



## Just deserts: court enforces payment of notified sum without requiring “arid exercise” of further adjudication

In *VMA Services Ltd v Project One London Ltd* [2024] EWHC 1815 (TCC), the Defendant (“**Project One**”) had commenced a true value adjudication (“TVA”) in an effort to challenge the amount claimed in an interim application made by the Claimant (“**VMA**”).

As Project One had neither paid the sum notified by VMA’s application nor served a valid payment or pay less notice, it was no surprise this attempt failed. The Court made clear once again that until a notified sum is paid in full, a paying party has no entitlement to pursue a TVA.

The more interesting issue was whether the adjudicator had exceeded his jurisdiction by going on to order Project One to pay that notified sum to VMA – raising again the question of whether and in what circumstances an adjudicator can make a monetary award in favour of the *responding party* to an application.

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### Key takeaways:

- **Failure to issue a valid payment or pay less notice results in an immediate obligation to pay the notified sum, regardless of any underlying dispute over the true value of the works.**
- **There is no way to leapfrog the immediate payment obligation; the notified sum *must* be paid before commencing a true value adjudication.**
- **Where the immediate payment obligation exists, the courts will enforce an adjudication**

**decision ordering payment of that notified sum to the responding party.**

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### Factual Background

On or around 16 October 2023, the parties entered into a JCT Design and Build Sub-Contract (2016 edition) for mechanical works at a development in Chelsea, London. On 21 June 2024, VMA submitted an interim application for payment (“**Application**”) claiming a net amount of £106,434.88.

Project One did not serve a payment or pay less notice in response yet did not pay. Instead, Project One commenced a TVA.

### Adjudication

VMA argued the absence of any effective notices meant the notified sum of £106,434.88 was immediately due, such that Project One had no entitlement to attempt a TVA.

The Adjudicator found in favour of VMA and declined to assess the work’s true value, emphasising that Project One must first satisfy its immediate obligation to pay the notified sum. Unusually, however, the Adjudicator went further and also awarded VMA the monetary sum due, *despite them being the responding party to the adjudication*.

Project One did not comply, arguing the Adjudicator lacked jurisdiction to make his findings. VMA sought summary judgment to enforce the Adjudicator’s decision.

### Held

The Judge, HHJ Adrian Williamson KC, firmly rejected Project One’s claim that the Adjudicator lacked jurisdiction to order monetary payment to

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# Construction Law Update

VMA. The Court enforced the award, making several key points in the process:

## Could Project One pursue the TVA?

Referring to the Housing Grants, Regeneration and Construction Act 1996 (“**Act**”) and established authority such as *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936 (TCC), the Judge confirmed again that a party cannot initiate a TVA under s.108 of the Act without first discharging its immediate obligation to pay the notified sum. Project One’s right under s.108 was subjugated to VMA’s immediate payment entitlement.

Since Project One had not made the required payment, its attempt to adjudicate the true value was impermissible.

## Did the Adjudicator have jurisdiction to award payment to the respondent?

On this point, the Judge first noted the general position set down by the Supreme Court in *Bresco Electrical Services (in liquidation) v Michael J Lonsdale (Electrical) Limited* [2020] UKSC 25. In *Bresco*, the Court explained that although a respondent could present any number of cross-claims and set-offs as defences in adjudication, it would not usually be permitted to advance an independent claim for a monetary award in its favour.

VMA nevertheless contended that in the present case, which concerned an immediate payment obligation, the adjudicator did have jurisdiction to make a financial award in its favour. It did so with reference to the decision in *WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC). In *WRW*, the Court departed from *Bresco* and enforced an adjudicator’s award in the respondent’s favour without requiring a second adjudication. The persuasive point in *WRW* was that a specific sum was immediately payable as a matter of law.

The Judge agreed with VMA that while there will be many cases where the usual *Bresco* approach will prevail, it is nevertheless the case that where there is a determination that a particular sum is immediately due to the Respondent, different considerations will apply. The obligation to comply with the decision that the notified sum was due was fortified by statute, and the Judge felt it would go against the Act’s objectives of certainty, speed and cash flow – and would be “*an arid exercise*” – to require VMA to commence another adjudication for recovery of a sum already determined to be immediately due to them.

On a side note, the Judge was quick to dismiss as “*Micawberish*” Project One’s suggestion that some new defence might turn up in future adjudication – rejecting this as a classic attempt by a losing party to “*comb through the adjudicator’s reasons*” in the hopes of finding a ground for challenge; a practice the Courts had condemned “*as long ago as 2005*”.

## Comment

The case is interesting in that it confirms again the Court’s readiness to enforce an adjudication decision awarding payment to a responding party where it has been established that that notified sum is immediately due and payable. It’s good news for claimant contractors who won’t have to jump through a further adjudication hoop where the obligation to pay has already crystallised.

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