

Construction Law Update

Two Contracts, Two Wins: Court Enforces Adjudicator's Decisions on Related but Separate Contract Claims

In *Construction Muzzy Ltd v Davis Construction (South East) Ltd [2025]*, the Technology and Construction Court enforced two adjudication decisions made by the same adjudicator, each relating to a dispute under a different subcontract for the same project.

The Court rejected an argument that the adjudicator had breached natural justice by relying on a further submission (surrejoinder) by the claimant subcontractor for which no permission had been given; and further held that the two disputes were not "substantially the same" despite their involving the same parties and having similarities in subject matter.

This is another example of the Courts' commitment to enforcing adjudication decisions, supporting the 'pay now, argue later' principle enshrined in the Housing Grants, Construction and Regeneration Act 1996.

Key takeaways:

- **The rule against referring "substantially the same dispute" to adjudication does not apply when the disputes arise under different contracts with different factual matrices, even if the issues overlap.**
- **An adjudicator exercising procedural flexibility, including taking into account unsolicited submissions, will not automatically breach the rules of natural justice.**

Factual Background

Davis Construction (South East) Limited ("Davis") engaged Construction Muzzy Limited ("CML") under two separate sub-contracts to perform groundworks (dated 3 February 2023) and drainage works (dated 7 June 2023) at a site in Conder, Epping, Essex (together the "Sub-Contracts"). The Sub-Contracts had the same contractual terms.

The relationship between the parties deteriorated and Davis asked CML to leave site before completing the work. Payment disputes arose under both Sub-Contracts. Davis failed to issue valid pay less notices in either case and CML launched two separate adjudications, one for each Sub-Contract, to recover the outstanding amounts.

The same adjudicator was appointed to both proceedings. He found that Davis owed CML £98,533.44 plus VAT in Adjudication 1 (the "Groundworks Adjudication"), and £102,966.45 plus VAT in Adjudication 2 (the "Drainage Adjudication"). When Davis failed to pay, CML issued Part 7 proceedings to enforce the adjudication decisions.

Held

District Judge Baldwin granted summary judgment, enforcing both adjudicator's decisions in full. In making its ruling, the Court explicitly rejected all three defences raised by Davis:

1. Should the adjudicator have accepted the unsolicited surrejoinder?

After receiving Davis' rejoinder (second submission in response) in the Groundworks Adjudication, CML emailed the adjudicator with a series of "short points" (the 'surrejoinder'). CML had not sought permission to do so, and Davis argued it was unfair for the adjudicator to rely on these late additional comments, claiming they contained new points that Davis hadn't had a chance to answer.

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The Court dismissed this suggestion as “*fanciful*.” In its view, the surrejoinder wasn’t an ambush designed to give CML the last word, but rather an opportunity for CML to address new issues raised by Davis in its rejoinder.

In any event, the contents of the surrejoinder were peripheral to the decision-making process. What they added wasn’t significant enough to change the outcome or make the process unfair.

2. Did the two adjudications concern “substantially the same dispute”?

Davis argued that the two adjudications were essentially the same dispute, given the causes of action (failure to serve a payless notice) were the same, the referral notices were virtually identical, and the adjudicator had decided the disputes in the same way.

This is important because the statutory Scheme for Construction Contracts makes clear that if the second dispute is the same or substantially the same as the previous dispute, the adjudicator must resign.

The Judge rejected this argument. While the adjudications were founded on disputes from two related Sub-Contracts, those Sub-Contracts were separate with distinct terms, scopes of work and payment mechanisms, and the disputes themselves relied on different factual matrices. The fact that both disputes involved the same parties and arose from work on the same construction site was insufficient to trigger the duty to resign.

3. Did the adjudicator display a predetermination bias?

Davis also contended the adjudicator’s decision in the first (Groundworks) adjudication tainted his approach to the second (Drainage) adjudication, so he did not approach it with an open mind, a form of bias known as predetermination.

However, the Judge found no real prospect that a predetermination argument would succeed. Davis had chosen not to participate in the Drainage Adjudication, leaving the adjudicator with only CML’s evidence to consider and “*no ammunition to proceed differently*”. The Judge was satisfied that the adjudicator had properly reviewed the evidence before reaching a decision.

Comment

This decision sits comfortably within the Courts’ consistent pro-enforcement approach to adjudication decisions. It confirms, once again, that minor procedural irregularities will not invalidate an otherwise sound decision, and challenges to enforcement will only succeed in cases of genuine unfairness.

The Court also recognised that notwithstanding similarities in their subject matter, separate contracts create separate disputes that can be separately adjudicated – a commercially sensible decision which should reassure anyone managing multiple agreements.

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