

ePaper:

Dealing with an adverse Adjudicator's Decision



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by Tim Seal

Introduction

- If you receive an adverse Adjudicator's Decision against you, typically you will have up to 7 days to comply with it. If you do not comply, your opponent will then quickly start enforcement proceedings against you at Court: ie ask the Court to Order you to comply.
- It is hard to defend enforcement proceedings and so a Court will be likely to dismiss your Defence.
- However, there are grounds to defend, albeit only limited ones, and they are not often used successfully. This is because the Court takes the approach that Adjudication is a necessary, rough and ready tool for resolving disputes quickly and cheaply, and that must not be undermined by picking apart the Adjudicators' Decisions save in exceptional cases. The phrase "pay now, argue later", is often used, to describe the fact that a party unhappy with the outcome of an Adjudication, must usually comply with it and then if it wishes to, it can go off and start an Arbitration or Litigation to get the dispute resolved more professionally and thoroughly.

Grounds for resisting enforcement

- There are essentially 5 grounds, which are:
 1. Adjudicator has exceeded jurisdiction
 2. Adjudicator responsible for a material breach of natural justice
 3. Fraud (by successful party)
 4. Insolvency (of successful party)
 5. Dissipation of funds (by successful party)
- You should raise these grounds if they are relevant as early as possible during the adjudication (ie as soon as they arise) and state that you are only participating in the Adjudication subject to them.
- *Adjudicator has exceeded jurisdiction*: this means that the Adjudicator has strayed outside the jurisdiction given to it in the Notice of Adjudication (the 1st notice sent in any Adjudication). That Notice outlines the dispute to be referred and the wording limits the jurisdiction.
- *Adjudicator responsible for a material breach of natural justice*: ie the Adjudicator has conducted the Adjudication in such a way as to cause significant unfairness to the losing party.
- *Fraud, insolvency and dissipation of funds*: all 3 grounds refer to the actions of the successful party. The fraud ground involves an allegation that that party is using Adjudication to commit a fraud and so the Court should not enforce the Decision. *The insolvency and dissipation of funds grounds*, bring in the scenario where the losing party is saying to the Court that it has its own claim to bring against the successful party in due course. Against that backdrop, the losing party says that it has good evidence that the successful party is insolvent or on the verge of insolvency, or intends to dissipate its funds. Therefore, if the losing party is ordered to comply with the Decision against it now (usually by paying over money), the likelihood is that the successful party will have ceased trading or lack the funds to pay any Decision against it, by the time the losing party succeeds with its claim (if it does). The losing party says that is unfair.

If you have any questions or need any advice please email Tim Seal on tseal@ridgemont.co or call him on 0203 909 9592.

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