

May 17, 2025

## No Gold for Midas: Security for Costs Reigns — Midas Construction Ltd v Harmsworth Pension Funds Trustees Ltd [2025] EWHC 1122 (TCC) (09 May 2025)

[Midas Construction Ltd v Harmsworth Pension Funds Trustees Ltd \[2025\] EWHC 1122 \(TCC\)](#)

**Date:** 9 May 2025

**Judge:** Martin Bowdery KC sitting as a Judge of the High Court

### **Key Words:**

*Adjudication Enforcement, Construction Contract, JCT Design and Build Contract 2011, Clause 8.7.4 Statement, Insolvency and Administration, Liquidator's Rights, Security for Costs, Damages Based Agreement Regulations 2013, Champerty and Maintenance, TeCSA Adjudication Rules, The Scheme for Construction Contracts, Pythagoras Capital (Third Party Funding), Print Hall Cross-Claim, Final or Overturning Proceedings, Sanctus Project, Dispute Resolution, Guideline Hourly Rates, Reasonableness of Costs, Civil Procedure Rules (CPR) Part 8 and Part 7, Expert Evidence, Cross-Claims and Set-Off, Meadowside Safeguards, Security Staging Debate*

### **Summary**

Midas Construction Ltd (in administration) applied to enforce an adjudicator's decision against Harmsworth Pension Funds Trustees Ltd [13, 18, 22]. The adjudication arose under a JCT 2011 Sub-Contract for works at Unity Street, Bristol ("Sanctus Project") [23], and found the Defendant owed £1,551,528 excluding VAT and interest following termination for insolvency [12]. The Defendant failed to pay [18].

Two defences were raised: (1) insufficient security for possible future litigation to overturn the decision; (2) champerty, which was raised but not pursued [25]. The key issue was what level of security the Claimant must provide [26(14,18,28), 32], considering both the Sanctus claim and a separate dispute under the Print Hall contract [23, 26(18,28), 32].

The court assessed recoverable costs and ordered Midas to provide £150,000 for Sanctus and £400,000 for Print Hall [41].

## Case Law/ Authorities:

1. *Styles & Wood Ltd (in administration) v GE CIF Trustees Ltd* [2020] EWHC 2694 (TCC) — Security in insolvency and ATE insurance.
2. *Meadowside Building Developments Ltd (in Liquidation) v 12-18 Hill Street Management Co Ltd* [2019] EWHC 2651 (TCC) — Enforcement safeguards for insolvent claimants.
3. *Bresco Electrical Services Ltd (in liquidation) v Michael J Lonsdale (Electrical) Ltd* [2020] UKSC 25 (not directly cited in this excerpt but foundational to the Meadowside analysis) — Insolvent companies' right to adjudicate.
4. *Absolute Living Developments Ltd v DS7 Ltd & Ors* [2018] EWHC 1432 (Ch) (referenced via Meadowside citation) — Public policy favouring liquidators' recovery efforts.
5. *J A Ball Ltd (In Administration) v St Philips Homes (Courthaulds) Ltd* (unreported) 3 February 2023 (TCC) — Mentioned in witness evidence context (by the Defendant's solicitor, Mr Gerstein), Costs estimation in enforcement context.

## Background

Midas Construction Ltd (in administration) and Harmsworth Pension Funds Trustees Ltd entered into a JCT Design and Build Sub-Contract 2011 (as amended) on 9 July 2018 [3]. The contract was for the design and construction of a student and residential development at Unity Street, Bristol — known as the “Sanctus Project” [3-4, 23], valued at £24,087,347.50 plus VAT [5].

Following Midas' insolvency and termination of the contract, Harmsworth issued a statement under clause 8.7.4 on 16 December 2022 [7-8], as previously ordered in a first adjudication [8-9, 23]. The clause provides a post-termination mechanism for calculating the net balance owed, requiring Harmsworth to set out: (1) its properly incurred expenses; (2) payments made to Midas; and (3) the total amount that would have been payable under the contract [9-10]. The difference determines which party owes a debt under clause 8.7.5 [10].

Harmsworth's statement recorded payments to Midas at £24,598,740.50, leaving no balance owed [11]. Midas disputed this, asserting they had only been paid £22,820,932.50 [12]. Accepting the other figures in the statement created a net entitlement of £1,551,528 exclusive of VAT [12, 14]. Harmsworth refused to pay [13, 18].

Midas initiated a second adjudication on 9 May 2023 [14-15], seeking findings that the statement overstated payments made, that the true amount was £22,820,932.50, and that £1,551,528 was due under clause 8.7.5 [14]. The adjudicator agreed and ordered payment within seven days [17]. Harmsworth failed to pay [18].

Separately, Harmsworth claimed Midas owed sums for alleged defects under a different contract — the Print Hall Contract [23]. Midas brought a third adjudication (“Print Hall Adjudication”) seeking a declaration that no sums were owed. The adjudicator again ruled in Midas' favour [23].

Midas then sought to enforce the second adjudication decision (Sanctus) [22-23], proposing enforcement subject to a stay and conditions to allow Harmsworth time to commence final proceedings [23]. Harmsworth opposed, arguing inadequate security and raising a champerty objection, though the latter was not seriously pursued [23, 25, 26(18, 28)].

The administrators had appointed Pythagoras Capital to fund and recover debts [23].

## Key Themes:

- *Insolvent claimants enforcing adjudication awards* [23, 26(15,17), 30(86)]

- *Meadowside safeguards to protect solvent respondents* [26(14-15), 27, 30(84-85), 31-32]
- *Security aims to replicate the position if the claimant were solvent* [30(84-85), 31-32]
- *Assessment based on likely recoverable costs, not incurred costs* [27]
- *Discount for work done in adjudication* [27, 38(4.16, 4.20-4.21, 4.23(i)(ii)-4.24)]
- *Guideline Hourly Rates used to evaluate solicitor fees* [38(4.9-4.14, 4.23(a)(i)-(iii)]
- *No staged security — respondents can pursue both claims simultaneously* [29-33]
- *Right to apply later for additional security* [33-36]
- *Champerty allegation rejected* [25]

## **Legal Issues and Analysis**

The central issue was whether an insolvent company could enforce an adjudicator's decision and, if so, on what terms [22, 24]. There was no dispute that the adjudicator had awarded Midas £1,551,528 [24]. The Defendant resisted enforcement on two grounds: (1) that Midas had not offered adequate security for the costs of final proceedings it intended to bring to overturn the adjudication decision; and (2) that the enforcement was champertous and therefore an abuse of process, although this latter argument was not pursued with force and was rejected [25].

The court's analysis was structured around the Meadowside safeguards, as clarified and endorsed in *Styles & Wood Ltd v GE CIF Trustees Ltd* [2020] EWHC 2694 (TCC) [26]. These safeguards aim to place the solvent responding party in a position as close as possible to where they would be if the claimant were solvent [30(84-85), 31]. Judge Bowdery KC accepted and applied this framework, noting that while full equivalence may not be achievable, security for the adjudicated sum and for potential litigation costs was a necessary precondition to enforcement [30(84-86)].

The court reiterated that a liquidator has a statutory duty to pursue debts, and the right to adjudicate persists post-insolvency. However, where enforcement would otherwise deprive a responding party of the ability to recover its own cross-claims or set-off due to insolvency, safeguards must be imposed [30(86)].

The key dispute was not whether some security should be provided, but how much. The Defendant argued that Midas's proposal was inadequate and that generic figures were used instead of a proper analysis of the actual issues that would arise in litigation [25, 26(18-28), 34]. The court agreed that security must reflect the actual scope and complexity of the issues to be tried, not generic estimates divorced from the case's specifics [27].

The court also applied the principle, endorsed in *Styles & Wood*, that prior work undertaken during the adjudication reduces the costs likely to be incurred in litigation [27, 38(4.16, 4.20-4.21, 4.23(i)-(ii), 4.24)]. Although adjudication costs are not recoverable in litigation [26(17), 27], the duplication of work is minimised where the issues substantially overlap.

Further, the court clarified that the correct basis for estimating security is likely recoverable costs, not likely incurred costs, and applied a standard 60% recovery assumption [27, 38(4.17-4.18, 4.21(c), 4.22, 4.25)]. The Defendant retained the right to return to court to request additional security if the amount later proved insufficient [33-36].

A significant area of dispute was Midas's attempt to "stage" the provision of security — initially covering only the Sanctus enforcement and deferring any Print Hall-related litigation [29, 38(4.17-4.18)]. The court rejected this. It agreed with Harmsworth, represented by Camille Slow KC, that litigation should not be constrained by the Claimant's insolvency [29, 32-33]. The Defendant was entitled to decide the sequence and structure of its claims, and enforcement conditions should

not dictate litigation strategy [31–32].

The court reviewed competing cost estimates. Harmsworth’s solicitor (Mr Gerstein) estimated £568,616 for the Sanctus claim and £767,105 for Print Hall [36]. Midas’s solicitor (Ms Howarth) estimated £106,142 and £430,388 respectively before adjustments, relying on lower hourly rates and procedural efficiency [38(4.14, 4.22)]. She applied a 20% discount for work done in adjudication, then applied the 60% recovery principle, producing final figures of £55,171.92 (Sanctus) and £258,232.80 (Print Hall) [38(4.14, 4.16–4.17, 4.24–4.25)].

Judge Bowdery KC considered both sets of figures extreme — the Claimant’s “obviously too low” and the Defendant’s “too high” [40]. He therefore exercised his own judgment to fix security at £150,000 for Sanctus and £400,000 for Print Hall [41].

In doing so, the judge noted that the Sanctus litigation would likely require a review of all three adjudications and potentially witness evidence regarding certificates, the administration order, and the rectification/common mistake claim [41–42]. For the Print Hall dispute, he anticipated two liability experts and a quantum expert [44].

The champerty argument — that the claim was tainted due to a breach of the Damages Based Agreement Regulations 2013 — was dismissed. The court found the relevant agreements had been amended appropriately and were not abusive [25]. Third-party funder Pythagoras Capital’s involvement was acknowledged but not found to undermine enforcement [23, 30(86)].

## **Conclusion**

Doing the best possible with the information available, the judge concluded that the appropriate security to be provided at this stage for the Sanctus claim is £150,000, and for the Print Hall claim is £400,000 [41]. The judge emphasised that these amounts could be reviewed later when costs budgets are exchanged and case management hearings are held [41].

## **Key Takeaway:**

*When enforcing an adjudication decision against an insolvent company, the court will require the claimant to provide adequate security to the responding party [30]. This security is intended to cover the likely recoverable costs of potential litigation that the responding party may bring to challenge the adjudication decision(s) [27, 32]. The court will assess the appropriate level of security by considering the specific issues and scope of all relevant potential claims (including cross-claims under separate contracts) and giving credit for preparatory work already undertaken during the adjudication process [27, 32, 38(4.14, 4.15(a)-(b)(ii), 4.16, 4.20-4.21, 4.23(II)-4.24). The court will not allow the insolvent claimant to dictate how the solvent defendant pursues its claims by staging the provision of security [30(85), 31-32]. The amounts ordered for security will be the court's assessment of likely recoverable costs, which may differ significantly from the parties' own estimates [38(4.11-4.14)].*

## **Parting Thoughts**

*So, what do we learn from this legal caper in the ruins of the Unity Street sanctum? First, you can’t just attach a name like “Pythagoras” to a funding arrangement and expect the numbers to square. Second, if you’re a company in administration waving an adjudicator’s decision like it’s a golden ticket, the court will still want something more concrete than enthusiasm and a lightly sketched insurance policy.*

*Judge Bowdery KC, presiding with the cool detachment of someone who's seen it all before, cut through the rhetorical inflation with methodical precision. The message was crisp: adjudication enforcement by an insolvent claimant is entirely possible — but not on their terms alone. Security*

*must be provided, not merely proposed.*

*Staging security? Rejected. You don't get to choreograph your opponent's litigation strategy just because your own financial footing is fragile. Champerty? Raised briefly, then politely escorted out. As for the rival cost estimates — one exuberantly high, the other suspiciously lean — neither survived judicial scrutiny unscathed.*

*In the end, the court settled on security figures of £150,000 and £400,000 — not ruinous, but a long way from the Claimant's starting position. Enforcement remains a valuable tool for insolvency practitioners, but this case reaffirms that it comes with conditions: transparency, realism, and a willingness to back your position with more than just procedural momentum.*

*In the end, adjudication may be quick, but where insolvency is in play, enforcement comes with strings—and scrutiny.*

**#Adjudication #AdjudicationEnforcement #Insolvency #SecurityForCosts #TCC #MeadowsidePrinciples #StylesAndWood #JCTContract #CaseLaw #MidasConstruction #HarmsworthPensionFunds #PythagorasCapital #ContractDispute #PaymentDispute #DDAlegal #LegalUpdate #ConstructionLaw #LegalJudgment**

**Nigel Davies** BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LL.M (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 CI Arb

Arbitrator Assessor for the CI Arb

ICE DRC Member

ICE DRC CPD Committee Chairman

Adjudicator Exam Question Setter for the ICE

CI Arb Adjudication Panel Member since 2006

CI Arb 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.