

# Enforcement of Adjudications under the Construction Contracts Order

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The Construction Contracts (NI) Order 1997 creates a statutory default scheme whereby any party to a construction contract can refer any dispute to adjudication, and where such a contract does not contain an adequate agreed procedure for adjudication, the legislation sets out the adjudication procedure that will apply.

Prior to the landmark decision of Mr Justice McLaughlin in *D G Williamson Limited v Northern Ireland Prison Service (2009) NIQB 8* there had been some uncertainty as to whether the Northern Ireland Courts would follow the approach taken by the High Court in England and Wales in enforcing such adjudication decisions.

Following Mr Justice McLaughlin's decision however we have been left in no doubt that adjudications under the 1997 Order will be enforced just as robustly in the Northern Ireland Courts as they have been in England and Wales.

## Background to the Case

The Plaintiff, D G Williamson Ltd carried out works on behalf of the Defendant, NIPS during 2007/08 giving rise to the issue of some 54 invoices which became the subject of a dispute as to whether all or any of the sums were due. The Plaintiff initiated the adjudication procedures under the 1997 Order. Mr Raymond Nash was appointed adjudicator and ordered the Defendants to pay the award of £212,874.80, plus VAT, the adjudicator's costs and interest.

The Defendants refused to pay which resulted in the Plaintiffs issuing a writ to enforce the adjudicator's award. The Defendants argued enforcement should be resisted on the following grounds:

1. the adjudicator had no jurisdiction to determine the dispute;
2. the contract was not a "contract in writing";
3. the Defendants have entitlement to a Set Off greatly in excess of that due to the Plaintiff; and
4. the judge should stay any judgment pending resolution of the set off claim at arbitration.

## Mr Justice McLaughlin's Decision

The Judge rejected all of the Defendant's arguments and enforced the adjudicator's award, plus interest and costs, setting out clearly that 'the starting point for a court dealing with a request for enforcement of an award of an Adjudicator is that it should work on the assumption that the award ought to be enforced, on a summary basis if necessary'. He further stated, the purpose of the 1997 Order is to 'ensure speedy payment' and 'even where there is an error, to require money to be paid and for the matter to be sorted out later when the contract disputes are settled finally by way of agreement, arbitration or litigation'.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*

## **NI Courts' Approach to Enforcing Adjudicator's Awards**

Therefore, the normal practice of the NI Courts for adjudications under the 1997 Order will be to enforce the award of the adjudicator if compliance does not take place within the specified time period, pending authoritative determination of all remaining disputes between the contracting parties. This follows the English judgment of Dyson J in *Macob Engineering Ltd v Morrison Construction Ltd* (1999) BLR 93.

This is not to say there will be no instances where a valid award will not be enforced, however it is clear that most adjudicator's awards will be enforced, and if the Defendant has outstanding issues or disputes, such as a Set-off Claim, the award should still be paid and these disputes resolved by separate agreement, arbitration or litigation.

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Cleaver Fulton Rankin Solicitors, 50 Bedford Street, Belfast, BT2 7FW  
T: 028 9024 3141, Fax: 028 9024 9096, [www.cfrlaw.co.uk](http://www.cfrlaw.co.uk)  
All Island Law – A legal alliance Matheson Ormsby Prentice, Dublin & Cleaver Fulton Rankin, Belfast