

# CHALLENGING AN ADJUDICATOR'S DECISION IN LIGHT OF HUTTON CONSTRUCTION V WILSON PROPERTIES

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- ▶ Guidance issued on the ability to challenge an adjudicator's decision in the course of TCC enforcement proceedings.
- ▶ Judgment restricts the ability of a defendant to resist enforcement.

## What's it about?

In *Hutton Construction Ltd v Wilson Properties (London) Ltd [2017 EWHC 517 (TCC)*, Coulson J in the Technology and Construction Court (TCC) gave guidance clarifying the circumstances in which a Part 8 Claim will be considered by the Court on the enforcement of an adjudicator's decision.

Under a contract dated 12 November 2014, Wilson (the Employer) engaged Hutton (the Contractor) to carry out residential conversion works at a property under a JCT Standard Building Contract without Quantities 2011 contract. Hutton issued an application for payment to Wilson on 17 August 2016. The matter was referred to adjudication after a dispute arose as to whether Wilson had served a valid interim certificate or pay less notice in response. The adjudicator found that Wilson had failed to serve a valid pay less notice and made an award of £491,944.73 in favour of Hutton on 15 November 2016. Wilson did not comply with the decision.

Hutton commenced enforcement proceedings in December 2016. Wilson did not serve a defence or counterclaim, though it did indicate that it intended to resist. Instead in its evidence Wilson raised issues which had not been the subject of the adjudication. Wilson also served a Part 8 Claim Form less than 3 weeks before the enforcement hearing contesting the adjudicator's decision. It did not include any specific declarations or clarify the basis of its defence.

## Decision

Coulson J found in favour of Hutton and in doing so refused to consider Wilson's challenge to the adjudicator's decision during the enforcement hearing. Any Part 8 claim would need to be pursued separately. This was on the basis that:

- ▶ the Part 8 Claim Form was incomplete and issued late; and
- ▶ Wilson did not clarify why enforcement was being resisted and instead attempted to 'shoehorn' a re-run of the adjudication issues into the enforcement hearing.

Coulson J stated that to allow such an approach would lead to adjudication becoming the first part of a two-stage process, with everything coming back to court for review prior to enforcement. The judge therefore found that Hutton was entitled to summary judgment for £491,944.73.

Coulson J also set out the procedure that must be adopted where a defendant seeks a Part 8 declaration on a point it believes was incorrectly decided and the narrow circumstances in which that would be permitted:

- ▶ the issue must be short and self-contained and have arisen in the adjudication;
  - ▶ the issue requires no oral evidence or any other elaboration beyond that which is possible during the time allowed for the enforcement hearing; and
  - ▶ the issue is one which it would be unconscionable for the Court to ignore.
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## What now?

The case clarifies that a party can only resist enforcement of an adjudicator's decision in very limited circumstances. In the vast majority of cases, a party's belief that issues were wrongly decided in an adjudication will be irrelevant and an adjudicator's award will be enforced even if there is an error.

The case also highlights that enforcement cannot be opposed by trying to revisit already decided issues. Any such attempt would be considered an abuse of process and potentially make that party liable for indemnity costs.

## Who to contact

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