

ADJUDICATION: "SHOULD I CHALLENGE?"

March 2008

Recent decisions in *Gray & Sons Builders* and *Harris Calnan* have set the parameters for challenging adjudicator's decisions. The "test" is whether a party has acted unreasonably by relying on defences that are "doomed to fail" on the facts or the law.

What challenges are "doomed to fail"?

This will depend on the facts, but challenges akin to the following are likely to be "doomed to fail":

- the Decision was not signed by the adjudicator;
- the adjudicator had made a mistake as to fact or law;
- oral changes had been made to a written contract which provides for adjudication.

What challenges will work?

Fact dependent, but there is scope for the following challenges to be upheld:

- multiple disputes were adjudicated without a party's consent;
- there was no "contract in writing";
- the adjudicator went on a frolic of his own.

Top Tip

To be able to challenge an adjudicator's Decision, you must have reserved your position during the adjudication. We advise that the following wording is used:

"The following submissions are made entirely without prejudice to the Responding Party's contention that you have no jurisdiction in this matter and that by making the following submissions the Responding Party does not in any way consent to your determining your own jurisdiction. Further, the Responding Party reserves its right to raise any jurisdictional issues and/or any other issues, whether mentioned below or not, in due course, whether within the forum of adjudication proceedings, arbitration proceedings or court proceedings."

These top tips are correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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