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Vision Construct Ltd v Gypcraft Drylining Contractors Ltd [2025] EWHC 2707 (TCC): The Fatal Consequences of Ignoring the Clock

[Vision Construct Ltd v Gypcraft Drylining Contractors Ltd \[2025\] EWHC 2707 \(TCC\)](#)

Date: 21 October 2025

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

Key Words:

Housing Grants, Construction & Regeneration Act 1996 ("the Act"), Payment mechanism, Subcontract, JCT DBSub/C 2016 standard form, Scheme for Construction Contracts, Statutory Compliance, Interim Valuation Date (IVD), Payment Notice (PN), Pay Less Notice (PLN), Timeliness / Out of time, Due date, Final date for payment, Notified sum, Section 110B(4), Estoppel by convention, Part 8 proceedings, Substantial dispute of fact, Unconscionability / Unjustness, Shared assumption, Contractual interpretation, Clarity and transparency, Business common sense, Retrospective conversion (of notices), Adjudicator / Adjudication Decision, Declarations

Summary

Part 8 proceedings were brought by **Vision Construct Ltd (VCL)** seeking declarations regarding the payment mechanism in its subcontract with **Gypcraft Drylining Contractors Ltd (Gypcraft)** [1]. The claim followed an adjudication decision of 12 November 2024, which held VCL liable to pay £216,947.75 plus interest for failing to serve valid payment notices for Payment Cycle 23 under s.110B(4) of the Act [2(ii)].

VCL advanced three arguments:

1. The payment regime was invalid for want of a clear Interim Valuation Date.
2. Gypcraft was estopped by convention from denying the validity of VCL's late Payment Notice.
3. Alternatively, the late Payment Notice was a valid Pay Less Notice [2(iii), 3(1)].

All three were rejected [31-33, 40-44]. The Court found the schedule clear, estoppel unproven, and retrospective conversion impermissible [28-29, 37, 43-44].

Key Themes:

1. **Statutory Compliance:** Strict adherence to the Act's timing and notice requirements is mandatory [2(ii), 11-12(1)(a)].
2. **Contractual Interpretation:** The subcontract and schedules provided a clear and workable payment regime, to be construed with business common sense [1-2(i), 24(a)-(c), 25-28].
3. **Estoppel by Convention:** High evidentiary burden for establishing shared assumptions; unsuitable for summary Part 8 determination [14, 34(a)-(b), 37, 40-42].
4. **Procedural Appropriateness:** Part 8 proceedings are unsuitable where substantial factual disputes, such as estoppel, are involved [14, 38-39].

Background

The subcontract dated 12 November 2020 incorporated JCT DBSub/C 2016 [5]. "Numbered Document 6" was redundant, so VCL issued updated schedules, including the 2022/23 Schedule, listing for each payment cycle: valuation date, due date, payment notice date, pay less notice date, and final payment date [6-7].

Under the JCT form, the due date was 21 days after the Interim Valuation Date; a payment notice was required within 5 days after, and a pay less notice not later than 1 day before the final payment date [10(i)-(vi)].

For **Payment Cycle 23**, Gypcraft applied for £342,385.52 on 16 January 2023 [19]. VCL issued a "Payment Notice" for £125,437.77 on 7 February 2023, five days late, and issued no pay less notice [20-21]. Gypcraft adjudicated successfully in October 2024 [22-23].

Legal Issues and Analysis

Issue 1: The Interim Valuation Date and the Scheme

VCL argued the 2022/23 Schedule lacked clear Interim Valuation Dates, invoking the Scheme [3(1), 24(10a)(a)-(c)].

- The Court rejected this "very technical" argument as contrary to business common sense [25; Bennett Construction Ltd v CIMC MBS Ltd [2019] BLR 587 at [42]].
- The Schedule's express "Sub-Contractor Submission Valuation Date" satisfied the requirement; substituting terminology did not render it invalid [26-29].
- The alternative claim that applications were due on, not before, the valuation date also failed [24(10a)(d)-(e), 30(i)].

Issue 2: Estoppel by Convention

VCL claimed a course of conduct had created a convention allowing late notices [30(2), 37].

- **Part 8 unsuitability:** Estoppel claims involve factual disputes inappropriate for summary procedure [14, 38-39]; ING Bank NV v Ros Roca SA [2012] 1 WLR 472.
- **No shared assumption:** Prior delays were equally consistent with "confusion or inefficiency" [37].
- **No implied representation:** The alleged shared understanding was "an ingenious lawyer's gloss upon the facts" [35-36].
- The estoppel claim therefore failed [40].

Issue 3: Payment Notice as Pay Less Notice

VCL argued its late Payment Notice was valid as a Pay Less Notice [3(iii), 10(vi)–(vii), 44–45].

- The Court found the document was “plainly what it said it was: a Payment Notice” [43; Advance JV v Enisca Ltd [2022] EWHC 1152 (TCC)].
- Retrospective conversion would “entirely undermine the Act and the Subcontract” [44; Grove Developments Ltd v S&T (UK) Ltd [2018] BLR 173 at [29]].

Conclusion

VCL failed on all three issues [31–33, 40–44]. The Court refused the declarations sought [45].

Key Takeaway:

*The decision reinforces the **strictness** of payment regimes under the HGCRA 1996:*

- Notices must be timely, correctly labelled, and unequivocal [2(ii), 12, 43–44].
- A late or mischaracterised notice cannot be retrospectively repurposed.
- Estoppel arguments and technical attacks on otherwise clear payment mechanisms are unlikely to succeed in Part 8 proceedings [14, 25, 40–42].

Parting Thoughts

In Vision Construct Ltd v Gypcraft Drylining Contractors Ltd [2025] EWHC 2707 (TCC), the TCC delivered a judgment that could be summarised in one line: if you miss the deadline, don’t expect the court to hand you a participation trophy. Vision Construct Ltd came armed with three ingenious theories — each more creative than the last — to explain why its late Payment Notice should somehow count, or why the contractual payment regime shouldn’t. Unfortunately for them, the court had read the calendar.

Adrian Williamson KC, deploying judicial understatement of surgical precision, dismantled each argument. The suggestion that the payment schedule lacked a valid “Interim Valuation Date” was, in his words, “very technical” — judicial code for “hopeless”. The attempt to conjure an estoppel by convention out of a shared history of missed deadlines collapsed for want of any actual evidence — or, indeed, any shared assumption beyond mutual confusion. And the pièce de résistance — that a document screaming “Payment Notice” might be rebranded, after the fact, as a “Pay Less Notice” — was dismissed as “ambitious”, which in legal English translates to “please stop”.

The message could not be clearer. The HGCRA 1996 is not a playground for improvisation. You either serve your Payment Notice on time, or you pay what the other side asked for. The Act doesn’t do sympathy, nor does it offer bonus points for creativity. It rewards punctuality, precision, and the ability to read your own schedule — qualities that, it appears, Vision Construct temporarily mislaid.

In the end, Gypcraft walked away with its money (and a moral victory for administrative discipline), while VCL was left holding a masterclass in statutory pedantry. The judgment reaffirms a simple truth of construction law: deadlines are not aspirations, notices are not chameleons, and business common sense still outranks legal gymnastics.

#ConstructionLaw #Adjudication #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal #HGCRA1996 #PaymentNotices #PayLessNotices #NotifiedSum #JCT #ContractualInterpretation #InterimPayment #EstoppelByConvention #Clarity #TCC #Part8 #DeadlinesMatter #BusinessCommonSense #Retrospective

Authorities

Case Law:

Notice Validity and Form

1. **Grove Developments Ltd v S&T (UK) Ltd [2018] EWHC 123 (TCC)** — Principle relied on:

General guidance applies equally to a payment notice and a pay less notice: each must make plain what it is, clearly set out the sum due/deducted, and the basis of calculation. Retrospectively converting a document intended as a Payment Notice into a Pay Less Notice would entirely undermine the Act and the Sub-Contract.

2. **Advance JV v Enisca Ltd [2022] EWHC 1152 (TCC), 202 Con LR 219** — Principle relied on:

Provides helpful summary guidance on the approach to be taken regarding contractual notices, supporting the conclusion that the document in question was clearly what it said it was: a Payment Notice.

Estoppe and Procedural Suitability

1. **Mears Limited v Shoreline Housing Partnership Limited [2015] EWHC 1396 (TCC), 160 ConLR 157** — Principle relied on:

Sets out the relevant legal ingredients for estoppel by convention, including the requirement that the assumption must be shared and communicated, the party claiming the benefit must have relied upon it, and a key element will be unconscionability or unjustice on the part of the person said to be estopped to assert the true legal or factual position.

2. **ING Bank NV v Ros Roca SA [2012] 1 WLR 472** — Principle relied on:

Explains that Part 8 proceedings are generally unsuitable for the trial of an issue of estoppel because once such a claim is disputed, the proceedings cease to comply with CPR r 8.1(2)(a) as they will involve a substantial dispute of fact.

Contractual Interpretation and Commerciality

1. **Bennett Construction Ltd v CIMC MBS Ltd [2019] BLR 587** — Principle relied on:

The courts expect the parties to adopt business common sense as to the arrangements for invoicing and payment, supporting the court's rejection of VCL's "very technical" argument regarding the Interim Valuation Date.

Legislation:

Substantive Statutory Payment Requirements

The HGCRA 1996 forms the foundation of the dispute, as the Adjudicator's decision was based on VCL's failure to comply with its requirements, resulting in Gypcraft's application becoming the notified sum.

1. **Housing Grants, Construction & Regeneration Act 1996 ("the Act")/ HGCRA96** —

Principle relied on: Establishes the contractual requirements for construction payments and dictates the consequences of failing to serve requisite notices. The court relied on the necessity of upholding the Act, noting that retrospectively converting a Payment Notice into a Pay Less Notice would "entirely undermine the Act and the Sub-Contract".

2. **Section 110B(4) of the Housing Grants, Construction & Regeneration Act 1996** —

Principle relied on: This subsection governs situations where the payer fails to issue a Payment Notice. If the contract requires or permits the payee to notify the payer of the sum considered due,

that notification (Gypcraft's application) is "to be regarded as a notice complying with section 110A(3)" (the statutory notice), thereby making the applied-for sum payable. VCL's first argument specifically aimed to prove that Gypcraft's application was not made "in accordance with the contract" as contemplated by this section.

3. Section 110A of the Housing Grants, Construction & Regeneration Act 1996 — Principle relied on: Sets out the content and timing requirements for contractual Payment Notices. A notice must specify the sum the payer considers due and the basis for calculation and must be given not later than five days after the payment due date. This section is directly referenced in the discussion of Gypcraft's default notice.

4. Section 110B of the Housing Grants, Construction & Regeneration Act 1996 — Principle relied on: Applies when the payer fails to issue a notice under section 110A(2), enabling the payee to issue a default notice, subject to subsection (4).

Default Statutory Scheme

1. Scheme for Construction Contracts (England & Wales) Regulations 1998 (SI 649/1998) — Principle relied on: VCL argued that the Subcontract's failure to adequately identify an Interim Valuation Date meant that clause 4 had to be "substantially re-written by Part II of the Scheme," meaning the Scheme would apply to fix the relevant valuation periods instead. (The court ultimately rejected this argument).

Civil Procedure Rules

1. CPR Part 8 — Principle relied on: Sets the procedural standard for the claim, requiring the court's decision to be based on a question "which is unlikely to involve a substantial dispute of fact." The Judge relied on this rule to determine that VCL's *Estoppe* argument was inherently unsuitable for the "evidence free zone of Part 8".

2. CPR r 8.1(2)(a) — Principle relied on: Specifies that Part 8 proceedings cease to be appropriate if they involve substantial disputes of fact, reinforcing the rejection of the *estoppel* claim.

Legal Texts & Commentary:

There are **no external legal texts, treatises, or academic commentaries** explicitly cited by name (such as legal textbooks or articles) that were relied upon in the reasoning of *Vision Construct Ltd v Gypcraft Drylining Contractors Ltd EWHC 2707 (TCC)*.

The judgment relies heavily on:

1. Case Law (as previously identified, e.g. *Grove Developments Limited v S&T (UK) Limited*).

2. Statutes and Regulations (e.g. the *Housing Grants, Construction & Regeneration Act 1996* and *CPR Part 8*).

3. Standard Form Contractual Documents (specifically the **JCT DBSub/C 2016 standard form** and its incorporated clauses) which govern the mechanics of the dispute.

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ICE DRC CPD Committee Chairman

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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

FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

RICS Dispute Board Registered since 2013

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