

ADJUDICATION CASE DATA BASE



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TOPIC INDEX	CASE NAME (<i>Hyperlinked – word version only – not available in pdf</i>) - CITATION : (<i>On-line web source</i>) : Bullet point summary.	JUDGE	Year/M/D	COURT
Statutory demand : enforcement of contract debt	Brooklyn Holdings v Able Handyman Services [2005] NZ HC, CIV2005-485-1362). Commentary by J.G.Walton An action for statutory demand set aside. Court made no reference to the CA decision of George Developments v Canam Construction. Allegations of set off and solvency raised to resist the demand. Echoing the TUFF case - conclusion must be that Summary Enforcement is the correct manner to enforce a Construction Contract claim.	Gendall HAJ	2005.09.13	High Court Wellington. New Zealand
Judicial Review – adjudicator's decision	Concrete Structures NZ Ltd v Michael D Palmer & Moncur Engineering Ltd [2006] NZHC 342 Application for judicial review brought against an adjudicator under the Construction Contracts Act 2002 in respect of an award on interest. Oral Judgement.	Baragwanath. J	2006.04.06	High Court of New Zealand. Rotorua Registry.
Payment due at end post termination	Construction Service Co Ltd v Wellington Waterfront Ltd [2006] HC WN CIV-2006-485-1117 Right to progress payments ends upon termination of contract : Payment then due on final account. Where sub-contractors paid directly - contractor not entitled to progress payments due to the sub-contractors.	Gendall J	2006.09.13	High Court District Registry New Zealand. Wellington
Weathertight Review	Dustin v Weathertight Homes Resolution Service [2006] NZHC 564 Application for judicial review of a Weathertight adjudication decision.	Courtney J	2006.05.25	High Court, New Zealand, Auckland Registry.
Costs	Dustin v Weathertight Homes Resolution Service [2006] NZHC 759 Costs Judgement.	Courtney J	2006.07.03	High Court of New Zealand. Auckland Registry.
Insolvency – set off	Esoon Ltd v R.I.Grieve, P.R.Jollands, Williams Investment Group Ltd [2007] Adj.L.R. 02/07 CIV 2006-404-6687 Liquidators must take note of and comply with debts established by an adjudication and cannot set that debt off against other claims.	Heath J. P.R.	2007.02.07	High Court District Registry New Zealand. Auckland
Costs – Weathertight action	Everest v Schwass No2 [2005] NZHC 308 Leaky building – Weathertight Claim. Costs Judgement.	Gendall D.I. Associate Judge	2005.11.30	High Court, New Zealand, Wellington Registry.

Summary Judgement- Weathertight action	Everest v Schwass No2 [2005] NZHC 308 Weathertight / leaky building adjudication : Failed application by defendant for summary judgement.	Gendall D.I. Associate Judge	2005.09.28	High Court, New Zealand, Wellington Registry.
Enforcement or set aside	Freemont Design & Construction Ltd v Natures View Joinery Ltd t/a Nebulite Waikato [2006] NZHC 866 Applications to set aside statutory demand pursuant to adjudicator's award.	Faire J	2006.07.26	High Court of New Zealand. Hamilton Registry.
Summary judgment : appeal	George Developments Ltd v Canam Construction Ltd [2005] NZCA 84 Unsuccessful appeals from a judgment of Associate Judge Christiansen, High Court at Auckland on applications by, respectively, the appellant and the respondent, for summary judgment. The two applications were heard together.	Anderson P, O'Regan : Robertson JJ.	2005.04.12	New Zealand Court of Appeal
Insolvency & Construction Contracts Act 2002	Gilmer (10) Ltd v Tracer Interiors & Construction Ltd [2005] NZHC 332 The relationship between the winding up provisions of the Companies Act 1993 on the one hand, and Sections 19 to 24 and Section 79 Construction Contracts Act 2002	Gendall D.I. Associate Judge	2005.12.06	High Court, New Zealand, Wellington Registry.
Statutory demand : Construction Act – set aside	Gulf Harbour Investments Ltd v Y Gulf Harbour Ltd (formerly Global Yacht Finishers Ltd) [2006] NZHC 239 Application for statutory demand in respect of sums due and owing by the applicants pursuant to payment claims under the Construction Contracts Act 2002. Application to set aside statutory demands.	Christiansen. Associate Judge	2006.03.16	High Court, New Zealand, Auckland Registry.
Statutory demand : Construction Act – set aside	Jian Hua Property Ltd v Freemont Design & Construction Ltd [2006] NZHC 77 Application to set aside statutory demand in relation to a progress payment. Interim judgment.	Doogue J P : Associate Judge	2006.02.16	High Court, New Zealand, Auckland Registry.
Costs – re application to set aside.	Jian Hua Property Ltd v Freemont Design & Construction Ltd No2 [2006] NZHC 295 Costs Judgement – following on from application to set aside statutory demand in relation to progress payments..	Doogue J P : Associate Judge	2006.03.29	High Court, New Zealand, Auckland Registry.
Weathertight Claim	Kay v Dickson Lonergan Ltd [2006] NZHC 605 Weathertight Homes Resolution Services Act 2002 adjudication.	France J Ellen	2006.05.31	High Court, New Zealand, Auckland Registry.
Insolvency : non-payment of statutory demand	Kizer Builders Limited v OEC Construction Limited [2006] CIV-2006-485-2287 Statement of Claim seeking an order to place the defendant company into liquidation. The grounds for this were that the defendant had failed to comply with a statutory demand. Temporary stay removed. The plaintiff is free to proceed with advertising of this liquidation application.	Gendall DI. Associate Judge	2006.11.16	High Court of New Zealand. Wellington Registry.
Claims and schedules - validity	Marsden Villas Ltd v Wooding Construction Ltd [2006] NZHC 569 Validity of payent claims and schedules - implications of failure to issue.	Asher J	2006.05.25	High Court, New Zealand, Auckland Registry.
Payment Schedule – meaning of	Metalcraft Industries Ltd v Christie [2007] NZHC 52 Failure to specify in a letter what is being claimed is not sufficient to establish a payment Schedule within the meaning of the Act. Appeal against refusal of summary enforcement.	Harrison J.	2007.02.15	High Court District Registry New Zealand. Whangarei

Set aside – statutory demand	Parker Construction Management (NZ) Ltd v Aden Electrical Ltd [2006] NZHC 61 Application to set aside statutory demand regarding supply of electrical goods and services.	Gendall D I Associate Judge	2006.02.13	High Court, New Zealand, Wellington Registry.
Set aside – statutory demand	Parker Construction Management (NZ) Ltd v Aden Electrical Ltd [2006] NZHC 61 Application to set aside statutory demand regarding supply of electrical goods and services.	Gendall D I Associate Judge	2006.02.13	High Court, New Zealand, Wellington Registry.
Insolvency : Statutory demand - liquidation	QC Construction Ltd v Apt Tiling Ltd [2006] NZHC 537 Statutory demand : Validity of progress payments conceded. However, court declined to put debtor into liquidation - evident there was an ability to pay.	Doogue J P : Associate Judge	2006.05.19	High Court, New Zealand, Auckland Registry.
Summary enforcement : appeal	Salem Limited v Top End Homes Limited [2005] NZ CA160/05 Commentary by J.G.Walton Failed appeal against the High Court judgement enforcing payment for a construction contract. Salem had already conceded in the lower court that there had been a valid claim. (see also later revised judgement April 2006 in relation to costs)	Young P, O'Regan Panckhurst JJ.	2005.12.12	Court of Appeal. New Zealand. William
Costs of failed appeal	Salem Limited v Top End Homes Limited [2006] NZCA 45 Construction payment dispute. Recall of judgment of 12 December 2005 in relation to the costs award. Upon reconsideration, the appellants is ordered to pay costs of \$3000 with usual disbursements.	Young P, O'Regan Panckhurst JJ.	2006.04.04	Court of Appeal. New Zealand. William
Statutory demand – set off – set aside	SCI Development & Construction Ltd v NZ Built Ltd [2005] NZHC 480 Application to set aside a statutory demand issued by the defendant, claiming amounts outstanding under a construction contract.	Abbott D H : Associate Judge	2005.12.23	High Court, New Zealand, Auckland Registry.
Appointment procedure defective	Stellar Projects Ltd v Nick Gjaja Plumbing Ltd [2006] NZHC 369 Successful challenge to the appointment procedure for an adjudicator.	Venning J	2006.04.10	High Court, New Zealand, Auckland Registry.
Summary enforcement	Top End Homes Ltd v Salem Ltd [2005] NZ. Adj.Soc Successful application for summary judgment - pursuant to a construction contract.	Venning J	2005.07.19	High Court New Zealand Whangarei Registry.
Payment Schedule	TGC Properties Ltd v Freemont Design & Construction Ltd [2006] NZHC 370 Consequence of not issuing a payment schedule in response to a lawful - though allegedly incorrectly calculated notice for payment.	Doogue J P : Associate Judge	2006.04.10	High Court, New Zealand, Auckland Registry.
Progress claim enforceable as a debt in absence of payment schedule	TUF Panel Construction Ltd v Robert Ernest Capon [2004] NZ : Adj.Soc. In the absence of a payment schedule pursuant to the Construction Contracts Act in response to an invoice, the sum demanded became a debt enforceable by summary judgment. The opportunity to raise issues as to whether the debt was owed by an individual qua director or by the company was provided by the payment schedule facility. The defendant did not avail themselves of this. It was now too late.	Wilson J QC D.M.	2004.03.15	New Zealand. District Court North Shore.

Payment schedule - compliance	Westnorth Labour Hire Ltd v SB Properties Ltd [2006] HC AK CIV 2006-404-001858 Heading a letter purporting to be a payment schedule Without Prejudice does not contradict scheme. In absence of negotiation offer it is not privileged. An indication that nothing is due satisfies the statute. Due date is within 20 working days even if under contract payment is due before then.	Hansen J Rodney	2006.12.19	High Court District Registry New Zealand. Auckland
Enforcement : Stay : Stakeholder a/c	Willis Trust Co Ltd v Green No1 [2006] NZHC 154 Stay of enforcement of adjudicator's decision : Stakeholder account payment..	Harrison J Rhys	2006.03.01	High Court, New Zealand, Auckland Registry.
Jurisdiction : Challenge	Willis Trust Co Ltd v Green No2 [2006] NZHC 571 Challenge to an adjudicator's decision.	Harrison J Rhys	2006.05.25	High Court, New Zealand, Auckland Registry.
Payment schedule – due date	Winslow Properties Ltd v Wooding Construction Ltd [2006] LIMITED HC AK CIV 2006-404-004969 Letter accompanying a claim to be read with claim for purposes of Construction Act. Claim addressed to nominated correspondent satisfies service requirements. Progress payment to be effective must be made within 10 working days.	Cooper J	2006.12.14	High Court District Registry New Zealand. Auckland