

The ‘correction’ principle cannot be used to resist enforcement of an adjudicator’s decision

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The case of *J & B Hopkins Ltd v Trant Engineering Ltd* [2020] EWHC 1305 (TCC) is another interesting decision which demonstrates the Court’s robust attitude to enforcement of adjudicator’s decisions.

In this instance, a novel argument based on the ‘correction’ principle, namely, that interim payments can be corrected in the next interim payment cycle, will not prevent the enforcement of an adjudicator’s decision.

The established legal principles

The court made a point of setting out the established legal principles regarding enforcement of an adjudicator’s decision. The starting point is that if the adjudicator has decided the issues referred to them, whether their decision is right or wrong in fact or in law, as long as they have acted broadly in accordance with the rules of natural justice, that decision will be enforced by summary judgment.

It follows that there are on contested enforcement applications, only two bases which will not lead to summary judgment and enforcement of the adjudicator’s decision. These are:

- (i) if the decision was one made without jurisdiction; and
- (ii) if the decision was made in the presence of material breaches of natural justice.

Neither of these arguments were contended by Trant, the party attempting to resist enforcement.

The court reminded the parties that the principles of enforcement are subject to two narrow exceptions, identified in *Hutton v Wilson* [2017] BLR 344. The first is an admitted error; the second is a self-contained legal point concerning timing, categorisation or description of payment notices or payless notices, in respect of which the potential paying party has issued Part 8 proceedings seeking a final determination of that or those substantive points. Again, neither of the exceptions were argued for by Trant.

The ‘correction’ principle

Instead, Trant attempted to convince the court of a novel reason to resist enforcement of the adjudicator’s decision based on the ‘correction’ principle. Trant described this simply as the principle set out in case law that interim payments can be corrected in the next interim payment cycle. Trant’s argument was that since the interim payment application which was the subject of the adjudication had been corrected long before the adjudication was commenced, the earlier payment entitlement ceased to exist and was replaced by the current sum due under the most recent interim payment cycle.

The court agreed that there is something which it said could usefully be termed the ‘correction’ principle but it was more sophisticated than the summary promoted by Trant. The court said that the ‘correction’ principle means that where an *“... interim application is subject to a failure by a particular party to issue the required notices, leading to the result that by that failure the sum applied for becomes due, any correction to reflect the true value of the work (and the application) is permissible on later applications. However, the quid pro quo of that is that the amount due on the original application as a result of the failure to serve the required notices is precisely that: the amount due...”*

In summary, the correction principle allows a paying party to ‘correct’ the true value of the works on later payment applications, but any such correction does not mean that the amount specified in the earlier payment application has not become or is no longer due. The paying party therefore remains liable for the amount due on the earlier payment application.

Decision

In light of the above, the court rejected Trant’s argument providing the following analysis to support its decision:

1. A decision to enforce the adjudicator’s decision would not undermine the correction principle because parties to a construction contract have the right to adjudicate at any time.
2. The argument promoted by Trant effectively meant that by a party making subsequent interim payment applications in the payment cycle, it removed the possibility of that party making a dispute on any issues outstanding on earlier

payment applications. The court held that those disputes on earlier applications do not disappear and cease to exist simply because a subsequent application is made on an interim basis. Nor does some sort of estoppel operate because a contractor makes another interim application in the cycle.

Following the above, and as Trant took no points on jurisdiction or natural justice, the court held that the adjudicator's decision should be enforced.

Take away points

This decision is one of the latest examples of a party attempting to use novel arguments to resist enforcement of an adjudicator's decision. The court was not persuaded and made a point of setting out the case law, chiefly that there are only two bases upon which a party can try and resist enforcement; jurisdiction and a breach of natural justice.

Parties and their advisers should consider carefully, particularly in light the costs consequences, whether it would be sensible to try and resist enforcement in circumstances where they find that on the facts of their case there are no issues of jurisdiction or natural justice.

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