

**Before His Honour Judge Richard Havery.** TCC. 20<sup>th</sup> August 2004.

This dispute concerned a residential construction contract outside the remit of the HGCRA. The contract arose out of an exchange of letters between the parties, commencing with a written offer from the claimant to the defendant to carry out construction works on his home on the terms of a '*JCT Standard Form of contract with Contractor's Design, 1988 Edition*'. The letter referred to various insurance issues and concluded that in the event of an irreconcilable dispute the terms of the JCT would apply. A dispute arose and was successfully referred to adjudication by the claimant contractor. The defendant did not pay. The claimant here sought enforcement and the adjudication decision.

The point taken during the enforcement action was whether or not there had been consent to adjudication between a contractor and his residential occupier client. Whilst the exchange of letters at the outset of the program had indicated that the contract was subject to the JCT Form 1988, there is no such contract. Since it was unclear whether the evident typographical error related to the 1981 (*which contains no adjudication provisions*) or to the 1998 edition, (*the letter referred to the contract being subject to the principals of the JCT Form rather than to the JCT itself, and identified specific clauses*) the adjudicator had no jurisdiction to hear the dispute.

The court agreed with the defendant and consequently declined to enforce the decision. The court observed that if no date had been mentioned, the court would have inferred that the 1998 edition applied.

**Note :** The court held that there was a contract, so the dispute could proceed to litigation. If the HGCRA had applied, then there would have been no problem with adjudication since the Scheme would apply in the absence of contractual adjudication terms in compliance with the Act.

Anthony Speaight QC (instructed by Burges Salmon, Bristol) for the claimant;  
Serena Cheng (instructed by Eversheds) for the defendant.