

**JUDGEMENT : HIS HONOUR JUDGE THORNTON QC : TCC : 2<sup>nd</sup> October 2000**

1. **Introduction :** The claimant ("Woods Hardwick") is an architect and engineer, trading as a limited company and the defendant ("Chiltern") is an air-conditioning specialist who also undertakes development and main contracting work. This claim seeks to enforce two decisions of the same adjudicator which relate, respectively, to work Woods Hardwick performed for Chiltern at Tasmin House, Dame Alice Street, Bedford and at Regency Place, Chapel Street, Bedford. Enforcement is resisted by Chiltern on the alleged grounds that the adjudicator's decision-making processes and, hence, the decisions themselves, are vitiated by procedural errors and by a failure to act impartially.
2. **Tasmin House Adjudication :** This adjudication was commenced by a notice of adjudication requesting the selection of an adjudicator which was sent to the Royal Institute of British Architects ("RIBA"), an adjudicator nominating body, dated 10 April. The RIBA selected Mr Yiannis Pareas as adjudicator, he accepted that appointment and conducted an adjudication following his receipt of Woods Hardwick's referral notice on 26 April 2000. He published his decision dated 6 June 2000 in which he directed Chiltern to pay three sums totalling £6,062.25 by 5.30pm on 14 June 2000. These sums were not paid and, in consequence, Woods Hardwick commenced these proceedings on 20 June 2000. No substantial defence has been put forward to the claim for summary judgment save that judgment should be stayed pending the trial of Chiltern's action against Woods Hardwick in relation to disputes arising out of an unrelated contract at Chapel Street, Luton.
3. Since the existence of a counterclaim arising out of the same, or even a different, contract is, ordinarily, no reason to stay or hold up payment of an adjudicator's decision or the execution of a judgment to enforce such a decision, and no exceptional grounds have been contended for in this case, Woods Chiltern is entitled to judgment for the sum claimed with interest. I assess a reasonable rate of interest to be 8% which should run from 15 June 2000 until the date this judgment was published, 2 October 2000. Thus, interest is also payable in the sum of £144.83 (There are 109 days between 13 June and 2 October, both days inclusive. The sum is arrived at by adopting the following equation:  $109 \times 6,062.25 \times 8 \div 365 \times 100$ ). Interest at the judgment rate will be payable on this sum from 3 October 2000 until the sum is paid. There is no good reason to stay execution or otherwise hold up payment save that no execution proceedings should be commenced until after 18 October 2000, to allow Woods Hardwick 14 days within which to make the appropriate payment without further proceedings. Woods Hardwick is entitled to its costs of enforcing the Tasmin House adjudication which I assess in the sum of £500. This sum in costs must also be paid within 14 days, by 18 October 2000.
4. **Chapel Street Adjudication : 3.1. Introduction :** This adjudication was commenced by a notice of adjudication dated 10 April 2000. The adjudication was dealt with in parallel with the Tasmin House adjudication although the adjudicator published a separate decision on 6 June 2000. Thus, the RIBA was approached to select an adjudicator, Mr Pareas was selected by the RIBA, he accepted that selection on 15 April 2000 and received Woods Hardwick's referral notice on 26 April 2000. It is the subsequent procedure adopted by Mr Pareas in resolving the dispute referred to him that is now challenged by Chiltern. I must, therefore, set out the history of the adjudication in some detail.
5. **Chapel Street Adjudication : 3:2 The Nature of the Dispute :** The dispute concerned Woods Hardwick's entitlement to immediate payment of further fees and as to the quantum of that entitlement. The claim was for £18,774.70 in unpaid invoices; an additional fee to take account of the fact that Woods Hardwick's fees claim had been based on a value of the works of £400,000 whereas this value had increased above that figure; further fees for additional works totalling £25,912.50; Woods Hardwick's costs and the adjudicator's fees.
6. The terms of the contract were in dispute but the contract was, on any view, an informal written contract. It incorporated, as Woods Hardwick alleged, a series of letters and, as Chiltern alleged, two letters. The work required Woods Hardwick to provide architectural services in connection with a development in Luton. The development comprised an original building which needed extensive refurbishment, the construction of a new 3-storey extension as well as an additional new storey to the main single storey of the original building. Professional work in connection with the necessary planning & building control applications was also required.

7. The development went disastrously wrong from Chiltern's point of view. As it saw the position, Woods Hardwick failed to provide an accurate survey drawing of the new extension and its location so that the extension was set out inaccurately. In consequence, the edge of this new building is located on the highway and other major structural features have been laid out incorrectly. Woods Hardwick challenged these complaints. It accepted that it had not carried out a full survey initially but had, instead, carried out a check survey. The reason for any ill-alignment of the building to the kerb line and within the structure, however, was that Chiltern had set out the structure and the other work inaccurately.
8. As far as Woods Hardwick's claim for fees was concerned, the part of the claim relating to the fees provided for in the contract was made because such fees were allegedly due. As for the part of the claim relating to additional fees, this arose because of the inordinate amount of additional work carried out by Woods Hardwick which had been caused by Chiltern's additional demands resulting from its incompetence and from its unreasonableness in constantly challenging Woods Hardwick's work without justification.
9. The adjudicator was concerned with Woods Hardwick's claim for fees following a withholding of payment by Chiltern based on its alleged claims arising out of loss caused by Woods Hardwick's breaches of contract. It was a significant feature of the adjudication that Chiltern had not served any appropriate notice under section 111 of the Housing Grants, Construction and Regeneration Act 1996 ("HGCRA") and was therefore not entitled to withhold payment otherwise due to Woods Hardwick. However, although Woods Hardwick put forward a set off and cross-claim for damages, its principal grounds for resisting payment in the adjudication were that the monies claimed were not yet due because the project was incomplete; that any fees that were due for payment fell to be abated by virtue of Woods Hardwick's breaches of contract and that no additional work had in fact been carried out by Chiltern.
10. Any abatement, properly relied on by Chiltern, would not of course be caught by s111 HGCRA, so Chiltern's abatement defence could, in principal, defeat or reduce Woods Hardwick's claims. (*Chiltern's defence was not put forward in terms as an abatement. However, the nature of Chiltern's defence was to the effect that such fees as might otherwise have been due were eliminated or reduced because the value of Woods Hardwick's work was greatly reduced by the alleged breaches of contract. It is for this reason that I have characterised Chiltern's principal defence as being one of abatement.*)
11. **3.3. The Adjudicator's Decision :** The adjudicator, in his reasoned decision, dismissed Chiltern's defences and awarded Woods Hardwick a substantial part of the sums it had claimed including part of the sums claimed for additional work. The additional work claim was, however, substantially reduced. The adjudicator made the following findings:
  1. *Woods Hardwick performed its task in the best possible way. All information that Woods Hardwick had been required to provide appeared to be present on the drawings that it had prepared.*
  2. *Although Woods Hardwick did not carry out a survey of the site and used setting out information provided by Chiltern without checking its accuracy, no losses had yet been proved to have occurred as a result of these omissions. If there was a sensible redesign of the use of the affected land, Chiltern's losses might be reduced or, as the adjudicator put it, "abated".*
  3. *Woods Hardwick's potential breaches of contract arising out of its survey work had no relevance to the adjudication "other than that relating to fee apportioning". In other words, these potential breaches of contract did not result in any abatement of fees, they merely led to a reduction in the number of additional chargeable hours claimable by Woods Hardwick.*
  4. *Although the principal claims for fees succeeded, the claim for additional work was substantially reduced because Chiltern did not actually distract or hamper Woods Hardwick and had only caused a proportion of the additional time to have been spent that was claimed to have been spent by Woods Hardwick in replying to accusatory correspondence.*
12. In reaching these decisions, the adjudicator held two site meetings at which personnel from Wood Hardwick and Chiltern were present, received documents from both parties and carried out investigatory interviews with personnel from Wood Hardwick, with two relevant subcontractors, with the solicitors' department of Luton Council, who were the relevant planning authority, and with the solicitor manning the RIBA Legal Helpline. These sources of information led the adjudicator to conclude that the problems on site had been caused by setting out errors caused by Chiltern's personnel and by Chiltern's shambolic running of the site. His reasoned decision set out a summary of the evidence he had obtained from his

interviews conducted with Chiltern, the two subcontractors and the Legal Helpline. He also summarised the observations that he had made during his site visits as to the erroneous setting out of steel stanchions, pre-cast concrete planks and the new extension relative to the kerb in the highway.

13. **3.4. The Course of the Adjudication :** The sequence of events that occurred during the adjudication process is relevant to the complaints made by Chiltern that the adjudication procedure was flawed. The details are, to some extent, in dispute but the salient features are readily discernible. I draw them from the witness statements relied on for the summary judgment application. The principal witness statements were those of Mr Richard Jones, the solicitor who conducted Woods Hardwick's case in the adjudication, and Mr Anthony Buczkowski, the Litigation Manager with the solicitors who conducted Chiltern's case in the adjudication. Woods Hardwick also obtained a detailed witness statement from the adjudicator which provided some additional details. In making use of this witness statement, I bear in mind the complaint of Chiltern that the contents of this witness statement, and the fact that the adjudicator provided one at all to assist Woods Hardwick, both evidence the unfairness of both the adjudication procedure and the adjudicator. I must return to those complaints later.
14. Woods Hardwick's referral notice, which triggered the 42-day period within which the adjudication process had to be carried out and completed. (*Para 19 (1) (a) of the Scheme for Construction Contracts set out in the Scheme for Construction Contracts (England and Wales) Regulations 1998 which governed the adjudication*), was dated 26 April 2000. Thus, the decision had to be reached on or before 7 June 2000 (*Para 19 (1) (b) of the scheme allows the period to be extended to 42 days if the referring party so consents and para 19 (1) (c) allows an extension by such period as the parties might, after the giving of the referral notice, agree.*). It was clear from a letter from Mr Buczkowski to his client Mr Savar, which was copied to both the adjudicator and Woods Hardwick's solicitor and was dated 25 May 2000, that the adjudicator had obtained the necessary consent to enable him to take 42 days to reach his decision.
15. The adjudicator visited the site on 4 May 2000 and was shown round by Mr Savar, Chiltern's Managing Director, and Mr Buczkowski. He then held a meeting on site on 12 May 2000 attended, on behalf of Woods Hardwick, by Mr Myhill, an Associate Director of Woods Hardwick, and Mr Jones and, on behalf of Chiltern, by Mr Savar, Mr Fletcher, a Director of Chiltern and Mr Buczkowski. The meeting lasted 5 hours. During the course of the meeting, Chiltern handed in its response document and two files of supporting documentation. The adjudicator then obtained details of the two relevant subcontractors and of Luton Council's legal department from Woods Hardwick by a faxed letter dated 16 May 2000 and, in the days following this meeting, made contact with these parties and obtained much detailed information from them and from Woods Hardwick personnel by telephone. On Friday evening 19 May 2000, the adjudicator faxed Chiltern and asked for a complete list of all items of Chiltern's loss and expenditure, to be supplied no later than 22 May 2000. This request was complied with and the list was faxed on 22 May 2000. Woods Hardwick received a copy of the document and replied in detail in a written submission dated 25 May 2000. The adjudicator also asked Chiltern in a letter dated 25 May 2000 for details of what information was given to Woods Hardwick in relation to the site boundaries on which the new building was located and when this information had been given to them. Chiltern had not replied to this letter by the time the adjudicator published his decision on 6 June 2000.
16. **3.5. Chiltern's Complaints :** Chiltern has, essentially, 3 complaints. These are that the adjudicator lacked impartiality and conducted the adjudication in breach of the rules of natural justice in:
  1. Preventing Chiltern from fairly presenting its case at the meetings held on 4 and 12 May 2000.
  2. Taking evidence from Woods Hardwick and from third parties following the second meeting which he failed, subsequently, to afford Chiltern an opportunity of commenting upon.
  - 3 Providing a detailed witness statement to Woods Hardwick for use in these enforcement proceedings which contained partisan views adverse to Chiltern.
17. It is an essential feature of Chiltern's case that the adjudicator has an obligation, imposed by the provisions of the Scheme and by the general law, to conduct the adjudication impartially and in compliance with the ordinary rules of natural justice. In consequence, according to Chiltern, the adjudicator's decision was arrived at without statutory authority and was a nullity. For both reasons, it was contended that the decision should not be enforced.

18. Woods Hardwick submitted that the adjudicator was both impartial and adopted a procedure which complied with basic requirements of natural justice. Since the adjudication was an inquisitorial process, was one that had to be carried out at great speed and was only temporary in its effect pending subsequent arbitration or litigation proceedings, the applicable standards of fairness and natural justice were not onerous and the adjudicator complied with those applicable standards. However, Chiltern also submitted that, even if the adjudicator had not been impartial and had not complied with the basic requirements of natural justice, his decision still had to be enforced. Any failure of this kind did not entitle Chiltern to hold up immediate effect being given to the adjudicator's decision in Woods Hardwick's favour.
19. **4. The Statutory Scheme :** It is only necessary briefly to summarise the salient features of the adjudication scheme imposed by the HGCRA and the Scheme imposed by the Statutory Instrument made in exercise of powers conferred by the Act. Essentially, a party to a construction contract has a right to refer any dispute arising under the contract for adjudication under a procedure complying with the Act. The relevant procedure, contained in the Statutory Instrument, provides the following features of such an adjudication:
1. The adjudicator must act impartially in carrying out his duties and avoid incurring unnecessary expense.
  2. The adjudicator can take the initiative in ascertaining the facts and the law necessary to determine the dispute and must decide on the procedure to be followed.
  3. The adjudicator can request any party to supply him with such documents as he might reasonably require; can meet and question any of the parties; can make such site visits and inspections as he considers appropriate; can obtain and consider such representations and submissions as he requires; can appoint experts, assessors or legal advisers provided he has notified the parties of his intention; and can give directions as to the timetable to be followed as well as deadlines and limits as to the length of written documents or oral representations.
  4. The adjudicator must consider any relevant information submitted to him by any of the parties to the dispute and must make available to the parties any information to be taken into account by him in reaching his decision.
  5. If there is a failure without sufficient cause to comply with any request, direction or timetable of the adjudicator, he can continue in the absence of that party or of the document or written statement requested; can draw such inferences from that failure to comply as circumstances may in his opinion be justified; and can make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any requested or directed period.
  6. If requested by one of the parties, the adjudicator must provide reasons for his decision.
20. The parties are required to comply with any request or direction of the adjudicator. They may be assisted by, or represented by, such advisors or representatives as that party considers appropriate who may not exceed more than one in number unless the adjudicator gives directions to the contrary. Finally, the adjudicator must ordinarily reach his decision within 28 days after the date of the referral notice and shall deliver a copy of that decision to each of the parties as soon as possible after he has reached it<sup>5</sup>. It is significant that the particular obligation imposed on the adjudicator to act impartially and the particular power enabling him to take the initiative in ascertaining the facts and the law are provided both by the HGCRA and the Scheme whereas the other requirements are only imposed by the Scheme. <sup>5</sup> See endnote 4 after paragraph 10 above. The summary of the adjudicator's powers and duties is taken from s108 (e) and (f) HGCRA and paras 12 - 17, 19 & 22 of the Scheme.

## 5. Findings of Fact

21. **5.1. The Views of the Adjudicator about Chiltern :** The adjudication imposed particular difficulties on the adjudicator as a result of Chiltern's hostile attitude to the adjudication. Chiltern had no wish to have an adjudication which had been imposed on it against its wish. It did, however, participate in the adjudication. The adjudicator clearly took a very adverse view of Chiltern's performance of the building work and of its representatives who appeared at the two meetings at the site that he held. This can be seen from these passages of his witness statement: *"I refer to paragraph 18 of Mr Buczkowski's witness statement, which relates to the meeting of 12 May 2000. Mr Buczkowski's statements are misleading. Both sides had ample time to raise their points [at the meeting on 12 May 2000] and Mr Savar used much longer than anybody to express his views and opinions. ... [Chiltern's] case was presented in a manner*

*verging on abusively at times - always confrontationally. I later learnt that this attitude had also be encountered by a number of other people I was to speak to in my investigations. I have no doubt that this attitude as encountered on site by the consultants. ... In my estimation Chiltern did not have the necessary experience or organisational skills to carry out their role properly. Chiltern were blaming [Woods Hardwick] for their own shortcomings and using that as an excuse for failing to pay sums to [Woods Hardwick], which was the conclusion I eventually reached. The meeting of 12 May 2000 was frequently heated. Mr Savar had tended to make long speeches, which often had little relevance to any of the issues I was raising. He did little to impress me as a witness and did a great deal to confirm the impression of disorganisation. ... In summary, all the third parties that I spoke to confirmed that Chiltern and Mr Savar had a confrontation, disorganisation and blaming anybody other than themselves. ... I really do not see how [Chiltern] can substantiate that Chiltern had been treated unfairly. They were given every chance to put their case, but I simply preferred [Woods Hardwick's] evidence." (The extracts are taken from paragraphs 3, 4, 5, 8 & 11 of the witness statement of the adjudicator dated 12 July 2000.)*

22. Furthermore, the adjudicator had intended, as he made clear in his witness statement, that his first site meeting would merely be a visit to familiarise himself with the site which would not be attended by representatives of either party save for a foreman from Chiltern who would merely act as a guide. Instead, both Mr Savar and Buczkowski accompanied him round the site and proceeded to put Chiltern's case to him. The adjudicator described what happened as follows: *"I made several polite attempts to stop this process which was in direct conflict with what I wanted to do which was simply to familiarise myself with the site. Eventually I had to say that I would like to walk about the site. Mr Savar followed and once or twice attempted to further put his case across. I had to ask him to not to do so on a number of occasions. Before long into the site visit Mr Buczkowski made his presence known and introduced himself."* It can be seen that the adjudicator had begun to form his adverse views about the two representatives of Chiltern during this one sided and impromptu site meeting.
23. Clearly, the adjudicator was entitled to form his own views about Chiltern's capabilities to perform the contract and about the professional competence and reliability of Chiltern's representatives but, if these views were adverse to Chiltern from an early stage in the adjudication process, he had to ensure that the procedure he adopted allowed Chiltern a fair opportunity to make its case and seek to present its point of view in relation to such views as the adjudicator had provisionally formed in the early stages of the adjudication.
24. **5.2. The Two Meetings :** There is a direct conflict between the witness statements of Mr Savar, Mr Buczkowski and Mr Fletcher on behalf of Chiltern and Mr Jones and the adjudicator on behalf of Woods Hardwick as to what happened at the principal meeting held on 12 May 2000. I describe the adjudicator's witness statement as being submitted on behalf of Woods Hardwick not only because it was obtained and then served by that party but because, as can be seen from the extracts I have already set out, its contents are supportive of Woods Hardwick's case seeking enforcement of the actual decision of the adjudicator.
25. What is clear from the evidence is that, in so far as the material being relied on by the adjudicator was confined to the material provided before and during the meeting, Chiltern's representatives had every opportunity to present its case and to answer Woods Hardwick's case. Furthermore, it is also clear that the adjudicator did not provide any definite assurance that there would be another meeting. It is clear that the reasonable impression that he left with those at the meeting at its conclusion was the same as the impression that he had himself formed after it had been concluded. In ascertaining what the adjudicator's impression was at that time, I have relied on his witness statement, the relevant extract from which is as follows: *"After the meeting I realised that the main issues were already covered and I did not feel the need to call a further meeting. A further meeting would not have contributed to the knowledge already gained."* (Paragraph 5 of the adjudicator's witness statement.)
26. **5.3. The Additional Material :** Following the second meeting held on 12 May 2000, the adjudicator clearly obtained much additional material from the interviews he conducted from the third parties he consulted and from Woods Hardwick's representatives. This material is summarised in his reasoned decision. Amongst other material, he obtained the following information:
  1. Further details about Chiltern's working methods, particularly so far as setting out and site management were concerned, and of the quality of the information provided by Chiltern as to setting out.

2. The personal views of the representatives of Woods Hardwick and the two subcontractors consulted about Chiltern and its capabilities.
  3. Views from Luton Council's litigation department as to whether Chiltern had incurred any loss as a result of the setting out of part of the new development on the highway.
  4. The legal opinion from the RIBA's Legal Helpline that the adjudicator could deal with Chiltern's possible breach of the contractual term not to hinder Woods Hardwick "as he feels fit".
27. Despite obtaining this additional information, the adjudicator did not inform Chiltern either that he had obtained it or of its content. This was even so with regard to the information obtained from Woods Hardwick's representatives. He did seek limited additional material from Chiltern in his two letters written on 19 and 25 May 2000 and, indeed, Chiltern failed to respond to the second request, but the scope of that requested additional material was far more limited than the information that the adjudicator had obtained from his inquisitorial approaches to relevant witnesses following the second site meeting. The adjudicator explained why he had not referred this additional information to Chiltern in his witness statement in the following terms: "*Having reached the [conclusion after the meeting on 12 May 2000 that a further meeting would not have contributed to the knowledge already gained], I decided to gather further information as I needed to finalise my decision ... I also decided to make further inquiries to check the points raised by Chiltern, especially those about steels beams and prefabricated concrete slabs. I contacted relevant subcontractors ... In summary, all the third parties that I spoke to confirmed that Chiltern and Mr Savar had a history of confrontation, disorganisation and blaming anybody other than themselves . ... All the points discussed on the telephone with [Woods Hardwick] were points which arose, either directly indirectly, on 12 May 2000 and in respect of which I was aware of Chiltern's position.*"( *ibid.*, paragraphs 6 & 8.)
28. Chiltern felt particularly aggrieved by the procedure adopted by the adjudicator whereby he had obtained much additional information from other sources and had then proceeded to publish his decision without giving Chiltern the opportunity to comment on it because, as Chiltern saw the position, much of that additional information could have been effectively challenged by documents in its possession. It is not appropriate for me to reach any firm conclusion as to whether the information in Chiltern's possession was capable of rebutting the additional information obtained by the adjudicator. What is clear is that some of that additional information that he had obtained from other sources glossed and expanded upon information that had formed the basis of the discussion at the meeting held on 12 May 2000 and that Chiltern was not given an opportunity to comment upon it. By way of example, one of the subcontractors interviewed by the adjudicator informed him that the pre-cast sections supplied had been correctly manufactured from the dimensioned drawings supplied by Woods Hardwick whereas the same subcontractor had informed Chiltern in January 2000, in a letter exhibited to Mr Buczkowski's witness statement, that these sections had been manufactured incorrectly due to inaccurate dimensioned drawings supplied by Woods Hardwick.
29. The additional information that was obtained by the adjudicator was highly material the relation to the key issues he had to determine. It related to the setting out details prepared by Woods Hardwick, to the setting out undertaken by Chiltern and to the quality of Chiltern's site organisation and administration. On these issues, the adjudicator, assisted by the additional information, made findings adverse to Chiltern. In consequence, he dismissed Chiltern's abatement defence and allowed the majority of Woods Hardwick's claims.
30. The adjudicator's reasons for not returning to Chiltern are not satisfactory. In summary, he felt that it would not have served any useful purpose to seek Chiltern's views on the additional information he had obtained since he felt that Chiltern would not have had anything further to tell him. In reaching that view, as is clear from his witness statement, he relied on the adverse view he had formed of Chiltern's witnesses at the two site meetings. In his view, there was no likelihood that these witnesses would have any answer to the additional information he had obtained and he was, therefore, entitled to act without further recourse to Chiltern if he regarded that course as being appropriate.
31. The adjudicator gave no explanation as to why he felt able to approach Woods Hardwick and question its representatives further, following the meeting on 12 May 2000, without informing Chiltern that he had done this and without informing its representatives of what he had been told. His only comment about

that lack of communication to Chiltern of Woods Hardwick's additional views was that all the points he had discussed on the telephone with Woods Hardwick were points which had arisen directly or indirectly at the meeting held on 12 May 2000 and on which he was already aware of Chiltern's position. However, the Scheme rules require the adjudicator to: "... consider any relevant information submitted to him by any of the parties to the dispute and shall, make available to them any information to be taken into account in reaching his decision." (Scheme. Paragraph 17.) In the context of this adjudication, in which so much additional information relied on by the adjudicator had been obtained by the process of telephone interviews with representatives of Woods Hardwick and other subcontractors, there was a clear breach of this statutory requirement.

32. **5.4. The Adjudicator's Witness Statement :** It is unusual for an adjudicator or arbitrator, in court proceedings to enforce a decision or award that follow the publication of an adjudicator's decision or an arbitrator's award, to give evidence in a witness statement at the behest of, and in support of, one party's case against the other party in those subsequent enforcement proceedings. There is no rule to prevent such a course but, if the adjudicator or arbitrator is to retain the confidence of the parties and his neutrality and objectivity in the adjudication proceedings with which he is concerned, he must scrupulously ensure that his evidence is confined to a neutral factual account of what transpired in the adjudication or arbitration. He should not take the opportunity to enlarge on his reasons or to argue the case of the party who has sought the witness statement from him. If he does not follow these elementary principles, he runs the risk of being thought to be lacking in impartiality and in being regarded as other than fair in his dealings with the parties.
33. The adjudicator, in taking the course he did, exceeded the requirement of neutrality in two material respects. Firstly, he revealed, in the evidence contained in the witness statement, that he had taken strongly against Chiltern and had decided at an early stage in the adjudication process that Chiltern's case should be dismissed. Secondly, he sought in the witness statement, to argue the case of Woods Hardwick and to explain and expand upon the reasons for his decision that he had already published. Woods Hardwick, in the written submissions prepared by its counsel in support of this summary judgment application, sought to explain and justify the course taken by the adjudicator by arguing that: "... *it is not unusual that the adjudicator provides a statement in circumstances where his conduct is being attacked for being in breach of natural justice and he has made a decision that the claimant is entitled to be paid.*"
34. Woods Hardwick's explanation for, and justification of, the adjudicator's witness statement does not deal with the partial nature of the contents of that witness statement nor with the need, given the partial view taken by the adjudicator at an early stage in the adjudication process, to ensure that Chiltern had the opportunity to comment in some form on all contrary information that he had obtained during his inquisitorial procedures.

## 6. Conclusion

35. **6.1. Requirements of Impartiality and Fairness :** The parties made detailed submissions as to whether or not the adjudicator had an obligation to comply with general principles of natural justice, what the extent of that obligation was in the context of a relatively summary inquisitorial procedure and what effect, if any, a failure to comply with basic principles of natural justice should have on the enforcement of an adjudicator's award. These submissions involved, amongst other questions, of a consideration of whether a failure to comply with basic principles of natural justice rendered an adjudicator's decision void or ultra vires, thereby taking it outside the general rule that an adjudicator's decision should be enforced even if it contained clear and discernible errors of fact or law. Chiltern relied heavily on the decision of Dyson J in **Macob Civil Engineering Ltd v Morrison Construction Ltd** [1999] 1 TCLR 113 in support of its submission that no breach of the principles of natural justice could or should prevent immediate enforcement of an adjudicator's decision since such a breach did not render the decision ultra vires or a nullity.
36. I need not consider these difficult matters in this judgment given the findings that I have made as to the failure to afford Chiltern an opportunity to consider and comment on the additional information obtained by the adjudicator and as to the nature of the witness statement that he has provided to Woods Hardwick in these enforcement proceedings.

37. **6.2. The Effect of the Findings As to the Adjudication :** The findings that I have made indicate that the adjudication was conducted in breach of the provisions of the Scheme in two material respects. Firstly, the adjudicator failed to make available to Chiltern information he had obtained from Woods Hardwick and various third parties which was highly material, since it enabled him to confirm his initial views as to Chiltern's liability. He also obtained legal advice without notifying the parties of his intention to take this advice. Secondly, in submitting a witness statement in the terms he did, in the light of the history of the adjudication, the adjudicator left Chiltern with the impression, which objectively it could reasonably hold, that he was not impartial. This view as to his lack of impartiality was one that was supported by knowledge of the previous breaches of the Scheme's requirements that I have already referred to.
38. In reaching these findings, I am conscious of the nature of adjudication proceedings. They are inevitably rushed in their outcome and must be carried out by an adjudicator taking summary and inquisitorial steps which he has himself devised. No party is entitled to expect an oral hearing, let alone a third oral hearing as Chiltern was submitting was appropriate. However, the adjudicator must not make up his mind to shut out further comments from a party merely because he believes that any comments he receives on newly acquired and material information from other sources, particularly from the other party, will not affect his view as to that party's position. He has a statutory duty to make available to both parties any information he has received which he is to take into account in reaching his decision. It must be remembered that the defendant, as in this case, is an unwilling party to the adjudication. This makes it important that the basic statutory requirements of fairness towards all parties are complied with.
39. I am also conscious that the adjudicator attempted to act in an impartial manner and showed no conscious bias or hostility to Chiltern. However, the statutory requirement to act impartially requires the adjudicator to act in a way that does not lead to a perception of partiality by one party which might objectively be held by that party. In this case, the adjudicator led the parties to believe that there would be no need for a hearing. Such a view would only be tenable if the adjudicator took other steps, by way of written communications for example, to inform both parties of any relevant additional information he subsequently obtained to enable them to comment upon it. Having left the parties with the impression that he did, he acted in a manner which could readily be perceived to be partial in approaching one side without informing the other, in seeking much additional information from third parties and in then making adverse findings against the party left in ignorance of these steps. These difficulties were then compounded by the adjudicator voluntarily providing a witness statement which seeks to put forward Woods Hardwick's case in favour of enforcement and which elaborates on the reasons for making adverse findings against Chiltern.
40. **6.3. The Effect of the Findings on the Enforcement Proceedings :** The adjudicator, in order to make a valid and enforceable decision, must act in conformity with the rules of the Scheme. There will be occasions when an adjudicator's departure from those rules is insignificant and not such as to preclude enforcement. Where, however, the departures are significant, the decision is one taken outside the framework of the Scheme and is not one which a court will ordinarily enforce. The consequence is that I must dismiss the summary judgment application. The claim based on the Chapel Street adjudication will be dealt with and tried at the same time as the action brought by Chiltern against Woods Hardwick that is concerned with this development. Further directions in this action will be given at the first case management conference held in that action. Meanwhile, the costs of the Chapel Street enforcement proceedings will be costs in the case. There will be permission to either party to apply for further directions if necessary.
41. Woods Hardwick is to prepare a draft order and submit it to the court, having obtained Chiltern's consent as to its terms, to enable an order to be entered which gives effect to this judgment.

Mr Manus McMullen appeared for the claimant instructed by Richard Jones & Co, Shelduck Chambers, Green Farm Lane, Thursford, Fakenham, Norfolk, NR21 OBX (Ref: Herstsmere).

Mr Paul Randolph appeared for the defendant instructed by William Bryant, 5 & 6 Station Square, Flitwick, Bedfordshire, MK45 1DP, DX 47008 Flitwick (Ref: PBJ/MD/Chiltern Air).