

JUDGMENT : HIS HONOUR JUDGE RICHARD HAVERY QC : TCC : 19th January 2001.

1. I have before me an application on the part of a Claimant under Part 24 for summary judgment to enforce the award of an adjudicator, Dr. Robert Gaitskell Q.C., in relation to a dispute arising out of a construction contract relating to the supply of electrical equipment and the fitting of electrical equipment to the premises of either Mr. Palmer, who was the Defendant in the adjudication and is the Defendant before me, or his company called Lords of Princetown Limited.
2. The point is this. Mr. Sinclair Cramsie, counsel for Mr. Palmer, submits that the adjudicator had no jurisdiction to make his award, because the true party to the relevant contract was Lords, the Company, rather than Mr. Palmer himself. The adjudication was between the Claimant and Mr. Palmer. That question was in fact raised before the adjudicator, and he decided as a question of fact that the contracting party was indeed Mr. Palmer and not the Company, and he ordered Mr. Palmer to pay to the Claimant the sum of something like £26,000 within 14 days, plus fees, in so far as the latter had been paid by the Claimant to him.
3. So the application before me raises a short point, and it is not an easy point. If the adjudicator was wrong in his finding of fact as to the contractual party, then he would have had no jurisdiction to decide the dispute. There is no argument about that. If he was right, it is not suggested that he erred in law in deciding that he had jurisdiction. I have to decide whether, therefore, the finding that is made that Mr. Palmer was a party to the contract is something that can be questioned in enforcement proceedings. I have come to the conclusion that it cannot. It is a finding that is properly made, and he has not erred in law in reaching a conclusion that he had jurisdiction, having regard to that finding. So far as I am aware, there is no authority directly in point, but there is a helpful decision of Dyson J., as he then was, in **The Project Consultancy Group v. The Trustees of the Gray Trust**, (1999) Building Law Reports at 377. The relevant passage is at page 380, where Dyson J, quoted himself in an earlier case, **Macob Civil Engineering v. Morrison Construction Ltd.**, and this is the passage that he quoted, with reference to the adjudicator: *"If his decision on the issue referred to him is wrong, whether because he erred on the facts or the law, or because in reaching his decision he made a procedural error which invalidates the decision, it is still a decision on the issue. Different considerations may well apply if a court is to decide a dispute which is not referred to him at all."*
4. He then went on in the **Project Consultancy** case to say this: *"In my view different considerations apply where the adjudicator purports to make a decision which he is not empowered by the Act to make. One example of this would be where an adjudicator decides a dispute arising under a contract which is not a construction contract within the meaning of Section 104.1 of that Act. In that event, there is no right to refer a dispute for adjudication under Section 108.1, since it is not a dispute falling within the scope of that subsection. It is only a party to a construction contract who has the right to refer a dispute under the contract for adjudication."*
5. The passage that I think is crucial is simply the sentence: "Different considerations apply where the adjudicator purports to make a decision which he is not empowered by the Act to make." In this case the adjudicator purported to make a decision which he was empowered by the Act to make. If he made any error in it which in fact results in his having no jurisdiction, it was an error of fact which it was certainly within his jurisdiction to determine.
6. In those circumstances, in my judgment, the award is binding to the extent of course that any adjudicator's award is binding, i.e. provisionally, and subject to any further proceedings that might be taken to set it aside and so on. That being so, it seems to me quite clear that Mr. Palmer can have no defence to this application.
7. That brings me to the question which I set aside at the outset. Mr. Cramsie applied for an adjournment because Mr. Palmer has most unfortunately become seriously ill and it is said that he could not give further instructions on the question of the circumstances in which the contract was made which would throw light on the true contracting party. But since I have decided that that would not be admissible or relevant evidence so far as enforcing the adjudicator's award is concerned, it seems to me that no useful purpose will be served by adjourning the application. It would merely keep the Claimant out of his money, to which he is undoubtedly entitled so far as the adjudication goes.
8. I have refused to adjourn this hearing, and there must be judgment for the Claimant.