

**JUDGMENT : HIS HONOUR JUDGE DAVID WILCOX** : TCC. 16<sup>th</sup> July 2000.

1. There are several applications before the court. First that of the Claimant's seeking Summary Judgment for £19,723.33 awarded by Mr M D Harris an Adjudicator in his decision of the 10th July of 1999. This was in respect of building works carried out for the Defendant, a Cypriot registered company at Flat 1, The Piper Building, Peterborough Road, Fulham, London, SW5.
2. The Defendants seek an order that the Claimant's claim in the proceedings be stayed, alternatively the judgment which the Claimant may obtain to these proceedings be, stayed pending the determination of the Defendant's claim against the Claimants in respect of the building works at Flat 1, Piper Building, referred to arbitration under a Notice dated 18th January 2000. The Defendants assert that the value of their claim will exceed that claimed by the Claimant in these proceedings and their belief that the Claimant will not be in a position to pay such a sum ordered to be paid to the Defendant in respect of their claim and that the Defendants will not be able to recover any sum which is required to be paid to the Claimants.
3. The Flat at 1, Piper Building, renovated under a construction contract was for the occupation of Mr Ayoub Farid M Saab who is a Director of the Defendant company which is owned and controlled by him for the benefit of his family. Mr Saab holds a Power of Attorney for the Defendant company in relation to the purchase, holding and disposition of movable and immovable property without limit of time or place.
4. The Defendants original contention that the contract was for work done on a residential dwelling, and therefore fell within the exception contained in Section 106 of The Housing Grants and Regeneration Act of 1996 (the Act) was not pursued before me. A limited company cannot be the residential occupier of a dwelling house.
5. The building works were carried out pursuant to a JCT agreement for Minor Building Works (1980 edition) as reprinted with amendments in March of 1993. The Adjudicator's decision was that the Defendant to pay the Claimant £17,434.69 together with his fee and interest, such a decision to be complied with peremptorily. The Defendant has failed to comply with the Adjudicator's decision.
6. It is common ground that there being no adjudication provisions in the contract, Section 108 of the Act applies. and the adjudication provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (the Scheme) apply.

Regulation 23(2) of the Scheme provides that: "*The decision of the Adjudicator shall be binding on the parties and they should comply with it until the dispute is finally determined by legal proceedings by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) otherwise by agreement between the parties.*" (emphasis mine)

7. The JCT Agreement for Minor Building Works contains an arbitration clause in the following terms:  
*"Article 4. If an dispute or difference as to the construction of this Agreement or arty other matter or thing of whatsoever nature arising thereunder or in connection therewith... shall arise between the employer or the architect (the contract administrator on his behalf and the contractor either during the progress, or after the abandonment of the Works, or after the determination of the employment of the Contractor arid it shall be and is hereby referred to arbitration in the accordance with clause 9...*
8. Mr Roger Smith argues that notwithstanding the Act and the Scheme the Defendants are nonetheless entitled to apply for a stay under Section 9 of the Arbitration Act of 1996 Since the dispute has arisen and the valid Notice has been given referring the dispute to arbitration under a clause which is not "*null and void; inoperative or incapable of being performed*". He relies upon a passage in the Judgment of Henry L. J. in *Halki Shipping Corporation V. Sopex Oils Limited* 1998 1WLR page 726, at page 746c "*...the parties were without qualification, agreeing to a form of dispute resolution alternative to that provided by courts*".
9. It is clearly the position in law but in relation to construction contracts after the 1st of May 1998 under the Act parties were required to make provision for the adjudication of disputes in their contracts and where they did not do so then the Scheme regime was implied.

10. The claim in these proceedings is to enforce the Adjudicator's peremptory decision. By virtue of the Act and the implication of the statutory Scheme into the JCT Minor Works Contract, the determination by an Adjudicator and its enforcement is entirely without prejudice to the final merits and determination by the Arbitrator under the parties' chosen Scheme. On this claim I consider that the Defendant has no defence. I therefore give Summary Judgment to the Claimants in the sum of £19,723.00.
11. The Defendant has late served statements putting into question the Claimant's financial viability and contends that I should stay judgment pending the outcome of the Defendant's substantial claim now referred to arbitration. To do so would frustrate the Scheme. - Whilst the Claimant has admitted an irregularity in making its company returns, it asserts in an Accountants statement put in at the hearing that the proper notification of Directors has been made and has now been filed at Company's House. I am not in a position to judge the financial standing of either company. It is not desirable that I should on such limited evidence before me, neither is it desirable to do so on such an application. It is entirely possible that if there is any impecuniosity in the Claimants, it could derive from the Defendant's default. I do not know what the timetable for the arbitration is or what their solution will be by the Arbitrator or agreement. The purpose of the Scheme is to provide a speedy mechanism for settling disputes in construction contracts on a provisional interim basis and, by requiring decisions of Adjudicators to be forced pending final determination of disputes by arbitration, litigation or agreement, whether those decisions are wrong in point of law or fact, if within the terms of the reference. It is a robust and summary procedure and there may be casualties although the determinations are provisional and not final. See *Bouygues U.K. Limited v. Dahl-Jensen U.K. Limited* TCC Dyson J judgment of the 17th November of 1999 at Paragraph 35.
12. In addition to judgment I give costs assessed in the sum submitted by the Claimants less £250.00.