

TCC rules on arbitrability of adjudication enforcement disputes and notices of dissatisfaction- Gideon Shirazi

In *Sefton MBC v Allenbuild* [2022] EWHC 1443 (TCC), the TCC handed down judgment giving the latest word in the debate around the arbitrability of adjudication enforcement. [Gideon Shirazi](#) acted for Allenbuild.

In 2005, Sefton MBC engaged Allenbuild under an NEC2 contract to build a waterpark known as Dunes Splash World. Over 12 years later, Sefton MBC brought an adjudication claim for defects. Sefton MBC succeeded in the adjudication, and sought to enforce its decision. Allenbuild argued that the contract contained an arbitration clause and so the claim should be stayed for arbitration.

Arbitration stay?

The court noted that s9 of the Arbitration Act 1996 requires the court to stay court proceedings where a claim falls within an arbitration clause. The key question, therefore, was whether the adjudication enforcement proceedings fell within the arbitration clause. The court concluded that any contract which incorporated the Scheme (and, potentially even any contract subject to the HGCRA terms) excluded adjudication enforcement from the scope of an arbitration clause because the parties agreed that an adjudicator's decision is binding until the dispute is finally determined.

This decision reflects the latest decision in which the TCC has refused to stay enforcement proceedings for arbitration. This tricky issue has not yet been considered by the appeal courts and it remains an open question whether this approach, which is inconsistent with the general approach of English law to arbitration clauses, would be upheld on appeal. There is also an open question whether the position would be different if the arbitration clause explicitly states that it covers adjudication enforcement.

Notices of dissatisfaction

The NEC, and several other contracts, require a dissatisfied party to serve a notice of dissatisfaction within a limited time period, failing which an adjudicator's decision becomes final and binding. In this case, the unsuccessful contractor served a notice of dissatisfaction which stated that it was dissatisfied with the entire decision.

Previous decisions held that a notice of dissatisfaction is required to challenge the enforceability of an adjudicator's decision, as well as to preserve the right to bring final determination proceedings. In this case, the court distinguished between those two situations and held that, where a dissatisfied party wished to challenge the enforceability of an adjudicator's decision, that must be specified in the notice of dissatisfaction.

Members of 4 Pump Court regularly act on arbitration stay applications and on adjudication enforcement disputes.