

# ADJUDICATION CASE SUMMARIES K



LAST UPDATED 25<sup>th</sup> OCTOBER 2006

**Karl Construction Ltd v. Palisade Properties Plc [2002] ScotCS 350**

Human Rights Act & HGCRA : Arrestments and inhibitions under Scottish Law Considered – Implications of HRA to striking out for lack of diligence in pursuing a suit.

Lord Drummond Young. Outer House, Court of Session. 14<sup>th</sup> January 2002.

**Karl Construction Ltd v Sweeney Civil Engineering (Scotland) Ltd, [2000] ScotCS 330**

Payment provisions : Parties cannot agree that a contract complies with the Payment Scheme - only the adjudicator/court.

Lord Caplan. Outer House, Court of Session. 21<sup>st</sup> December 2000.

**Karl Construction Ltd v Sweeney Civil Eng. Ltd [2002] SLT 312P/872/00**

Payment provisions : Parties cannot agree that a contract complies with the Payment Scheme - only the adjudicator/court.

Lords Marnoch, Dawson and Clarke. Extra Division, Inner House, Court of Session. 22<sup>nd</sup> January 2002.

**Ken Biggs v Norman [2004] Adjudication Soc. [2004] All ER (D) 20 (Aug)**

This dispute concerned a residential construction contract outside the remit of the HGCRA. The point taken during an enforcement action was whether or not there had been consent to adjudication between a contractor and his residential occupier client. An exchange of letters at the outset of the program indicated 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 1981 or 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. Consequently, the court declined to enforce the decision.

His Honour Judge Richard Havery. TCC. 4<sup>th</sup> August 2004.

**COMMENT :** If the correspondence had referred simply to the JCT without a date it is likely that the court would have inferred that it was a reference to the current edition, in which case the decision would have been enforceable.

**Ken Griffin & John Tomlinson v Midas Homes Ltd [2000] EWHC] TCC : [2001] 78 Con LR**

Notice of intention : Notice failed to clearly identify all the issues subsequently referred : Only the one clear matter enforceable and claimant liable to costs on the rest.

His Honour Judge Humphrey Lloyd. TCC. 21<sup>st</sup> July 2000.

**Kier Regional Ltd (t/a Wallis) v City & General (Holborn) Ltd [2006] EWHC 848 (TCC)**

Kier was the contractor under a construction contract for refurbishment works what was subject to delays. Kier sought via adjudication to recover for loss and expense. The defendants introduced an expert report as evidence in their response. The adjudicator chose to disregard that expert evidence on the grounds that it had not been available to the parties at the time when the dispute crystallised.

The defendant asserted breach of due process and accordingly resisted enforcement. The court held that, even if in error, if the adjudicator decided on an analysis of facts or law that it was irrelevant it was within his jurisdiction to so decide. This is an inherent risk within adjudication.

*Buxton Building Contractors Ltd v Governors of Durand Primary School* [2004] considered. *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2002] applied.

His Honour Mr Justice Jackson. TCC. 6<sup>th</sup> March 2006.

**Knapman R J Ltd. v Richards [2006] EWHC 2518 (TCC)**

The defendants contracted with the claimant builders to build a pair of semi-detached houses. A dispute arose as to who was responsible for the supply of windows and in respect or entitlement to an extension of time. The claimant submitted the dispute to adjudication. He lost on the window claim, but prevailed in part on a claim for an extension of time. The adjudicator also found that there had been no practical completion and that there was outstanding work to be completed.

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The defendant had made significant deduction (£41K). The adjudicator found that £18.2K had been incorrectly deducted and awarded this sum plus interest to the claimant. In this action the claimant sought to enforce that decision.

The respondent concluded the failed portion of the EOT claim gave rise to LADs and sought to set off LAD's against the adjudicator's decision, resulting in a negative balance due to the respondent of £3K. Initially the respondent further asserted that the claimant had unreasonably suspended the works and requested that the claimants arrange to complete the works but concluded that the claimant was not going to complete the works and terminated the contract. The court concluded that there was an ongoing dispute about other issues that might go to adjudication or litigation, but noted that it was only concerned with the adjudication enforcement application. The court noted *Macob Civil Engineering Ltd v. Morrison Construction Ltd* [1999] B.L.R. 93 and *Carillion Construction Limited v Devonport Royal Dockyard Limited* [2005] EWCA Civ 1358.

Enforcement of the adjudicator's decision was resisted on the grounds that by refusing to pay the £3K the claimant was cherry picking the favourable elements of the adjudication decision whilst ignoring those that were unfavourable. In essence the claimant should abide by the whole of the decision and could not be selective about the parts that it wished to enforce.

Regarding set off, the court referred to *VHE Construction plc v RBSTB Trust Co Ltd* [2000] B.L.R. 187; *David McLean Housing (Contractors) Limited v Swansea Housing Association Limited* [2002] B.L.R. 125; *Ferson Contractors -v- Levolux AT Limited* [2003] B.L.R. 118, *Balfour Beatty Construction -v Serco Limited* [2004] EWHC 3336 (TCC), *Bovis Lend Lease v Triangle Developments* [2003] BLR 31 and *William Verry Limited v The Mayor and Burgesses of the London Borough of Camden* [2006] EWHC 761 (TCC).

As to cherry-picking the court noted *Shimuzu Europe Ltd. v Automajor Limited* [2002] B.L.R. 113 and *R Durtnell & Sons Limited v Kaduna Limited* [2003] B.L.R. 225 but declined to conclude that by enforcing payment of the sum awarded that the court was not enforcing the other aspects of the adjudicator's decision, namely the declaration that practical completion had not been achieved. Whilst there may well be grounds to establish LADs the adjudicator had not finally determined all questions of EOTs for subsequent periods. Accordingly it was not possible to demonstrate that the LADs had been ascertained and were thus due and capable of being set off against the adjudicator's award. Thus enforcement was granted.

His Honour Judge Peter. Coulson 12<sup>th</sup> October 2006

### **KNS Industrial Services Ltd v. Sindall Ltd [2000] EWHC TCC 75**

Cherry picking elements of an adjudicator's decision : KNS sought to cherry pick elements of decision – ie award on one aspect and deny award on reduction and then enforce payment of larger amount.

His Honour Judge Humphrey Lloyd. TCC. 17<sup>th</sup> July 2000.