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New Build, Jurisdiction Denied: RBH Building Contractors Ltd v James & Anor [2025] EWHC 2005 (TCC)

RBH Building Contractors Ltd v James & Anor [2025] EWHC 2005 (TCC)

Date: 10 June 2025

Judge: Neil Moody KC Sitting as Deputy Judge of the High Court

(Permission to Appeal was granted on 7 October 2025 and is due to be heard by 30 September 2026)

Key Words:

Adjudication, Residential Occupier, Housing Grants Construction and Regeneration Act 1996, HGCRA, Section 106, Payless Notice, Summary Judgment, Adjudicator's Fees, Contract Dispute, TCC, RBH Building Contractors Ltd, James & Anor

Summary

The TCC considered RBH's application for summary judgment to enforce an adjudicator's decision, and the James' Part 8 claim seeking declarations on jurisdiction and payless notice validity [1].

The dispute centred on whether the contract was with a "residential occupier" under s.106 of the HGCRA 1996, which would oust the statutory adjudication regime [1, 19-20]. Also at issue was the validity of the James' payless notice [2, 7].

The court declined to enforce the adjudicator's decision, holding the James' had a real prospect of proving the s.106 exception applied, and therefore the adjudicator may have lacked jurisdiction [46-47, 49(47(v))]. The payless notice was, however, held to be valid, leaving RBH with no enforceable entitlement [56-57]. On fees, the judge ruled he lacked jurisdiction to disturb the adjudicator's decision [77].

Key Themes:

1. ***Residential Occupier Exception (s.106 HGCRA 1996)****: Focus on the employer's objective intention at contract formation [1, 19-20, 24-26].*
2. ***Payless Notices (s.111 HGCRA)****: Court endorsed a commonsense, objective, non-technical approach [2, 48(49), 49(47(viii)-(ix)), 50-51, 53, 55-57].*
3. ***Adjudication Enforcement****: Summary judgment refused where jurisdiction is credibly*

contested [1, 13-18, 46-47].

4. ***Adjudicator's Fees**: Decision upheld even when substantive award reversed [2, 58-61, 71, 73, 77-79].*

Background

1. **Parties**: RBH, through Mr Huntley, contracted orally with the James'—property business professionals—for demolition and reconstruction of a luxury new home in Devon [4].
2. **Contract & Works**: RBH was to receive £1,000 weekly, £10,000 monthly (18 months), plus reimbursement and a further fee for overheads and profits [5-6].
3. **Dispute**: Works began Jan 2022, ceased Apr 2024. RBH had received £1.31m by then [6].
4. **Payment Application & Payless Notice**: On 18 Nov 2024, RBH claimed £663k. The James' responded on 27 Nov with a letter asserting payment of £0 and giving reasons [6-7].
5. **Adjudication**: RBH served notice on 6 Dec. The adjudicator held he had jurisdiction and awarded RBH £663k and fees of £9,638 + VAT [10-12]. The James' did not pay. RBH sought enforcement; the James' sought declarations [12].

Legal Issues and Analysis

A. Residential Occupier Exception (Section 106 of the 1996 Act)

1. **The Law:** Statutory adjudication does not apply to contracts with residential occupiers (s.106(1)(a)). Intention to occupy is assessed at contract formation, with later events used to confirm objective intent [19, 24-25].
2. **James' Arguments:**
    1. Intended to live there as main residence [26-28].
    2. Sold Essex home; reclaimed SDLT surcharge [28].
    3. Lived on site; registered locally for health and electoral purposes [29].
    4. Personalised design (including lap pool) [29].
    5. Architect confirmed intent to live there [29].
    6. Seasonal letting (13 weeks/year) didn't displace primary residential status [29, 34].
3. **RBH's Arguments:**
    1. No disclosed intent to occupy [30].
    2. Never occupied, no future intention [31-32].
    3. Commercial financing included warranties against occupation [35-38].
    4. Declarations by Mrs James confirm business intent [38-39].
    5. Planning described it as "market housing" [35].
    6. Argued conditional intent insufficient; judge disagreed [33].
    7. Argued letting rendered it non-residential; rejected [34].
4. **Court's Analysis and Decision**:
    1. The court reviewed relevant case law: *Samuel Thomas Construction Ltd* (2000) (unreported) (focused on "principally" relating to operations on a dwelling) [21-22, 39-40], *Howsons Ltd v Redfearn & Anor* [2019] EWHC 2540 (TCC) (unlawful occupation, e.g. breach of planning conditions, cannot be relied upon), *Edenbooth Ltd v Cre8 Developments Ltd* [2008] EWHC 570 (company defendant, property developer, not registered owner) [22, 31-32], and *Westfields Construction Ltd v Lewis* [2013] EWHC 376 (leading case, emphasis on intention at contract formation, "commonsense"

approach) [23].
2. Distinguished Howsons: loan terms ≠ planning breach [41].
3. Loan docs and client identity suggested possible development—but not conclusive [42, 49(47(ii)-(iii))].
4. Weight given to site residency, GP registration, Essex sale, and bespoke design [43-44].
5. Judge emphasised factual dispute; the court had more evidence than adjudicator [27, 32, 35].
6. Concluded real prospect of s.106 applying; refused summary judgment [16-18, 35, 45-47, 49(47(iv)), 57].

B. Validity of Payless Notice (Section 111 of the 1996 Act)

1. **The Law**: Section 111(3) allows a payer to give notice of intention to pay less than the notified sum [46-47]. Section 111(4) requires notice to specify the sum due and basis of calculation; zero is permissible [48].
2. **Principles of Construction**: The court referred to *Advance JV v Aniska Limited* [2022] EWHC 1152 (TCC) which summarised the law from cases like *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 ('Mannai), and *Grove Developments Ltd v S&T (UK) Ltd* [2018] BLR 173 ('Grove Developments') and *S&T (UK) Ltd v Grove Developments Ltd* [2019] BLR 1 ('S&T') [49(46-47(i))]. Key principles include:
    1. Objective construction: how a reasonable recipient (circumstanced as the actual parties) would understand the notice, considering the relevant objective contextual scene and the contract [49(47(i)-(ii)].
    2. Purpose of the notice is relevant [49(47(iii))].
    3. Courts take a **"commonsense, practical view"** and are "unimpressed by nice points of textual analysis". Provided it "makes tolerably clear what is being held and why," it will likely be valid [49(47(iv))].
    4. Notices must comply with statutory requirements in substance and form [49(47(vi))].
    5. The question of validity is one of "fact and degree" [49(47(vi))].
    6. The notice must clearly set out the sum due/deducted and the basis of calculation and be "free from ambiguity" [49(47(vii))].
    7. A valid payless notice provides an "adequate agenda for an adjudication" *(Henia [32] and Grove [26])* [49(47(ix))].
3. **The James' Payless Notice**: The notice, dated 27 November 2024 [7], stated an intention to withhold £663,016.16, making payment of £0 [7]. It provided 11 short bullet points with very brief reasons for withholding sums [7]. Some points referred to specific quantified claims with "insufficient evidence" or as "unpaid invoice[s]," while others rejected wholesale heads of claim (e.g., "Contract Welding Services," "PGR Timber") without referring to specific figures within the notice itself, though these were traceable to the payment application's Excel spreadsheet [7, 53-54].
4. **RBH's Argument (Invalidity)**: Claimed lack of sufficient breakdown; some items unquantified; total less than £663k [52-53].
5. **James' Argument (Validity)**: Mr Hanna argued the letter plainly satisfied section 111(4) and provided a helpful table linking the bullet points in the payless notice to the specific claims and figures in RBH's payment application [53-54].
6. **Court's Analysis and Decision**:
    1. The judge agreed with Mr Hanna, stating that if a payless notice is deemed invalid, it has

"draconian consequences" and the Scheme was not intended to encourage overly technical arguments [52].

2. The judge found that a **"reasonably objective reader who had knowledge of the contract works"** would have understood how the bullet points related to the payment application [55].
3. The notice **set an "adequate agenda for an adjudication"** by identifying specific unaccepted elements and briefly why [49(47(ix)), 55].
4. The judge explicitly stated that the letter did **not need to set out an arithmetical calculation** to be valid, as this would be an additional, unstatutory requirement contrary to the case law's "overly prescriptive approach" warning [55].
5. Therefore, the letter dated 27 November 2024 was a **valid payless notice**, and the adjudicator was "wrongly decided" on this point [56].

C. Adjudicator's Fees

1. **The Issue**: The James' sought to reverse the adjudicator's fee decision in light of jurisdiction and payless findings [2, 57, 63, 70].
2. **Arguments**:
    1. Mr Hanna acknowledged authority was against him but said it was "thin" [57, 70-71].
    2. Mr Frampton: court lacks power to alter fee decisions [57].
3. **Case Law Review**: The judge reviewed five key cases on this point [58-68]:
    1. *Castle Inns (Stirling) Ltd v Clark Contracts* [2005] Scot CS CSOH 178: Lord Drummond Young held the court had no power to interfere with an adjudicator's decision on fees for four reasons: (1) no contractual mechanism for reconsideration, (2) fee decisions are not a "dispute" in the contractual sense and thus not subject to indirect challenge via court proceedings, (3) no commercial necessity for reconsideration as fee decisions are ancillary, and (4) practical difficulties in reconsidering such decisions given the nature of adjudication vs. court proceedings [60]. This judgment is cited in Sir Peter Coulson's book as authority for the proposition that an adjudicator's fee decision is final and not subject to challenge [62].
    2. *TSG Building Services PLC v South Anglia Housing* [2013] EWHC 1151(TCC): Akenhead J reversed a substantive adjudicator's decision but did not reverse the fee decision, stating, "the adjudicator had jurisdiction to decide what he did" [63-64].
    3. *Halsbury Homes Ltd v Adam Architecture Ltd* [2016] EWHC 1422: Edwards-Stuart J agreed with the *Castle Inns* observation, noting its reasoning was "equally applicable" in England, but in that specific case, the contract allowed for fee allocation reconsideration [65-66].
    4. *D McGlaughlin & Sons Ltd v East Ayrshire Council* [2021] CSOH 122: Lord Clark distinguished adjudicator's fees from interest (which is "part and parcel of the adjudicator's award" and thus recoverable), making "no criticism of Castle Inns" regarding fees [67-68].
    5. *A&V Building Solution Ltd v J&B Hopkins Ltd* [2024] EWHC 2295: Mr Roger Ter Haar KC noted that all authority supported the position that the adjudicator's fee decision could not be challenged, stating he would not depart from this settled position [69].
4. **Mr Hanna's Submissions (Rejected)**:
    1. **Distinguishing *Castle Inns***: Mr Hanna argued *Castle Inns* involved multiple issues while this case revolved around a single substantive issue (payless notice validity) [71]. The judge rejected this, stating *Castle Inns* was "plainly put on a broad footing" and the authority, though "thin," was "all one way" [70]. The judge highlighted the merit of a

"clear rule that the adjudicator's decision as to fees is not susceptible to review" due to the practical difficulties of reconsideration [72].

2. Implication from *Aspect Contracts v Higgins* [2015] UKSC 38: Mr Hanna argued that the Supreme Court's decision in *Aspect Contracts*, which established an implied term allowing recovery of overpayments due to an adjudicator's decision once a final determination is made, should also cover adjudicator's fees [70]. The judge rejected this for several reasons: (1) The Scheme treats adjudicator's fees as "ancillary and separate to the dispute" [74]; (2) *Aspect Contracts* did not cite *Castle Inns* and did not suggest it intended to cover adjudicator's fees [75]; (3) An adjudicator has "wide discretion as to fees," which can depend on conduct, not just outcome, making a causation test difficult to apply [75].
3. **Alternative Implied Term**: Mr Hanna's third submission for an alternative implied term (via the "officious bystander test") was rejected for the same reasons: inconsistency with authorities and the statutory scheme, and difficulty in applying a causation test [70, 76].

5. **Conclusion on Fees**: The judge was **not persuaded that he had the power to alter the adjudicator's decision in relation to his fees** [78-79].

Conclusion

1. RBH's application for summary judgment was dismissed: James' may succeed under s.106.
2. The James' succeeded on their Part 8 claim: their payless notice was valid, and RBH's entitlement fell to zero.
3. The adjudicator's fee award stood: the court had no power to amend it.

Key Takeaway:

1. ***Residential Occupier Exception is Fact-Sensitive:*** *Objective intent at contract formation is determinative. Indicators of commercial purpose may not override personal intent.*
2. ***Payless Notices Are Interpreted with Common Sense:*** *No arithmetic needed if intent and scope are clear. Courts resist technical invalidity arguments.*
3. ***Adjudicator's Fee Decisions Stand:*** *They are final and immune to judicial reversal—even if the award is overturned—due to their ancillary and contractual nature.*

Parting Thoughts

RBH approached the TCC seeking swift enforcement of a £663,016.16 adjudicator's award. Instead, it encountered a jurisdictional obstacle, a legal detour through HGCRA s.106, and a reminder that adjudication, while fast, often operates with limited visibility—unlike the courts, which see the fuller evidential landscape.

The adjudicator, working from a narrower record, found jurisdiction and awarded the full claim. The court, with access to witness statements, planning documents, loan terms, declarations, screenshots, and GP registrations, reached a different view: the James' had a real prospect of proving they were residential occupiers when contracting—an exception that, if established, strips adjudicators of jurisdiction.

That alone was enough to defeat summary enforcement. Yet the court went further, addressing the payless notice. RBH claimed it lacked clarity, detail, and calculation. The court disagreed. Applying established principles, it found that a reasonable party could understand what was being withheld and why. The James' 11-point letter, cross-referenced to RBH's spreadsheet, met the statutory threshold. The notice was valid. The adjudicator's contrary view was incorrect.

As for fees, the court reaffirmed settled law: adjudicators' decisions on their own fees are final, even when the substantive award falls. This is not an anomaly—it is a deliberate part of the Scheme's architecture.

This was no routine home renovation—it was a high-value new-build dispute involving real factual complexity. The case illustrates the vulnerability of "smash and grab" claims where residential status is credibly raised, and confirms the judiciary's practical, non-technical stance on payless notices. It is also a quiet endorsement of procedural realism: adjudicators work with what they're given; courts see the rest of the iceberg.

#LegalUpdate #DDAlegal #ConstructionLaw #Adjudication #HGCRAct1996 #HGCRA #ResidentialOccupier #Section106 #s.106 #PaylessNotice #SummaryJudgment #HighCourt #TCC #ContractDispute #AdjudicatorsFees #RBHBuildingContractors #PropertyDevelopment #James

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