



LEGAL BRIEFING

Rhode v Markham David (No 2) EWHC 1408

HHJ Thornton QC [2007] TCC

The Facts

Mr Justice Jackson heard an application for Summary Judgment in respect of the enforcement of an Adjudicator's Decision, and gave permission to defend. This case deals with the hearing of that defence.

Mr Rhode as builder carried out work for Mr Markham-David in 1999. Work went well until the parties fell out. Around a year and a half later a Notice of Adjudication was served. Mr Markham-David had not been living at the property for some 13 months. He did not receive the Notice. The adjudication progressed in the absence of Mr Markham-David.

The Issues

The key issue was whether the adjudication had started at all, such that there could be a valid and enforceable decision. The second issue was whether the adjudication was conducted fairly and without a breach of natural justice, as Mr Markham-David had not been involved in the process.

The Decision

HHJ Thornton QC held that the Adjudicator had made little attempt to engage Mr Markham-David or to keep him informed. There was no evidence that the Notice was ever delivered to his address. The Adjudicator became aware that Mr Markham-David had not been served with the Notice and that notification of the appointment and terms of the Adjudicator may not have reached him. In those circumstances it was not adequate for the Adjudicator to ask the claiming party's representative to send further copies to the last known principal residence, given that it was unlikely that Mr Markham-David would receive the documents.

The Judge stated:

"It is incumbent on the Adjudicator to take reasonable steps to ensure that an adjudication has been validly started by trying to establish whether the responding party is resident, that the appropriate documentation has been validly served and brought to the attention of the responding party".
(Paragraph 18).

The claim therefore to enforce the Decision failed and was dismissed with costs.

Comment

This case concerned the enforcement of an Adjudicator's Decision. It all relates to service of proceedings on the Responding Party. The Adjudicator knew or ought to have known that the Respondent had not, or at least it was likely that the Respondent had not, received the documents. The Adjudicator asked the Referring Party to send the documents to the Respondent. However, this Judgment shows that there is an independent obligation on the Adjudicator to take "reasonable steps" to ensure that the documents have been brought to

the attention of the Responding Party.

The Adjudicator should use registered post or even personal service if necessary. The Adjudicator did not take appropriate steps to ensure that the address given to him was the last known residential address of Mr Markham-David. As a result the procedure was “so unfair as to fatally compromise the validity of the proceedings”.

Nicholas Gould
March 2008