**Before** Ward LJ, Dyson LJ, Carnwath LJ.

**JUDGMENT : LORD JUSTICE DYSON :** CA. 1st March 2005)

*1.* This is an appeal from the decision of His Honour Judge Richard Havery QC who on 25 June 2004, determined four issues that arose in these proceedings in which Connex South Eastern Limited ("SE") claimed various declarations in relation to an adjudication which MJ Building Services Group Plc ("MJ") had initiated pursuant to the Housing Grants, Construction and Regeneration Act *1996 ("the Act").*

2. MJ are building contractors who are experienced in the installation of closed circuit television ("CCTV") systems. In 2000, SE held a franchise for the operation of train services on railways in Kent and part of East Sussex. A sister company, Connex South Central Limited ("SC") held a similar franchise in relation to railways in the remaining part of Sussex and parts of Surrey and Hampshire. Both companies were at that time subsidiaries of Connex Transport UK Limited ("Connex").

3. A firm called Condes provided architectural and project management services to Connex. In February 2000, Condes, acting on behalf of SC and SE issued a document entitled "Master specification for the design and installation of security CCTV systems to stations and car parks for Connex South (Central/Eastern) Ltd". This document included the specification for the works and conditions of contract. It identified the employer as *"Connex South (Central/Eastern) Limited"*. No company of that name existed. The invitation to tender that was sent by Condes to MJ on 6 June 2000 described the contract works as *"the Phase 9 installation works consisting of 50 stations across the Connex South Eastern and South Central Networks"*.

4. MJ submitted its tender proposal on 31 July 2000. It was accepted on behalf of Connex by Condes giving an oral instruction for the work to be carried out. The judge found that this oral instruction was evidenced in writing by the minutes of a meeting dated 15 September, and held that the contract was in writing within the meaning of section 107 of the Act. There is no challenge to this. He also held that SC and SE entered into the contract as joint contractors. It is submitted on behalf of MJ that he was wrong to do so. But before I come to this issue, I need to complete the history so far as it is relevant to the questions that are raised on this appeal.

5. On 20 September 2000, Condes wrote to MJ saying that all CCTV works were to be suspended until further notice. At a meeting on 20 November, Condes confirmed that, following the rescheduling of SE and SC stations into separate phases, Connex had given approval for the project to proceed as quickly as possible. MJ was instructed to proceed accordingly.

6. In August 2001, Govia Limited acquired the entire share capital of SC. Some time thereafter, SC decided that it did not wish to proceed with the project in its original form. On a date which is not disclosed by the evidence Condes ceased to act for SE, although they continued to act for SC.

7. On 4 December 2001, Condes notified MJ that it had been instructed by SE that no further installations were to be commenced under Phase 9 until further notice, although the installations at 4 named stations were to be completed and commissioned. At a meeting on 14 December, MJ told Condes that they had started work on 6 stations, and that they intended to complete all 6 in accordance with the programme. Condes informed MJ that SE were of the opinion that there was no contract between them. They said that they would not action certification for two reasons: (a) the works were not complete, and (b) Condes did not have an order to manage the project, and all queries should be addressed to Elyes Frickha, the Connex project manager. On 25 January 2002, MJ submitted a claim to Mr Frickha in respect of materials procured for the stations that had been withdrawn.

8. Correspondence ensued between MJ and Mr Frickha in which MJ claimed £199,326 from SE for materials purchased for the Phase 9 rolling programme installation works.

9. Meetings took place between Mr Blaquiere, facilities project manager for SC, and Mr McAnallen, managing director of MJ, with a view to restructuring the project. These culminated in an agreement which is contained in the letter of 11 February 2002 from Condes to Mr McAnallen in the following terms:

*"**The phase 9 CCTV contract***
*Since Govia's takeover of South Central, the Client has worked with you to restructure the scope of works to reach a mutually acceptable solution.*
*The final shape of the contract is now clear. We list below the works instructed to date and the budgeted works awaiting instruction.*
*We would now like to formalise your mutual agreement with the Client that the works below now represent the full extent of the "Phase 9" contract. The forecast value of Works that have been instructed or will be instructed totals £937,847.*
*Please note that we do expect to be able to instruct some additional works on the Epsom Downs line, which might have a value of around £60,000 but for budgetary reasons this is not certain and you should regard this as a bonus.*
*We would be grateful if you would please sign the bottom of this letter and return to me in order to confirm your agreement."*

10. The letter was marked as being copied to Mr Blaquiere. Mr McAnallen signed the letter at the bottom as requested. The works said to have been listed below were in fact listed on a separate piece of paper.

11. During 2002, SE continued to maintain that it had no liability to pay for certain materials that had been purchased by MJ for the Phase 9 project on the grounds that the purchase had not been authorised by SE and that there was no contract between the two companies. On 29 November 2002, MJ wrote to SE stating that its denial of the existence of a contract (and therefore of its liability to pay) was a repudiatory breach of contract, which MJ accepted, thereby terminating the contract.

12. Solicitors became involved. Eventually, on 13 February 2004 MJ's solicitors wrote to SC and SE giving notice of MJ's intention to refer a dispute to adjudication pursuant to the Act. The dispute was described as the claim for damages against SC and/or SE as particularised in the report by Mr John McCombie dated 5 December 2003 arising from the failure to make payment for the Phase 9 works. The principal head of claim was for damages for loss of profit on the stations within the SE part of Phase 9 which had been removed from the contract. The total sum claimed was £362,914.26. It was put on the basis that SC and SE were jointly liable under the contract to pay the sums claimed.

13. Mr R J Crease BSc, CEng FICE FCIArb was appointed as adjudicator. The adjudication commenced thereby lapsed; but a further adjudication was commenced by a letter from MJ's solicitors to SC and SE dated 24 February 2004, whereby they gave notice of an intention to refer the same dispute to adjudication. Mr Crease was again appointed adjudicator. On 25 February 2004, he stayed the adjudication by consent pending the outcome of the current proceedings in which SE sought the following declaratory relief:
*"(1) That there is no agreement between South Eastern and MJ as alleged in the notice of Adjudication dated 24 February 2004, whose terms, or whose material terms thereof, are recorded in writing, as required by section 107 of the Housing Grants, Construction and Regeneration Act 1996;*
*(2) That MJ no longer has any statutory right to adjudication under section 108 of the said Act; and/or*
*(3) That MJ's Notice of Adjudication dated 24 February 2004 is an abuse of process."*

At the hearing before the judge, the following questions were identified:
*"(1) Has there been an agreement to which the claimant and the defendant have been parties and which is an agreement "in writing" within the meaning of s.107 of the Act?*
*(2) If the answer to question (1) is yes, did the defendant still have the right to refer a dispute to adjudication under s.108 of the Act on 24th February 2004 if the agreement had previously been discharged by the acceptance of the claimant's repudiation?*
*(3) If the answer to question (1) is yes, did the defendant still have the right to refer a dispute to adjudication under s.108 of the Act notwithstanding the letter of agreement dated 11th February 2002?*
*(4) If the answer to questions (1), (2) and (3) are all yes,*
*a. Is the defendant's notice of adjudication dated 24th February 2004 an abuse of process?*
*b. If so, what is the consequence?"*

MJ reached terms of settlement with SC, who accordingly have played no part in these court proceedings.

14. The judge answered these questions as follows: (1) Yes. (2) Yes. (3) Yes, but only to the extent indicated in para 32 of the judgment. (4)(a) No. (4)(b) Not applicable. Accordingly, he declined to make the declarations sought. MJ does not seek (nor does it have permission) to challenge the decisions on questions (1) or (2). It does, however, challenge the decision on question (3). By a cross-appeal, SE seeks to challenge the decision on question (4).

15. In a nutshell, the argument advanced by Mr David Ashton on behalf of SE in relation to question 3 (which in substance was accepted by the judge) is as follows. SC and SE were joint contractors under the original contract. By the agreement of 11 February 2002, an accord was reached between SC and MJ whereby the original performance was superseded by a completely different performance. The new performance promised by MJ constituted satisfaction. MJ thereby released SC from its original obligations. Since SC and SE were joint contractors, that release was also effective to release SE from its obligations.

**Were SC and SE joint contractors under the original contract?**

16. As the judge pointed out, the first question was whether under the original contract SE and SC were joint contractors. If they were not, then there would be no basis for holding that any of MJ's claims against SE had been compromised. The judge dealt with this first question at paras 27 and 28 of the judgment in the following way:

*"27. The first question here is whether under the original contract SE and SC were joint contractors. As stated in Chitty on Contracts, 29th edition, paragraph 17-005, the presumption is that a promise made by two or more persons is joint so that express words are necessary to make it joint and several. Mr Speaight submitted that in a course of previous conduct in relation to phases before phase 9, where the material terms of the relevant documents were the same, each certificate for payment named only the franchisee whose station was the subject of the relevant work. Moreover, the implied obligations of SE and SC to give MJ access to the sites and permit MJ to carry out works there could be performed in the case of each station only by the franchisee in whose area that station was situated. That argument, if correct, does not preclude the possibility of joint liability. Rather, it points to the proposition that each of SE and SC contracted only in relation to the stations in its own franchise area. That would, of course, imply several liability.*

*28. There are no express words making the liability of SE and SC joint and several, let alone several. There was only one form of draft agreement (albeit not signed) in the contractual documents. The employer was named as a single company, Connex South (Central/Eastern) Limited, albeit by a misnomer. SE and SC shared the management of their relevant business (or businesses). Both companies were at the time in the same ownership. There is nothing in the agreement to suggest that each company contracted only in relation to the stations in its own franchise area. In my judgment, SE and SC contracted jointly".*

17. Mr Anthony Speaight QC submits that the judge reached the wrong conclusion on this issue. He draws attention to the previous course of dealing between the parties. MJ had been employed by Connex on phases 5, 6 and 8 of the CCTV project. In relation to each of these earlier phases, the tender documentation described the employer as *"Connex South (Central/Eastern) Ltd"*. In each of the previous contracts, Condes issued a payment certificate naming SE or SC as the client, depending on the location of the station at which the installation was taking place, and upon the issue of the certificate, MJ issued an invoice to the company so named. Mr Speaight also points out that the tender documentation for Phase 9 included 50 proforma sheets each headed with the name of a station and that the Master Specification named the employer as *"Connex South (Central/Eastern) Ltd"*. The effect of this documentation, especially when read in the light of the previous course of dealing in relation to certificates and invoices, was that SE undertook to pay for MJ's work in relation to stations in the area covered by the SE franchise, and to grant access to sites and cooperate in respect of those stations, and SC undertook the same obligations in relation to stations in the area covered by its franchise.

18. Mr Ashton submits that the judge reached the right conclusion for the right reasons. He also relies on the fact that SE and SC occupied the same office and employed the same staff and the same project manager for the purposes of Phase 9. Moreover, the draft rolling programme dated August 2000, which was tabled as a "preliminary programme for discussion" at the meeting of 24 August, showed Phase 9 divided into 8 sub-phases some of which were to be carried out by both SE and SC ie this programme did not show a separation of sub-phases as between the two companies. Mr Ashton also relies on the misnomer of the employer shown on the tender documentation. He submits that the use of the misnomer "Connex South (Central/Eastern) Limited" indicates that Connex intended SC and SE to be treated as the joint employer.

19. The judge said that there was nothing in the agreement to suggest that each company contracted only in relation to the stations within its own franchise area. I respectfully disagree. There has been no appeal against the judge's finding that the contract was made by the oral acceptance by Connex of

MJ's tender on 15 September. It is necessary to examine the communications between the parties in the period between the submission of MJ's tender and its acceptance in a little more detail. At the meeting on 24 August, MJ tabled the preliminary programme to which I have referred. Later the same day, Condes wrote to MJ saying: "Due to Connex requirements please note that this phase of works will be split into South Central and South Eastern Packages".

*20.* On 15 September a "General Kick Off" meeting was held. Under the heading "Introduction" the minutes record that Connex had given Condes a verbal instruction that the project was to be carried forward immediately, and that the MJ representative stated that MJ was still awaiting an official order from the client. And then this: *"1.04 TS stated that due to the splitting up of the contract to S/C and S/E the phases would be reallocated" (TS was a Condes representative).*

The next section of the minutes is headed "CCTV Phase 9 Programme". Para 2.04 states*: "SC wished to know how the phases would be split between S/C and S/E and would they require revised procurement schedules and programmes."* (SC was a MJ representative).

Following this meeting, MJ prepared a programme which showed the sub-phases of Phase 9 allocated separately as between SE and SC.

21. It seems to me that the judge failed to take into account para 1.04 of the minutes of the meeting of 15 September. At para 8 of his judgment, he said of the minutes that "it was simply a case of altering and possibly adding phase numbers". That would be a fair comment to make of para 2.04 of the minutes. But in my view, para 1.04 was of greater significance than that. It spoke of "the splitting up of the contract to S/C and S/E" and this was not in the context of the programme. The minute at para 2.04 was dealing with the programme and records that MJ wanted to know how the phases would be split. In my judgment, MJ's need to know how the phases would be split arose *as a consequence* of the decision to split the contract.

22. What is the significance of the misnomer "Connex South (Central/Eastern) Ltd"? Viewed in isolation, I can see that there is force in interpreting it as a (false) shorthand for the two companies, and for treating SE and SC as the joint contracting parties and (as the judge did) applying the presumption referred to at para 17-005 of *Chitty on Contracts* 29th edition. But the misnomer cannot be viewed in isolation. The same misnomer had been used in the contract documentation between the same parties on 3 earlier phases of the same overall CCTV project. As Mr Speaight has demonstrated, there can be no doubt that in these earlier contracts, the misnomer was used as a shorthand to refer to SE and SC as separate employers for the work to be done at each company's stations. It seems to me that it is legitimate to have regard to the previous course of dealings between the parties to see what was meant by the misnomer in relation to Phase 9. In my judgment, the use of the same misnomer in the Phase 9 documentation indicates that, in the absence of any countervailing considerations, it was intended to bear the same meaning as in the previous contracts.

23. I can find no such countervailing considerations. Mr Ashton referred to the rolling programme tabled at the meeting of 24 August. But it is clear that before the contract was concluded, this programme ceased to have any significance. It is true that the two companies shared offices, staff and Project Manager. But (although we have been shown no evidence about it) there is no reason to suppose that this had not been the position under the earlier contracts. Since they were sister companies until August 2001, this is not at all surprising. And then there is the reference at para 1.04 of the minutes of the meeting of 15 September, which, far from being a countervailing consideration, supports the argument that it was not intended that there should be separate contracts for SE and SC.

24. For these reasons, I would hold that SC and SE were not joint contractors under the original contract. But in case I am wrong about this, I shall go on to deal with the second issue that arises under question (3), namely whether, on the assumption that they were joint contractors, the agreement of 11 February 2002 modified the obligations in relation to the SE part of the contract.

**The meaning and effect of the agreement of 11 February 2002**

25. The judge dealt with this issue at paras 30-32 of his judgment:

*"30. According to Chitty on Contracts, ib., paragraph 17-017, the discharge of one joint debtor by accord and satisfaction discharges all, in accordance with the general principle that joint liability creates only one obligation; and the same is true,*


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*illogical though it may seem, if one joint and several debtor is so discharged. Mr. Ashton fairly described that situation as a trap for the unwary. Chitty goes on to say that a covenant not to sue one joint or joint and several debtor does not discharge the others. The courts generally construe a release as a covenant not to sue if it contains an indication of intention that the other debtors are not to be discharged. If the agreement appears from its words to be a release and there are no words reserving rights against the other debtors, nor anything in the circumstances to rebut the prima facie meaning of words used, the agreement will release all the debtors; but it would seem that the courts lean in favour of other debtors not being discharged by construing the agreement as a covenant not to sue or as a release but subject to an implied reservation of rights against other debtors. That is what Chitty says. In my judgment, it is clear that in this context the word "debtor" includes one liable in damages."*

*31. It is clear that the agreement of 11th February 2002 was intended to release SC from its obligations in relation to the 24 stations removed from the earlier agreement. In view of the words "the works below will now represent the full extent of phase 9 contract", it is clear that the agreement was also intended to release SC from its liability, if any, in relation to the stations in the franchise area of SE. There is nothing in the agreement to suggest that SE should not be discharged. There is nothing in the circumstances to rebut the prima facie meaning of the words used.*

*32. I conclude that SE are released jointly with SC from the obligations from which SC was released by the agreement of 11th February. I must consider the extent of those obligations. The negotiations between MJ and SC leading to that agreement appear to have been settlement negotiations (see paragraph 21 above). Settlement of what, does not appear. In particular, there is no evidence whether there was an existing claim or potential claim on the part of MJ against SC for expenditure wasted on work done or supply of materials to stations which were subsequently withdrawn from the list, or for the price of the works done on such stations. The agreement makes no mention of any such claim. I conclude on the evidence, which is not satisfactory on this point, that neither SC nor SE was released by the agreement of 11th February from any such claim. But SC and SE were released from their obligations to afford access to MJ in the future to the stations withdrawn from the list of stations in the SC franchise area and from all stations in the SE franchise area. Thus a claim for loss of profits expected to be earned in relation to those stations has been released".*

26. Mr Speaight submits that upon its true construction, the agreement of 11 February is concerned only with the Phase 9 stations that were in the area covered by the SC franchise. He points out that the whole letter is about the new plans of Govia and its subsidiary SC; it was written by Condes who, as MJ knew, by 11 February were no longer acting for SE. The reference to "the Client" can, therefore, only be a reference to SC. The stations listed or referred to in the letter were all within the SC area. The figure of £937,847 is referred to as the value of "the Works". But as the attached sheet shows, this is the value only of work done to the SC stations. It follows that the sentence "…the works below now represent the full extent of the Phase 9 contract" cannot reasonably be read as connoting an intention that the works on the attached sheet comprised the full extent of works in the SE area as well as the SC area. The judge was, therefore, wrong to hold that the prima facie meaning of the letter was to discharge SE from liability in respect of stations in the SE area.

27. Alternatively, Mr Speaight submits that the surrounding circumstances rebut the prima facie meaning found by the judge. He refers to the fact that Mr Blaquiere said that Govia wanted to alter the nature and extent of the project in the SC area and to that end held a series of meetings with Mr McAnallen Further, at no time in the discussions did anybody suggest that SC might have any liability for stations in the SE area.

28. Mr Ashton submits that the judge was correct to construe the words "the works below now represent the full extent of the "Phase 9" contract" as referring to the whole of the subject of the Phase 9 contract, and not merely the part referable to the SC franchise. He also relies on the heading of the letter "The Phase 9 CCTV contract".

29. In my judgment, properly construed in its factual matrix, the agreement of 11 February was only concerned with the stations in the SC franchise area. The factual background is important. After being taken over by Govia, SC decided that it wanted to make a number of significant alterations to the nature and extent of the SC works. As has been seen, meetings were held between Mr Blaquiere of SC and Mr McAnallen of MJ to restructure the project. These culminated in the agreement which is contained in the letter dated 11 February. SE was not party to these discussions or to the agreement.

30. SE's position was quite different. As I have already said, on 4 December 2001, Condes wrote saying that SE wanted no further installations to be commenced until further notice. On 14 December, Condes advised MJ that the opinion of SE was that "there is no contract in place and therefore the

Contractor carries out any further works and purchases materials at his own risk." On 25 January 2002, MJ sent SE documentation in relation to its claim for payment of materials. There were no discussions about the remaining stations within the area of the SE franchise.

31. Interpreted against that background, it is clear that the letter of 11 February was not intended to affect the work to be done on the SE stations. In my judgment, the phrase *"the Phase 9 contract"* must be read as meaning *"the Phase 9 contract as respects the SC stations"*. The letter formalised the oral agreement that had already been made between SC and MJ. The discussions between these two companies did not touch the contract as respects the SE stations. The works which were to be restructured were the SC works. The "works instructed to date and the budgeted works awaiting instruction" which were "listed below" were exclusively SC works. As has been seen, some SE works had been instructed. The fact that these were not referred to in the letter as included in the works that had been instructed shows decisively that this agreement did not impinge in any way on the SE works.

32. In my judgment, it is therefore clear that the reference *to "the Phase 9 contract"* was only to the SC works. Mr Ashton relied on the fact that the SC works had been completed before 11 February as indicating that the agreement of that date could not have only referred to the SC works. Even if the premise were true, I do not consider that the consequence would follow. But there is no finding that the SC works had been completed by 11 February. And there is evidence at para 11 of the statement of Mr Blaquiere that MJ carried out the revised SC works *after* the making of the agreement.

33. As I have said, the judge held that the agreement of 11 February was an accord and satisfaction so as to engage the principle that the discharge of one joint debtor discharges all joint debtors. But even if (a) SC and SE were joint contractors and (b) the agreement of 11 February was an accord and satisfaction, its effect would have been only to modify their rights and obligations in relation to the SC works. It would not have affected their rights and obligations in relation to the SE works. We heard interesting argument on the question of whether the judge was right to hold that the agreement of 11 February was an accord and satisfaction. But in view of the clear conclusions that I have reached on the first two issues, I do not propose to express a view on this question. It follows that in my judgment, the appeal should be allowed against the judge's answer to question (3).

34. **The cross-appeal**

35. Mr Ashton submits that it was *"an abuse of process"* for MJ to start adjudication proceedings so long after it purported on 29 November 2002 to accept a repudiation of the contract by SE. Section 108(1) of the Act confers the right to refer a dispute arising under the contract for adjudication. Subsection (2) provides that the contract shall "enable a party to give notice *at any time* of his intention to refer a dispute to adjudication" (emphasis added).

36. He says that the phrase *"at any time"* cannot be read literally. Thus, for example, a party cannot refer a dispute to adjudication after the expiry of the relevant limitation period. There is nothing in the Act, he submits, which indicates what Parliament meant by the words *"at any time"*. Mr Ashton made extensive reference to Hansard. I am very doubtful as to whether it is appropriate to refer to Hansard having regard to the principles stated in ***Pepper v Hart*** [1993] AC 593, 634. Nevertheless, it is of interest to note what was said in particular by Lord Lucas, the peer who took over responsibility for the bill from Earl Ferrers, the Minister of State for the Department of the Environment: the bill was introduced in the House of Lords. Lord Lucas said (p 362 on 22 April 1996) that the words "at any time" were necessary since otherwise *"it will be possible for a party bent on avoiding adjudication to insert a term which would allow notice to be given within an unreasonably narrow window, and we cannot allow that."* He continued:

*"I am of course aware that some have doubted the wisdom of allowing parties to refer a dispute to adjudication so long after work under the contract has ceased. However, as long as there is any possibility of disputes arising under a contract, parties will have to live with the fact that an adjudicator's decision may be sought. Indeed, there may be times, even at such a late stage, where it is desirable to have a quick and cheap procedure that can produce an effective temporary decision, particularly since this will not prevent parties from seeking a permanent decision through arbitration or the courts."*

37. Mr Ashton submits that *"Parliament was content for adjudication to take place after the cessation of work because this was seen in the context of a procedure which was (a) quick, (b) cheap and (c) a temporary decision.*

*Once this quick, cheap and temporary decision had been taken, it could then be followed by a permanent decision via arbitration or the courts"*. But he argues that if, as a result of the passage time, it is no longer possible to have a quick, cheap and temporary adjudication, then it is an abuse of process to permit an adjudication to take place.

38. I cannot accept these submissions. The phrase "at any time" means exactly what it says. It would have been possible to restrict the time within which an adjudication could be commenced, say, to a period by reference to the date when work was completed or the contract terminated. But this was not done. It is clear from Hansard that the question of the time for referring a dispute to adjudication was carefully considered, and that it was decided not to provide any time limit for the reasons given by Lord Lucas. Those reasons were entirely rational.

39. There is, therefore, no time limit. There may be circumstances as a result of which a party loses the right to refer a dispute to adjudication: the right may have been waived or the subject of an estoppel. But subject to considerations of this kind, there is nothing to prevent a party from referring a dispute to adjudication at any time, even after the expiry of the relevant limitation period. Similarly, there is nothing to stop a party from issuing court proceedings after the expiry of the relevant limitation period. Just as a party who takes that course in court proceedings runs the risk that, if the limitation defence is pleaded, the claim will fail (and indeed may be struck out), so a party who takes that course in an adjudication runs the risk that, if the limitation defence is taken, the adjudicator will make an award in favour of the respondent.

40. In the civil courts, the concept of *"abuse of process*" is well understood. It applies in a number of different contexts: see Civil Procedure Volume 1, para 3.4.3. But neither the Act nor the Scheme for Construction Contracts (England and Wales) Regulations (S1 1998/649) gives an adjudicator the power to strike out or stay an adjudication for abuse of process. Indeed, they contain no reference to *"abuse of process"*. In my judgment, the only question is whether there is any limit on the time within which a party may refer a dispute to adjudication. The answer to that question depends on a proper interpretation of section 108(2) of the Act, and not on an application of the principles developed by the courts to control their own process so as to prevent abuse. In my judgment, there is nothing in the Act which indicates that the words "at any time" should be construed as bearing other than their literal and ordinary meaning.

41. I confess that I had some difficulty in understanding the logic of Mr Ashton's submission. I can accept that Parliament intended adjudication to be quick and (relatively) cheap, although it may not have been entirely successful in bringing this about. But that says nothing about when the quick and (relatively) cheap adjudication may be commenced. There is no link between the speed and expense of an adjudication and the time when it starts. An adjudication started before practical completion may be complex, slow and expensive. Conversely, an adjudication started long after practical completion may be simple, quick and cheap. Nor do I understand why an adjudication conducted long after practical completion cannot on that account result in a decision which has provisional or temporary effort only.

42. It follows that I agree with the answers given by the judge to question (4) and the cross-appeal should be dismissed.

43. In the result, I would allow the appeal on question (3) and dismiss the cross-appeal on question (4).

**Lord Justice Carnwath:**

44. I agree.

**Lord Justice Ward:**

45. I also agree.

ORDER: Appeal allowed; Cross-appeal dismissed. Order as agreed in terms lodged with the court. Costs to be paid within 28 days. (Order does not form part of approved Judgment).