due*). The aim of the HGCRA was to protect cash-flow and speedy payment, subject to final determination by arbitration/litigation.

Accordingly, execution on the summary judgment was ordered to enforce the adjudicator’s decision, awarding the contractor the sum certified as due from the employer by the contract administrator.