DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

August 23, 2025

Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC): No Frolic, No Granularity, No Chance

Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC)

Date: 19 August 2025

Judge: HHJ Kelly sitting as a Judge of the High Court

Key Words:

Adjudication Enforcement, Adjudicator's Decision, Breach of Natural Justice, Materiality of Breach, Excess of Jurisdiction, Valuation, Adjudicator's Powers / Discretion, Sufficiency of Reasons, Summary Judgment, JCT Design and Build Contract, Fair and Reasonable Rates, Remeasurement, Extensions of Time, Liquidated Damages, Interim Payment Application 37, "Frolic of his own", "Rough and ready", Intermediate Position, Granularity

Summary

HHJ Kelly granted summary judgment enforcing an adjudication decision made by Mr Kevin Shilcock on 17 January 2025 [1, 16, 36, 52, 57]. Prestige challenged enforcement, citing breaches of natural justice — particularly the use of new “fair and reasonable” rates and a re-measurement without consultation — and alleged insufficient reasons [12, 15]. The court dismissed these arguments as overly granular and found no material injustice [37-38, 40, 44, 51-53, 55-58].

Key Themes:

- **Enforcement of Adjudication Decisions:** The TCC reaffirmed its robust pro-enforcement stance, tolerating the “rough and ready” nature of adjudication [11(a)-(b), 35-36].
- **Breach of Natural Justice:** The bar remains high: only serious breaches with real impact justify non-enforcement [11(c)(a)-(d), 11(f)-(h)].
- **Adjudicator's Scope and Initiative:** Adjudicators may exercise expertise, adopt new rates or measurements, and reach their own conclusions — particularly when invited to decide “such other sum as the adjudicator may decide” [11(d)-(f), 37-39, 6(22/10/24, 20/01/25, 21/01/25)].
- **Materiality and Prejudice:** Breaches must show actual injustice; benefits to the complaining party or trivial effects render arguments immaterial [11(j), 26, 28-30, 44-50, 57-58].
- **Granularity vs. Global Valuation:** The court favoured a broad-brush valuation over hyper-

detailed scrutiny, especially for interim applications [15, 23-26, 33-36, 51-52, 41-42, 55-56].

Background

- **Contract and Dispute:** Under an amended JCT Design and Build contract (10 November 2022) for a leisure and retail centre [1-3], disputes arose over Application 37 (27 August 2024) regarding eight agreed variations ("Relevant Changes"), entitlement to EOTs, and LADs [3-6].
- **Adjudication Process:**
  - Notice: 15 October 2024; RICS appointed Mr Shilcock [6].
  - Referral: 22 October 2024, seeking valuation of £23,502,636.65 + VAT or "such other sum" [6].
  - Response: 5 November 2024, including its own valuation and same open-ended invitation [6].
  - Submissions ran through reply, rejoinder, and surrejoinder [6].
- **Adjudication Decision (17 January 2025):**
  - Defendant undervalued the eight Relevant Changes.
  - Claimant entitled to EOTs, reducing LADs.
  - Suspension and thickening costs awarded.
  - Payment ordered: £541,880.12 + VAT, interest, and adjudicator's fees.
- **Methodology:** Reasons provided on key issues; new "fair and reasonable" rates derived from first principles, applying clause 5 [6].
- **Post-Decision Clarification:** The adjudicator confirmed his discretion under clause 5.4.2 and that further consultation was unnecessary [6].
- **Defendant's Challenge:** Alleged jurisdictional excess and breach of natural justice [6].

Legal Issues and Analysis

The court considered three issues [12]:

1. Breach of natural justice for lack of consultation.
2. Insufficiency of reasons.
3. Severance of any affected parts.

Legal Principles

- **Summary Judgment:** Refused only where there's a realistic prospect of showing a material breach or jurisdictional excess; factual or legal errors don't suffice [11(a)-(c)].
- **Breach of Natural Justice – Cantillon v Urvasco:** Breach must be material, decisive, and uncanvassed by the parties [11(c)(c)-(d)].
- **Duty to Consult – Primus Build v Pompey Centre:** No duty to share every provisional thought; only "exceptional cases" demand it [11(d), 11(h)].
- **Fairly Canvassed Issues:** Intermediate positions rarely need further submissions [11(e)-(g)].
- **Splitting the Difference:** Permissible without consultation [11(i)].
- **Materiality:** Must show realistic potential to change the outcome [11(j)].

Defendant's Submissions

- Breach due to “new rates” and a re-measurement without consultation [16].
- Relied on *Primus Build*, *Roe Brickwork*, and *Van Oord* to argue overreach [17-18].
- Asserted material prejudice, likening the situation to *Balfour Beatty v Lambeth LBC* [18].
- Pointed to insufficient explanation and significant sums (£407,246.86 or 55% of variation value) [19-22].
- Claimed post-decision workings still inadequate [31].

Claimant's Submissions

- The adjudicator acted within remit, using expertise expressly invited by both parties [23-24, 37].
- Complaints were overly granular; valuations fell within parties’ ranges [24-25].
- No substantial injustice: most rates were advantageous to the Defendant, with adverse adjustments de minimis (<£2,600) against £202,000 in benefits [27-30, 47-49].
- Global valuations don’t demand detailed reasoning [32-34, 55-56].
- Distinguished *Balfour Beatty*, noting no uncanvassed issues here [34, 39].
- “Rough and ready” nature of adjudication tolerates minor procedural imperfections [35-36].

Court's Findings

No Breach of Natural Justice

- The parties’ “such other sum” invitation allowed broad discretion [37-38].
- Using expertise to apply new rates was proper; issues had been “fairly canvassed” [38-40].
- Outcomes were either intermediate or favourable to the Defendant [40, 43].
- Granular challenges to global valuations were rejected [41-42, 51-52].
- Alleged prejudice was negligible (<0.2% of total) and outweighed by benefits [28, 44-50].

Sufficient Reasons

- Initial reasoning was adequate; post-decision workings didn’t reveal any deficiency [53-54].
- Broad-brush reasoning sufficed for a global valuation [55-56].
- Even if imperfect, no substantial prejudice was shown [56-58].

Severance

- Not considered, given no breach or insufficiency [27-28, 57].

Conclusion

Summary judgment was granted for Clegg Food Projects, with the adjudication enforced in full. No material breach or injustice was found [37-38, 40, 44, 51-53, 55-58].

***Key Takeaway**:*

This judgment reinforces the TCC’s pro-enforcement stance. Adjudicators invited to determine a global sum have wide latitude to use their expertise, including applying new rates or measurements, provided issues were “fairly canvassed” and results stayed within the contended range or were advantageous to the challenger [36-39, 40, 11(e)-(g), 43]. The bar for a “material” breach of natural

justice remains high: only real, demonstrable injustice will defeat enforcement. Granular, technical complaints — especially when net effects are beneficial or de minimis — will not suffice [11(f)-(g)(j), 23-24, 26, 30, 35-36, 44, 49-50].

Parting Thoughts

If there were any lingering doubt that the TCC treats adjudication enforcement with a judicial shrug and raised eyebrow, this judgment erases it. Prestige threw everything at the wall — alleged breaches of natural justice, inadequate reasons, and claims of frolicsome adjudicator conduct — only to watch it all slide to the floor.

HHJ Kelly was unmoved. An adjudicator invited to "decide such other sum as he sees fit" need not seek permission every time he reaches for his metaphorical slide rule. Nor will the court entertain post-mortems on granular sub-items that made no material difference, particularly where the supposedly offending rates actually benefited the losing party.

The message is clear: adjudication is rough, ready, and firmly entrenched. Without a truly material injustice — not a hypothetical grievance or minor arithmetic gripe — enforcement will not be derailed.

For contractors, the judgment underlines the reliability of the "pay now, argue later" regime. For employers, it is a caution against reverse-engineering an adjudicator's reasoning into a natural justice argument. And for adjudicators, reassurance: stay within your remit, ground decisions in evidence, avoid an uninvited "frolic of your own," and the TCC will support you — even if your reasoning is more broad brush than Rembrandt.

In short: granularity is out, global valuation is in, and natural justice remains a high hurdle, not a get-out-of-enforcement-free card.

Authorities

Case Law:

The following judgments were discussed and relied upon to establish legal principles relevant to the case:

Principles of Natural Justice and Adjudicator's Duty to Consult

- ***Cantillon Ltd v Urvasco Ltd*** ***[2008] EWHC 282 (TCC)****: This case established the test for a breach of natural justice.*
  - *It was necessary to prove that the adjudicator failed to apply the rules of natural justice; that any breach was more than peripheral and material; and that breaches were material where the adjudicator failed to bring to the parties' attention a decisive or considerably important point or issue that they ought to have been given the opportunity to comment upon.*
  - *It was only if the adjudicator went "off on a frolic of his own" by deciding a case on a factual or legal basis which had not been argued or put forward by either side, without giving the parties an opportunity to comment or, where relevant, put in further evidence, that the type of breach of the rules of natural justice was concerned.*
- ***Primus Build Limited v Pompey Centre Limited*** ***[2009] EWHC 1487****: This case clarified an adjudicator's duty to consult.*
  - *It stated that if an adjudicator believed there was a legitimate alternative course that had not been considered or put forward by the referring party, but which might meet the objections of the responding party, they should immediately ask themselves if they*

needed to give notice of, and obtain submissions about, that alternative approach.

- *However, an adjudicator was not required to consult the parties on every element of their thinking leading up to a decision, even if some elements of their reasoning were derived from, rather than expressly set out in, the parties' submissions.*
- *The adjudicator was found not to have been filling a gap in the evidence in this particular case, as both parties had made submissions on rates.*

- ***Balfour Beatty Construction Ltd v Lambeth LBC** [**[2002] EWHC 597 (TCC)**]: This case provided an example of an "exceptional case" where an adjudicator's failure to put their provisional conclusions to the parties constituted a serious breach of natural justice.*
  - *In that case, the adjudicator "made good" one party's case by creating a critical path for extensions of time without analysis of critical and non-critical events and without informing the parties of the methodology they proposed to adopt or inviting submissions on it.*
- ***Carillion Construction Ltd v Devonport Royal Dockyard Ltd** [**[2005] EWHC 778 (TCC)**] **and** [**[2005] EWCA Civ 1358 (TCC)**]: This case approved the principle that it was often not practicable for an adjudicator to put their provisional calculations to the parties for comment, as these conclusions often represented an intermediate position for which neither party was contending.*
  - *A failure to put provisional conclusions to the parties would only constitute such a serious breach of the rules of natural justice that a court would decline to enforce a decision in an "exceptional case," like Balfour Beatty v Lambeth LBC.*
- ***Roe Brickwork Ltd v Wates Construction Ltd** [**[2013] EWHC 3417 (TCC)**]: The Defendant cited this case to assert a breach of natural justice, arguing that the adjudicator went too far by deciding new rates and measurements without consultation.*
  - *However, the Defendant also acknowledged that in Roe Brickwork, a decision by an adjudicator to come to a valuation using a combined day works and profit rate was not considered a breach of natural justice because the adjudicator's calculations were transparent and, even if consultation had occurred, the result would probably have been the award of a greater amount.*
- ***Van Oord UK Ltd v Dragados UK Ltd** [**[2022] CSOH 30**]: The Defendant relied on this Scottish case to assert that by deciding new rates and a new measurement without consultation, the adjudicator had plainly gone too far in deciding an alternative way to value aspects of the application for payment.*

Materiality of Breach in Enforcement Proceedings

- ***Corebuild Limited v Cleaver** [**[2019] EWHC 2170 (TCC)**]: This case outlined conditions for refusing summary judgment.*
  - *The court would refuse a summary judgment application if there was a realistic prospect of establishing a material breach of natural justice or an excess of jurisdiction by the adjudicator.*
  - *It stated that there might be circumstances where it was possible to demonstrate on summary judgment that the answer the adjudicator arrived at was so obviously correct that the failure to allow a point to be properly ventilated was not material, as permitting submissions could not have changed the outcome.*
  - *Generally, it was sufficient for a party to show that the substance of the point with which they were deprived of the opportunity to engage was properly arguable, meaning it had reasonable prospects of success.*

Adjudicator's Discretion and Intermediate Positions

- ***Arcadis UK Ltd v May and Baker Ltd (t/a Sanofi)*** *[2013] EWHC 87 (TCC): This case confirmed that an adjudicator's decision to "crudely split the difference" between two adjusted forecast figures could not be considered a breach of the rules of natural justice.*
    - *The fact that an adjudicator might have been factually wrong did not impact the enforceability of their decision.*

Sufficiency of Adjudicator's Reasons

- ***Gillies Ramsay Diamond & Others v PJW Enterprises Ltd [2004] BLR 131****: This case set a standard for when reasons were inadequate, stating that they must be "so incoherent that it makes it impossible for the reasonable reader to make sense of them".*
    - *It was not necessary to give detailed reasons, workings, and explanations for each individual sub-item when the dispute put to the adjudicator concerned a global valuation.*

Legislation:

The Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998 649, as amended)

The Housing Grants, Construction and Regeneration Act 1996

Purpose and Practical Application of Adjudication

- ***The 1996 Act and Scheme****: This legislation governed the adjudication process and its practical application.*
    - *The Act provided that an adjudicator was permitted to take the initiative in ascertaining the facts and the law.*
    - *The judgment noted that the 1996 Act and Scheme operated in a "rough and ready" manner. It was designed such that breaches of the rules of natural justice which had no demonstrable consequence were disregarded, as were errors of fact and law by adjudicators, to facilitate the enforcement of decisions and uphold the provisional nature of adjudication.*

Legal Texts & Commentary:

1. General Principles of Construction Law

- ***Keating on Construction Contracts, 12th edition, Chapter 18***
    - *This legal text was listed as one of the authorities to which the court was referred. However, the judgment* ***did not explicitly summarise any specific legal point or principle relied upon from this text*** *within its reasoning. The principles detailed in the judgment were stated to be derived from the cases referred to.*

#LegalUpdate #DDAlegal #ConstructionLaw #Adjudication #UKLaw #DisputeResolution #ContractLaw #CaseLaw #TCC #SummaryJudgment #Enforcement #BreachOfNaturalJustice #ExcessOfJurisdiction #MaterialityOfBreach #AdjudicatorPowers #DutyToConsult #Valuation #FairAndReasonableRates #Remeasurement #SufficiencyOfReasons #ConstructionLaw #JCTContract #PaymentApplication #LiquidatedDamages #ExtensionsOfTime #ProvisionalDecision #CleggFoodProjects #PrestigeCarDirectProperties

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
TECSA Adjudication Panel Member since 2012
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
RICS Dispute Board Registered since 2013

The information & opinions expressed in this article are not necessarily comprehensive, nor do they represent the trenchant view of the author; in any event, this article does not purport to offer professional advice. This article has been prepared as a summary and is intended for general guidance only. In the case of a specific problem, it is recommended that professional advice be sought.

© 2025 Davies & Davies Associates Ltd

Back to Legal Updates