Neutral Citation Number: [2025] EWHC 943 (TCC)

Claim No. HT 2025-000019

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16 April 2025

Before :

ADRIAN WILLIAMSON KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

LAPP INDUSTRIES LTD	**Claimant**
- and –	
1ST FORMATIONS LIMITED	**Defendant**

- -
- -

Sheriar Khan (instructed by Alston Asquith Limited) for the **Claimant**
Felicity Dynes (instructed by Bracher Rawlins LLP) for the **Defendant**

Hearing dates: 25 March 2025

- -

JUDGMENT

This judgment was handed down by the court remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 16 April 2025 at 10.30am.

Adrian Williamson KC:

1. In these proceedings, the Claimant ("LAPP") seeks summary judgment of an adjudicator's decision dated 24th December 2024 ("the Decision"). The Defendant ("Formations") resists this application on two main grounds: lack of jurisdiction and breach of natural justice.

2. These issues arise in the following context. In 2022, LAPP was engaged by Formations under a contract to carry out works relating to the refurbishment of the reception, business centre, and second and third floors at 71 – 75 Shelton Street, London WC2H 9JQ ("the premises"). The nature of that contract will be returned to below.

3. On 14 April 2023, LAPP sent to Formations what they asserted to be an application for interim payment under the contract ("the Application"). Formations did not issue any valid Payment Notice or Pay Less Notice. LAPP's case is that the Application therefore became the Default Payment Notice. LAPP say that it was entitled to the notified sum of £120,000 (inclusive of VAT). This was not paid by Formations.

4. On 22 November 2024, LAPP commenced the adjudication by serving its Notice of Adjudication. On 25 November 2024, Ms Grace Cheng was appointed as the Adjudicator ("the Adjudicator") by the Chairman of TECBAR.

5. Formations raised a jurisdictional challenge, namely that there were, in truth, numerous contracts between the parties and not a single contract as alleged by LAPP. It followed, according to Formations, that the adjudicator lacked jurisdiction because many disputes under numerous contracts had purportedly been referred to her.

6. On 12 December 2024, following extensive submissions, the Adjudicator rejected Formations' jurisdictional challenge, concluding that the parties had entered into a construction contract and that there was only one contract.

7. The next day Formations, without prejudice to this jurisdictional objection, served their Response. Their central contention (see e.g. para 19(1)) was that the Application was not a valid application for payment.

8. On 24 December 2024, the Adjudicator issued the Decision in LAPP's favour. She concluded that there was a notified sum of £120,000. LAPP was awarded payment of the notified sum and interest. Formations was to pay those sums within 14 days and was liable for the whole of the Adjudicator's fees.

9. Formations has not paid the sums awarded by the Adjudicator to LAPP or the Adjudicator's fees. Hence LAPP bring these proceedings and seek summary judgment.

10. Formations accept that an adjudicator's decision is, in general, to be enforced but they raise in this court two matters:

    i) They repeat the jurisdictional challenge summarised above;

    ii) They say that the adjudicator acted in breach of the rules of natural justice by undertaking "a frolic of her own" and/or failing to consider two defences put forward by Formations.

11. Against that background, I propose to deal with this application under the following headings:

    a) Enforcement generally;

b) The jurisdiction argument;

c) The law relating to natural justice;

d) The "frolic" point;

e) The defences allegedly not dealt with;

f) Conclusions.

A. Enforcement

12. As already mentioned, this is an application for summary judgment. CPR Part 24.3 provides that:

"*The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—*

(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial".

13. The notes in the White Book observe at note 24.3.3 that:

"If an applicant for summary judgment adduces credible evidence in support of the application, the respondent then comes under an evidential burden to prove some real prospect of success or other reason for having a trial: Sainsbury's Supermarkets Ltd v Condek Holdings Ltd (formerly Condek Ltd) [2014] EWHC 2016 (TCC) at [13]."

14. It is well known that the court will, wherever possible uphold and enforce Adjudicators' decisions. The Court of Appeal put this point as follows in *Carillion Construction Limited v Devonport Royal Dockyard Limited* [2006] BLR 15:

> *"85. The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision*

> *unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator. The courts should give no encouragement to the approach adopted by DML in the present case; which…may, indeed, aptly be described as "simply scrabbling around to find some argument, however tenuous, to resist payment"".*

15. Furthermore, it is not open to a party seeking to resist summary judgment to rely upon "surmise and micawberism", i.e. the profession of a hope that something may turn up in due course. The defendant has to put material before the judge at the summary judgment stage which shows that there is a defence with a real prospect of success: see *Iluminesia Ltd (ta AlterEgo Facades) v RFL Facades Ltd* [2023] EWHC 3122 (TCC) paras 84-87.

16. Finally, it should be noted that the court needs to strike a balance between avoiding a mini-trial on the one hand and ensuring that points which can be determined summarily are so decided. See generally the summary of principles formulated by Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] as approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 at [24]. I would note the following in particular from this summary, at (vii):

> *"it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it."*

B. The jurisdiction argument

17. Formations' point can be shortly stated. They submit that there was more than one contract between the parties. Thus, LAPP's Notice of Adjudication purported to refer many disputes under numerous contracts, so that the Adjudicator did not have jurisdiction.

18. The relevant facts are not greatly in dispute. Mr Harris, a director of LAPP, sets out the background in a witness statement of 4th December 2024, which was put before the Adjudicator on the jurisdictional challenge:

> "*6. At some point in late May 2022, I was contacted by Mr. John O'Donnell, who I understood to be acting on behalf of 1st Formations to look at some potential works to quote the Property.*
> *7. I met him at the Property on 28 May 2022 where he asked me to first quote for some minor works, which I quoted for on 21 June 20221 and these were subsequently carried out on 29 June 2022. At that time, we did not enter into a written contract.*
> *8. While I was carrying out the minor works referred to in paragraph 7 above, Mr. O'Donnell requested that I provide a quotation for demolition and enabling works at the Property. This ended up being the quotation of 17 July 2022. Prior to preparing the quotation, Mr. O'Donnell took me on a tour of the entire building, explaining that additional works throughout the Property would also require quotations once 1st Formations had determined their specific requirements. Unfortunately, as I will elaborate further in this witness statement, 1st Formations never definitively finalised a specification for any part of the project. Even when a specification was agreed upon, it was frequently altered, either through written communication or verbal instructions.*
> *9. The initial focus was on demolition on the second and third floors, referred to as the "**Upper Floors**" During this time, it was agreed that I would provide individual quotations for specific items of work. These quotations would then need approval from Mr. Graeme Donnelly, the director of 1st Formations, before any work could begin. This process of submitting quotations for approval and awaiting confirmation became the basis of how we worked together throughout the project.*
> *10. I submitted quotations for various elements of the works as agreed. These quotations were reviewed by Mr. O'Donnell and then passed on to Mr. Donnelly for final approval. Once each tranche of work was completed, I issued an invoice. It was understood between us that payment for these*

invoices would be made promptly, and this formed part of the working arrangement throughout the project."

19. Importantly, Mr Donnelly, the managing director of Formations, did not demur from this overall picture: see paragraph 7 of his witness statement dated 24th February 2025.

20. As Mr Harris explains above, LAPP submitted an initial quotation for works to the roof, decking and reception of the premises on 21st June 2022. This was accepted in writing by Formations on 28th June 2022. These works proceeded, were invoiced and paid.

21. These undisputed facts clearly gave rise to a construction contract. The parties were *ad idem* as to scope, price and location, with the time for completion impliedly agreed to be a reasonable time. Thereafter, LAPP submitted further quotations, which were accepted. LAPP then carried out the agreed further works, raised invoices for the same and were paid.

22. Counsel did not suggest that there were any special rules which applied to the question whether a particular contractual document was a variation of or addition to an existing contract or, on the other hand, gave rise to a fresh contract. Each such document must be construed objectively, in the light of the circumstances pertaining when it was issued. In *Investors Compensation Scheme v West Bromwich Building Society*, [1998] 1 W.L.R. 896 at 912 Lord Hoffmann summarised the relevant principles as follows:

"(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the 'matrix of fact', but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man."

23. Applying this approach, it seems to me clear that the parties agreed, on an *ad hoc* basis, to expand the scope of the construction contract formed in June 2022, through a series of further accepted quotations. There was, therefore, a single contract (and a single dispute), albeit that this contract grew considerably in scope when compared to the initial June 2022 engagement. LAPP have therefore demonstrated that there is no real prospect of the court being persuaded at trial that there was more than one contract.

24. I have reached this conclusion for the following reasons:

i) Any other analysis is contrived and unrealistic. These business people were not concerned with some artificial carving up of what was, for them, a single, ongoing engagement. The "more than one contract" point would not have occurred to them, and has arisen solely in the context of a very technical argument on jurisdiction, of the kind familiar to lawyers but not, generally, to those involved in commercial negotiations;

ii) All the work was performed at a single site, i.e. the premises;

iii) Both parties referred to the works as a "project". For example, Formations' agent Mr O'Donnell said "please find a spec of works … to kick start the refurb project at 71/75" in an email dated 24 July 2022 where the email attachment title was "New project phases for 71-75 Shelton." LAPP also referred to the works as a "project";

iv) Likewise, Formations' Mr Donnelly referred to a "final account" of the "Reception and Business Centre Re-fit Projects" in his email of 27 February 2023. This is consistent with an overarching contractual arrangement for the "project" as a whole, rather than a series of one-off engagements;

v) Formations made advance payments and/or paid a number of invoices in respect of numerous phases of works at the premises as set out in LAPP's Invoice Payment Summary up to 9 May 2023. These did not necessarily correspond to the individual quotations. Instead, some invoices were in respect of work carried out in different time periods, or advance payment for a proportion of the totality of the works;

vi) There were some fourteen quotations issued by LAPP. It would be surprising if there were at least fourteen separate contracts at a single site. It cannot have been the parties' intention, objectively construed, for there to have been fourteen separate contracts. A reasonable person would not have anticipated that LAPP would have to make numerous separate referrals to adjudication in respect of any payment issues arising across different quotations;

vii) The scenario here – an initial limited engagement, gradually expanded *ad hoc* – is not unfamiliar in the construction industry and makes far more commercial sense than the suggestion of many separate contracts.

25. As against this, Formations submit that:

i) The single contract case, based on the June 2022 quotation, is not pleaded by LAPP adequately or at all;

ii) The quotations differ as to their terms, e.g. as to payment, suggesting that these gave rise to fresh contracts;

iii) The workscope evolved in a manner inconsistent with a single overarching contract;

iv) Even if there appears *prima facie* to be a single contract, there may be matters of conduct, or conversations, which will emerge at trial and which will show matters in a different light.

26. Attractively as these points were presented, I do not find that they are at all convincing:

i) The LAPP pleadings do not cogently advance any such case, but the task for me on these enforcement proceedings is to consider whether there is a real prospect of Formations showing that there were multiple contracts. For the reasons given above, I do not think there is such a prospect;

ii) The quotations do, on occasions, differ in minor respects as to terms, but this does not undermine the overall picture that I have described above;

iii) The workscope did indeed evolve in a somewhat untidy fashion, and grew far beyond the scope of the June 2022 quotation. But that is quite consistent with a single contract gradually being expanded, as required;

iv) This is pure "surmise and Micawberism". Formations do not identify any particular conduct or conversations which point away from the

conclusions I have arrived at. On the contrary, this seems to me a suitable case for me "grasp the nettle and decide" the legal effect of largely undisputed facts.

27. Additionally, LAPP submit that once the Adjudicator had decided that there was a construction contract, her decision-making process regarding whether there was more than one contract was a question of fact or law decided within her jurisdiction which cannot be challenged on enforcement.

28. In this connection reliance is placed upon the line of cases helpfully summarised in *Viridis UK Limited v Mulalley & Company Limited* [2014] EWHC 268 (TCC):

> *"…Miss Cheng relied upon the decision of Akenhead J in the Air Design case to which I have already referred. In particular she referred me to paragraph 22 of*
> *his decision in that case, where he said this:*
> *"22. However, there are two further factors which effectively override considerations as to whether or not there were one, two, three or four contracts between the parties which establish that the Adjudicator was acting within his proper jurisdiction:(a) The substantive decision-making process upon which the Adjudicator had to embark in relation to the disputed claim put before him necessarily involved a consideration of whether there was more than one contract. It was thus within his jurisdiction to decide in effect that there was one contract, albeit one that may have been varied by agreement.*
> *(b) It was thus a part of his jurisdiction to decide whether or not and if so to what extent the Basebuild Contract had been varied by the CPA and BMS Arrangements and indeed whether there were yet further variations ordered to the Basebuild Contract. There may be cases, and this is clearly one, where substance and jurisdiction overlap so that it is within the Adjudicator's jurisdiction to decide as matters within his or her substantive jurisdiction whether there have been in*
> *effect variations to the contract pursuant to which he or she has properly been appointed Adjudicator. It cannot then in those circumstances be a valid challenge to his or her jurisdiction that upon analysis he or she may be wrong as a matter of fact or law in determining that such variations were made to the originating contract as opposed to a series of later legally unconnected contracts.*
> *(c) ...*

I have therefore formed the view that the Adjudicator did have jurisdiction to rule on all the matters which he did decide in his Decision. Whether he was right or wrong to find or make the assumption that there was effectively one contract which was varied and whether he was wrong as a matter of fact or law in any other part of his decision is immaterial. Any such errors do not mean that he does not have jurisdiction. Even if I was wrong about that conclusion, then my analysis that effectively the CPA and BMS Arrangements and the Supplementary Agreement were simply variations of the Basebuild Contract would apply." ...

77. Akenhead J has revisited his decision in Air Design in two further decisions, the first being Camillin Denny Architects v Adelaide Jones & Co [2009] EWHC 2110 (TCC) and the second being Supablast v Story Rail [2010] EWHC 56 (TCC).

78. In the Camillin case he commented on Air Design in the following terms:

"30. That was a case in which there could be no doubt that the adjudicator was properly appointed under the first contract and there could be no argument that, in that capacity, he had jurisdiction to decide whether later "contracts" were simply variations of the first contract or stood on their own entirely separately as contracts in their own right. I am not convinced that this case is authority for any proposition other than that there may be cases in which adjudicators properly appointed have jurisdiction to resolve jurisdictional issues if and to the extent coincidentally those issues are part of the substantive dispute referred to adjudication."

79. In the Supablast case he referred both to Air Design and to Camillin and then said this:

"29. One must bear in mind that variations, that is additional, altered, substituted or omitted works, are very common and almost invariably feature in payment disputes between construction contract parties. Many of the adjudication decisions which come to be considered by the TCC involve rulings on whether particular work has been varied and if so what price is to be put on it. Generally, an adjudicator properly appointed under the original contract between the parties to the adjudication will have jurisdiction to determine whether or not particular work was or was to be treated as a variation under or pursuant to that original contract. Of course, it is open to either party to argue that, although the particular work was extra to the scope of works covered by the original contract, it was not a variation envisaged or permitted by that contract. That argument will or may in effect give rise both to a substantive defence under the original contract ("there is no entitlement to payment because there is no variation") as well as a jurisdictional challenge ("the adjudicator has no jurisdiction to decide because the extra work cannot have been ordered under the original contract which gives the adjudicator jurisdiction in the first place"). This is where there will often be an overlap between jurisdiction and substance."

29. In the present case, there was "an overlap between jurisdiction and substance." The Adjudicator had to decide whether the Application was a valid application for payment. Of course, if there were several contracts, then a single application for payment would not have been valid (whatever other merits or defects it might have had). It follows that the Adjudicator's decision on the substantive point necessarily contained within it a binding decision on jurisdiction.

30. For all these reasons, I therefore reject the jurisdiction arguments raised by Formations.

C. The law relating to natural justice

31. Adjudicators have a difficult task. They have to resolve often complex disputes at breakneck speed. They are deluged with submissions from all concerned, which are, equally, prepared in great haste. It has to be borne in mind, also, that adjudicators are required only to provide a temporarily binding solution to a dispute. Their decisions are not to be compared with those of the Supreme Court or Commercial Court, drafted and redrafted over a long period following extensive submissions from the finest advocates available.

32. The courts recognise these pressures and constraints. In *Carillion*, the Court of Appeal observed that:

> *"86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels "excess of jurisdiction" or "breach of natural justice"…The task of the adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case.*
> *87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position. To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense as,*
> *we suspect, the costs incurred in the present case will demonstrate only too clearly."*

(See also to similar effect: *CG Group Ltd v Breyer Group Plc* [2013] EWHC 2722 (TCC) at para 31(e)).

33. In respect of a "frolic" complaint (that is to say, that the adjudicator has decided the dispute on a point not put before him or her), the case of *Roe Brickwork Ltd v Wates Construction Ltd* [2013] EWHC 3417 (TCC) provides a helpful summary of the approach, with emphasis added:

> *"22. It is also well understood that an adjudicator must observe the rules of natural justice. In this context, that means that he should not decide a point on a factual or legal basis that has not been argued or put forward in the submissions made to him: see Balfour Beatty Construction v London Borough of Lambeth [2002] BLR 288. However, this rule is often easier to state than to apply.*
> *23. If an adjudicator has it in mind to determine a point wholly or partly on the basis of material that has not been put before him by the parties, he must give them an opportunity to make submissions on it. For example, he should not arrive at a rate for particular work using a pricing guide to which no reference had been made during the course of the referral without giving the parties an opportunity to comment on it.*
> *24. By contrast, there is no rule that a judge, arbitrator or adjudicator must decide a case only by accepting the submissions of one party or the other. An adjudicator can reach a decision on a point of importance on the material before him on a basis for which neither party has contended, provided that the parties were aware of the relevant material and that the issues to which it gave rise had been fairly canvassed before the adjudicator."*

34. As regards failing to take into account defences, the relevant law is set out in *KNN Coburn LLP v GD City Holdings Ltd* [2013] EWHC 2879 (TCC), again with emphasis added:

> *"48. A number of authorities have referred to the question of natural justice in the context of adjudications. I respectfully adopt and endorse the judgment of Coulson J in Pilon Limited v Breyer Group Ltd [2010] EWHC 837 where he reviewed relevant authorities from [17] and provided a summary of the relevant principles at 22. For present purposes it is sufficient to set out his summary, which was:*
> *22 As a matter of principle, therefore, it seems to me that the law on this topic can be summarised as follows.*
> *22.1 The adjudicator must attempt to answer the question referred to him. The question may consist of a number of separate sub-issues. If the adjudicator has endeavoured generally to address those issues in order to answer the question then, whether right or wrong, his decision is enforceable: ….*
> *22.2 If the adjudicator fails to address the question referred to him because he has taken an erroneously restrictive view of his jurisdiction (and has, for*

example, failed even to consider the defence to the claim or some fundamental element of it), then that may make his decision unenforceable, either on grounds of jurisdiction or natural justice: ....
22.3 However, for that result to obtain, the adjudicator's failure must be deliberate. If there has simply been an inadvertent failure to consider one of a number of issues embraced by the single dispute that the adjudicator has to decide, then such a failure will not ordinarily render the decision unenforceable: ....
22.4 It goes without saying that any such failure must also be material: .... In other words, the error must be shown to have had a potentially significant effect on the overall result of the adjudication: ....
22.5 A factor which may be relevant to the court's consideration of this topic in any given case is whether or not the claiming party has brought about the adjudicator's error by a misguided attempt to seek a tactical advantage. ... ."
49. It will be noted that an inadvertent failure to consider one of a number of issues will "ordinarily" not render the decision unenforceable. This qualification admits the possibility that an inadvertent failure may in an extraordinary case bring the principle into play. No clear guidance is available about when an inadvertent failure will render the decision unenforceable. Since the essence of the adjudication process is that the real dispute between the parties should be resolved, it seems to me that the touchstone should be whether the inadvertent failure means that the adjudicator has not effectively addressed the major issues raised on either side. Clearly, as [22.4] of Pilon makes clear, the failure must be material in the sense of having had a potentially significant effect on the overall result of the adjudication."

35. In addition to the points I have emphasised above in the authorities, it is necessary, in my judgment, that a natural justice challenge shows that the relevant failing by the adjudicator "went to the heart of the dispute": see *Pilon Limited v Breyer Group PLC* [2010] EWHC 837 para 43. Even if an adjudicator has gone on a "frolic" or has failed, deliberately, to consider a defence that is of no moment unless such failure pertains to a critical part of the decision ultimately reached.

D. The "frolic" point.

36. Formations' criticism of the adjudicator in its skeleton argument is that:

> *"37. She went off on a frolic of her own in determining that the interim application was valid for reasons not raised by or argued by the parties and on which they were not given the opportunity to comment….*
>
> *38. In the adjudication, the adjudicator decided that the purported application for payment was a valid application. One point that was central, in 1st Formations' submission, to that decision was her reliance on what she stated to be "the Parties' course of dealing" in respect of previous requests for advance payment (see paragraphs 38, 39, 42 and 43 of the Decision".*

37. Before considering this complaint, it is important to remember that the authorities show that the "frolic" line of cases is intended to provide a safeguard for a losing party where the adjudicator has decided the dispute (or an important issue within the dispute) upon a basis as to which the parties have not had the opportunity to make submissions or put forward evidence. The touchstone is that the court, making every allowance for the inherently rough and ready and speedy nature of adjudication, will nonetheless intervene where unfairness has occurred.

38. That is not this case. I say that for the following reasons.

39. First of all, I do not accept that the adjudicator undertook any form of frolic. She had to consider whether the Application, which was headed "Application for interim payment" and sought an "on account" payment of £100,000 plus VAT was a proper application in accordance with the contract between the parties and the Scheme. That is exactly what she did do, as set out at paragraphs 37 to 48 of the Decision. She was driven by a number of factors set out in those paragraphs to conclude that the Application was indeed valid.

40. Secondly, her observation at paragraph 38 of the Decision that there had been previous requests for advance (i.e. on account) payments flowed from the material which Formations had put before her as an exhibit to the Response. This is simply not a case of an adjudicator seeking to determine an issue wholly or partly on the basis of material that has not been put before her by the parties.

41. Thirdly, it is apparent that the reference in the Decision to "course of dealing" was very far from going "to the heart of the dispute". At most it was a further factor which supported her overall view that the Application was valid: see paragraphs 38, 39 and 42 of the Decision. When the Adjudicator came to summarise her views at paragraph 48, the course of dealing point is not even mentioned.

42. In short, the Adjudicator was satisfied, for a number of reasons, that the Application was valid. The "course of dealing" was not central to her reasoning. And even if it was, the material had been put before her by Formations, who cannot now complain of the same.

E. The defences allegedly not dealt with.

43. Essentially two points are said to have been ignored by the Adjudicator. This is put as follows in Formations' skeleton argument:

> *"42. The Adjudicator also failed to consider two of the defences put forward by 1st Formations and in doing so committed a material breach of natural justice because these defences were central to the defence advanced by 1st Formations and/or provide a complete defence to the claim: see paragraphs 35 to 47 of GWM2 [HB/(C.2)1/73-76].*
>
> *43.Firstly, she failed to consider the defence that "the document relied on did not comply with the requirements of Part II of the [Scheme]" (Response, para*

14(9) [HB/(E.3)4/210] and "the Referring Party is not entitled to any payment because: … (1) The documents relied upon as giving rise to an entitlement did not comply with the requirements of Part II of the [Scheme] and are incapable of amounting to a valid application for payment for the reasons set out above" (Response para 19(1) [HB/(E.3)4/213].

44.In the relevant section of her Decision on the issue of the validity of the application at paragraphs headed 'Discussion', no mention is made of this defence or a rejection of it.

45.Similarly, the Adjudicator fails to deal with the defence that the purported application was withdrawn and so cannot be relied on, because LAPP issued a further invoice dated 27 April 2023 which requested the sum of £426,854.52 expressly stated to include the sum of £100,000 plus VAT claimed on 14 April 2023: see paragraphs 19(2)-(4) of 1st Formations' Response."

44. I will take these points in turn.

45. As regards the Scheme Defence, the Adjudicator carefully noted the points made at paragraphs 6 and 33 of the Decision. Her overall conclusion on the validity of the Application was set out at paragraph 48 of the Decision as follows:

"It is not necessary for a payment notice to be perfectly drafted. Whilst it must clearly set out the sum which is due and/or to be deducted and the basis on which the sum is calculated; beyond that, the question of whether a notice is a valid notice is a question of fact and degree. Taking a commonsense, practical view of the contents, I am of the view that the Application for Payment makes clear what is being held and why and therefore, I am reluctant to intervene to find reasons that would render the Application for Payment invalid or ineffective which I find to be a valid notice."

46. It is apparent from this passage that the Adjudicator reached an overall view on the validity of the Application, taking into account all the contentions urged on each side. There was no breach of the rules of natural justice. Formations may not agree with her reasoning, but that is nothing to the point.

47. In relation to the withdrawal issue, the Adjudicator again carefully noted the points made at paragraphs 6 and 57 of the Decision. It is apparent from these paragraphs that she regarded there as being an issue of implied withdrawal/estoppel/waiver arising out of the further invoice. She rejected Formations' case on this at paragraph 65 of the Decision.

48. It was submitted on behalf of Formations that paragraph 65 was an inadequate response to this part of its case, because the adjudicator referred to estoppel and waiver but did not mention withdrawal. I do not agree. As I have explained, she regarded this as a composite issue and she was not persuaded by it. There is no breach of natural justice.

49. Leaving aside the two individual issues, I would add the following general reasons for rejecting Formations' complaints under this heading.

50. First of all, it is apparent from the authorities that an adjudicator's failure must be deliberate. There is nothing to suggest, in this case, that there was any deliberate failure to engage with the defences, which were indeed set out in terms in the Decision. If there was an inadvertent failure to consider one of a number of issues embraced by the single dispute, such a failure will only render the decision unenforceable in an "extraordinary" case. This was not such a case.

51. Secondly, any failure on the part of the Adjudicator (and in my view there was none) was not material to the outcome. It is apparent from paragraphs 48 and 65 of the Decision that the Adjudicator reached a firm overall conclusion that the Application was valid and that LAPP never resiled from it. That was a conclusion she was entitled to arrive at and it would not have been affected by further consideration of these two defences.

52. Thirdly, the Decision contained the following paragraph:

> "*I have considered all material that was submitted by both Parties. Any omission to refer to any material in this Decision should not be taken as a failure to have taken such material into account and given it all due and proper weight."*

53. Formations submit that this is merely a "boilerplate" clause. I do not agree. The Adjudicator was thereby making clear that she had taken into account all the evidence and submissions before her. Even in a High Court Judgment, it is not necessary for the Judge to deal expressly with every point which has been argued, provided that the overall decision deals with the substance of each party's case.

54. Finally, in respect of these points and the "frolic" complaint, this seems to me a classic case of a losing party seeking "to comb through the adjudicator's reasons and identify points upon which to present a challenge", as decried by the Court of Appeal in *Carillion*. That is a long way away from a remotely convincing natural justice challenge.

F. Conclusions

55. For the reasons set out above, I reject all of the defences put forward by Formations.

56. There will be summary judgment in favour of LAPP in the sum awarded in the Decision, together with the fees of the Adjudicator and interest. I will hear Counsel at a consequentials hearing as to the exact form of relief to be granted, unless this can be agreed.

57. For completeness, I should add that on 27th January 2025, Formations issued proceedings under CPR Part 8 seeking a declaration that the Application was not a valid application for an interim payment in accordance with the Scheme.

58. The Claim Form provided that the Part 8 Claim was without prejudice to Formations' position that there was not a single contract between the parties, i.e. the jurisdiction point taken in the summary judgment proceedings. I concluded, in a short *ex tempore* judgment at the hearing on 25th March 2025, that this was not an appropriate use of Part 8. I therefore invited Ms Dynes, Counsel for Formations, to consider how Formations wished to pursue this claim under Part 7 and to make proposals for directions at this consequentials hearing. Counsels' clerks should arrange a (remote) hearing in the usual way, unless all the consequentials can be agreed.