

## Adjudication Enforcement and the Administration Moratorium

*South Coast Construction Ltd v Iverson Road Ltd [2017] EWHC 61 (TCC)*

SCC was a contractor which had been shoddily treated by IRL and, as a consequence, had obtained an adjudication award for £868,728 as damages for breach of contract and loss of profits. SCC then issued an application in the TCC to enforce its award. At this stage it was discovered that IRL had issued multiple, sequential Notices of Intention to Appoint Administrators which brought in the insolvency moratorium against creditor action under paragraph 43 of schedule B1 to the Insolvency Act 1986. Coincidentally, the last effective day of the moratorium was the day on which SCC's enforcement application was listed.

There were two questions before the court:

- (1) Should it permit SCC's enforcement application to continue notwithstanding the moratorium; and
- (2) Had the adjudicator exceeded his jurisdiction by deciding questions of time extensions and costs claims (being the basis of IRL's jurisdictional challenge)?

In the TCC, Coulson J that a claimant seeking to enforce an adjudication award would be treated as being in a very strong position given that there had already been a decision by an adjudicator in his favour decided on the merits and that a sum of money had been declared as due and owing. As a matter of practicality, the court was required to decide the balance of convenience which, in this case, was squarely with SCC. SCC would be an unsecured creditor of IRL and the administrators would in no way be jeopardised by SCC's being awarded an enforceable judgment. Indeed, the level of certainty afforded by such a judgment would benefit the administration.

In exercising its discretion in any case, the court was required to consider the conduct of the parties. Here SCC had acted properly throughout and incurred considerable expense in pursuing an award. IRL's conduct had not been meritorious and it should not be rewarded by the court.

On the question of the adjudicator's jurisdiction, the court held that the process, which began with a notice of adjudication, should not be treated too legalistically. A pragmatic view of the notice and the subject of the dispute between the parties should be taken and this could be expanded or refined by the parties or the adjudicator during the course of the adjudication. In this case, IRL's complaint related to minor issues relating to extensions of time sought by SCC, IRL's claim for liquidated damages and prolongation costs. Accordingly, there was no merit to IRL's complaint.

To an extent, this is a somewhat rarefied set of circumstances but it is not *that* uncommon a situation. It seems sensible that a claimant with an adjudication award should be able to obtain an enforceable judgment notwithstanding the defendant's administration – if for no other reason than to provide certainty about its claims and also to deal with the issue of costs. This does not prefer the claimant over other unsecured creditors as alleged by IRL.

We should also point out that the judgment here is largely *obiter* as IRL had gone into liquidation at the time of the hearing so the issue did not strictly arise. The decision remains valid though.

**If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.**



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