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**

March 26, 2026

LMND Group Ltd v John Henry Group Ltd [2025] Unreported — When an Adjudicator Decides to Freelance, Enforcement Falls Off a Cliff

LMND Group Ltd v John Henry Group Ltd Unreported

[2025] EWHC (TCC), Manchester

HHJ Stephen Davies (sitting as a High Court Judge)

15 December 2025

Key Words:

Adjudication enforcement, summary judgment, breach of natural justice, estoppel by convention, notified sum, smash and grab adjudication, payment certificates, unargued legal authority, Technology and Construction Court

1. **Headnote**
    1. In adjudication enforcement proceedings, an adjudicator commits a material breach of natural justice where he rejects a substantive estoppel by convention defence by relying on factual considerations and legal authority not advanced by either party and without inviting submissions on those matters.
    2. Where the defence is properly arguable and potentially dispositive, such a breach goes to the heart of the decision and justifies refusal of enforcement, notwithstanding the generally robust approach of the court to adjudicators' decisions.
    3. By contrast, in a notified sum ("smash and grab") adjudication, an adjudicator is entitled to disregard set-off or prior payment arguments unless and until the notified sum has been paid, and doing so does not amount to a breach of natural justice.
2. **Facts**
    1. The claimant employer, LMND Group Limited, applied for summary judgment to enforce an adjudicator's decision awarding it just under £238,000 plus interest against the defendant contractor, John Henry Group Limited [1].
    2. The parties had entered into a framework agreement in May 2023 pursuant to which two sub-contract works directions were issued and performed, with the works completing in 2024 [3].
    Following completion, a sequence of adjudications took place between the parties, the present adjudication being the fifth [3].

3. The adjudication concerned 15 payment applications advanced on a notified sum basis, and the Adjudicator issued his decision in favour of LMND on 9 October 2025 [1, 4]. LMND sought to enforce the decision by Part 7 proceedings in the Technology and Construction Court [1].
4. John Henry resisted enforcement on two grounds, both said to involve breaches of natural justice [2].

3. **Issues**
    1. The principal issues before the court were:
        1. whether the Adjudicator breached natural justice by rejecting an estoppel by convention defence on grounds not advanced by either party and by reliance on authority not cited in the adjudication [2, 9–11]; and
        2. whether the Adjudicator failed to determine a defence that substantial prior payments should have been credited against the notified sum, thereby committing a further breach of natural justice [2, 15].

4. **Decision**
    1. The court refused to enforce the Adjudicator's decision [17].
    2. The first ground succeeded, while the second ground failed, but the success of the first ground was sufficient to defeat enforcement [16–17].

5. **Reasoning**
    1. **Estoppel by Convention and Natural Justice**
        1. John Henry advanced a defence of estoppel by convention, contending that LMND was precluded from challenging the validity of the payment certificates because it had previously accepted approximately 120 certificates in materially the same format without objection [7].
           The Adjudicator recognised the defence as one of estoppel by convention but rejected it without engaging with its substantive elements [8].
        2. Instead, the Adjudicator relied on the fact that the defence had not been raised in earlier adjudications, a point not advanced by either party in the present adjudication [9].
           The Adjudicator further relied on *Spencer v MW High Tech Projects Ltd*, an authority neither relied upon nor cited by either party and which was subsequently accepted as irrelevant to the estoppel argument advanced [10].
        3. The Adjudicator did not invite submissions from either party before relying on those matters in his reasoning [9–11].
        4. The judge held that this amounted to a serious breach of natural justice because the Adjudicator had decided the defence on a basis which the parties had no opportunity to address [11, 14].
        5. The breach was material because the estoppel defence was substantive and, if successful, would have defeated LMND's claim entirely [11].
        6. The court rejected LMND's submission that the defence was hopeless, holding that the interaction between the contractual non-waiver clause and estoppel by convention was legally arguable and not settled beyond doubt [12–13].
    2. **Prior Payments and Notified Sum Adjudications**
        1. John Henry also contended that the Adjudicator failed to consider that approximately £209,000 had already been paid and should have been deducted from the amount awarded [15].
        2. The Adjudicator rejected that argument on the basis that the adjudication

concerned a notified sum and that the notified sum must be paid before any true value or repayment arguments could be pursued [15–16].

3. The judge held that this approach was correct in law and did not involve any breach of natural justice [16].
4. Accordingly, the second ground failed [16].

6. **Ratio Decidendi**
    1. An adjudicator acts in breach of natural justice where he rejects a properly arguable and potentially determinative estoppel defence by relying on unargued factual considerations or legal authorities without giving the parties an opportunity to make submissions, and such a breach will justify refusal of enforcement.
    2. However, in a notified sum adjudication, an adjudicator is entitled to refuse to entertain prior payment or set-off arguments unless the notified sum has first been paid, and doing so does not constitute a breach of natural justice.
7. **Comment**
    1. The decision illustrates both the court's continued reluctance to intervene in adjudication enforcement except in clear cases and the limits of that tolerance where an adjudicator departs from the parties' cases on a decisive issue.
    2. It reinforces that adjudicators must exercise caution not to introduce new arguments or authorities of their own motion without procedural fairness, even within the constrained timescales of adjudication.

Parting Thoughts

The lesson from LMND v John Henry is straightforward. The TCC remains characteristically robust in enforcing adjudicators' decisions, even where the process is compressed and imperfect. But that robustness has a boundary. Where an adjudicator rejects a potentially dispositive defence by relying on points not argued by either part and on authority never put to them for comment, the court will not treat that as mere rough justice. It will treat it as what it is: a material failure of natural justice.

That is precisely what happened here. The Adjudicator's treatment of the estoppel by convention defence was not merely unpersuasive; it proceeded on a basis the parties had no fair opportunity to address. Once that was established, enforcement was in real difficulty. The court was not willing to cure the problem by declaring the defence obviously hopeless, particularly given the genuinely arguable relationship between the contractual non-waiver provisions and the estoppel case advanced.

At the same time, the judgment keeps orthodox "smash and grab" principles firmly in place. On the separate prior-payments point, the Adjudicator was entitled to hold the line: the notified sum must be paid before any attempt is made to unravel it by set-off or true-value style arguments. So this is not a departure from the court's usual pro-enforcement stance. It is a reminder that adjudication may be swift and pragmatic, but it cannot be procedurally inventive on a decisive issue without consequence.

#ConstructionLaw #Adjudication #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal #AdjudicationEnforcement #SummaryJudgment #NaturalJustice #EstoppelByConvention #SmashAndGrab #TechnologyAndConstructionCourt #PaymentCertificates #UKLaw

Authorities

Case Law:

1. ***Natural justice / enforcement of adjudicators' decisions (high threshold; materiality;***

approach on summary judgment)

1. ***Carillion Construction Ltd v Devonport Royal Dockyard Ltd*** [2005] EWCA Civ 1358 *— emphasised that natural justice challenges to enforcement succeed only in "all save the plainest cases", reflecting the court's robust pro-enforcement stance.* ***[4]***
2. ***CG Group Ltd v Breyer Group plc*** [2013] EWHC 2722 (TCC) *— highlighted the constraints under which adjudicators operate when assessing allegations of procedural unfairness/natural justice.* ***[4]***
3. ***Beumer Group UK Ltd v Vinci Construction UK Ltd*** [2016] EWHC 2283 (TCC) *— cautioned (in strong terms) against deploying natural justice arguments except where the adjudication is "obviously unfair", reinforcing the exceptional nature of the defence.* ***[4]***
4. ***Essential Living (Greenwich) Ltd v Conneely Facades Ltd*** [2024] EWHC 2629 (TCC) *— reiterated the practical constraints on adjudicators and the court's restrained approach when asked to police natural justice in enforcement proceedings.* ***[4]***
5. ***Lapp Industries Ltd v 1st Formations Ltd*** [2025] EWHC 943 (TCC) *— again emphasised adjudicators' constraints and the high bar for establishing natural justice breaches in the enforcement context.* ***[4]***
6. ***Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd*** [2025] EWHC 2173 (TCC) *— provided a summary of core principles: natural justice is "exquisitely fact sensitive"; any breach must be serious/considerably important to the outcome; and the court should not normally decide merits at enforcement stage beyond whether the deprived point was properly arguable.* ***[5]***
7. ***Cantillon Ltd v Urvasco Ltd*** [2008] EWHC 282 (TCC) *— relied on indirectly via Clegg as part of the established natural justice principles applicable in adjudication enforcement.* ***[5]***
8. ***Corebuild Ltd v Cleaver*** [2019] EWHC 2170 (TCC) *— relied on for the "obviously correct" exception and, more generally, that it is usually enough for the resisting party to show the point they were deprived of addressing was "properly arguable"; the court should not determine the merits on the summary judgment application.* ***[5, 12]***

2. ***Adjudicator "frolic of his own": reliance on unargued points/authorities (natural justice breach in this case)***
    1. ***Spencer v MW High Tech Projects Ltd*** [2019] EWHC 2547 (TCC)***;*** [2020] EWCA Civ 331 ***appeal dismissed (CA)*** *— cited by the Adjudicator (not the parties) for the proposition that a common misunderstanding of the Construction Act could not found an estoppel by convention; the judge held the authority was irrelevant to the estoppel argument in the present adjudication, and its unheralded deployment (without submissions) contributed materially to the natural justice breach.* ***[10–11]***

3. ***Notified sum ("smash and grab") adjudications: payment-first principle before true value/cross-claims***
    1. ***S&T (UK) Ltd v Grove Developments Ltd*** [2018] EWCA Civ 2448 *— cited for the payment-first principle in notified sum adjudications (i.e., the notified sum must be paid before pursuing "true value" claims or analogous attempts to reduce liability through cross-claims/set-offs), which framed the Adjudicator's approach to the prior payment/deduction argument.* ***[15–16]***

4. ***Adjudicator jurisdiction in true value adjudications and treatment of cross-claims/set-off (distinguished)***
    1. ***Morganstone Ltd v Birkemp Ltd*** [2024] EWHC 933 (TCC) *— relied upon by the defendant to argue the Adjudicator wrongly excluded set-off/cross-claims by taking too restrictive a view of jurisdiction; distinguished by the judge on the basis that Morganstone concerned a true value adjudication, whereas the present matter was a notified sum*

adjudication where the payment-first principle applied. ***[16]***

5. ***Non-waiver clauses; waiver vs estoppel by convention (whether non-waiver defeats estoppel) (raised to test "hopelessness")***
    1. ***Lidl Great Britain Limited v Closed Circuit Cooling Limited t/a 3CL [2023] EWHC 3051 (TCC) (earlier decision of HHJ Stephen Davies, paragraph 39)*** *— cited by the judge as analogous support for the proposition that a contractual non-waiver clause is not necessarily a complete answer to an estoppel by convention defence and may require "teasing out" in legal proceedings, undermining the submission that the estoppel defence here was hopeless.* ***[13]***

6. ***Completeness note (within the four corners of this judgment)***
    1. *The judgment also references earlier adjudication "decisions" (including the "Whittle" decision and the "Smith" decision) as part of the factual narrative, but these are not identified as reported court judgments and are not treated as legal authorities relied upon by the court for principles.* ***[3, 9]***

Legislation:

1. ***Statutory Framework Governing Adjudication and Notified Sum Regime (Primary statutory context underpinning the reasoning)***
    1. ***Housing Grants, Construction and Regeneration Act 1996*** *(commonly referred to in this judgment as the "Construction Act") — referenced as the statutory regime governing adjudication and payment obligations, including the operation of payment notices and the notified sum mechanism. The Act is engaged in the context of an adjudicator's reasoning on whether a misunderstanding as to statutory payment requirements could found an estoppel by convention, and in explaining why (even if estoppel were established) invalid payment notices under the Act would remain invalid. The Act also forms part of the background logic underpinning the payment-first principle applied in notified sum adjudications.* ***[10, 15]***

2. ***Thematic Explanation and Priority – Theme 1 (Most Important): Statutory payment regime and notified sums under the Construction Act***
    1. *The Construction Act provides the statutory backdrop for the Adjudicator's role and the court's analysis, particularly concerning the notified sum regime and the requirement that notified sums be paid before true value or repayment claims may be pursued. Although the judgment does not quote specific sections, the Act is central to the Adjudicator's reliance on existing adjudication principles and to the court's assessment of whether the Adjudicator's approach to payment and jurisdiction was valid.* ***[10, 15–16]***

3. ***Important Limitation (expressly noted)***
    1. *No other statutes, statutory instruments, or regulations are identified or relied upon elsewhere in the judgment. All other reasoning is grounded in case law principles of adjudication enforcement and natural justice rather than further legislative provisions.* ***[entire judgment]***

Legal Texts & Commentary:

1. ***Natural Justice Principles as Summarised in Textbooks and Secondary Commentary (Contextual and indirect reliance only) Unspecified legal textbooks and commentaries on adjudication and natural justice*** *— the judgment records that, in Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC), the judge was referred to a "formidable list of authorities and textbooks" (see: Davies & Davies), from which a*

summary of principles was distilled. Those principles concerned the high threshold for establishing a breach of natural justice in adjudication enforcement, the fact-sensitive nature of the inquiry, and the requirement that any breach be serious and of material potential importance to the outcome. However, the present judgment does not identify or name any specific textbook, commentary, or secondary source, nor does it rely directly on any such text as an independent authority. ***[5]***

2. ***Thematic Explanation and Priority – Theme 1 (Most Important) Natural justice threshold in enforcement + materiality: Secondary commentary as background synthesis, not primary authority*** *— the court's reasoning does not directly rely on any identifiable legal textbook or commentary as an authoritative source. Instead, reference to "textbooks" appears only indirectly, via HHJ Kelly's observations in Clegg Food Projects, to acknowledge that established principles of natural justice in adjudication are well-trodden in both case law and commentary. The present judge adopts the summary of principles set out judicially in Clegg, rather than engaging with or extracting propositions directly from any named legal treatise.* ***[5–6]***
3. ***Express Limitation (Important to note)*** *— no legal text, practitioner work, textbook, or academic commentary is expressly identified, cited by name, or relied upon anywhere else in the judgment. The court's analysis proceeds entirely by reference to decided case law and the facts of the adjudication under challenge.* ***[entire judgment]***
4. ***Summary Statement*** *— for completeness and accuracy:* ***there are no named or directly cited legal texts or commentaries within this judgment****. Any reference to textbooks is generic, indirect, and contextual only, forming part of a judicial summary of case-law-derived principles rather than an independent source of reasoning.*

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
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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.

© 2026 Davies & Davies Associates Ltd

Back to Legal Updates

Director: N. J. 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, Chartered Builder, Chartered Construction Manager, Chartered Surveyor, Chartered Arbitrator, Panel Registered Adjudicator, Mediator, Mediation Advocate, and Solicitor-Advocate

Regulated by RICS

Davies and Davies Associates Ltd (Registered Name) is authorised and regulated by the Solicitors Regulation Authority (Registered No. 472797)