

## Construction Law Update

### Insolvent Company Successfully Enforces an Adjudicator's Decision

The recent case of *Styles & Wood Limited (in administration) v GE CIF Trustees Limited* is one of the first reported decisions where an insolvent party has successfully enforced an adjudication decision using the principles laid down in the recent Supreme Court decision in *Bresco*.

#### Background

Styles & Wood Limited (“S&W”) and GE CIF Trustees (the “Employer”) entered into a JCT Intermediate Building Contract with contractor’s design 2011 in relation to the development of a property in Manchester.

S&W submitted a final account in the sum of just under £9 million but the Employer’s QS valued the account in the sum of just over £5 million and there were various claims and cross-claims.

A dispute arose in relation to the final account. This dispute was referred to adjudication under the relevant contractual provisions and the adjudication commenced on 14 February 2020. Part way through the adjudication, on 28 February 2020, S&W went into administration. The adjudication continued and the adjudicator decided that S&W was entitled to a sum of just under £700,000 plus VAT and interest.

The Employer refused to comply with the adjudicator’s decision on the ground of futility and sought a stay of execution. Despite being insolvent, S&W sought to enforce that adjudication decision.

#### Was adequate security offered?

As is now widely recognised, in light of *Bresco Electrical Services Limited v Michael J Lonsdale (Electrical) Limited*, an insolvent party can adjudicate a dispute. However, due to the insolvency, in enforcement of the adjudicator’s decision the insolvent party must provide appropriate undertakings and security.

In this case, S&W’s joint administrators offered to provide an undertaking to ringfence the enforcement sums pending the resolution of any final determination proceedings. They also offered an ATE insurance policy of £200,000 to cover a potential adverse costs order in any subsequent arbitration proceedings for final determination of the dispute.

The Employer attempted to raise a number of issues, including complaints about S&W’s financial position. However, the main issue between the parties was whether the level of cover provided by the ATE insurance policy was adequate. The Employer argued that the likely costs they could be awarded in arbitration would be five times that of the level of the ATE insurance offered. The court considered the Employer’s approach to assessing the level of costs to be “*broad brush*” and “*wholly unpersuasive*”.

The Employer also raised concerns about the wording and substance of the ATE insurance policy and S&W’s proposed undertaking for the ringfencing, arguing that the security was inadequate. During the proceedings, S&W addressed those concerns by making amendments to the ATE insurance policy and offered further undertakings from their administrators.

#### What did the TCC decide?

Ultimately, the court considered the security offered to be sufficient and therefore found in favour of S&W and enforced the adjudicator’s decision. However, this was only on the condition that the ATE insurance policy remained in force and the joint administrators provided the necessary undertakings to ringfence the sum until the conclusion of any appeal process from the arbitrator’s award.

#### Analysis

This is one of the first cases post *Bresco* where an insolvent party has been successful in enforcing an adjudicator’s decision. The decision offers welcome

## Construction Law Update

clarification on what is considered to be sufficient security.

*This article contains information of general interest about current legal issues, but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.*

© Hawkswell Kilvington Limited 2020