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Clerkenwell Lifestyle (UK) Ltd v HG Construction Ltd [2026] EWHC 1406 (TCC): Alleged Variation by Email and Unraised Defence in Adjudication Enforcement

Clerkenwell Lifestyle (UK) Ltd v HG Construction Ltd

[2026] EWHC 1406 (TCC)

Technology and Construction Court (King's Bench Division)
Mrs Justice Jefford, 12 June 2026

Key Words

Adjudication enforcement, summary judgment, Part 7 and Part 8 proceedings, breach of natural justice, jurisdiction, extension of time (EOT), liquidated damages, binding agreement, Employer's Agent authority, contractual completion dates, construction dispute.

1. **Headnote**
    1. This case concerned the enforcement of an adjudicator's decision by way of summary judgment in Part 7 proceedings, together with a Part 8 claim seeking declarations that the decision was unenforceable on grounds of excess of jurisdiction and breach of natural justice. [1], [58]
    2. The defendant contended that the adjudicator had failed to consider a binding agreement arising from email correspondence dated 8 February 2023, which allegedly revised the contractual completion dates. [1], [55]
    3. The court held that no such binding agreement existed, that the alleged defence had not been raised in the adjudication, and that there had been no breach of natural justice. [77], [80], [91]
    4. The court further held that the adjudicator had determined the dispute referred by undertaking a holistic delay analysis based on the original contractual baseline programme. [53], [54], [79]
    5. Summary judgment was granted enforcing the adjudicator's decision and the Part 8 claim was dismissed. [94]
2. **Material Facts**
    1. The claimant engaged the defendant under an amended JCT Design and Build Contract 2016 for the

2. The contract provided for extensions of time to be granted through a contractual mechanism where delay was caused by Relevant Events. [8]
3. During 2022, the defendant asserted delay arising from matters including Covid, strikes, weather, and material supply issues, and sought an extension of time. [11], [13]
4. On 8 February 2023, the Employer's Agent issued an email setting out proposals concerning extensions of time and associated matters, which the defendant accepted. [16], [17]
5. On 9 February 2023, the Employer's Agent issued a formal Notification of Extension of Time granting a 12-week extension pursuant to the contract. [18], [19]
6. Further extensions of time were later granted, but the works were completed significantly after the extended completion dates, leading to the imposition of liquidated damages. [20], [22]
7. The claimant commenced adjudication in November 2025 concerning entitlement to extensions of time and liquidated damages. [24]
8. The adjudicator determined revised completion dates by reference to expert delay evidence grounded in the original baseline programme and awarded liquidated damages. [47], [54]
9. After the decision, the defendant advanced the contention that the February 2023 emails constituted a binding agreement revising completion dates. [48]–[51]

3. **Issues**
    1. Whether the adjudicator breached natural justice by failing to consider a material defence based on an alleged binding agreement. [62], [68]
    2. Whether the adjudicator decided the dispute on a basis not advanced by the parties. [78], [79]
    3. Whether the February 2023 email exchange constituted a binding agreement varying contractual completion dates. [55], [81]–[91]
    4. Whether, if such an agreement existed, the Employer's Agent had authority to enter into it. [96]–[100]

4. **Decision**
    1. The court held that there had been no breach of natural justice and no excess of jurisdiction and that the adjudicator's decision was enforceable. [59], [80]
    2. The court further held that no binding agreement arose from the February 2023 email exchange and refused the declarations sought in the Part 8 proceedings. [91], [94]
    3. Summary judgment was granted enforcing the adjudicator's decision. [94]

5. **Reasoning**
    1. The court held that a necessary precondition to establishing a breach of natural justice based on failure to consider a defence was that the defence must have been raised in the adjudication. [68]
    2. The alleged defence based on a binding agreement had not been advanced in the defendant's Response and was not identified as a defence in any meaningful way. [70], [71]
    3. The limited references to an "agreed" extension of time did not convey that the defendant was asserting a freestanding contractual variation of completion dates. [71]
    4. The defendant's own expert evidence proceeded on the basis of a baseline programme tied to the original contractual completion dates and a holistic analysis of delay from project inception. [41]–[43], [76]

5. In those circumstances, the adjudicator could not be criticised for failing to consider a defence that had not been raised and was inconsistent with the evidential case advanced. [77]
6. The court rejected the argument that the adjudicator had decided something not contended for, holding that both parties had invited a determination of entitlement to extensions of time over the full project duration. [79]
7. The adjudicator's approach, involving a holistic delay analysis applied to the original baseline dates, fell within the dispute referred. [53], [54], [79]
8. Ae alleged binding agreement, the court held that the language of agreement in the emails reflected agreement to operate the contractual extension of time machinery rather than an intention to create a separate binding contract. [82], [83]
9. The context demonstrated that the parties contemplated a formal application and subsequent grant of an extension of time under the contract. [83]
10. The proposals contained in the email were complex, conditional, and insufficiently certain to constitute a binding agreement varying completion dates. [87]–[90]
11. The parties' subsequent conduct, including the manner in which the adjudication case was advanced, was consistent with reliance on the contractual mechanism rather than a freestanding agreement varying completion dates. [92], [93]
12. The court therefore concluded that no binding agreement had been formed. [91], [94]
13. In any event, the Employer's Agent's authority was confined to acting under the contract and did not extend to entering into new agreements varying completion dates. [96]–[100]

6. **Held**
    1. The court held that there had been no breach of natural justice because the alleged defence based on a binding agreement had not been raised in the adjudication. [68], [77]
    2. The court held that the adjudicator had not exceeded his jurisdiction and had determined the dispute referred by undertaking a holistic assessment of extension of time entitlement. [59], [79]
    3. The court held that the adjudicator had not decided a case not advanced by the parties, as both parties had invited determination by reference to full delay analysis. [53], [79]
    4. The court held that the email correspondence dated 8 February 2023 did not constitute a binding agreement varying the contractual completion dates but formed part of the contractual extension of time process. [83], [91]
    5. The court held that, in any event, the Employer's Agent did not have authority to enter into a binding agreement varying the completion dates outside the contract. [96]–[100]
    6. The court held that there was no basis for refusing enforcement of the adjudicator's decision. [80], [94]

7. **Ratio Decidendi**
    1. A party resisting enforcement of an adjudicator's decision on natural justice grounds must establish that the adjudicator failed to consider a material defence that was clearly raised in the adjudication. [68], [77]
    2. Where a defence is not advanced, and cannot reasonably be identified from the responding party's case, failure to consider it does not amount to a breach of natural justice. [68], [77]
    3. An adjudicator does not exceed jurisdiction by determining entitlement to extensions of time holistically by reference to the original contractual baseline where that approach reflects the case presented by the parties. [53], [54], [79]
    4. In this case, email exchanges referring to "agreement" in the context of extensions of

time were construed as part of the operation of the contractual machinery, not as creating a free-standing binding agreement, absent clear intention and certainty. [82], [83], [89]–[91]

5. An Employer's Agent acting under a building contract does not, absent clear authority, have power to enter into a binding agreement varying contractual completion dates outside the contractual mechanisms. [96]–[100]

8. **Disposition**
    1. The Part 8 claim was dismissed. [94]
    2. Summary judgment was entered enforcing the adjudicator's decision, including payment of the sum awarded and the adjudicator's fees. [94]

Comment

This judgment confirms that adjudication enforcement is not an opportunity for a party to retrofit arguments which were not properly advanced during the adjudication process.

HG's case depended on characterising the February 2023 email exchange as a binding agreement which revised the contractual completion dates and constrained the adjudicator's approach. The court found that this argument had not been advanced in that form during the adjudication. [61], [68], [70]–[77]

The court emphasised that an adjudicator cannot be criticised for failing to deal with a defence which was not properly raised. A reference to an "agreed" extension of time did not, in context, amount to the formulation of a freestanding contractual variation. It reflected the operation of the contractual extension of time mechanism. [68], [71], [82]–[83], [91]

The judgment also highlights the difficulty of advancing, after the event, a position inconsistent with the evidential case presented in the adjudication. HG's own delay analysis proceeded by reference to the original baseline programme and addressed delay across the whole project. [41]–[43], [53]–[54], [76]

The decision reinforces three principles. First, a party seeking to resist enforcement on natural justice grounds must demonstrate that the relevant defence was clearly advanced in the adjudication. Secondly, an adjudicator who determines the dispute referred, on the basis of the material and analysis presented by the parties, will not ordinarily exceed jurisdiction. Thirdly, correspondence concerning extensions of time may be construed as part of the contractual machinery rather than as creating a separate binding agreement, where there is no clear intention to create such an agreement and insufficient certainty. [59], [68], [79], [82]–[83], [91]

The practical lesson is that if a party contends that correspondence has altered contractual completion dates, that position must be clearly advanced during the adjudication and supported by a case consistent with the evidence relied upon. In this case, that did not occur, and the adjudicator's decision was enforced while the Part 8 claim was dismissed. [91], [94]

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Authorities

Case Law:

Natural Justice and Scope of Adjudication - Primary Theme

1. ***Pilon Ltd v Breyer Group plc*** **[2010] EWHC 837 (TCC)** — ***Judgment refs:*** *[63]–[64]. The court relied on the principles that an adjudicator must attempt to answer the question referred, and that a failure to consider a material defence may render a decision unenforceable where the failure is deliberate and material, whilst an inadvertent omission will not ordinarily suffice. The case also confirmed that a responding party is entitled to raise all legitimate defences within the scope of the adjudication.*
2. ***KNN Colburn LLP v GD City Holdings Ltd*** **[2013] EWHC 2879 (QB)** — ***Judgment refs:*** *[65]. The court referred to the refinement that an inadvertent failure to address an issue will not usually invalidate a decision unless it results in the adjudicator failing to address the real dispute between the parties, with emphasis on whether the adjudicator dealt with the major issues raised.*
3. ***Global Switch Estates 1 Ltd v Sudlows Ltd*** **[2020] EWHC 3314 (TCC)**— ***Judgment refs:*** *[66]. The court referred to the principles that a responding party may raise any defence within the scope of the adjudication, and that a failure by the adjudicator to consider such a defence may amount to a breach of natural justice, whilst it remains for the adjudicator to determine whether the defence is valid on the facts and law.*
4. ***Cantillon Ltd v Urvasco Ltd*** **[2008] EWHC 282 (TCC)** — ***Judgment refs:*** *[78]. The court referred to the principle that an adjudicator may breach natural justice by deciding a dispute on a basis not advanced by the parties.*

Adjudication Procedure and Parallel Part 7 / Part 8 Claims - Secondary Theme

1. ***Hutton Construction Ltd v Wilson Properties (London) Ltd*** **[2017] EWHC 517 (TCC)** — ***Judgment refs:*** *[2]. The court referred to this authority in the context of whether Part 8 proceedings may appropriately be heard alongside adjudication enforcement proceedings where a short point of construction or law is raised.*
2. ***A&V Building Solutions Ltd v J&B Hopkins Ltd*** **[2023] EWCA Civ 54** — ***Judgment refs:*** *[2]. The Court of Appeal authority was cited as affirming the guidance concerning the use of Part 8 proceedings alongside adjudication enforcement proceedings.*

Authority of Agents and Limits of Contractual Functions - Tertiary Theme

1. ***Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago*** **[2026] UKPC 2** — ***Judgment refs:*** *[97]. The court referred to this authority as offering support for the view that provisions defining an agent's contractual authority should not be read as granting authority beyond their specific terms. The judge noted that there was no direct equivalence with Article 3 of the contract in this case.*
2. ***J L Builders & Son v Naylor & Naylor*** **[2009] EWCA Civ 1621** — ***Judgment refs:*** *[98]–[100]. The Court of Appeal was cited on the limits of an agent's contractual functions. The judgment supported the proposition that an agent's functions are not to be extended beyond what is expressly authorised, understood to be authorised, or reasonably incidental to that authority.*
3. ***GPN Ltd (in receivership) v O2 (UK) Ltd*** **[2004] EWHC 2494 (TCC)** — ***Judgment refs:*** *[99]–[100]. Referred to through **J L Builders**, including the discussion of professional agents, including architects and quantity surveyors. The cited passage supported the view that such agents do not have implied authority to make a contract or depart from the concluded contract.*

Prioritisation Summary

1. ***Natural justice and scope of defences in adjudication*** *— central to the disposition of both enforcement and the Part 8 claim.*
2. ***Procedural framework for Part 7/ Part 8 interaction*** *— important to the structure of the proceedings, although not the substantive basis of the final outcome.*
3. ***Authority of agents and contractual variation*** *— secondary, addressed as a fallback issue after the court had already concluded that no binding agreement had been formed.*

Legislation:

1. ***Scheme for Construction Contracts (reference to paragraph 20) — Judgment refs: [58].*** *The court referred to the adjudicator's power to "open up, review and revise" matters in the context of the scope of the adjudicator's jurisdiction, although no detailed statutory analysis was undertaken and the reference was not determinative of the outcome.*

Legal Texts & Commentary:

Contract Formation, Interpretation and Use of Subsequent Conduct (Primary Theme)

1. ***Lewison on the Interpretation of Contracts, 8th ed. — Judgment refs:*** *[93]. The court referred to this text for the proposition that, whilst subsequent conduct is generally not admissible as an aid to the interpretation of contractual terms, it may be relied upon as evidence relevant to whether a contract was formed and what its terms were.*
2. ***Chitty on Contracts, 36th ed. — Judgment refs:*** *[93]. The court referred to this text in support of the same distinction, namely that subsequent conduct is generally not admissible for construing contractual terms, but may be admissible in limited circumstances as evidence of the existence of a contract and the identification of its terms.*

Authority of Agents and Limits of Contractual Functions (Secondary Theme)

1. ***Hudson on Building & Engineering Contracts — Judgment refs:*** *[99]. The text was referred to via judicial quotation as supporting the proposition that professional agents do not have implied authority to enter into contracts or depart from the concluded contractual bargain.*
2. ***Keating on Construction Contracts — Judgment refs:*** *[99]. The text was referred to via judicial quotation in connection with the limits of professional agents' contractual functions, including the principle that such functions should not be extended beyond what is expressly authorised, understood to be authorised, or reasonably incidental.*

Prioritisation Summary

1. ***Contract formation and evidential use of subsequent conduct*** *— central to the determination that no binding agreement arose from the February 2023 email correspondence.*
2. ***Authority of agents and limits of contractual functions*** *— secondary and addressed in the alternative after the court had concluded that no binding agreement existed.*
3. ***Adjudication statutory framework*** *— background only, informing jurisdictional context but not determinative of the court's reasoning.*

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