ADJUDICATION CASE SUMMARIES R

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Rainford House (in Receivership) v Cadogan [2001] HT 01/014

This case concerned an application for enforcement where the enforcing party was in receivership. The court contrasted the situation where a claimant party is in liquidation where *"it is inevitable that the process contemplated by Rule 4.90 of Insolvency Rules 1986 will be undertaken"* but went on to state that *"that is not the position in a case in which the claimant is a company in administrative receivership. In the latter case one cannot tell what the outcome of the receivership will be. In a case in which there is not, inevitably, a need for a determination more or less as matters then stand between the parties of the net state of accounts, in which process the correctness of the decision of the adjudicator must be evaluated, and there is not otherwise any defence to a claim to enforce the award of an adjudicator, it seems to me that the factors which led Chadwick LJ in* ***Bouygues (UK) Ltd. v. Dahl-Jensen (UK) Ltd.*** *to consider that it would not be appropriate to give summary judgment at all are not present. However, if there is credible evidence that the claimant is insolvent, in my judgment that is a highly material matter for the court to consider in relation to any application for a stay of execution of the judgment in favour of the claimant.."*

In the circumstances the court determined that credible evidence of insolvency had been adduced and not disproved. The court considered that it was appropriate to order enforcement, but noting that there was a danger that if a current counterclaim were to be successful it would be unlikely that that counterclaim would be met if Rainford received and dispersed the funds. Accordingly the court held that a temporary stay of enforcement be ordered pending the outcome of that action. ***Herschell Engineering Ltd. v. Breen Property Ltd***. considered. His Honour Judge Richard Seymour. TCC. 9th February 2001.

Rankilor (1) & Perco Engineering Service Ltd (2) v Igoe (M) Ltd [2006] Adj.L.R. 01/27:: NADR

This case concerned two enforcement actions (1) for monies due pursuant to an adjudicator's decision and (2) payment by the losing applicant for a equal share of the adjudicator's fee. Perco had been retained to carry out boring works. The boring machine failed to bore out one area and took additional time to bore out another. The contract was terminated and traditional excavation methods adopted using an alternative contractor. Due to insufficient data on ground conditions, the contractor had undertaken to carry out the work within 10 days on the basis of normal ground conditions, excluding liability for delay or inability to bore if he encountered unexpected ground conditions.

The client's view was that he had tendered out for boring through clay. The ground was clay and thus there was nothing unexpected about the ground conditions. The problem was due either to worn out boring machinery or inexperienced operators. The contractor's case was that the ground conditions were not normal and prevented the machine functioning or functioning properly. Paperwork established that the boring machine was only 18 months old.

The adjudicator found that the ground conditions were unexpected. This decision was reinforced by his conclusion about why the boring equipment did not perform effectively, which he reached by relying on his own geological expertise. This view differed from that of the claimant and the defendant. The defendant asserted that he has been deprived of an opportunity to address this latter issue which was not canvassed in the adjudication.

The court found that the claimant in the adjudication (here the defendant) had failed to prove his case viz. normal conditions. Whilst the contractor's theory as to the cause of the loss differed from that of both the client's expert and also the adjudicator's alternative explanation (adduced from technical reports of both parties), the adjudicator was entitled to conclude that the conditions were unexpected.

The adjudicator did not have to share all provisional views with the parties. The parties between them had raised all the technical data relied upon by the adjudicator. The defendant had chosen to rely on a bold assertion that the ground conditions were normal, without adducing any proof. He had failed to prove that the machine was defective or adduce evidence of incompetence. He did not adduce any evidence as to why the machine was ineffective. That was his choice. He was not obliged to do so, but a failure to do so meant

that the adjudicator was left to reach his own preliminary conclusions. These conclusions were not at odds with the evidence. Accordingly there was no breach of the rules of natural justice. Both decisions enforced.

Carillion Construction Ltd v Devonport Royal Dockyard Ltd (*Jackson J)* applied. ***Bouygues, C&B Scene: Levolux Discain, Balfour' Beatty; Pegram Shopfitters*** considered. ***Balfour Beatty v London Borough of Lambeth*** *[2002] distinguished.* His Honour Judge Gilliland. TCC. Salford District Registry. 27th January 2006.

COMMENT : Whenever an arbiter adjudicates on a dispute it is inevitable that the decision will be influenced / guided by the arbiter's personal knowledge, experience and understanding. That is one of the reasons why the arbiter is appointed in the first place, so it cannot in itself be a ground for complaint. It is not surprising that when this leads an arbiter to a conclusion which differs in some way from the views of the parties, the losing party might, as in this case, feel aggrieved. The crucial factors, when this occurs are 1) that neither party is deprived of an opportunity to put their case and 2) the arbiter does not make the case for one party, to the detriment of the other or 3) disadvantage a party by expanding the scope of the dispute to cover issues not introduced and canvassed by the parties. Adjudication in particular is subject to strict time constraints. There is some leeway in arbitration for the parties to grow the dispute during the course of the arbitration, but, as was clearly demonstrated in ***All in One v Makers*** *[2005]* in adjudication jurisdiction is limited to the matters raised in and directly related to the notice of intention / referral document unless the parties otherwise agree to extend jurisdiction to other issues. In particular, there is no value in making a major issue or dispute over something the decisions do not turn on.

R C Pillar & Son v The Camber [2007] EWHC 1626 (TCC)

The defendant mounted a rainstorm of defences to an application for an enforcement of an adjudication decision including :- no written contract ; if a contract – wrong contract – replaced by a substitute contract : no dispute crystallised. The court rejected all defences. In particular since the defendant had introduced a counter-claim not related to set off against the claim he had made an ad hoc submission to jurisdiction which the claimant had acceded to. HHJ Thornton. TCC. 15th March 2007

Re A Company (number 1299 of 2001) [2001] EWHC Ch.Div.

GAL were subcontracted by CCL to carry out roofing works pursuant to a main contract with Landreach. GAL had during the course of construction put in two successive payment applications. The sums were duly certified for payment. No withholding notices had been issued in respect of either and a balance of £9K+ was outstanding. GAL issued a statutory demand for payment and threatened to commence winding up proceedings if the claim was not met. CCL then obtained a restraining injunction preventing GAL from proceeding with the winding up motion. In this action Gal seeks to set the injunction aside.

CCL's case was that following an adjudication and a negotiated settlement with Landreach, which was recorded in an adjudication decision, CCL had suffered loss due to defective roofing and guttering work carried out by GAL. Accordingly CCL sought to maintain the injunction pending action against GAL for defective works. The court found applying the test in ***Seawind Tankers Corporation v Bayoil S.A.*** *[1999] Lloyds Rep 210* that whilst there might be a viable claim, CCL had not taken prompt action at an earlier stage to litigate this dispute when it had ample opportunity to do so. In consequence the claimant had the right to assert the debt and proceed to motion for winding up. There was a reasonable prospect that the court hearing the motion might refuse to take on board the counterclaim for want of prosecution. ***Cadiz Waterworks v Barnett****, LR 19 Eq. 182.* ***Greenacre v Group*** *[2000] BCC 11)* noted.

David Donaldson Q.C. Chancery Division, High Court. 15th May 2001.

Re : A Company (5606 of 2001) : A M Environmental Services [2001] EWHC Ch.Div.

A petition for winding up of a construction company was refused by Mr Justice Hart on the 14th November 2001. The petitioner had not issued a withholding notice against the company - so potentially, pending outcome of this dispute, the company might be in credit to the petitioner. ***Sea Wind Tankers Corporation v Bay Oil*** *and* ***Re A Company (1299 of 2001)*** applied.

His Honour Mr Justice Hart. Chancery Division, High Court. 14th November 2001.

Redworth Construction Ltd v Brookdale Healthcare Ltd [2006] EWHC 1994 (TCC)

The court held that an adjudication decision was non-enforceable because there was no written contract for the purposes of s107 HGCRA, at least on the terms argued by the applicant for enforcement at the adjudication. The applicant could not change the pleadings in respect of what contract applied at enforcement. The adjudicator found that there was the contract was on JCT standard form, whereas the court held that this was not the case. There had been much discussion about using the JCT but this had never been formalised and there were a wide range of discussions, both written and oral about the terms of the contract, but much of what occurred developed on an ad hoc basis. There was a dispute that falls for determination - presumably at an alternative forum. ***RJT v D.M.Engineering*** considered.

His Honour Judge Havery. TCC. 31st July 2006

Reinwood Ltd v L Brown & Sons Ltd [2008] UKHL 12

Withholding provisions HGCRA. JCT clause 24 : Certificate of non completion issued together with notice : Certificate subsequently withdrawn but no replacement notice served. Did the original notice continue to be valid? Yes – in the circumstances since nothing to the contrary in the contract terms. ***Melville Dundas Ltd v George Wimpey UK Ltd*** [2007] UKHL 18 considered.

House of Lords before Lords Hope; Scott ; Walker ; Brown : Neuberger. 20th February 2008.

Rentokil Ailsa Environmental Ltd v Eastend Civil Eng Ltd [1999] CILL 1506

This concerned minor engineering works over 15 sites, with contracts spanning the period during which the HGCRA came into force. Three post HGCRA contract dispute were referred to adjudication. Rentokil asserted counterclaims for defects but never quantified them at the adjudication. The adjudicator found for Eastend who ultimately commenced enforcement proceedings. The day before the hearing Rentokil sent a cheque for the full amount of the decisions but simultaneously secured an arrestment as security for defects claims that exceeded the value of the cheque. Arrestment is a process peculiar to Scotland, whereby the arrested funds are secured by the court.

At first instance Sheriff Gilmour found that the arrestment was an abuse of the HGCRA process and held that there could be no set off against subsequent claims. There had been no withholding notices. Accordingly the decision became immediately enforceable. Lanark Sheriff Court.12th March 1999.

On appeal, Sheriff Principal Cox confirmed that there could be no arrestment in respect of matters covered by the adjudications. However, he upheld the general right under Scottish Law to apply for an arrestment, and permitted arrestment in respect of claims that concerned disputes not referred to the adjudicator.

Macob Civil Engineering Ltd v Morrison Construction Ltd *1999 :* ***Hydraload Research and Development Ltd v Bone Connell and Baxters Ltd*** *1996 SLT 219* considered. Sheriff Principal Cox. 31st March 1999.

R.G.Carter Ltd v Edmund Nuttall Ltd [2000] EWHC HT 00 230 (TCC) ; [2002] BLR 312

The parties contract on Dom/1 1998 terms with an additional clause 41 to the effect that the parties should engage in *"mandatory mediation prior to any adjudication procedure being commenced,"* coupled with an agreement to submit disputes to a named adjudicator. The other party submitted a dispute to adjudication following the standard JCT procedure and RICS appointed an adjudicator. The applicant here requested an injunction against the continuation of this adjudication or alternatively a declaration that the adjudicator appointed by RICS did not have jurisdiction.

A problem arose as to whether or not there was a construction contract, and if so which documents constituted the contract. The court determined that provided the essential elements of a contract evidenced in writing could be adduced there was a valid contract for the purposes of the HGCRA and it did not have to be a distinct and cohesive, all embracing and finally determinative document that covered all relevant terms. Further more both parties accepted that there was a construction contract.

There appear to have been documents and provisions that related to the old Dom/1 1980 version which contained stakeholder provisions. The court determined that these were contradictory to the current contract and therefore disregarded them. In the circumstances this resulted in the terms in respect of a named adjudicator being set aside – and hence the RICS appointment stood.

The court also determined that since the HGCRA requires that a contract provide an unhindered right to refer a dispute to adjudication, the pre-adjudication mediation provision was unenforceable.

Thus, in all the circumstances of the case, the declaration was refused.

His Honour Judge Anthony Thornton. TCC. 21st June 2000.

R.G.Carter Ltd v Edmund Nuttall Ltd [2002] EWHC HT 02-121 (TCC) : BLR 359

Meaning of Dispute : Can an adjudicator deal with additional matters not contained in the notice of adjudication? Full referral needed : Court will not interfere with appointment and stay adjudication even though defendant objects – but possible that enforcement may not subsequently be granted.

His Honour Judge Peter Bowsher. TCC. 18th April 2002.

CROSS REFERENCE : ***Edmund Nuttall Ltd v R G Carter Ltd. [2002] EWHC 400 (TCC).*** before His Honour Judge Richard Seymour. TCC. 21st March 2002. regarding an earlier but distinct and separate dispute referred to adjudication.

Ringway Infrastructure Services Ltd v Vauxhall Motors Ltd No1 [2007] EWHC 2421 (TCC)

Ringway had been engaged by Vauxhall to construct a new vehicle distribution centre. The form of Contract was the JCT With Contractors Design 1998 incorporating amendments 1 to 5. A dispute had arisen over payment and Ringway referred the dispute to adjudication. Under this particular Contract, clause 30.3.5 states that in the event that neither a payment and/or a withholding notice is issued the Employer shall pay the Contractor the full amount applied for in the Application for Payment. The Employer had issued a withholding notice but not until a number of weeks after the final date for such issue. The Adjudicator decided that Vauxhall should pay Ringway £1,303,704.95 plus VAT and interest together with the Adjudicators fees.

Ringway applied for summary judgement for enforcement of the Adjudicators decision.

Vauxhall raised a number of jurisdictional defences. In particular Vauxhall claimed that the Adjudicator did not have jurisdiction to decide on Ringways entitlement to payment for an interim valuation and that the dispute should only deal with any final value. Further that as Ringway had not raised the issue of Vauxhall's failure to issue notices per 30.3.3 and 30.3.4 prior to the Adjudication, he had no Jurisdiction to decide that in the absence of these proper notices being issued, pursuant to clause 30.3.5, Ringway was entitled full payment of the net interim application figure.

The Court held that the Interim Application Number 11 was a valid claim for payment in accordance with the Contract provisions and that the Adjudicator as such had jurisdiction. In respect of clause 30.3.5 it was held that the "*fact that there was no express or specific reliance on Clauses 30.3.3 and 30.3.5 does not alter the fact that there was a clear claim for payment*". Vauxhall's failure to issue a notice in accordance with 30.3.3 led to the application of clause 30.3.5 and the monies applied for were payable.

Vauxhall also failed in challenging jurisdiction in that they could not rely on Ringway failing to issue an invoice as preventing the payment becoming due. An invoice required in accordance with clause 30.3.6.1 is triggered by the payment notice per clause 30.3.3, which Vauxhall had failed to provide. The court further stated that "*It cannot be open for an Employer in those circumstances by reason of its own breach to defer its obligation to pay indefinitely*".

Held: Adjudicators decision was enforceable.

Regarding the meaning of a dispute and crystallisation ***Macob v Morrison*** [1999] BLR 93, ***Bouygues v Dahl-Jensen*** [2000] BLR 522). ***Carillion v Devonport*** [2005] BLR 310; ***Thomas Frederic's v Keith Wilson*** [2004] BLR 30 : ***Amec v S.S for Transport*** [2004] EWHC 2339 (TCC), ***Collins v Baltic Quay*** [2005] BLR 63. ***F&G Sykes v Fine Fare*** *[1967] Lloyd's Rep 53;* ***Monmouthshire County Council v Costelloe & Kemple Ltd*** (1965) 5 BLR 83: ***Fastrack v Morrison*** [2000] BLR 168: ***AWG v Rockingham*** [2004] EWHC 88 (TCC) considered.

Summary by Nick Turner. Judgement Mr Justice Akenhead. TCC. 23rd October 2007

Ringway Infrastructure Services Ltd v Vauxhall Motors Ltd No 2 [2007] EWHC 2507 (TCC)

Interest, post enforcement runs from the date of the court judgement, not from the date when monies were due under the contract – which matter was one for the adjudicator, not the court.

Mr Justice Akenhead. TCC. 30th October 2007.

Ritchie Brothers (PWC) Ltd v. David Philp (Commercials) Ltd [2004] ScotCS 94

This involved a construction adjudication under the Scheme. Due to delivery problems with the referral document the adjudicator started late. Later the adjudicator requested an extension which was potentially outside the 28 day period. Enforcement was resisted on the grounds that an extension could not be granted if requested outside the 28 day period and so the adjudicator was by analogy with arbitration law, functus officio. The court held that the 28 day period commences when the referral document is sent to the adjudicator, not when the adjudicator receives it. Under the Scheme, the relevant date of the decision is when it is finalised, not when it is delivered to the parties. Unlike arbitration, the adjudicator does not automatically become functus officio after 28 days in the absence of an extension, but rather if and when either party terminates the adjudication for delay and appoints a replacement adjudicator. This had not happened and so the decision was enforceable.

St Andrews Bay v HBG 2003. ***Blyth's Trustees v Kaye*** 1976 SLT 67, ***A v B*** 2002. ***Costain v Strathclyde*** 2003; ***Gillies Ramsay v PJW*** 2003. ***Construction Centre v Highland Council*** *[2002].* ***Simons v Aardvark*** [2003]. ***Macob v Morrison*** [1999]. ***Watson v Harrison*** 2002 considered

Lord Eassie. Outer House, Court of Session. 14th April 2004.

Ritchie Brothers Ltd v. David Philp Ltd [2005] ScotCS CSIH_32

The first issue related to when time started to count for the purpose of the 28 day rule under the HGCRA. By a majority the court went for the earlier of the two dates, namely when the referral was issued, rather than the date when it was received by the adjudicator. Consequently, his decision was delivered late if time started to run from the day the Post Office first attempted to deliver the documents. Reversing the court at first instance, the majority held on appeal that in the absence of an extension the adjudicator's jurisdiction expired after 28 days. The court noted that the problem was avoidable since the adjudicator could and should have requested an extension before time ran out. Once the period expired it was too late to seek an extension. The decision was not therefore enforceable.

Blyth & Blyth's Tr v Kaye, 1976 SLT 67; ***Gillies Ramsay v PJW*** 2004. ***Macob v Morrison*** [1999]; ***Ballast v Burrell*** 2003. ***Simons v Aardvaark*** [2004]. ***St Andrew's Bay v HBG,*** 2003; ***Barnes & Elliot v Taylor Woodrow*** [2004] considered.

Lord Justice Clerk, Lords Abernethy and Nimmo Smith. Second Division. Inner House Court of Session. 24th March 2005.

RJT Consulting Engineers Ltd v DM Engineering Ltd [2001] EWHC HT 35/01 (TCC) : [2002] BLR 217

Declaration sought to confirm a Construction Contract in existence : Initial oral contract supported by subsequent correspondence complied with requirements of s107 – declaration of non-compliance refused.

His Honour Judge Mackay. TCC. 9th May 2001.

RJT Consulting Engineers Ltd v DM Engineering Ltd [2002] EWCA Civ 270

Declaration : Initial oral contract supported by subsequent correspondence complied with requirements of s107 – declaration of non-compliance refused. ***RG Carter v Edmund Nuttall***. 2000. ***Grovedeck v Capital Demolition*** 2000 considered. CA before Lord Justice Auld, Ward and Robert Walker. 8th March 2002.

Robert Cunningham v Collett & Farmer (a firm) [2006] EWHC 148 (TCC) : Bailli

This report is concerned with an interim costs hearing. The court provides a detailed analysis of the procedure to be applied when assessing costs thrown away. ***Lownds v Home Office*** [2002] EWCA Civ 365; and ***Bryen & Langley Ltd v Martin Boston*** [2005] EWCA Civ 973 applied. A two stage process should be adopted. First, were costs disproportionate and second, assess what would be reasonable, rather than simply comparing the costs summaries of the parties.

The claimant property developer cancelled a construction contract, dismissing the contractor and the architect. The claimant was previously ordered by an adjudicator to pay outstanding fees to the architect and sought to recover his losses by commencing a professional action to recover £0.5M. Costs (the subject of this hearing) were thrown away by delays caused because the claimant's pleadings were not in good order. The claimant's first legal team asked for a postponement because the claimant might be a might be a patient under the Mental Health Act. The claimant refuted this and appointed a replacement legal team. An agreement was brokered whereby the first legal team agreed to pay the costs thrown away by the applications for

postponement. This trial was therefore concerned with the assessment of those costs, and the costs of this assessment. The court concluded that the claimant was responsible for most of the problems related to the conduct of the trial to date, noting that the final figure that would be claimed for negligence once the pleadings were put in good order, was likely to be considerably less that appeared at that time.

The trial of the negligence action is pending, so no comment can be made at the current time.

Coulson QC HHJ Peter. TCC. 9th February 2006.

Robert McAlpine (Sir) v Pring St Hill [2001] EWHC 779 (TCC)

Enforcement of decision : R won an adjudication against P for damage : P commenced an adjudication against R for non payment and sought a stay pending decision. Failed. ***VHE v RBSTB*** [2000] ***Outwing v Randall*** 1999. ***Macob v Morrison*** 1999 considered. His Honour Judge Moseley. TCC. 2nd October 2001.

Rohde Construction v Markham-David [2006] EWHC 814 (TCC)

A contractor submitted a payment dispute to adjudication. The defendant separated from his wife and they both moved to separate addresses. The property was occupied by tenants who were in dispute with the defendant. All communications in respect of the adjudication were sent to this address and not forwarded on to the defendant. Consequently neither the notice of intention, appointment or referral were communicated to defendant. The adjudicator delivered a default judgment. This was not honoured and the contractor commenced this enforcement action.

Should this default adjudication decision be enforced? In the circumstances the court held that there was a real possibility of the claim being successfully defended. Accordingly, the court set aside the decision and the case was set down for trial.

A challenge based on the decision being delivered out of time was rejected. Court referred to ***Barnes and Elliott Limited v Taylor Woodrow Holdings Limited*** [2003] EWHC 3100; ***Simons Construction Limited v Aardvark Developments Limited*** *[2003] EWHC 2474* and held that a slight delay is not fatal.

Contrary to the general rule that adjudication procedures should not be finely nit-picked through, as per ***Carillion Construction Limited v Devonport Royal Dockyard*** *[2005] EWCA Civ 1358* in the circumstances the business address of the defendant was well known and it would not have been difficult to contact the defendant to make sure he knew of the proceedings, so this was a rare case where enforcement might be denied. Mr Justice Jackson. TCC. 20th March 2006

Rhode v Markham-David (No 2) [2007] EWHC 1408 (TCC)

Validity of default adjudication where the defendant recieved no notice of the process. Held : The adjudication process is invalid - so the adjudication decision is unenforceable. Application dismissed with costs - following the previous determination of Jackson J setting aside a default enforcement judgment in 2006. HHJ Thornton. TCC. 26th March 2007

ROK Build Ltd v Harris Wharf Development Company Ltd [2006] EWHC 3573 (TCC)

Final Account Dispute – application of Cl 30 JCT 1998 with contractors design discussed. Identify of contractor changed during project - identify of subsidiary etc confused - resulting in an arguable case that adjudicator had no jurisdiction (*though identify whilst discussed does not appear to have been contested in the adjudication*) and thus arguable that claimant not entitled to summary judgement (actual outcome is not clear from the transcript).

Meaning of Dispute - existence of dispute considered : There was clearly a dispute. ***Carillion Construction Limited v. Devonport Royal Dockyard*** [2005] 1 BLR p.310, ***Collins Limited v. Baltic Quay Management*** [2005] 1 BLR 63 considered.

Finally, there was a dispute as to whether or not the parties had agreed not to enforce the adjudication whilst negotiations were on-going. A sum had been paid on account. The court held that the commencement of enforcement indicated that negotiations had ended. There could be no enforceable agreement to negotiate in good faith. ***Walford v. Miles*** [1992] 2 A.C. at p.128 applied.

HHJ David Wilcox. TCC. 15th December 2006

COMMENT : The moral of the story here seems to be that if the legal identity of a contractor changes during the course of a project it is essential to get the change approved and signed off to prevent any subsequent

attempts to avoid payment.In particular where there is a parent and subsidiary companies involved it is equally important to ensure that all communications are correctly headed with the appropriate contracting body, particularly where the parent and subsidiary and satellite subsidiaries are trading out of the same office. Devices such "as trading as" may not be enough to provide protection.

Roscco Civ Eng v Dwr Cymru Cyfyngedic [2004] EWHC HT-03-190 (TCC)

This concerned an application for enforcement of an adjudicator's decision, before Recorder Dermod O'Brien. During the course of a construction contract the contractors went from a partnership to an incorporated company and from then on added Ltd to their letterhead. A dispute arose as to the value of materials used which was referred to adjudication by WW against the Ltd Company. The adjudicator queried the discrepancy between the initial and subsequent identify of the contractor but received no reply. WW lost and resisted enforcement on the grounds that the contracting party was the partnership and hence, since the Company was not a party to the contract the adjudicator lacked jurisdiction. WW asserted that the Company was liable to carry out all works submitted to it but that WW owed no responsibilities to the company. The court held that having conceded the current trading name of the other party at adjudication it was not open to the defendant to resist payment because that was not the name used in the original contract. There was a mutual estoppel that meant neither party could resist the decision on those grounds.

The court also considered what amounts to a "written" construction contract for the purposes of the HGCRA and determined that there was an oral contract on written terms which could be validly referred to adjudication.

Macob v Morrison [1999], ***Bouygues v Dahl Jensen*** [2002]; ***C&B Scene v Isobars*** [2002]. ***Amalgamated Investment & Property v Texas Commerce International Bank*** [1982] QB 84. ***Furness Whithy v Metal Distributors*** [1990] 1 Lloyds Rep 238). ***Thomas-Fredric's v Wilson*** [2004]. ***Grovedeck v Capital Demolition*** [2000]. ***RJT v DM Engineering*** [2002]; ***Pegram v Tally Weil*** 2004. ***Nordot v Siemens*** .2000. ***Fasttrack v Morrison*** [2000] considered. Deputy Judge Mr Recorder Dermod O'Brien QC. TCC. 15th July 2004.

RSL (South West) Ltd. v Stansell Ltd. [2003] EWHC 1390 (TCC)

The adjudicator engaged a consultant to provide an expert report. He provided a summary of the initial report to both parties, but did not provide either party with a copy of the initial or the final report. The adjudicator took the report into account in making his decision. The court held that this amounted to a fundamental breach of the rules of natural justice, and the right of a party to know the full details of the case against him and to be afforded an opportunity to respond to that case. In consequence the decision was struck down.

As a second line of attack the claimant sought to have the element of the decision based on the report severed from other elements of the decision so that sums ordered to be paid in respect of those other elements be ordered even though the sums arising out of the report based part might not be enforceable. The court held that whilst such a course of action might be sustainable under Scots law, under English law there could be on severance of a single claim or dispute. The entire decision stood or fell on the basis of natural justice. His Honour Judge Richard Seymour. TCC. 16th June 2003.

Comment : Whilst it appears that a reference for multiple disputes could be severable under English Law, since only one dispute can be referred at a time to adjudication, severance would appear to be limited to arbitration.

RSL Southwest Ltd v Stansell Ltd [2003] EWCA 1319 : Adjudication.co.uk

Application for appeal against the decision of Seymour J where the decision of an adjudicator was not enforced on the grounds of breach of due process granted. Whilst the respondent's case against cherrypicking enforceable elements out of an otherwise unenforceable decision was strong, this was an important issue that the CA should consider. (In the event it appears that the appeal was not pursued).

CA before Sir Andrew Morritt VC and Lord Justice Peter Gibson. 4th September 2003.

Rupert Morgan B.S.Ltd v David & Harriett Jervis [2003] EWCA Civ 1563

Witholding Notices : Sum incorrectly certified as due by architect : Client refused to pay : no withholding notice issued : Held : Must pay and subsequently could seek to reclaim in court action. ***SL Timber v***

Carillion [2001]. ***KNS v Sindall*** (2000). ***Whiteways v Impresa*** (2000), ***Millers v Nobles*** (2000). ***Woods v Hardwicke*** [2001] .***VHE v RBSTB*** [2000]. ***Clark v Burrell*** [2002] considered.

CA before Lord Justices Scheimann, Sedley and Jacob. 12th November 2003.