



Adjudicator's decision void and unenforceable on grounds of limitation

In *LJR Interiors Ltd v Cooper Construction Ltd* [2023] the TCC held for the first time that an adjudicator was wrong to reject the responding party's limitation defence which rendered their decision void and unenforceable.

Background

In August 2014, LJR and Cooper (together, the "Parties") entered into a written contract (the "Contract"), pursuant to which LJR agreed to carry out dry lining, plastering and screed works at a property in Oxfordshire (the "Works").

The Works completed in October 2014.

On 31 July 2022, almost 8 years after completion of the Works, LJR submitted interim application no 4 ("AfP4") to Cooper in the sum of c£3k excluding VAT. Cooper did not respond to AfP4 either by paying it or responding with a pay less notice.

h LJR referred the dispute to statutory adjudication in September 2022 and claimed the sum stated in AfP4 and interest.

The Adjudicator's Decision

The Adjudicator concluded that AfP4 was valid and complied with section 110A(3) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) (the "Construction Act"). On the issue of limitation, the Adjudicator found that under section 5 of the Limitation Act 1980 (the "Limitation Act") was "not relevant" and limitation had not expired. Finally, in the absence of a pay less notice and/or any evidence that LJR had acted fraudulently, the Adjudicator awarded LJR the sum stated in AfP4 along with interest and statutory compensation for late payment (the "Decision").

This case concerns LJR's Part 7 enforcement proceedings and application for summary judgment (the "Part 7 Claim") and Coopers Part 8 claim (the "Part 8 Claim") which sought to challenge the validity of the Decision on the basis that the sum awarded was limitation-barred.

Held

The TCC dismissed LJR's Part 7 Claim and granted the declaratory relief sought by Cooper.

Was the Adjudicator wrong to conclude that AfP4 was not statute barred?

Drawing on the findings made in *Hutton Construction Ltd v Wilson Properties* [2017] (as replicated in paragraphs 9.4.4 and 9.4.5 of the TCC Guide), the Court reasoned that to resist summary judgment under CPR Part 8, Cooper must be able to demonstrate that:

- (a) there is a short and self-contained issue which arose in the adjudication and which Cooper continues to contest;
- (b) the issue in question requires no oral evidence, or any other elaboration beyond that which is capable of being provided during the interlocutory hearing set aside for the enforcement; and
- (c) the issue is one which, on a summary judgment application, it would be unconscionable for the court to ignore.

After careful analysis of the authorities, the judge concluded that the Adjudicator was wrong to conclude that section 5 of the Limitation Act was not relevant to the question of whether AfP4 was valid.

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The court referred to the following points in support of this: -

- Whilst the Adjudicator had not ignored the limitation point as a 'non-point', his conclusion that AfP4 was not invalid because "*the Scheme does not contain any provision limiting when a claim for payment under a relevant construction can be made*" was wrong. In the same way that section 108(2)(a) of the Construction Act cannot be read as prescribing any limitation period, neither can it be suggested that section 39 of the Limitation Act operates to disapply its section 5.
- A limitation period cannot be "*renewed*" simply by making a claim for payment of sums previously demanded and otherwise barred from recovery on limitation grounds (which is what AfP4 sought to do). The Adjudicator had failed to take account of the payment terms contained in the Contract such that it wrongly relied upon the Scheme to establish a payment accrual date of 28 August 2022. In reality, LJR's right to payment accrued on 28 November 2014.
- The term "*action*" in the definition in section 38 of the Limitation Act should be read as including adjudication proceedings. Consequently, the normal rule under section 5 of the Limitation Act (which prevents a party claiming in contract more than six years after the cause of action accrues) applied. This gave Cooper a complete defence to LJR's claim.

"*erroneous approach*" of the Adjudicator. The Decision was void and unenforceable and the limitation defence operated as a complete defence to the claim advanced by LJR.

Analysis

This case is the first reported case where the court has refused to enforce an adjudicator's decision due to limitation. The case serves as an important reminder to parties seeking to bring a claim against another that they must do so promptly to avoid the costly consequences of limitation being relied upon as a defence.

This case, however, turns on its own facts and has been acknowledged by the TCC as one of those "*rare cases*" where the dispute in question is referred to adjudication long after contractual completion. As such, the circumstances in which parties will be able to challenge an adjudicator's decision as wrong to resist enforcement remains significantly restricted.

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Was the Adjudicator's error one which would be unconscionable for the court to ignore on the Part 7 Claim?

For the reasons explained above, the court found that it would be unconscionable to ignore the

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