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Scrabbling for Defences, Micawberism Denied: Lapp Industries Ltd v 1st Formations Ltd [2025] EWHC 943 (TCC) (16 April 2025)

[Lapp Industries Ltd v 1st Formations Ltd \[2025\] EWHC 943 \(TCC\)](#)

Date: 16 April 2025

Judge: Adrian Williamson KC (sitting as a Deputy Judge of the High Court)

Key Words:

Adjudication Enforcement, Summary Judgment, Jurisdiction Challenge, Multiple vs Single Contract, Natural Justice, Frolic of One's Own, Payment Notice, Pay Less Notice, Default Payment Notice, Scheme for Construction Contracts, Material Breach, Construction Contract, Project-Based Contracting, Micawberism, Overlapping Jurisdiction and Merits.

Summary

Lapp Industries Ltd ("LAPP") LAPP successfully enforced an adjudicator's decision awarding £120,000 against 1st Formations Ltd ("Formations"). Formations resisted enforcement, arguing (i) lack of jurisdiction (multiple contracts) and (ii) breach of natural justice (alleged "frolic" and ignored defences). The High Court rejected both arguments and granted summary judgment for LAPP plus fees and interest [1, 9, 55-56].

Case Law/ Authorities:

1. *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2006] BLR 15 — enforcement principles [14, 32, 54]
2. *Sainsbury's Supermarkets Ltd v Condek Holdings Ltd* [2014] EWHC 2016 (TCC) — summary judgment standards [13]
3. *Iluminesia Ltd (t/a AlterEgo Facades) v RFL Facades Ltd* [2023] EWHC 3122 (TCC) — avoiding speculation in summary judgment [15]
4. *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) — summary judgment principles [16]
5. *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 — endorsed Easyair [16]
6. *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 — contract interpretation [22]
7. *Viridis UK Ltd v Mulalley & Co Ltd* [2014] EWHC 268 (TCC) — jurisdiction/merits overlap [28]
8. *Air Design (Kent) Ltd v Deerglen (Jersey) Ltd* [2008] EWHC 3047 (TCC) — variations and

jurisdiction [28]

9. *Camillin Denny Architects Ltd v Adelaide Jones & Co Ltd* [2009] [EWHC 2110 \(TCC\)](#) — clarified Air Design [28]
10. *Supablast (Nationwide) Ltd v Story Rail Ltd* [2010] [EWHC 56 \(TCC\)](#) — jurisdiction overlap [28]
11. *CG Group Ltd v Breyer Group Plc* [2013] [EWHC 2722 \(TCC\)](#) — discouraging technical adjudicator challenges [32]
12. *Roe Brickwork Ltd v Wates Construction Ltd* [2013] [EWHC 3417 \(TCC\)](#) — frolic doctrine [33-34]
13. *KNN Coburn LLP v GD City Holdings Ltd* [2013] [EWHC 2879 \(TCC\)](#) — materiality and inadvertent failures [34]
14. *Pilon Ltd v Breyer Group Plc* [2010] [EWHC 837 \(TCC\)](#) — enforcement and material breaches [34-35]

Background

In 2022, LAPP contracted with Formations for refurbishment works [2]. LAPP submitted an interim application for £120,000 on 14 April 2023 [3]. Formations issued no valid Payment or Pay Less Notice [3], and did not pay [3]. LAPP commenced adjudication on 22 November 2024, and Ms Grace Cheng was appointed adjudicator [4].

Formations raised a jurisdictional objection (multiple contracts) [5], which the adjudicator rejected [6]. Formations then argued the application was invalid [7]. On 24 December 2024, the adjudicator ruled in LAPP's favour [8]. Formations did not pay, prompting enforcement proceedings [9].

Key Themes:

1. **Enforcement of Adjudicators' Decisions:** Courts will uphold adjudications unless plainly wrong [13-16].
2. **Summary Judgment Principles:** Under CPR Part 24.3, granted if no real prospect of defence [12-16].
3. **Jurisdictional Challenges:** Focus on whether one or multiple contracts existed [5, 18(8), 22-23].
4. **Overlap of Substance and Jurisdiction:** Adjudicator's decision on one contract issue binds enforcement [24, 27-30].
5. **Natural Justice Challenges:** High threshold; only material, deliberate failures affect enforcement [34(22.3, 22.5, 49), 35-36, 50-52].
6. **Commercial Reality vs Technical Arguments:** Focus on how parties acted, not contrived legal distinctions [24-26].

Legal Issues and Analysis

Formations' two grounds (jurisdiction and natural justice) [5, 10] were addressed under the following:

- **The Jurisdiction Argument:**

- Formations argued that LAPP's referral covered disputes under multiple contracts, rendering the adjudicator's decision invalid [5, 17-26].
- LAPP contended there was a single contract, initially agreed in June 2022 for minor works, which was then expanded through subsequent accepted quotations for further elements of the refurbishment [18-22].
- Applying principles of contractual interpretation, the court found that the parties agreed to expand the scope of the initial construction contract through a series of further

accepted quotations [22-23]. The court viewed this as a single contract that grew in scope [23].

- The court found Formations' arguments for multiple contracts "contrived and unrealistic," noting that the parties treated the works as a single "project" at a single site [24i-24v]. References to a "final account" and advance payments across different work phases supported the single contract view [24iv-24vi]. The scenario of an initial limited engagement gradually expanded is common in construction and makes commercial sense [24vii].
- Formations' counterarguments (pleading, differing terms, evolving scope, potential future evidence) were rejected, the last being described as "pure 'surmise and Micawberism'" [25-27].
- Furthermore, the court agreed with LAPP that the adjudicator's decision on whether there was one contract was a question of fact or law decided within her jurisdiction because it overlapped with the substantive issue of the validity of the payment application [24vii-25ii, 27-31]. If there were multiple contracts, a single application would likely be invalid [29]. Therefore, her decision on validity inherently included a binding decision on jurisdiction [29-30].

- **The Law Relating to Natural Justice:**

- The court acknowledged the pressure and speed inherent in adjudication and the high bar for natural justice challenges [31-32]. Challenges should only succeed in "plainest cases" [32].
- **The "Frolic" Point:** Formations argued the adjudicator went on a "frolic of her own" by relying on the "Parties' course of dealing" regarding previous advance payments, a point not raised or argued by the parties [36]. The court found this complaint unconvincing [28-30]. The adjudicator had to decide the validity of the application. Her observation about the course of dealing flowed from material put before her by Formations [40-42]. The court found the course of dealing was "very far from going 'to the heart of the dispute'" and was not central to her reasoning [41-42].
- **Defences Allegedly Not Dealt With:** Formations claimed the adjudicator failed to consider two defences: (1) non-compliance of the application with the Scheme requirements [43(43)] and (2) withdrawal of the application by a later invoice [43(45)]. The court reviewed the adjudicator's decision and concluded she did consider these points [45-54]. She reached an overall view on the validity of the application, taking into account all contentions, implicitly dealing with the Scheme point 47-50]. She specifically addressed the withdrawal issue (framed as implied withdrawal/estoppel/waiver) and rejected Formations' case on it [47-50]. Even if there were failures, they were deemed not deliberate or material to the outcome [50-52]. The adjudicator's general statement that she considered all material was noted [53-54]. The court characterised Formations' complaints as a losing party "scrabbling around to find some argument" [14, 54].

Conclusion

All Formations' defences failed [55]. The court granted summary judgment for LAPP for the awarded sum, adjudicator's fees, and interest [56]. Formations' related CPR Part 8 claim was deemed inappropriate [57-58].

Key Takeaway:

The judgment strongly reinforces the courts' commitment to enforcing adjudicators' decisions in construction disputes [16]. Challenges based on technical arguments about multiple contracts or

alleged breaches of natural justice face a high threshold [14, 32-33, 36]. An evolving scope of works under accepted quotations is likely to be treated as an expansion of a single contract for adjudication jurisdiction purposes [23, 24(vii)-25(ii), 29-30]. Natural justice challenges must demonstrate a material failure by the adjudicator that went to the core of the dispute, not merely disagreement with their reasoning or the handling of minor points [34-38, 50-53]. The court will not easily allow a party to avoid paying a validly notified sum based on later challenges unless there are plain and obvious flaws in the adjudication process [14-15, 32-35, 54-56].

Parting Thoughts

In the end, the court treated Formations' defence with all the seriousness usually reserved for a badly written soap opera subplot. Waving away allegations of jurisdictional chaos and accusations of adjudicator frolics, the judgment landed squarely on the side of commercial reality — a rare, beautiful moment where the law resisted the temptation to drown in its own technicalities.

Formations' attempt to reframe a straightforward "project" as a messy tangle of contracts was dismissed as "contrived and unrealistic" [24(i)]. Their hopes that something – anything – might yet "turn up" were categorised as "pure surmise and Micawberism" [26(iv)], a legal flourish that feels like being politely but firmly shown the door.

As for natural justice? The Court was unamused by complaints that the adjudicator had engaged in creative writing. It found that any alleged frolic was nothing more than the adjudicator working with the material Formations themselves had put on the table [40-42], and that any supposed "missed" defences were either dealt with expressly or had no bearing on the outcome [45-54].

In short, the Court delivered a reminder that adjudication enforcement is not an exercise in interpretative dance. If you want to resist paying an adjudicator's decision, you'd better come armed with more than a handful of technical grumbles and a hope for miracles. Otherwise, like Formations, expect to be run over by the judicial equivalent of a combine harvester: fast, inevitable, and not terribly interested in your last-minute excuses.

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#NaturalJustice #LappvFormations #PaymentDispute #EnglishLaw #LegalUpdate
#DDAlegal #BuildingDispute**

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIQB, FCIInstCES, 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

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

TECSA Adjudication Panel Member since 2012

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