

Construction Law Update

Ain't that a Sham? No Enforcement Where Existence of the Contract is in Doubt

TCC declines to uphold adjudicator's decision over alleged fraudulent contract.

The recent case of *High Tech Construction Ltd v WLP Trading and Marketing Ltd [2026]*, provides a rare example of the TCC refusing to summarily enforce an adjudicator's decision, against a backdrop of complex facts and a fundamental dispute over whether the contract said to appoint the adjudicator ever existed at all.

Here, the contractor had adjudicated on the footing of a signed JCT Design and Build contract, which the employer claimed was fabricated.

At enforcement, the Court revisited the familiar tension between an adjudicator deciding which contract, terms and scope apply (a substantive issue the adjudicator can usually determine) and a challenge that the very contract said to confer jurisdiction never existed in the first place (a jurisdictional issue that may prevent summary enforcement).

Key takeaways:

- **Jurisdiction follows the foundational contract.** If it is properly arguable that the wrong foundational contract has been relied upon by the referring party – or, as in this case, that the supposed contract never existed at all – the adjudicator is likely to be found to lack jurisdiction.
- **Misdescribing the contract usually isn't fatal.** If everyone accepts there is a real contract, arguments about which version applies or how its terms work are normally treated as substantive issues for the adjudicator to decide.

- **Credible, timely contract paperwork protects the right to adjudicate.** Contractors who may wish to rely on a construction contract for the purposes of adjudication should be astute to ensure their contract is clearly evidenced, because confused or confusing contract documentation can put any adjudication decision at risk.

Factual Background

Between early 2023 and July 2024, High Tech Construction Limited (“**HTC**”) carried out groundworks and enabling works on a London residential development owned by WLP Trading and Marketing Ltd (“**WLP**”).

HTC said the works were done under a JCT Design and Build Sub-Contract agreed at a meeting in a hotel in January 2023 (the “**JCT Contract**”), which adopted the Scheme for Construction Contracts. On that footing, HTC referred a payment dispute to adjudication and obtained an award of about £2.14 million in its favour.

HTC then applied to the TCC seeking summary judgment to enforce the adjudicator's decision.

The Arguments

Characterising HTC's case as “fraudulent”, WLP sought to resist enforcement on three main grounds:

- The alleged January JCT Contract never existed as a genuine, binding agreement and was instead fabricated or created later, after the works had begun. On that basis, WLP said the adjudicator had no jurisdiction at all, because the clause said to appoint him was contained in a contract that “*simply did not exist.*”
- Instead, WLP said the parties had operated under two informal arrangements: an oral / WhatsApp-based enabling works agreement and a later lump-sum agreement for reinforced concrete

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London

Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk

BE
BEYOND
LAW GROUP
beyondlawgroup.co.uk

Construction Law Update

frame works (respectively, the “**Enabling Works Contract**” and the “**RC Frame Contract**”).

- The JCT Contract had been fabricated, altered or misrepresented so that HTC’s reliance on it was fraudulent and the adjudicator’s decision had been procured by fraud.

The TCC had to decide whether HTC was entitled to summary judgment enforcing the adjudicator’s decision, or whether WLP’s arguments – particularly the jurisdictional one – were strong enough to require a full trial.

Several points emerged at the enforcement hearing, going to the true nature and existence of the supposed JCT Contract, not all of which had been raised in adjudication:

- After an initial phase of works, WLP explored a sale of the development and HTC joined discussions with a potential purchaser, Hestia.
- Minutes of a June 2023 meeting noting “no JCT or equivalent contract available” and a need for one “ASAP” were difficult to reconcile with HTC’s case that a JCT Contract had been agreed some five months earlier.
- WhatsApp messages suggested WLP was looking to formalise a looser arrangement into a JCT-style contract, reportedly to satisfy Hestia and funding requirements.
- Metadata and drafting anomalies suggested the Word-format JCT document was created months after the alleged January agreement and may have been adapted from unrelated templates or documents, casting doubt on whether it was ever intended to be the operative contract for the works.

Held

Mr Justice Constable declined summary judgment and left the dispute to proceed to trial, because there was a real prospect that the contract relied upon to appoint the adjudicator never in fact existed. He cited three reasons for that view:

1. Jurisdictional issue – did the foundational contract exist?

The Judge drew a clear line between two types of dispute:

- **Misdescription cases**, where everyone accepts there is a real contract but disagrees about scope, valuation or which version or terms apply. Those are *substantive* issues for the adjudicator, relating to *merits*, and the Court will normally enforce the decision if the adjudicator’s reasoning stays within the bounds of the agreed contract.
- **Non-existence cases**, where there is a genuine question whether the alleged contract ever existed at all. Those tend to go to *jurisdiction*, because if there was no real contract, there was no valid adjudication clause and no power to decide the dispute.

On the evidence (including the June 2023 minutes, WhatsApps and document/metadata issues), Constable J held that this case fell on the “*existential*” side of the line, and WLP had a realistic prospect of proving that the JCT Contract relied on by HTC was not the true agreement. If that were shown to be right at trial, the adjudicator would have been appointed under a clause that was “*not real*”, and his £2.14m decision would be incapable of being enforced.

The Court also made clear that the Scheme for Construction Contracts could not cure a fundamentally wrong foundation. Even if the Scheme applied, that did not validate an adjudication appointment made under a contract which may never have existed in the first place. Jurisdiction turns first on the existence and identity of a real “foundation” contract; only then do the Scheme or any contractual adjudication procedures bite.

2. Had the decision been procured by fraud?

WLP also argued that the JCT Contract had been fabricated or so materially misrepresented that the

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London

Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk

BE
BEYOND
LAW GROUP
beyondlawgroup.co.uk

Construction Law Update

adjudicator's decision had been procured by fraud, and this should independently bar enforcement.

The Court did not decide whether the contract was in fact "forged". Constable J explained that, because enforcement was already being refused on the jurisdictional ground, it was not necessary to determine the fraud allegations at this stage.

The fraud challenge did not change the outcome: the key question was whether there was a genuine contractual basis for the adjudicator's jurisdiction in the first place.

3. "New contract" argument at enforcement

WLP's alternative case was that the true contractual position was not the January JCT Contract at all, but two informal agreements – the Enabling Works Contract and the RC Frame Contract.

Constable J noted that this argument, and the evidence said to support it, had not been put to the adjudicator in this way. On enforcement the Court would not entertain that alternative contractual narrative as a fresh route to overturn the adjudicator's decision; the focus had to remain on whether the contract relied on in the adjudication – the JCT Contract – existed as a real, foundational contract.

Comment

This case is a rare reminder that adjudication only works if there is a real construction contract underlying it. Where there is a credible argument that the "contract" relied on in the referral may never have existed at all, the court will not simply wave the decision through on a "pay now, argue later" basis and will instead direct that the dispute go to a full trial.

Going forward, respondents will no doubt seek to frame issues as "the supposed contract never existed", while referring parties will want to cast them as misdescription within an accepted foundational contract. That is a risky landscape on projects where

there is long pre-contract correspondence and work often starts – and finishes – before any clear, signed contract is in place.

As always, the practical lesson is to get the foundational contract properly agreed and evidenced at the time, not reconstructed later from WhatsApps-and-Word templates. Otherwise, even a large adjudicator's award can fail at enforcement because the very contract said to give the adjudicator power is in doubt.

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 2026

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London

Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk

BE
BEYOND
LAW GROUP
beyondlawgroup.co.uk