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Residential Occupier Exception Still Has Teeth: Court of Appeal Rejects Smash-and-Grab Enforcement in RBH v James

RBH Building Contractors Ltd v James & Anor [2026] EWCA Civ 511

Lady Justice King, Lord Justice Coulson and Lord Justice Males, 29 April 2026

Key Words

Construction Adjudication, Residential Occupier Exception, Housing Grants Construction and Regeneration Act 1996, s.106, Intention to Occupy, Payless Notice, Payment Application, s.111, Summary Judgment, Jurisdiction Challenge, Smash and Grab Claims.

1. **Headnote**
    1. The claimant contractor sought to enforce an adjudicator's decision awarding approximately £663,000 under an oral construction management contract relating to the construction of a luxury dwelling [2]–[9].
    2. The defendants resisted enforcement, contending that the statutory adjudication regime did not apply because they had a real prospect of establishing that they were residential occupiers within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996 [8], [12]–[14], [18]–[20].
    3. They also contended that their response to the payment application constituted a valid payless notice under section 111 of the Act [7], [10], [15].
    4. At first instance, the Technology and Construction Court refused summary judgment, holding that the defendants had a real prospect of establishing the residential occupier exception and that the payless notice was valid [12]–[15].
    5. The contractor appealed [16]–[17].
    6. Held, dismissing the appeal, that:
        1. The defendants had a real prospect of establishing an intention to occupy the property as their residence at the time the contract was made, notwithstanding declarations contained in third-party commercial loan documentation. The adjudicator's jurisdiction was therefore realistically arguable, and summary enforcement was inappropriate [52]–[60], [67], [99]–[101].
        2. The defendants' letter stating an intention to pay £0 and setting out reasons for withholding payment constituted a valid payless notice under section 111 when read objectively and in its commercial context, notwithstanding the absence of a full arithmetical breakdown [76]–[85], [86]–[98].

2. **Facts**
    1. In about January 2022, RBH Building Contractors Ltd was engaged by Mr and Mrs James under an oral contract to provide site and project management services in connection with the construction of a large luxury house at Ferndown, Saunton, North Devon [2]–[3].
    2. The original payment arrangement was then significantly modified, with RBH to be reimbursed for costs incurred in procuring subcontractors and materials. RBH also asserted entitlement to additional sums, including overhead and profit. The arrangement thereby became a form of construction management contract [3].
    3. Construction work began in about January 2022. RBH ceased work in about April 2024, when the works remained incomplete. The property was subsequently completed by others [4].
    4. On 18 November 2024, RBH served an application for payment claiming a net balance of £663,016.16. The application was accompanied by a spreadsheet containing 527 line items and limited explanation [5]–[6].
    5. On 27 November 2024, Mr and Mrs James served a letter stating that they intended to withhold the whole of the sum claimed and make payment of £0. The letter gave eleven reasons for withholding payment [7].
    6. RBH commenced adjudication. The adjudicator rejected the defendants' jurisdictional objection based on the residential occupier exception and concluded that the letter of 27 November 2024 was not a valid payless notice. In consequence, he awarded RBH £663,016.16, together with interest and his fees and expenses [8]–[9].
    7. Mr and Mrs James did not pay. RBH issued enforcement proceedings in the Technology and Construction Court and sought summary judgment [10].
    8. The TCC refused summary judgment. RBH appealed [14]–[17].
3. **Issues**
    1. Whether the defendants had a real prospect of establishing that they were residential occupiers within section 106 of the Housing Grants, Construction and Regeneration Act 1996, such that the adjudicator arguably lacked jurisdiction [16], [18]–[20], [52]–[53].
    2. Whether the defendants' letter of 27 November 2024 constituted a valid payless notice for the purposes of section 111 of the 1996 Act [17], [68]–[76].
4. **Decision**
    1. The Court of Appeal unanimously dismissed the appeal and upheld the refusal of summary judgment [99]–[101].
    2. On the residential occupier issue, the Court held that the defendants had crossed the relatively low threshold of showing a real prospect of establishing that, at the time the contract was made, they intended to occupy the property as their residence [53]–[60], [67].
    3. The Court emphasised that s.106 jurisdictional challenges are fact sensitive. They may be determined summarily in a clear case, but not where there is credible evidence both ways on intention to occupy [52.2].
    4. On the payless notice issue, the Court held that the defendants' letter of 27 November 2024 was a valid payless notice. It specified the sum considered due, namely £0, and gave a sufficiently clear basis for that position when read in context [86]–[98].
    5. The Court also treated RBH's application as part of the relevant context. Coulson LJ described it as an unsatisfactory and poorly presented final account claim, and characterised the enforcement attempt as a "smash and grab" claim [87]–[88], [93].
5. **Ratio Decidendi**

Residential Occupier Exception (s.106)

1. Section 106 excludes from the statutory adjudication regime a construction contract with a residential occupier, meaning a contract which principally relates to operations on a dwelling which one of the parties occupies or intends to occupy as their residence [18].
2. The burden of proof lies on the party seeking to rely on the statutory exception [52.1].
3. The relevant intention is the intention at the time the contract was made. Evidence before and after that date may be relevant insofar as it bears on that question [43], [52.3].
4. The test has two elements. First, there must be a bona fide intention to occupy the property as a residence. That is largely a matter of subjective intent, supported where appropriate by objective evidence [46]–[48], [52.4]–[52.5].
5. Secondly, there must be a realistic, rather than fanciful, prospect of bringing that occupation about [46]–[48], [52.6].
6. Declarations in third-party commercial loan documentation that the property would not be used as a dwelling were not determinative as a matter of law. They were part of the evidential picture, but they did not trump all other evidence [28]–[31], [57]–[60].
7. Evidence capable of supporting the defendants' asserted intention to occupy included the purchase of the site as a home, payment of second-home stamp duty, the sale of their former home, residence in a caravan on site during the works, registration with local services, entry on the electoral register, and bespoke design features personal to Mr James [22]–[23], [54]–[55].
8. An intention to let the property on an Airbnb-style basis for part of the year was not inconsistent with residential occupier status. A dwelling may remain a residence even if let out for part of the year [26], [33], [65]–[66].
9. A possible breach of a private loan agreement did not render occupation unlawful in the relevant sense. That was materially different from occupation in breach of planning control [27], [32], [61]–[64].
10. The defendants therefore had a real prospect of establishing that s.106 applied, meaning that the adjudicator arguably lacked jurisdiction and summary enforcement was inappropriate [53], [67].

Payless Notice (s.111)

1. A valid payless notice must specify the sum the payer considers due at the date of the notice and the basis on which that sum is calculated. The sum may be zero [76].
2. The validity of such a notice is assessed objectively, from the perspective of a reasonable recipient, and in its proper commercial context [79]–[80].
3. A payless notice does not need a particular title, nor does it need to refer expressly to a contractual clause or statutory provision, provided that its function is objectively clear [83].
4. The defendants' letter plainly stated that they intended to withhold the entirety of the sum claimed and make payment of £0 [75], [89].
5. The eleven reasons given in the letter identified the disputed elements of RBH's payment application and explained why the defendants said nothing further was due [70]–[72], [90]–[92].
6. Given the poor particularisation of RBH's own payment application, the defendants were not required to provide a fully arithmetical rebuttal in order to satisfy section 111 [87]–[88], [92]–[94].
7. The letter provided a sufficiently clear agenda for adjudication and therefore constituted a valid payless notice [84]–[85], [95]–[98].

Comment

The Court of Appeal's decision in RBH Building Contractors Ltd v James & Anor [2026] EWCA Civ 511 is a useful reminder that adjudication, for all its statutory horsepower, does not flatten every domestic building dispute in its path. Section 106 of the 1996 Act remains very much alive, even if contractors would sometimes prefer it to be discovered in a museum next to fax machines and retention bonds.

On the residential occupier issue, the Court refused to treat commercial loan paperwork as a legal ejector seat. The declarations in the development loan undoubtedly made life uncomfortable for Mr and Mrs James, but they were not a magic trump card [57]–[60]. The real question was factual: at the time the contract was made, did they intend to occupy the property as their residence [52.3]? Their evidence — buying the site as a home, selling up elsewhere, living in a caravan on site, registering locally, and designing personal features into the house — was enough to give them a real prospect of proving exactly that [54]–[55].

Importantly, the Court did not finally decide that the residential occupier exception applied. It held that the defendants had a realistic prospect of establishing it [53], [67]. That was enough to defeat summary enforcement, because if s.106 applied the adjudicator had no jurisdiction [14].

The fact that the property might also be let out for part of the year did not convert a home into a commercial investment vehicle wearing a leisurewear disguise. As Coulson LJ observed, plenty of people let their homes for holiday use without ceasing to live in them [65]–[66]. Common sense, inconvenient though it often is, prevailed.

The payless notice point is just as important. The defendants' letter said, in substance: we are paying nothing, and here is why [7], [89]. That was enough. The Court was not impressed by the attempt to turn section 111 into a parlour game of forensic arithmetic. A payless notice must identify the sum considered due and the basis of calculation, but it need not be drafted as though awaiting embalming in a Chancery textbook [76], [81]–[85].

Context mattered. RBH's own payment application was hardly a model of crystalline precision: hundreds of spreadsheet lines, unexplained colour coding, vague invoice descriptions, and a large sum apparently presented without prior invoicing [5]–[6], [87]–[88]. Against that background, the defendants' eleven objections gave a tolerably clear agenda for adjudication [90]–[95]. That is what the statute required; not a mathematical sonnet.

The wider lesson is bracing. Contractors pursuing "smash and grab" claims should not assume that a thinly particularised payment application will be treated as holy writ merely because the receiving party fails to respond in the preferred dialect of spreadsheet theology. Equally, employers cannot rely on fog and indignation alone. Here, the letter worked because it said £0, identified the challenged items, and explained why they were not accepted [89]–[97].

This decision therefore does two things neatly. First, it confirms that the residential occupier exception is a fact-sensitive jurisdictional defence capable of derailing enforcement where credible evidence exists [52.2], [53], [67]. Secondly, it reasserts that payment notices and payless notices are commercial documents, not linguistic mousetraps [79]–[85].

The Court of Appeal has made clear that adjudication is robust but not brainless; swift but not blind; and certainly not a mechanism by which a poorly explained £663,000 demand can be fired across the bows and then enforced simply because the reply was not dressed in ceremonial accounting robes [87]–[88], [93]–[98].

In short: RBH's claim had the look of a smash-and-grab. The defendants' payless notice had enough

grip. And section 106, far from being decorative statutory upholstery, still has real work to do.

#ConstructionLaw #ConstructionAdjudication #ResidentialOccupier #PaylessNotice #HGCRA1996 #Section106 #Section111 #SummaryJudgment #JurisdictionChallenge #SmashAndGrab #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

s.106 HGCRA 1996 — "residential occupier" exception and the "intends to occupy" limb

1. ***Westfields Construction Limited v Lewis*** [2013] EWHC 376; [2013] 1 WLR 3377 [41-43], [52.1]-[52.3], [52.6], [53-55] – *The court treated this as the leading domestic authority on s.106 (and specifically on "intends to occupy"), emphasising (i) that what mattered was the employer's intention at contract formation, while evidence before and after could test that intention, and (ii) that s.106 should be approached with "commonsense" so the residential character should ordinarily be "plain" on a brief consideration of the facts. The judgment also treated Westfields as authority that the burden of proof sat on the party seeking to trigger the s.106 exception.*
2. ***Howsons Limited v Redfearn & Anr*** [2019] EWHC 2540 (TCC); [2019] 186 ConLR 223 [41-45], [52.6], [61-63] – *The judgment considered Howsons for the proposition that (in its own statutory-and-factual setting) s.106 required "lawful" occupation, with the rationale that an employer should not rely on their own wrong (unlawful occupation) to claim exemption from the adjudication scheme. The judgment then confined that reasoning: it treated Howsons as best understood as a "realistic prospect of lawful occupation" point, and distinguished it from a mere breach of a private loan agreement.*
3. ***Samuel Thomas Construction Limited*** (2000) (unreported) [40] – *Cited as one of the rare, first-instance s.106 decisions (primarily concerning actual occupation rather than "intends to occupy"). It was used to illustrate that s.106 cases were fact-sensitive and uncommon.*
4. ***Edenbooth Limited v Cr8 Developments Limited*** [2008] EWHC 570 [40] – *Cited as part of the limited set of High Court authorities on s.106 (again, mainly dealing with actual occupation). It was relied on only to show the rarity and factual nature of s.106 disputes.*
5. ***Shaw v Massey Foundations Piling Limited*** [2009] EWHC 493 (TCC) (TCC) [40] – *Cited in the same way as Edenbooth and Samuel Thomas, as part of the small body of first-instance s.106 cases (fact-driven and at the margins).*

"Intention to occupy" — objective/subjective structure and "realistic prospect" tests (borrowed analogies)

1. ***Gregson & Anr v Cyril Lord Limited*** [1963] 1 WLR 41 [46-47], [52.2], [52.4], [52.6] – *The judgment adopted Gregson's two-limb structure for "intends to occupy": (i) a genuine bona fide intention (largely subjective) and (ii) an objective requirement that there was a reasonable prospect of bringing about occupation by the party's own act of volition. The second limb was treated as an objective test evaluated on all the evidence.*
2. ***The Mayor and Burgesses of the London Borough of Islington v Boyle & Anr*** [2011] EWCA Civ 1450 ("Islington") [50-51], [52.2], [52.6]-[52.7] – *The judgment relied on Islington for an objective approach to residence/occupation questions, including the need for a "practical possibility" of fulfilling an intention to return, and for a temporal dimension (intention to occupy within a reasonable time). It used those concepts to shape the s.106 "intends to occupy" analysis, including the temporal requirement.*

3. ***Gatwick Park Services Limited v Sargeant*** [2000] EWCA Civ J0124-5, [2000] 2 EGLR 45, CA, [2000] 3 P.R. 25 [48], [52.2] – *Used to support the proposition that the hurdle of establishing an intention to occupy "is by no means a high one", and (in the Part 24 context) that the threshold for resisting summary judgment could be correspondingly low.*
4. ***Sutton LBC v Swann*** [1986] 18 HLR 140, CA [49] – *Cited (in the Housing Act 1985/right-to-buy context) as background in the right-to-buy/secure tenancy context to illustrate the significance of continued occupation as a home, rather than as a direct s.106 authority.*

Part 24/ adjudication enforcement — how courts handle jurisdictional defences and avoid "mini-trials"

1. ***Estor Ltd v Multifit (UK) Ltd*** [2009] EWCH 2108 [12], [52.2] – *The judgment treated Estor as setting the approach to summary judgment in adjudication enforcement where jurisdiction is challenged: (i) pure questions of law might be dealt with summarily, but (ii) where the challenge depended on fact/evidence, summary disposal might not be appropriate. It was also relied on for the proposition that there was no overriding presumption in favour of enforcement if it was realistically arguable that the adjudicator lacked jurisdiction.*
2. ***National Insurance Company v Alliance Global Corporate and Speciality AG*** [2007] EWCA Civ 1066 [34] – *Cited for the Part 24 test applied on appeal submissions: whether the defendants had identified enough evidence to show a real prospect of establishing the jurisdictional defence. But the Court's operative summary judgment approach is principally expressed through Estor and the principles at [52.2]. Did not form part of the ratio.*
3. ***E.D.F. Mann Liquid Products v Patel*** [2003] EWCA Civ 472 [34] – *Relied on to reinforce that a Part 24 application should not become a "mini-trial". Did not form part of the ratio.*

Payless/payment notices — construction, required content, and "common sense not technical traps"

1. ***Mannai Investment Co. Limited v Eagle Star Life Insurance Co. Limited*** [1997] UKHL J0521-3, [1999] AC 749 [77], [79-80] – *The judgment treated Mannai as the foundation for construing notices objectively: the issue was how a reasonable recipient would understand the notice, viewed in its "objective contextual scene", with knowledge of the relevant contract and (for payless notices) of the responding payment notice.*
2. ***Grove Developments Limited v S&T (UK) Limited*** [2018] EWHC 123 (TCC), [2018] BLR 173 ("Grove") [77], [79], [81-82], [84] – *Used (with S&T) to support: objective construction; fact-and-degree compliance; judicial resistance to artificial textual attacks; and the relevance of draconian consequences to the reasonable-recipient assessment. Also cited for the "adequate agenda for adjudication / true value" test. (Grove was not the only source of the test).*
3. ***S&T (UK) Limited v Grove Developments Limited*** [2018] EWCA Civ 2448, [2019] BLR 1 ("S&T") [77], [79], [81-82] – *Identified as the only Court of Appeal authority touching payment/payless notices, upholding the first instance approach; used alongside Grove on objective interpretation and the fact-and-degree nature of compliance.*
4. ***Advance JV v Aniska Limited*** [2022] EWHC 1152 ("Advance JV") [15], [77-78], [85] – *Treated as a helpful synthesis of notice principles (via Joanna Smith J), reinforcing the "tolerably clear what is being withheld and why" approach and discouraging over-prescriptive notice requirements.*
5. ***Henia Investments Limited v Beck Interiors Limited*** [2015] EWHC 2433, [2015] BLR 704 [77], [81], [84] – *Cited for the requirement that notices comply with contractual/statutory requirements and for the "adequate agenda for adjudication / true value" test when assessing whether the notice explained the basis of the sum stated (including where that sum was £0).*
6. ***Thomas Vale Construction PLC v Brookside Syston Limited*** [2006] EWHC 3637 (TCC) [77], [81] – *Relied on for the proposition that the court should be unimpressed by contrived*

textual analysis designed to condemn notices on artificial bases.

7. ***Surrey and Sussex Healthcare NHS Trust v Logan Construction (Southeast)*** [2017] EWHC 17 (TCC), [2017] BLR 189 [77], [83] – *Used for the point that a valid notice need not have a particular title or cite the relevant clause, provided that objectively it was intended to fulfil the statutory function.*
8. ***Muir Construction Ltd v Kapital Residential Ltd*** [2017] CSOH 132 [77], [84] – *Cited (obiter) as an example where a payless notice was invalid because it gave none of the information needed to work out the basis for a zero figure, reinforcing the "basis of calculation" requirement.*
9. ***Everwarm Ltd v BN Rendering Ltd*** [2019] EWHC 3060 (TCC) [84] – *Cited (obiter) in support of the proposition that a notice must contain enough to allow the reasonable recipient to work out the basis of calculation; a bare figure without basis was insufficient.*

Legislation:

Housing Grants, Construction and Regeneration Act 1996 — jurisdictional gateway (s.106) and the payless notice regime (s.111)

1. ***Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act") — s.106 (the "residential occupier" exception) [1], [18-20], [40-45], [52.1-52.7], [53-67]***
   The judgment treated s.106 as going to the adjudicator's jurisdiction because Part II did not apply where the contract was with a "residential occupier", including where one party ***intended to occupy*** *the dwelling as their residence.*
   The judgment articulated the operative approach to "intends to occupy" for s.106, including that (i) the burden lay on the party invoking the exception, (ii) intention was a question of fact assessed on evidence, (iii) the key time was contract formation (while pre- and post-contract evidence could test that intention), and (iv) the inquiry had both a subjective bona fide element and an objective "realistic prospect" element, with a temporal dimension ("within a reasonable time" after completion).
2. ***Housing Grants, Construction and Regeneration Act 1996 — s.111(3) and s.111(4) (payless notices: function and mandatory content) [16-17], [76-85], [86-98]***
   The judgment relied on s.111(3) as defining the statutory function of a payless notice (a notice of the payer's intention to pay less than the notified sum).
   The judgment relied on s.111(4) as setting the mandatory requirements: the notice had to specify (a) the sum the payer considered due at the date of service and (b) the basis of calculation, and it was immaterial that the sum could be zero.
   The judgment then applied those statutory requirements (construed objectively and in context) to uphold the 27 November letter as a compliant payless notice.
3. ***Housing Grants, Construction and Regeneration Act 1996 — s.110B (payment notice mechanism, pleaded but not determined) [5], [88]***
   The judgment recorded RBH's case that its 18 November application was a payment notice "in accordance with s.110B", but stated that the court expressed no concluded view on whether it was a valid statutory payment notice, observing only that (if it was) it "barely limped over the threshold".

Statutory fallback payment framework — the Scheme for Construction Contracts Regulations (and the payment timetable context)

1. ***Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011) ("the Scheme") [7-8], [76], [88],***

[93]
The judgment proceeded on the basis that, in the absence of a written contract, the Scheme applied (subject to the residential occupier jurisdiction objection).
The judgment treated the Scheme as providing the payment machinery and the short statutory time periods within which a payer had to respond, and it expressly relied on that timing context when assessing the adequacy of the payless notice (including the observation that the payment application arrived "without warning" and allowed just over a fortnight to respond, albeit "in accordance with the Scheme").
The correspondence quoted in the judgment expressly referred to the Scheme in relation to due date/final date mechanics and referred to "paragraph 2 of Part II" as relevant to due date calculation.

Statutory analogies used to structure "intends to occupy / residence" concepts (informative, not directly governing the dispute)

1. ***Landlord and Tenant Act 1954* — s.30(1)(g) (intention to occupy language used as an analogue) [35], [46-48], [52.4], [52.6]**
   The judgment used s.30(1)(g) as an interpretive comparator because it employed "intends to occupy" language, and it drew from that statutory setting the two-part structure applied in its s.106 synthesis: a bona fide intention plus an objective requirement of a realistic prospect of achieving occupation.
2. ***Housing Act 1985* — ss.118–119 (right to buy framework referenced to illustrate residence/occupation as a statutory criterion) [49-51]**
   The judgment referenced ss.118–119 to illustrate that whether a person occupied (or continued to occupy) a dwelling as their home could be a critical statutory ingredient in other contexts, informing its discussion of how "residence" and "occupation" concepts were assessed objectively.

Unspecified legislative backdrop mentioned only as context

1. ***"Consumer credit legislation" (not identified by title or provision in the judgment) [30], [64]** – The judgment noted that the Development Loan declarations appeared designed to exclude protections/remedies that might otherwise have been available under consumer credit legislation, but did not identify any specific statute or apply any consumer credit provision as part of its reasoning on the issues for decision.*

Legal Texts & Commentary:

Payment / payless notices — "tolerably clear" content threshold and a non-technical, common-sense approach

1. ***Coulson on Construction Adjudication (4th Edition), paragraph 3.36 [15] (and accompanying footnote reference)** – The judgment referred to this commentary, as also noted in Advance JV v Aniska Ltd, as reflecting the authorities on payless notices: provided the notice makes "tolerably clear" what is being withheld and why, the court should not strive to find reasons to invalidate it. The reference reinforced the non-technical, common-sense approach adopted in the judgment and supported the conclusion that a valid payless notice need not contain a full arithmetical working, provided it identifies the sum said to be due and the basis for paying less in a way that would be clear to a reasonable recipient in context.*

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

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