JUDGMENT : JUDGE PETER COULSON QC: TCC : 27th May 2005

INTRODUCTION

1. By a Claim Form dated 6th May 2005, the Claimant, Allen Wilson Shopfitters & Builders Limited, claims **£50,401.35**, together with interest and two other specific sums by way of fees, arising out of an Adjudicator's decision dated 20th April 2005. The Defendant, Mr. Anthony Buckingham, denies these claims in their entirety and appears in person today at the hearing of the Claimant's application for summary judgment under CPR Part 24.

BACKGROUND

2. During 2004 and January 2005, the Claimant carried out extensive building work at the Defendant's property at Clobb Copse House in Bucklers Hard, Beaulieu ("the property"). The value of the work actually carried out was, on any view, over £500,000. However, the contractual basis on which this work was done is vigorously disputed. In addition, although the Defendant had engaged Deacon & Jones, a firm of quantity surveyors, to manage the refurbishment works at the property and to act as the contract administrators, he terminated their engagement on 3rd January 2005.

3. In the absence of Deacon & Jones, on 7th January 2005, the Claimant prepared and provided Valuation 12 to the Defendant in the total sum of £80,729.14. A substantial part of this claim for an interim payment was paid by the Defendant on 25th January, leaving the sum of **£17,757.14** unpaid. On 24th January, the Claimant prepared and provided Valuation 13, in the total sum of **£32,644.21**, in respect of which nothing was paid by the Defendant. Accordingly, on the Claimant's case, by the beginning of February 2005, the total sum of **£50,401.35** in respect of Valuations 12 and 13 was outstanding. Other than the payment on 25th January, there was no detailed response from the Defendant in respect of either Valuation 12 or Valuation 13.

4. On 1st February 2005, the Claimant suspended its work at the property, due, it said, to non-payment. Relations between the Claimant and the Defendant had now broken down completely. There is a debate, which I do not need to resolve at this hearing, as to whether it was the Claimant or the Defendant who wrongfully repudiated the agreement between the parties.

5. On 3rd March 2005, the Claimant issued a Notice of Adjudication, but it was withdrawn the following day. A further such Notice was issued on 8th March 2005. That identified a dispute *"under your contract with us…because of your continued failure to make payment in accordance with the terms of the contract"*. Mr. Eamonn Malone was appointed by the RICS to act as Adjudicator. The Referral Notice was also apparently dated 8th March 2005. The claim was limited to the **£50,401.35** which I have identified above.

6. The Response to the Referral Notice was prepared by Mr. Buckingham's then solicitors, G.S.C. Solicitors, and served on 30th March 2005. This effectively took four points challenging the Adjudicator's jurisdiction, namely that:
   (a) There was no written contract in respect of the works which were the subject matter of the adjudication;
   (b) Any contract had been terminated and was therefore irrelevant and could not give the Adjudicator jurisdiction;
   (c) The works concerned the refurbishment of a dwellinghouse and were therefore excluded from the adjudication provisions set out in the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act"); and
   (d) Any agreement to adjudicate was contrary to the Unfair Terms in Consumer Contracts Regulations 1999.

7. It is important to note that the Defendant's Response document was expressly limited to these jurisdictional challenges. The Response document stated, in terms, that it contained no defence on the merits or the detail of the Claimant's claims within Valuations 12 and 13. At para.3, it said:
   "Given Mr. Buckingham's submissions on jurisdiction set out below, he will not respond to the substantive issues and/or the individual paragraphs contained in the Referral in this adjudication … Furthermore, Mr. Buckingham is in the process of preparing final proceedings against Allen Wilson, which will be commenced

shortly for delay and defective works and the additional costs of having to complete these incomplete and defective works."

8. The Claimant's Reply to this document was served on 4th April 2005. It dealt, to a greater or lesser extent, with each of the four jurisdiction points identified above. On 20th April 2005, the Adjudicator published his decision, in which he summarily rejected the four points taken by the Defendant as to his lack of jurisdiction, and awarded the Claimant the **£50,401.35**, together with interest and certain other fees. It is that decision which the Claimant now seeks to enforce in these proceedings.

9. In these proceedings, the Defendant denies that the Claimant is entitled to the sums awarded by the Adjudicator, although there remains no breakdown of the Defendant's version of the Claimant's account as set out in Valuations 12 and 13. In addition, the Claimant makes a cross-claim in respect of defective work, delay, and sums which the Defendant claims to have paid to some of the Claimant's subcontractors. There is no withholding notice or similar document and there is no pleaded or written counterclaim for defects, incomplete work or delay. The "final proceedings" instigated by the Defendant and said to be imminent in para.3 of the Response document (paragraph 7 above), remain to be issued.

JURISDICTION - GENERAL

10. In general terms, the parties to a construction contract confer the necessary jurisdiction on an Adjudicator in one of two ways. They can agree a contract which contains express written provisions concerning the resolution of disputes by adjudication. Alternatively, if they have a construction contract in, or evidenced in, writing, which contains no express adjudication provisions and which is not otherwise excluded from the operation of the 1996 Act, then the adjudication provisions set out in the 1996 Act will be incorporated and will apply.

11. Accordingly, my first task is to analyse the Contract in this case to see if it expressly incorporated an adjudication agreement; only if it did not will it become necessary to see whether it is a construction contract to which the 1996 Act applied.

THE FIRST LETTER OF INTENT

12. On behalf of the Defendant, Deacon & Jones set out a first letter of intent dated 21st July 2004. The material parts of the letter were as follows:

"On behalf of our client, Mr. Tony Buckingham, we are issuing the letter of intent to your company for refurbishment works at Clobb Copse, Bucklers Hard, Beaulieu based on the following:

1. Works to be carried out under the terms and conditions of the JCT 1998 Private Without Quantities 1998 edition.

2. The scope of works will be Preliminary Internal Demolition and Alteration works as detailed in the agreed schedule of works and costs agreed at the meeting on 14th July 2004, as follows:-

(a) Schedule No.3 (amended) and to include the complete demolition and rebuilding the fireplace and chimney stack in the kitchen

In the sum of £51,535

(b) Schedule 4 works (preparatory stripping-out works) to include only …[the preparatory stripping-out works are then set out]

In the sum of £16,965

….

6. Please accept this letter as our instruction to commence the Works in accordance with the terms and conditions of the Contract, pending execution of the formal Contract documents. In the event that no formal Contract is entered into then the terms of this letter will apply to the whole of the works carried out by you. The Employer will pay for you any work so completed in accordance with the payment provisions of the Contract…..

10. By signing and returning a copy of this letter to us, you shall agree to indemnify us against all loss or liability due to death or personal injury or damage to real or personal property save to the extent that such loss or liability is due to any act or neglect of the Employer or of the Employer's Consultants … We enclose a

duplicate copy of this letter of intent which you are required to sign in confirmation of your agreement to the contents of this letter, which, upon signing, should be returned to Deacon & Jones."

13. The JCT 1998 Edition incorporated a detailed set of adjudication provisions at Clause 41A. Article 5 of that edition of the JCT Contract could not be in clearer terms:

"If any dispute or difference arises under this Contract, either party may refer it to adjudication in accordance with Clause 41A."

14. The JCT 1998 Edition also allowed the architect or supervising officer (who, until 3rd January 2005, would have been Deacon & Jones) to instruct variations and additional works on behalf of the Defendant. Clauses 4 and 13 of the 1998 Edition contained detailed provisions dealing with such instructions and variations in what are standard terms; importantly, these Clauses permitted the architect or supervising officer to instruct the contractor to perform additional work outside the original contract work scope.

15. This first letter of intent was signed and returned by the Claimant. Apparently, as is all too common in the construction industry, no formal contract documents were ever prepared by Deacon and Jones, and certainly none were ever executed.

16. Accordingly, it seems to me that, pursuant to this first letter of intent, there was a Contract, evidenced in writing, pursuant to which:
(a) The Claimant would carry out the schedule 3 works for £51,535;
(b) The Claimant would carry out the preparatory stripping-out works in schedule 4 for £16,965;
(c) All the terms of the JCT 1998 Edition, including of course those relating to variations and additional work as well as those relating to adjudication, were incorporated into this Contract.

17. Accordingly, it seems to me beyond argument that any dispute between the parties arising under, or in connection with, the Works performed pursuant to the Contract set out in this first letter of intent would be referable to adjudication pursuant to the express terms to which I have referred.

THE SECOND LETTER OF INTENT

18. On 8th November 2004, Deacon & Jones sent out a second letter of intent. This was apparently designed to sweep up all the Works to be carried out at the property in one lump sum package, and it introduced the bulk of the schedule 4 works which had not been expressly included in the first letter of intent. By this stage, at least some of that work had already been instructed by Deacon & Jones as additional work under Clauses 4 and 13, and had been carried out by the Claimant.

19. As one might expect, the second letter of intent was in very similar terms to the first. It endeavoured to set out a proposed agreement in which all of the proposed Works would be carried out and completed for £650,250, including VAT. It included precisely the same terms as the first letter in respect of the JCT 1998 Edition and again said that, in the absence of an executed contract, those conditions would apply. There was also a similar provision in respect of the agreement and returning of the letter, and a duplicate was enclosed. In addition, I note that the second letter of intent suggested a Contract completion date of 31st January 2004.

20. The Claimant did not sign this second letter of intent. This was apparently a deliberate decision on its part and not mere inadvertence. On 1st December 2004, Deacon & Jones wrote a chasing letter to the Claimant in the following terms:

"With reference to the letter of intent dated 8th November 2004 and my reminder letter of 1st December, I note that you have still not yet returned it signed, as requested. Please can you respond to this <u>urgently</u>."

It appears that Deacon & Jones were (quite rightly) beginning to become concerned that there was no fixed price, lump sum agreement in place, even though the Claimant, on their instructions, was carrying out work far more extensive in scope than the work covered by the two lump sums in the Contract. However, this letter crossed with a letter from the Claimant to Deacon & Jones, dated the same day, in which the Claimant made complaints about outstanding information and what it described as the Defendant's "abysmal payment record". This letter concluded:

"We are of the view that because of the continuous breaches of our payment agreement that we are not bound by the contract terms and conditions."

21. It seems to me clear that, because the second letter of intent was deliberately never signed or returned by the Claimant, it can have no contractual significance. That was the Claimant's case in the adjudication, which made no reference to it, and that was the thrust of Mr. Kennedy's helpful submissions on behalf of the Claimant today. However, in his statement dated 25th May 2005, the Claimant's Mr. Allen spends nine paragraphs, from paras 8 to 16 (inclusive), suggesting that, although it was deliberately never signed, the second letter of intent was broadly agreed and/or did somehow have some contractual significance. I confess that I was surprised by this evidence because I do not believe it to be of assistance to the Claimant; more importantly, I have no doubt that, for the reasons which I have given, it is quite wrong. It seems to me clear that the only contractual document is the first letter of intent, dated 21st July 2004.

THE WORK IN VALUATIONS 12 AND 13

22. It appears that, in the adjudication, the Defendant's principal point was that, in the absence of an agreement as per the second letter of intent, there was no express agreement to adjudicate any disputes arising out of Valuations 12 and 13 and the work which was the subject matter of those Valuations. They argued that the work which was the subject of Valuations 12 and 13, being work included within the bulk of schedule 4, was accordingly not covered by the Contract comprised by the first letter of intent.

23. If I may say so, that argument is rather simplistic. True it is that, if the second letter of intent had been agreed, there would have been no debate but that the disputes arising out of the work covered by Valuations 12 and 13 would have been referable to adjudication. However, in the absence of a Contract incorporating that second letter of intent, the question still remains: on what contractual basis was the work in Valuations 12 and 13 actually carried out?

24. The work which was the subject matter of those Valuations was carried out because it was instructed by Deacon & Jones on behalf of the Defendant. Like much of the work carried out by the Claimant at the property, and paid for by the Defendant, such work was not included within the two specific lump sum items in the first letter of intent; however, it was work carried out by the Claimant and paid for by the Defendant because it was work which the supervising officer, Deacon & Jones, instructed the Claimant (on behalf of the Defendant) to carry out.

25. Accordingly, the work in Valuations 12 and 13 was work instructed under Clause 13 of the JCT 1998 Edition, which was itself expressly incorporated into the Contract comprised within that first letter of intent. Thus the work in Valuations 12 and 13 was carried out pursuant to a Contract which contained an express agreement to adjudicate. The fact that, at a later stage, Deacon & Jones sought to sweep up all the extra work in a lump sum agreement is understandable, but the Claimant's failure to agree that lump sum proposal is irrelevant to the issue which I have to decide.

26. In the circumstances, there can be no doubt at all, in my judgment, that the work which was the subject matter of the Adjudicator's decision was carried out as extra or varied work under a Contract which contained an express agreement to adjudicate. The Notice of Adjudication identified the dispute being referred to the Adjudicator as a failure to make payment for that work in accordance with that Contract. Accordingly it seems to me that the Adjudicator had the necessary jurisdiction to reach his decision and it ought therefore to be enforced.

THE CONTRACT PAYMENT MACHINERY

27. In the adjudication, a further complication was introduced, by both parties, by reference to arguments concerning the Contract payment machinery. Prior to the sacking of Deacon & Jones, interim Valuations would have been produced by the Claimant and, after appropriate consideration, interim Certificates would have then been issued by Deacon and Jones. Those Certificates would then have been payable by the Defendant. Without Deacon & Jones and without an alternative supervising officer appointed in their place, it appears that, in January 2005, the Claimant was unclear how it could claim its perceived financial entitlement arising out of Valuations 12 and 13. In the Referral

Notice, the Claimant seems to have put its claim by reference, not to the payment mechanism in the Contract, but to the payment provisions set out as part of the scheme in the 1996 Act. This immediately attracted the challenge from the Defendant that, since he was a residential occupier of the property, the Act could not apply and the Adjudicator had no jurisdiction.

28. My primary conclusion is that the precise nature of the contractual payment machinery operating in January and February 2005 is an issue which does not and cannot affect these enforcement proceedings. The Adjudicator derived his jurisdiction, to consider claims in respect of the work which was the subject of Valuations 12 and 13, from the terms of the Contract and the Notice of Adjudication, for the reasons which I have previously explained. He concluded that the sums claimed in Valuations 12 and 13 were due and payable by the Defendant. It seems to me that any inquiry into the precise status of Valuations 12 and 13 (and whether, if at all, the absence of any Certificates made any difference to the Claimant's entitlement) was entirely a matter for him. His answer may have been right; alternatively, he may have been wrong to reach the conclusion he did, although the fact that there was no material from the Defendant at all on the substantive issues seems to me to remove any realistic ground for criticism of his decision. But, in any event, since the Adjudicator had the jurisdiction to consider what was due by reference to Valuations 12 and 13, it is not for me, now, to review the correctness of that decision.

29. I am strengthened in my view that this is the correct approach by the decision of the Court of Appeal in **C&B Scene Concept Design Limited v. Isobars Limited** [2002] E.W.C.A. Civ.46. There the Court of Appeal allowed an appeal from this court, in which the learned recorder had refused to enforce the decision of an adjudicator on the ground that he had wrongfully endeavoured to enforce the contract terms, rather than the scheme under the 1996 Act. In allowing the appeal, Sir Murray Stuart-Smith said:

> *"29… The Adjudicator's jurisdiction is determined by and derives from the dispute that is referred to him. If he determines matters over and beyond the dispute, he has no jurisdiction. But the scope of the dispute was agreed, namely as to the Employer's obligation to make payment and the Contractor's entitlement to receive payment following receipt by the Employer of the Contractor's Applications for interim payment Nos 4, 5 and 6 … In order to determine this dispute the Adjudicator had to resolve as a matter of law whether Clauses 30.3.3-6 applied or not, and if they did, what was the effect of failure to serve a timeous notice by the Employer. Even if he was wrong on both these points that did not affect his jurisdiction.*
>
> *30. It is important that the enforcement of an adjudicator's decision by summary judgment should not be prevented by arguments that the adjudicator has made errors of law in reaching his decision, unless the adjudicator has purported to decide matters that are not referred to him. He must decide as a matter of construction of the referral, and therefore as a matter of law, what the dispute is that he has to decide. If he erroneously decides that the dispute referred to him is wider than it is, then, in so far as he has exceeded his jurisdiction, his decision cannot be enforced. But in the present case there was entire agreement as to the scope of the dispute, and the Adjudicator's decision, albeit he may have made errors of law as to the relevant contractual provisions, is still binding and enforceable until the matter is corrected in the final determination."*

30. In the present case, the Notice of Adjudication sought payment of the £50,000-odd made up of two sums due by reference to interim Valuations, nos.12 and 13, issued under the Contract. The dispute which was referred to the Adjudicator in these terms was clearly wide enough to allow him to reach the decision which he did. On one analysis, the most that can be said here is that the Adjudicator has done the exact opposite of what the Adjudicator did in C&B Scene; Mr Malone applied the scheme under the Act rather than the Contract payment mechanism. However, the point of principle is precisely the same: his choice of payment mechanism may have been incorrect, but it cannot affect his jurisdiction.

31. In addition, and for the avoidance of doubt, I have also concluded that the Contract, including the agreement to adjudicate, continued to govern any disputes as to valuation and payment arising out of Valuations 12 and 13, and that no jurisdictional challenge, based on the 1996 Act, was or is open to the Defendant in any event. There are four reasons for these conclusions.

32. First, it seems to me that, notwithstanding the termination of Deacon & Jones' employment, the Contract between the Claimant and the Defendant continued to operate in practice; that is amply demonstrated on the evidence before me. The Contract provided the machinery pursuant to which, even without Deacon & Jones, the Claimant's entitlement to interim payments would be assessed and paid. The Claimant provided Valuations 12 and 13 in January 2005 in the same way as it had done before the new year; all that was different was that it was now Mr. Buckingham alone who had to consider them and pay what was due in accordance with the Contract timetable. Thus, I do not believe that the Contract payment mechanism was rendered irrelevant by Deacon & Jones' sacking. The machinery was capable of being adapted by the parties so that it could continue to work in the absence of Certificates issued by Deacon & Jones.

33. Indeed, as Mr. Buckingham himself made clear this afternoon, he had written to the Claimant on 4th January 2005 to say that he would now administer the Contract. Accordingly, on that view, the payment mechanism stayed in place and was not changed at all. Mr. Buckingham accepted that he had not issued Certificates in respect of Valuations 12 and 13: plainly, on his own case, he should have done. As the contract administrator, therefore, he was in default, but, as Mr. Kennedy correctly submitted, that default was rectified by the Adjudicator, who essentially made good the absence of such Certificates by his decision.

34. Secondly, not only was the Contract payment mechanism capable of being adapted by the parties to operate in the absence of Deacon & Jones, but, again as Mr. Buckingham agreed, it was so adapted. When he received Valuation 12, the Defendant did not reject it outright; he considered it and made a payment of some £40,000-odd in respect of the claim which had been made. That was, therefore, in my judgment, an unequivocal acknowledgment by the Defendant that the contract machinery continued to operate in the absence of Deacon & Jones.

35. Thirdly, although it is not my approach, one analysis of the situation after the sacking of Deacon & Jones could be that the Contract remained in force, including the agreement to adjudicate, and that, if appropriate or necessary, the terms of the scheme in the 1996 Act could be implied into that Contract simply in order to make the payment mechanism work in the absence of interim Certificates. That did not mean that the Adjudicator derived his jurisdiction from the 1996 Act: he plainly did not, for the reasons that I have explained.

36. Fourthly, even if I am wrong and the only appropriate payment mechanism, following the sacking of Deacon & Jones, was that provided by the scheme in the 1996 Act, the Defendant is in any event prevented from seeking to rely on the residential occupier exclusion in the Act in order to challenge the Adjudicator's jurisdiction and resist these enforcement proceedings. If the payment mechanism within the scheme was the only way in which the Claimant could recover its financial entitlement, then the failure to replace Deacon & Jones by others who would issue interim Certificates means that the Defendant was in breach of contract (see **Croudace v. Lambeth** [1986] 33 B.L.R. 20). In those circumstances, I accept the proposition that the Defendant cannot seek to take advantage of his own breach by arguing that, as a result of that breach, the Contract payment machinery was unworkable and that the scheme, under the 1996 Act, did not fill the gap because the Defendant was a residential occupier.

37. Accordingly, it seems to me clear that, whether there is anything in the point about the status of Valuations 12 and 13 and the precise operation of the Contract payment machinery (which, for the reasons I have given, I do not in any event accept), it cannot affect my unequivocal conclusion that the Adjudicator had the necessary jurisdiction to consider the claims set out in Valuations 12 and 13 and to make a decision based upon them. Whilst that is sufficient to dispose of the application, I should, for completeness, go on to deal with one or two other matters which were raised in the course of argument.

RESIDENTIAL OCCUPIER

38. In the adjudication, a good deal of time was taken up with what I regard to be an irrelevant argument advanced by the Claimant, to the effect that the property was not a residence of the Defendant and was therefore not excluded by s.106(1)(a) of the Act. I am in no doubt whatsoever that the property

was one of the Defendant's residences and that he was therefore a residential occupier. Accordingly, if (which I manifestly do not accept) the Adjudicator's jurisdiction had derived from the 1996 Act, I would have found that he had no jurisdiction because s.106(1)(a) would have applied. Of course, for the numerous reasons which I have previously given, the Adjudicator's jurisdiction did not derive from the 1996 Act and neither party before me this afternoon has submitted to the contrary. The Adjudicator's jurisdiction derived from the Contract agreed between the parties and, therefore, the residential occupier point does not arise.

TERMINATION

39. In the adjudication, the Defendant's advisors also took the point that, because the Contract had been terminated, it was therefore irrelevant. It is not clear the extent, if at all, to which this point now arises but, for the sake of completeness, I should make plain that I regard that contention as manifestly a bad one. The Contract may have come to an end, but the parties' accrued rights and liabilities under that Contract remained for the Adjudicator to determine. The Claimant had an accrued right in respect of Valuations 12 and 13, and the subsequent termination of the Contract did not alter or affect that right.

40. For completeness, I should add that, at one point, it was suggested that the Claimant had terminated the Contract by its letter of 1st December, which I have read out. It seems to me that that is again irrelevant, for the reasons which I have already given. But, as a matter of fact, it seems to me clear that that submission was wholly wrong: after 1st December, works continued at the property and, in early January, although the Defendant sacked Deacon & Jones, he expressly told the Claimant that he was taking over the administration of the Contract himself. The continuing existence of the Contract was affirmed by both parties repeatedly after 1st December. In those circumstances, therefore, it seems to me clear that the Contract was not, and could not have been, terminated by the Claimant's letter of 1st December in any event.

THE UNFAIR TERMS IN CONSUMER CONTRACTS

REGULATIONS 1999

41. The last argument advanced in the adjudication was that the adjudication provisions in the Contract should be struck out as offending against the Unfair Terms in Consumer Contract Regulations 1999. To the extent that that argument is still relied on, I reject it as a matter of principle. To adopt the phrasing of His Honour Judge Thornton Q.C. in **Westminster Building Company Limited v. Beckingham** [2004] B.L.R. 163 at p.170, the adjudication agreement would be unfair and, hence, not binding on Mr. Buckingham if:
    (a) It was not individually negotiated and
    (b) It is contrary to the requirement of good faith and
    (c) It causes a significant imbalance in the parties' rights and obligations arising under the Contract, to the detriment of Mr. Buckingham as a consumer and
    (d) It is unfair, taking into account the nature of the goods or services for which the contract was concluded, by referring at the time of the conclusion of the Contract to all the circumstances attending the conclusion of the Contract and all the other terms of the contract.

42. The only authority of which I am aware in which it was found that adjudication provisions might contravene these Regulations is **Picardi v. Cuniberti** [2003] B.L.R. 487. There, His Honour Judge Toulmin C.M.G., Q.C. held that relevant conditions, including an adjudication agreement, had not in fact been incorporated into the contract. Therefore his remarks about the Regulations were obiter. Furthermore, there can be little doubt that one of the principal reasons why the learned judge came to the view that, if there had been an adjudication agreement, it may have offended against the Regulations, was because the proposed adjudication agreement in that case had been originally put forward by the Claimant architect, so that, if he had been able to establish the contract for which he contended, he could then have relied upon that agreement.

43. In **Westminster v. Beckingham** itself, Judge Thornton rejected the suggestion that the term was unfair on the facts with which he had to deal. Importantly, he found at paragraph 31 :
    "The terms of the contract were decided upon by Mr. Beckingham's agents, who are chartered surveyors, and Mr. Beckingham had, or had available to him, competent and objective advice as to the existence and effect of the

adjudication clause before he proffered and entered into the contract. Westminster did no more than accept the contract terms offered and had no reasonable need to draw to Mr. Beckingham's attention the potential pitfalls to be found in the adjudication clause and in its operation during the course of the work. The clause did not therefore contravene the requirement of good faith (see especially the speech of Lord Bingham in the case of ***Director-General of Fair Trading v. The First National Bank Plc*** *[2002] 1 AC 481)."*

It seems to me that the present case is precisely on all fours with the decision in **Westminster** and the same result should apply.

44. A more comprehensive review of the authorities was provided by His Honour Judge Richard Seymour Q.C. in **Bryen & Langley Limited v. Martin Rodney Boston** [2004] EWHC 2450. Again the judge ruled that the adjudication agreement was not unfair. Again it was a highly material fact that there (as here) the defendant's agents had proffered the contract terms, which included the adjudication agreement. I expressly agree with and adopt Judge Seymour's comments at paragraphs 43 and 44 of his judgment. In particular, I agree with his commonsense conclusion that:

"While it may be going too far to say that a building contractor who merely, without more, accepts a proposal from a 'consumer' as to the terms of the contract to be made between them could never contravene the requirement of good faith, it is difficult to envisage circumstances in which the criticism could properly be made that the contractor had acted contrary to the requirement of good faith in such a case."

45. For all those reasons, therefore, I reject the suggestion that the adjudication agreement in the JCT conditions in this case was unfair to the Defendant, pursuant to the Unfair Terms in Consumer Contracts Regulations 1999.

CONCLUSIONS

46. For the reasons which I have given, I conclude that the Adjudicator had the necessary jurisdiction to reach the decision he did. I therefore grant summary judgment to the Claimant for the following:

(a) The sum of **£50,401.35**, being the total due in respect of valuations 12 and 13;

(b) Interest in a sum which I direct the parties to agree, pursuant to the Late Payment of Commercial Debts Interest Act 1998;

(c) The nomination fee payable to the RICS, which the adjudicator ordered the defendant to pay; and

(d) The sum of **£2,112.25**, plus VAT, in respect of the adjudicator's fees, which he also directed to be paid.

47. Finally, I should say this. I have some sympathy for Mr. Buckingham's position, not because he had any defence to this enforcement claim (because, manifestly, he did not) but because it seems that, from the material which I have seen, he has apparently been let down by his previous professional advisors. In particular, it seems to me that these disputes arose because there was not in place a clear lump sum Contract at the outset covering all the proposed Works at the property. If work begins on site without a lump sum agreement in place, events can quickly mean that the parties move apart, rather than together, and the prospect of ever agreeing a lump sum recedes into the distance. Unhappily for Mr. Buckingham, that seems to be what happened here. These difficulties were then compounded by the curious decision not to advance any case at all on the merits in the adjudication. However, as I have said, I am afraid that these points do not and cannot give Mr Buckingham any sort of defence to these enforcement proceedings.

MR. S. KENNEDY (instructed by Fenwick Elliott) appeared on behalf of the Claimant.
THE DEFENDANT appeared in person.