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Construction Law Update

Settle in haste, repent at leisure: Court confirms adjudication rights may survive into settlement agreements

A party to a settlement agreement can adjudicate if:

- The agreement includes adjudication rights, or
- The agreement constitutes a construction contract under section 108 the Housing Grants, Construction and Regeneration Act 1996 ("**Construction Act**").

In *London Eco Homes Limited v Raise Now Ealing Ltd [2025] EWHC 1505*, the status of the settlement agreement on both counts was unclear. The key question was whether the Adjudicator had jurisdiction to determine disputes arising under the settlement agreement, and this mostly turned on how the settlement agreement related to the original construction contract.

Key takeaways:

- **Adjudication rights in a construction contract may survive into a settlement agreement, if the settlement agreement varies (rather than replaces) the original construction contract, and the original contract gives a right to adjudicate.**
- **Draft precisely to avoid confusion. If you want adjudication to apply, include a clause to that effect; to exclude adjudication, draft the settlement agreement as a fully standalone contract and expressly exclude the ability to determine disputes this way.**

Background

In November 2021, Raise Now Ealing Limited ("**RNEL**") engaged London Eco Homes Limited ("**LEHL**") under a JCT Intermediate Building Contract with contractor's design (the "**Contract**") for a construction project in West Ealing. The Contract contained an express adjudication provision for dealing with disputes.

Disputes arose during the works and were resolved in August 2023 by a settlement agreement, which required RNEL to make payments according to a specified schedule (the "**Settlement Agreement**"). The Settlement Agreement did not contain an express adjudication clause.

RNEL failed to pay according to the schedule and, in May 2024, LEHL referred the matter to adjudication.

RNEL challenged the Adjudicator's jurisdiction, arguing the Settlement Agreement did not permit adjudication as the forum for dispute resolution. The Adjudicator rejected this challenge and found in LEHL's favour, ordering RNEL to pay the outstanding balance due plus fees and interest, totalling just under £125,750. When the sums went unpaid, LEHL sought summary judgment to enforce the Adjudicator's award.

What were the issues?

RNEL again challenged the Adjudicator's jurisdiction. It argued the Settlement Agreement was a standalone contract that had no adjudication provisions, so disputes could not be decided this way.

LEHL argued the Settlement Agreement only varied the original Contract, so adjudication rights survived. Alternatively, the Settlement Agreement was itself a "construction contract" under the Construction Act, which would imply adjudication rights.

Held

The Settlement Agreement was a variation (not replacement) of the original Contract, and the adjudication provisions in the Contract survived. It

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followed that the Adjudicator had jurisdiction to determine the dispute and the decision was enforced.

In reaching this decision, District Judge Baldwin considered three questions:

Was the Settlement Agreement a construction contract?

The Judge began by considering whether the Settlement Agreement could be classified as a construction contract within the meaning of section 104 of the Construction Act 1996. If it could, there would be an implied right to adjudicate disputes relating to "*construction operations*" regardless of what the agreement actually said about dispute resolution.

The relevant clause here was clause 2.7 of the Settlement Agreement, which provided for LEHL to carry out "*all necessary works or modifications*" required for a warranty to be signed off in respect of the basement works.

The Judge accepted that such work amounted to "*construction operations.*" However, the dispute here concerned the timing and/or acceptability of the provision of the basement warranty, not the provision of works, so there was no implied right to adjudicate.

Was the Settlement Agreement a standalone contract?

RNEL's position that the Settlement Agreement *superseded* and *replaced* the Contract, and was therefore a standalone contract, was swiftly rejected. Applying commercial common sense, the Judge said the Settlement Agreement could not be understood in isolation from the Contract as it:

- Drew on definitions in the Contract,
- Referred to the original termination and payment mechanisms in the Contract, and
- Contained an "entire agreement" clause that only referred to the termination of the original Contract, not the removal or replacement of its terms.

In other words, there was a clear commercial link between the two documents, making it impossible to treat the Settlement Agreement as entirely self-standing.

Did LEHL have an *express* right to adjudicate?

The Judge then turned to whether the adjudication clause in the original Contract applied to the Settlement Agreement. The answer was a clear 'yes'. Since the Settlement Agreement was a variation of the Contract, and the original Contract's adjudication clause applied to disputes "*arising under the contract,*" the express right from the Contract continued to apply.

The Judge also pointed out the circular and illogical nature of RNEL's position. The Courts favour alternative dispute resolution methods and have broad powers to order parties to engage in any form of ADR, including adjudication.

Analysis

This case is very much in keeping with two clear themes in construction law, namely:

1. The Courts will enforce adjudication decisions, unless there is a clear case that the Adjudicator lacked jurisdiction, and

2. The Courts will interpret construction agreements in line with commercial common sense and encourage alternative dispute resolution where possible.

Most importantly, this judgment drives home the importance of careful drafting when entering into settlement agreements. In the rush to resolve a dispute, parties may be tempted to gloss over the finer details, but a failure to consider dispute resolution methods can expose both sides to further litigation and uncertain outcomes.