

TCC ruling on the S&T rule- *AM Construction v The Darul Amaan Trust* [2022] EWHC 1478 (TCC)

In *AM Construction v The Darul Amaan Trust* [2022] EWHC 1478 (TCC), the TCC gave judgment on an adjudication enforcement dispute involving the rule in *S&T v Grove* and issues around the delivery of a notice of adjudication. [Gideon Shirazi](#) acted for the successful contractor obtaining negative declarations about enforcement.

The *S&T* rule

In *S&T v Grove*, the Court of Appeal held that an employer had the right to bring a true valuation adjudication but that this right was subject to the employer first complying with its obligation to pay a notified sum. *S&T*, and all other cases considered by the TCC to date, involved situations where there was an adjudicator's decision which concluded that a notified sum was due and unpaid.

In *AM Construction*, the employer started a true valuation adjudication without paying the notified sum. The employer argued that the *S&T* doctrine applied only where a previous adjudicator's decision determined that there was a notified sum due, and not where there was merely a dispute about it. The court rejected this approach, concluding that the fact that a notified sum was due was an absolute bar to any true valuation adjudication being started by an employer.

Default notices

The contractor relied upon two alternative default payment notices. The employer argued that the service of an invalid first notice meant that the second notice was not validly served. The court confirmed that when an invalid default payment notice is served, it has no effect and so does not preclude the contractor from serving a second notice. Contractors will, of course, still need to ensure that their second notice is valid and sufficiently clear to satisfy the requirements for a valid notice.

Delivery of notice of adjudication

The employer's solicitor emailed various documents, including a PDF of the notice of adjudication, to a process server to print and deliver. The process server, through an error, failed to print or enclose all the documents in the envelope for delivery so that he hand delivered an envelope which did not include the notice of adjudication. The court concluded that the correct delivery of a notice of adjudication was fundamental to starting an adjudication and that emailing the documents to the process server did not count as "pre-paid post" and so was not sufficient.

Conclusion

This judgment provides welcome clarity to the *S&T* rule. It will operate to bar an employer from starting a true valuation adjudication whenever a notified sum is due, even if the employer disputes whether that sum is due. It also re-emphasises the fundamental importance of proper service of a notice of adjudication and that a court will not try to rescue an employer that fails to effect proper service.

Members of 4 Pump Court regularly act on adjudications and adjudication enforcement disputes.