

# ADJUDICATION CASE SUMMARIES I



LAST UPDATED 7<sup>th</sup> MAY 2006

## **IDE Contracting Ltd. v RG Carter Cambridge Ltd [2004] EWHC 36 TCC**

His Honour Havery J considered an application for enforcement of an adjudication decision. Wishing to submit a dispute to adjudication, a party approached the named adjudicator in the contract, only to find that he was not available and promptly approached an ANB for a nomination. The nominated adjudicator went ahead and delivered a decision in due course. The other party sought, successfully to resist enforcement on the basis of no jurisdiction. The court held that where the contract names an adjudicator, all parties must be informed of his unavailability before an ANB can be approached to make a nomination. *Thomas-Fredric (Construction) Ltd v. Keith Wilson* [2003] EWCA Civ 1494 applied.

His Honour Judge Richard Havery. TCC. 16<sup>th</sup> January 2004.

## **Image Decorations Ltd v Dean & Bowes (Contracts) Ltd [2004]**

A dispute about variations arose in respect of a plastering and relining project for a club in Epsom on D&B standard form contract terms. The dispute was referred to adjudication but a lack of clarity as to what was to be determined by the adjudicator resulted in the referral being deemed to be limited to matters of entitlement alone. The adjudicator requested the power to determine quantum but this was declined. Relying in the dicta of *S L Timber System Ltd v Carillion Construction Ltd 2001* and paragraph 20 of Part I of the Scheme the adjudicator nonetheless went ahead and decided quantum on the basis that it was a matter necessarily connected with the dispute. The court disagreed with this approach, finding that the intention of para 20 of the scheme was to enable the adjudicator to make subsidiary matters necessary to decide the issues referred to him. Clearly there was no need here to decide quantum in order to decide entitlement, which was an additional issue not a subsidiary matter. Accordingly, enforcement was refused for lack of jurisdiction. (Details regarding the Court and judge not available at the present time.) 5<sup>th</sup> March 2004.

## **Impresa Castelli SpA v Cola Holdings Ltd [2002] TCC**

Jurisdiction of the court : Waiver : Parties adjudicated certain disputes but then agreed to refer other issues to court : Held : agreement overrode contract provisions for arbitration etc.

Regarding the validity of a "Penalty Clause" *Dunlop, Pneumatic Tyre Co Ltd v New Garage & Motor Co [1915] AC 79* and *Philips Hong Kong v AG of Hong Kong* (1993) 61 BLR 41 considered.

His Honour Judge Thornton. TCC. 2<sup>nd</sup> May 2002.

## **Interserve Industrial Services Ltd v Cleveland Bridge UK Ltd [2006] EWHC 741 (TCC)**

The claimant successfully adjudicated a construction claim and accordingly, monies became due. The defendant then successfully adjudicated a subsequent dispute, but monies had not yet become due. At an enforcement hearing court in respect of the first adjudication, the court held that the sums due from that first adjudication could not be set off against the second. The Housing Grants and Construction Regeneration Act 1996 and the accompanying Scheme required immediate payment. A system of rolling balances cannot be operated in respect of successive adjudications. *Gilbert-Ash v Modern Engineering* [[1973] : *VHE v RBSTB* [2000] : *Levelox v Ferson* [2003] Applied.

His Honour Mr Justice Jackson. TCC. 6<sup>th</sup> February 2006.

## **Isovel Contracts Ltd v ABB Technologies Ltd [2001] Ch.Div**

Insolvency : Court ordered enforcement despite the fact that business was in administration and asserted set off claims : Deputy Judge Simon Berry Q.C. Chancery Division. 30<sup>th</sup> November 2001.

**Cross Reference :** *Bougyues* & see Insolvency Act.