

ADJUDICATION CASE DATA BASE



NEW ZEALAND : LAST UPDATED 4th AUGUST 2008 : WWW.NADR.CO.UK

For Word Documents only : To re-set search category : Select a column : Click on direction arrow in Tables and Borders.

TOPIC INDEX	CASE NAME (<i>Hyperlinked – word version only – not available in pdf</i>) - CITATION : (<i>On-line web source</i>) : Bullet point summary.	JUDGE	Year/M/D	COURT
Payment schedule – code compliance	Sugulogovale & Sanielo Suaniu v Hi-Qual Builders Ltd CIV 2008-404-001576 Unsuccessful application to set aside summary judgement enforcing an adjudicator's decision for payment of final account and variations - and application to set down hearing on standard track on grounds that Council had withdrawn Code Compliance certificate. Held : This was an issue that should have been put in the payment schedule and put to the adjudicator. Outstanding claims by defendants could still be recovered but they must "Pay now, re-claim later."	Wylie J	2008.06.26	High Court New Zealand Auckland Registry.
Legal personality	Saint-Alexis v Hanna [2008] HC BLE CIV 2008 406 108 Appeal against summary judgment in respect of an outstanding progress payment. Demonstrated that the claimant trustee was not the legal entity entitled to payment. Cross action against the claimant pending. Appeal successful. Claim and counterclaim to be heard together by the district court.	Dobson J	2008.06.24	High Court New Zealand Blenheim Registry.
Weathertight Homes Adjudication – jurisdiction	Kells v Auckland City Council [2008] ORS HC AK CIV 2008-404-1812 Appeal against jurisdictional ruling or Weathertight Homes Tribunal adjudication / application for judicial review - Held : not appropriate to engage in judicial review to circumvent absence of right to appeal particularly in respect of interlocutory matters.	Asher J	2008.05.30	High Court New Zealand Auckland Registry.
Time bar to appeal : extension	Donovan Drainage & Earthmoving Ltd v Halls Earthworks Ltd (in liquidation) [2008] CA CA463/07 Successful application for extension of time, over and beyond the statutory six months time limit, for the appeal against a successful summary enforcement action in respect of an adjudication decision.	William Young P, Glazebrook J Baragwanath J	2008.05.23	Court of Appeal. New Zealand.
Leaky Homes	Body Corporate 188529 v North Shore City Council HC AK CIV 2004-404-3230 Weathertight Homes Litigation.	Heath J	2008.04.30	High Court New Zealand Auckland Registry.
Leaky Homes	G F Parsonage & T J Goulding v J C Laidlaw & C A Laidlaw HC AK CIV 2007-404-004484 Weathertight Homes litigation.	Abbott J	2008.04.30	High Court New Zealand Auckland Registry.
Charging Order Jurisdiction District or High Court	Page & MacRae Ltd v Real Cool Ltd HC TAU CIV 2007-404-5774 Adjudicator gave permission to issue a charging order under s 49 of the Act, and order duly entered into in the High Court. Claimant notified court of the decision in <i>Laywood and Rees v Holmes Construction Wellington Ltd</i> that only the District Court could enter a charging order. Court noted an appeal pending in <i>Laywood</i> . Determined to continue order pending application to District Court.	Heath J	2008.04.29	High Court New Zealand Tauranga Registry

Enforcement order : final for insolvency ?	Holmes Constructions Wellington Ltd v Rees [2008] HC AK CIV 2006-404-004219 The question of whether an order pursuant to s 74 of the Construction Contracts Act 2002, made by District Court Judge DM Wilson QC, that an adjudicator's determination be enforced by entry as a judgment of the Court, is a final judgment for the purposes of s 19(1)(d) of the Insolvency Act 1967 shall be determined separately and before the determination of the balance of the matters required to be determined in the application to set aside the bankruptcy notices.	JA Faire Associate Judge	2008.03.03	High Court New Zealand Auckland Registry.
Stay of liquidation hearing	M Spencer v Jed Rice Building Contractors Ltd [2008] HC AK CIV 2007-404-007539 Failed application to stay liquidation hearing arising out of failure to pay two costs awards. Whilst Rice stands potentially to recover debts over counterclaim and is otherwise solvent – this would be a matter for the court to determine.	Associate Judge Abbott	2008.02.21	High Court New Zealand Auckland Registry.
Residential occupiers	T R Welsh v Gunac South Auckland Ltd [2008] HC AK CIV 2006-404-7877 First instance judgement set aside because there was no evidence that the party was a residential occupier as required by the legislative provisions applied by the judge.	Allan J	2008.02.11	High Court New Zealand Auckland Registry.
Bankruptcy notice : appeal	Sheree Ann Taylor v W & D Mellis Builders Ltd [2007] HC NAP CIV 2007-441-411 Failed appeal against bankruptcy notice arising out of a final judgment based on determination of adjudicator. No set aside.	Associate Judge Robinson	2008.02.11	High Court New Zealand Napier Registry.
Strike out – summary judgement	R T Phillips & S Phillips v L Petrou [2008] HC AK CIV 2007-404-1771 Castor Bay Partners, seek to strike out the plaintiffs' claim and apply for summary judgment in their favour on the ground that the plaintiffs' claim is time-barred.	Associate Judge Robinson	2008.02.01	High Court New Zealand Auckland Registry.
Strike out application : limitation	Bunting & Gardner v Auckland City Council [2007] HC AK CIV 2007-404-2317 Watertight Claim struck out – 10 years since registration – action time barred.	J.P. Doogue Associate Judge	2007.12.21	High Court New Zealand Auckland Registry.
Decision as judgment of court	Laywood & Rees v Holmes Construction Wellington Ltd [2007] HC AK CIV 2006-404-4152 Failed appeal against entry of an adjudication decision as a judgement of the court. Whether sum claimed exceeded jurisdiction of court : whether a hearing should have taken place : whether error in finding judgment had not been paid.	Asher J	2007.12.13	High Court New Zealand Auckland Registry.
Costs appeal	Auckland Waterproofing v TPS Consulting [2007] HC AK CIV-2007-404-005890 Appeal against an order that the defendant (now the respondent in this Court) pay the plaintiff (now the appellant in this Court) costs in respect of District Court proceedings in the sum of \$1,862, including disbursements and GST. The appellant contends that it is entitled to a higher award of costs than that amount. It seeks an award of \$6,608 plus disbursements of \$465; these amounts being the actual costs it has incurred in pursuing the summary judgment.	Duffy J	2007.12.11	High Court New Zealand Auckland Registry.
Transfer of proceedings	R T Phillips v Petrou [2007] HC AK CIV 2007-404-001771 Application to transfer proceedings to the Weathertight Homes Tribunal.	Abbott Associate Judge	2007.10.05	High Court New Zealand Auckland Registry.
Leaky Building : design	Body Corporate No. 188273 v Leuschke Group Architects Ltd [2007] HC AK CIV 2004-404-002003 Whether or not the 5 th defendant, in his personal capacity, acted as a developer and could be held liable to outstanding debts in the light of the insolvency of the other defendants. Held : not a joint tortfeasor : no duty of care : not liable for negligence of the other parties.	Rhys Harrison J	2007.09.28	High Court New Zealand Auckland Registry.

Summary judgement : credit facility	Commercial Reveivables Ltd v William John & Catherine May Thompson[2007] HC AK CIV2006-404-3036 Application for summary judgement in reliance on a revolving credit facility agreement entered into between the former plaintiff, Nationwide Finance Limited, and the Thompsons in February 2005, a subsequent arrangement they made to provide for Nationwide to make payments from the facility to a company called Okley Construction Company Limited.	Sargisson Associate Judge	2007.09.14	High Court New Zealand Auckland Registry.
Recall / review of judgment	Insite Design & Development Ltd v John Sadler No2 [2007] HC AK CIV2006-404-4528 Applications seeking: a) An order recalling my judgment of 27 April 2007, in which I declined to set aside the bankruptcy notice served on Mr Sadler by the judgment creditor, Insite. b) In the alternative, the review of that judgment and an order setting it aside. c) In the alternative, an order staying the judgment pending determination of any application for review and/or appeal. d) An order that a transcript of the hearing of the application to set aside the bankruptcy notice be made available. e) An order that costs be reserved on the application.	Sargisson Associate Judge	2007.09.13	High Court New Zealand Auckland Registry.
Summary judgement : leaky home	J E Moxon v Cassidy & MGI Wilson Elliot Trustees Ltd [2007] HC AK CIV 2006-404-5380 Unsuccessful appeal against summary judgment for breach of warranty that vendor had " <i>no knowledge or notice, or was not aware of facts that might give rise to or indicate the possibility of ... proceedings being instituted by or against the Body Corporate</i> " in relation to the sale of leaky premises.	Winkelmann J	2007.08.27	High Court New Zealand Auckland Registry.
Costs of enforcement hearing	Halls Earthworks Ltd (in liquidation) v Donovan Drainage & Earthmoving Ltd [2007] HC WHA CIV 2007-488-000144 Costs hearing in relation to prior enforcement hearing : All costs enforced. Attempt to postpone costs assessment until an attempted judicial review of the adjudication had taken place repelled.	Faire Associate Judge	2007.08.10	High Court New Zealand Whangarei Registry.
Fraud : validity of payment schedule	Halls Earthworks Ltd (in liquidation) v Donovan Drainage & Earth Moving Ltd [2007] HC WHA CIV 2007-488-000144 Fraud in procurement of contract / decision : Payment Schedule - whether any issued : Enforcement of adjudication.	Faire Associate Judge	2007.07.17	High Court New Zealand Whangarei Registry.
Costs : challenge to appointment	Bluemover One Ltd v Breen Construction Co Ltd [2007] HC DUN CIV 2006 412 001022 Application for Costs of successful challenge to the appointment of an adjudicator in respect of construction works not supported by a written contract.	Christiansen Associate Judge	2007.07.03	High Court New Zealand. Dunedin Registry
Weathertight multi-party action	Nationwide Building Certifiers Ltd v Hamish Hey [2007] CIV-2006-404-1052 Multi-party action - owners of multi-occupancy premises - separate actions ordered - cases transferred to Weathertight Tribunal : Costs of appeal.	Hansen J Rodney	2007.06.22	High Court New Zealand. Auckland Registry
Costs : statutory demand versus adjudication	Carlos Concepts Ltd v Rockford Construction Services Ltd [2007] HC AK CIV 2006-404-006516 Application for enforcement of statutory demand re construction contract set aside - pending adjudication of payment claim. Costs deferred till the end of the dispute resolution process.	Doogue J JP	2007.05.31	High Court New Zealand. Auckland Registry
Insolvency : statutory demand	Silverpoint International Ltd v Wedding Earthmovers Ltd [2007] HC AK CIV 2007-404-104 Application to set aside four statutory demands - two of which related to payment applications under the Construction Contracts Act 2002.	Doogue J JP	2007.05.30	High Court New Zealand. Auckland Registry
Strike out : leaky home	Struthers v Patterson Co-Partners Architects Ltd [2007] HC AK CIV-2003-404-3232 Successful strike out actions by HM AG (successor to Building Industry Association[BIA] & Branz in respect of tortious claims for breach of Fair Trading Act 1986 in respect of a leaky home.	Frater J	2007.05.30	High Court New Zealand. Auckland Registry

Set off : Bankruptcy	Insite Design & Development Ltd v John Sadler [2007] HC AK CIV2006-404-4528 Asserts an outstanding claim not available under the Construction Act filed in High Court : Held : Claim could not be used to avoid bankruptcy for non-payment of the progress payment due under the Act.	Sargisson J Associate	2007.04.27	High Court New Zealand. Auckland Registry
Leaky Homes : Duty of care Contributory Negligence	Bergin v North Shore City Council HC AK CIV 2006-404-2295 Whether developer owes purchasers a duty of care to take reasonable steps to ensure that any building work complied with the minimum standard set by the Building Act 1991 and that it was carried out to a workmanlike standard. Whether developer owes a duty of care for work done by contractors.	Andrews J	2007.04.05	High Court New Zealand. Auckland Registry
Payment schedule – due date	Winslow Properties Ltd v Wooding Construction Ltd [2007] HC AK CIV 2006-404-004969 Application to appeal against decision that service on persons identified in contract fulfils statutory service requirements : and against a finding that the contractual date of service of payment schedule (10 days) replaces the statutory default period (20 days).	Veening J	2007.04.04	High Court New Zealand.
Leaky Homes Claim	Hartley v Balemi [2007] HC AK CIV 2006-404-002589 UNDER the Weathertight Homes Resolution Services Act 2002 ("the Act") IN THE MATTER OF an appeal pursuant to sections 44 and 45 of the Act from a determination of Adjudicator A M R Dean dated 11 April 2006.	Stevens J	2007.03.29	High Court New Zealand. Auckland Registry
Payment Schedule – meaning of	Metalcraft Industries Ltd v Christie [2007] NZHC 52 Failure to specify in a letter what is being claimed is not sufficient to establish a payment Schedule within the meaning of the Act. Appeal against refusal of summary enforcement.	Harrison J.	2007.02.15	High Court District Registry New Zealand. Whangarei
Insolvency – set aside bankruptcy notice	Holmes Construction Wellington v Rees & Laywood HC AK CIV 2006-404-4219 Where an application for to have an adjudicator’s determination entered in as a judgement debt is opposed, there should be a hearing. The matter however had been dealt with as a paper only application. In this application to set aside bankruptcy notices the court ordered an adjournment pending appeal or application to set aside the judgement debt entry .This is essentially a continuation of the Willis Trust litigation.	Faire J. AJ. Associate Judge	2007.02.09	High Court District Registry New Zealand. Auckland
Insolvency – set off	Esoon Ltd v R.I.Grieve, P.R.Jollands, Williams Investment Group Ltd [2007] Adj.L.R. 02/07 CIV 2006-404-6687 Liquidators must take note of and comply with debts established by an adjudication and cannot set that debt off against other claims.	Heath J. P.R.	2007.02.07	High Court District Registry New Zealand. Auckland
Leaky Homes	Dicks v Hobson Swan Construction Ltd (in liquidation) [2006] HC AK CIV 2004-404-1065 Liability of contractor / local council for a leaky home.	Baragwanath J.	2006.12.22	High Court New Zealand. Auckland
Payment schedule - compliance	Westnorth Labour Hire Ltd v SB Properties Ltd [2006] HC AK CIV 2006-404-001858 Heading a letter purporting to be a payment schedule Without Prejudice does not contradict scheme. In absence of negotiation offer it is not privileged. An indication that nothing is due satisfies the statute. Due date is within 20 working days even if under contract payment is due before then.	Hansen J Rodney	2006.12.19	High Court District Registry New Zealand. Auckland
Payment schedule – due date	Winslow Properties Ltd v Wooding Construction Ltd [2006] LIMITED HC AK CIV 2006-404-004969 Letter accompanying a claim to be read with claim for purposes of Construction Act. Claim addressed to nominated correspondent satisfies service requirements. Progress payment to be effective must be made within 10 working days.	Cooper J	2006.12.14	High Court District Registry New Zealand. Auckland

Insolvency : non-payment of statutory demand	Kizer Builders Limited v OEC Construction Limited [2006] CIV-2006-485-2287 Statement of Claim seeking an order to place the defendant company into liquidation. The grounds for this were that the defendant had failed to comply with a statutory demand. Temporary stay removed. The plaintiff is free to proceed with advertising of this liquidation application.	Gendall DI. Associate Judge	2006.11.16	High Court of New Zealand. Wellington Registry.
Payment due at end post termination	Construction Service Co Ltd v Wellington Waterfront Ltd [2006] HC WN CIV-2006-485-1117 Right to progress payments ends upon termination of contract : Payment then due on final account. Where sub-contractors paid directly - contractor not entitled to progress payments due to the sub-contractors.	Gendall J	2006.09.13	High Court District Registry New Zealand. Wellington
Enforcement or set aside	Freemont Design & Construction Ltd v Natures View Joinery Ltd t/a Nebulite Waikato [2006] NZHC 866 Applications to set aside statutory demand pursuant to adjudicator's award.	Faire J	2006.07.26	High Court of New Zealand. Hamilton Registry.
Costs	Dustin v Weathertight Homes Resolution Service [2006] NZHC 759 Costs Judgement.	Courtney J	2006.07.03	High Court of New Zealand. Auckland Registry.
Weathertight Claim	Kay v Dickson Lonergan Ltd [2006] NZHC 605 Weathertight Homes Resolution Services Act 2002 adjudication.	France J Ellen	2006.05.31	High Court, New Zealand, Auckland Registry.
Claims and schedules - validity	Marsden Villas Ltd v Wooding Construction Ltd [2006] NZHC 569 Validity of payent claims and schedules - implications of failure to issue.	Asher J	2006.05.25	High Court, New Zealand, Auckland Registry.
Weathertight Review	Dustin v Weathertight Homes Resolution Service [2006] NZHC 564 Application for judicial review of a Weathertight adjudication decision.	Courtney J	2006.05.25	High Court, New Zealand, Auckland Registry.
Jurisdiction : Challenge	Willis Trust Co Ltd v Green No2 [2006] NZHC 571 Challenge to an adjudicator's decision.	Harrison J Rhys	2006.05.25	High Court, New Zealand, Auckland Registry.
Insolvency : Statutory demand - liquidation	QC Construction Ltd v Apt Tiling Ltd [2006] NZHC 537 Statutory demand : Validity of progress payments conceded. However, court declined to put debtor into liquidation - evident there was an ability to pay.	Doogue J P : Associate Judge	2006.05.19	High Court, New Zealand, Auckland Registry.
Appointment procedure defective	Stellar Projects Ltd v Nick Gjaja Plumbing Ltd [2006] NZHC 369 Successful challenge to the appointment procedure for an adjudicator.	Venning J	2006.04.10	High Court, New Zealand, Auckland Registry.
Payment Schedule	TGC Properties Ltd v Freemont Design & Construction Ltd [2006] NZHC 370 Consequence of not issuing a payment schedule in response to a lawful - though allegedly incorrectly calculated notice for payment.	Doogue J P : Associate Judge	2006.04.10	High Court, New Zealand, Auckland Registry.
Judicial Review – adjudicator's decision	Concrete Structures NZ Ltd v Michael D Palmer & Moncur Engineering Ltd [2006] NZHC 342 Application for judicial review brought against an adjudicator under the Construction Contracts Act 2002 in respect of an award on interest. Oral Judgement.	Baragwanath.J	2006.04.06	High Court of New Zealand. Rotorua Registry.

Costs – re application to set aside.	Jian Hua Property Ltd v Freemont Design & Construction Ltd No2 [2006] NZHC 295 Costs Judgement – following on from application to set aside statutory demand in relation to progress payments..	Doogue J P : Associate Judge	2006.03.29	High Court, New Zealand, Auckland Registry.
Statutory demand : Construction Act – set aside	Gulf Harbour Investments Ltd v Y Gulf Harbour Ltd (formerly Global Yacht Finishers Ltd) [2006] NZHC 239 Application for statutory demand in respect of sums due and owing by the applicants pursuant to payment claims under the Construction Contracts Act 2002. Application to set aside statutory demands.	Christiansen. Associate Judge	2006.03.16	High Court, New Zealand, Auckland Registry.
Enforcement : Stay : Stakeholder a/c	Willis Trust Co Ltd v Green No1 [2006] NZHC 154 Stay of enforcement of adjudicator's decision : Stakeholder account payment..	Harrison J Rhys	2006.03.01	High Court, New Zealand, Auckland Registry.
Statutory demand : Construction Act – set aside	Jian Hua Property Ltd v Freemont Design & Construction Ltd [2006] NZHC 77 Application to set aside statutory demand in relation to a progress payment. Interim judgment.	Doogue J P : Associate Judge	2006.02.16	High Court, New Zealand, Auckland Registry.
Set aside – statutory demand	Parker Construction Management (NZ) Ltd v Aden Electrical Ltd [2006] NZHC 61 Application to set aside statutory demand regarding supply of electrical goods and services.	Gendall D I Associate Judge	2006.02.13	High Court, New Zealand, Wellington Registry.
Statutory demand – set off – set aside	SCI Development & Construction Ltd v NZ Built Ltd [2005] NZHC 480 Application to set aside a statutory demand issued by the defendant, claiming amounts outstanding under a construction contract.	Abbott D H : Associate Judge	2005.12.23	High Court, New Zealand, Auckland Registry.
Summary enforcement : appeal	Salem Limited v Top End Homes Limited [2005] NZ CA160/05 Failed appeal against the High Court judgement enforcing payment for a construction contract. Salem had already conceded in the lower court that there had been a valid claim. (see also later revised judgement April 2006 in relation to costs)	Young P, O'Regan Panckhurst JJ.	2005.12.12	Court of Appeal. New Zealand. William
Insolvency & Construction Contracts Act 2002	Gilmer (10) Ltd v Tracer Interiors & Construction Ltd [2005] NZHC 332 The relationship between the winding up provisions of the Companies Act 1993 on the one hand, and Sections 19 to 24 and Section 79 Construction Contracts Act 2002	Gendall D.I. Associate Judge	2005.12.06	High Court, New Zealand, Wellington Registry.
Costs – Weathertight action	Everest v Schwass No2 [2005] NZHC 308 Leaky building – Weathertight Claim. Costs Judgement.	Gendall D.I. Associate Judge	2005.11.30	High Court, New Zealand, Wellington Registry.
Summary Judgement– Weathertight action	Everest v Schwass No2 [2005] NZHC 308 Weathertight / leaky building adjudication : Failed application by defendant for summary judgement.	Gendall D.I. Associate Judge	2005.09.28	High Court, New Zealand, Wellington Registry.

Statutory demand : enforcement of contract debt	Brooklyn Holdings v Able Handyman Services [2005] NZ HC, CIV2005-485-1362). Commentary by J.G.Walton An action for statutory demand set aside. Court made no reference to the CA decision of George Developments v Canam Construction. Allegations of set off and solvency raised to resist the demand. Echoing the TUFF case - conclusion must be that Summary Enforcement is the correct manner to enforce a Construction Contract claim.	Gendall HAJ	2005.09.13	High Court Wellington. New Zealand
Summary enforcement	Top End Homes Ltd v Salem Ltd [2005] NZ. Adj.Soc Successful application for summary judgment - pursuant to a construction contract.	Venning J	2005.07.19	High Court New Zealand Whangarei Registry.
Summary judgment : appeal	George Developments Ltd v Canam Construction Ltd [2005] NZCA 84 Unsuccessful appeals from a judgment of Associate Judge Christiansen, High Court at Auckland on applications by, respectively, the appellant and the respondent, for summary judgment. The two applications were heard together.	Anderson P, O'Regan : Robertson JJ.	2005.04.12	New Zealand Court of Appeal
Progress claim enforceable as a debt in absence of payment schedule	TUF Panel Construction Ltd v Robert Ernest Capon [2004] NZ : Adj.Soc. In the absence of a payment schedule pursuant to the Construction Contracts Act in response to an invoice, the sum demanded became a debt enforceable by summary judgment. The opportunity to raise issues as to whether the debt was owed by an individual qua director or by the company was provided by the payment schedule facility. The defendant did not avail themselves of this. It was now too late.	Wilson J QC D.M.	2004.03.15	New Zealand. District Court North Shore.