IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Case No. HT-2025-MAN-000050
HT-2025-MAN-000063

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Monday, 15th December 2025

Before:
HIS HONOUR JUDGE STEPHEN DAVIES
(sitting as a High Court Judge)

B E T W E E N:

LMND GROUP LIMITED

Claimant

and

JOHN HENRY GROUP LIMITED

Defendant

MR J FRAMPTON (instructed by Archor LLP) appeared on behalf of the Claimant
MR W LACEY appeared on behalf of the Defendant

JUDGMENT
(Approved)

HHJ STEPHEN DAVIES:

1. I now give my judgment on the Part 7 adjudication enforcement claim issued by the claimant, LMND Group Limited against the defendant, John Henry Group Limited. The claim was issued in the Manchester Technology and Construction Court on 11 October 2025. The allocated case number is HT-2025-MAN-000050. By this claim LMND seeks summary judgment for the sum of just under £238,000, plus interest of £40,000 and continuing, as decided by an adjudicator, Mr Christopher Harrell, in his decision made on 9 October 2025. There are also separate Part 8 proceedings issued by John Henry against LMND, but I do not need to refer to these at this point, nor do I need to refer to the fallback stay application brought or argued by John Henry.
2. The argument advanced by John Henry through counsel, Mr James Frampton, is that the decision is unenforceable on two natural justice grounds, the first ground being that the adjudicator decided an estoppel defence raised by John Henry on a basis which had not been argued by either side and relying upon an authority which had not been referred to by either side and on which he had not given either side the opportunity to make submissions. The second ground is a failure to make a decision on a further defence by John Henry that the sum of just under £209,000 had already been paid and ought to be credited against any liability it might have.
3. The background can be stated shortly. There was a framework agreement entered into between the parties for the provision of sub-contract services in May 2023 and pursuant to that agreement two sub-contract works directions were issued and works were undertaken under those sub-contract work directions. The works ended in 2024. Subsequently, LMND have brought a total of four adjudications, of which this is the most recent. The first was an adjudication which was dealt with by a Mr Whittle. He found in favour of LMND who was paid without dispute. There were then two further adjudications in which, as I understand it, John Henry did not participate. All of these seem to have involved small sums but then there was a subsequent adjudication seeking repayment. That was agreed by LMND and this is the fifth adjudication.
4. The purpose of the adjudication sought payment on a notified sum basis in relation to 15 separate applications. It set out the basis of the claims in some detail. There was a response which also set out the nature of the defences in some detail, but I only need to focus on those which are in issue in this case. Before I do so, I should refer to the authorities to which I have been referred in relation to natural justice. Mr William Lacey, counsel for LMND, has referred me to three well-known authorities from 2005-2016 and two more recent authorities. The three well-known authorities are those of *Carillion Construction v Devonport Royal Dockyard* [2005] EWCA Civ 1358, where Chadwick LJ made well-known observations about the prospects of success in raising natural justice arguments in all save the plainest cases. The theme was taken up by Akenhead J in *CG Group v Breyer Group Limited* [2013] EWHC 2722 TCC, where he drew attention to the constraints under which adjudicators operate when considering natural justice arguments. Finally, of the three older cases I was referred me to Fraser J's decision in *Beumer Group UK Limited v Vinci Construction* [2016] EWHC 2283 TCC where Fraser J, as he then was, expressed himself in vigorous terms as regards raising natural justice arguments. As he said, this should be done only in the plainest of cases where the adjudication proceedings were obviously unfair. More recent are the decisions of Mr Adrian Williamson KC, sitting as a Deputy High Court Judge, in the cases of *Essential Living (Greenwich) Limited v Connelley Facades Limited* [2024] EWHC 2629 TCC at paragraph six and *Lapp Industries Limited v 1st Formations Limited* [2025] EWHC 943

TCC at paragraphs 31 and 35. In both of these cases the judge emphasised the constraints under which adjudicators were operating.

5. In his submissions, Mr Frampton referred me to another recent decision, this time that of Her Honour Judge Kelly, sitting as a judge of the High Court, in the Leeds Technology and Construction Court, *Clegg Food Projects Limited v Prestige Car Direct Properties Limited* [2025] EWHC 2173 TCC. At paragraph 10 she recorded that she had been referred to a formidable list of authorities and textbooks and, helpfully, in paragraph 11 set out a summary of the principles to be derived from those cases. In particular, she referred at sub-paragraph 11(c) to the observations of Akenhead J in the case of *Cantillon Ltd v Urvasco Ltd* [2008] EWHC 282 (TCC). She also referred to further summaries of the position which I do not need to refer to specifically. She observed at paragraph (e) that whether or not there has been a breach of natural justice was, as she put it, exquisitely fact sensitive. She also observed that it must be of serious or of considerable potential importance to the outcome before the decision would be compromised. Finally, she referred to the decision of Mr Adam Constable QC (as he then was) in *Corebuild Limited v Cleaver* [2019] EWHC 2170 TCC, where he addressed the circumstances in which it might be possible to demonstrate at summary judgment that the answer the adjudicator arrived at was so obviously correct that the failure to have allowed the point to be properly ventilated is not material. However generally, he said, it is sufficient for a party to show that the substance of the point with which they were deprived of the opportunity to engage with was properly arguable, i.e. had reasonable prospects of success. Beyond that, the Court should not determine the merits of the point itself on the summary judgment application.
6. I deal with this case in line with those helpful authorities and principles.
7. The first point here relates to a defence which had been raised by John Henry of estoppel by convention. That appeared in its response at paragraph 5.21 and following which was headed waiver of right to object to payment certificates. It is clear from the substance of what was set out that in fact what was being argued was an estoppel by convention whereby LMND, it was said, should be prevented from arguing that the payment certificates were invalid on the basis that they were accepted - and there was a large number, 120 - as valid despite being each in substantially the same format as those now criticised in the adjudication and that it was only now, well after the works were completed, that it sought to raise an alleged issue of non-compliance.
8. Reference was made to the relevant authorities and their submissions were set out. Reference was made to three recent decisions in the Technology and Construction Court where such arguments had been considered and, in the last two cases, had succeeded. That was the position that was being argued in front of the arbitrator. No doubt for perfectly good reasons LMND decided not to put in a reply in the adjudication and therefore the adjudication did not have the benefit of any submissions or reference to other relevant authority from LMND. The adjudicator decided this as sub-issue (b) - a waiver of right to object to payment certificates. At paragraph 62(b) the adjudicator concisely and accurately set out the defence as being one of estoppel by convention and referred to the fact that he had been referred to these authorities. At paragraph 63 he then said this: "I am not persuaded by the estoppel defence argument proffered by JHG". He continued in the same paragraph by referring to the requirements of the sub-contract and how it was that, by not setting out payment certificates and situations for each line entry, LMND could not ascertain the basis on which the sum had been calculated. As Mr Frampton has observed, that is clearly not an attempt to engage with the merits of the estoppel argument, it is simply a recording of the position as he had found it in relation to the validity of the payment notices.

9. Obviously, this case is not concerned with whether his decision was right or wrong. If he was wrong that would, of course, not be something which would prevent enforcement. However, it is certainly not something which goes to support his decision on the question of the estoppel argument. In paragraph 64 he continued: "As stated above, JHG did not participate in the second *Whittle* decision or the *Smith* decision." Those are references to two of the earlier adjudications. "If JHG considered that they had grounds to plead a defence of estoppel, then no doubt such an issue could have been rehearsed in these previous adjudications". That appears to be an argument that the estoppel defence is in some way weakened by the fact that it had not been raised in the previous adjudications. It is difficult to know what to make about that. Insofar as it was being relied upon, then of course the adjudicator was entitled to do so within his jurisdiction but, insofar as it is sought to be relied upon, it is perhaps also pertinent that it was not something which was or could have been raised by anyone in the adjudication thus far, given that it was not raised by John Henry nor was it raised by LMND. Thus, on the face of it, it appears to have been something that had been picked up by the adjudicator himself, without giving anyone the opportunity to make submissions upon it.
10. In paragraph 65, reference was made the decision of *Spencer v MW High Tech Projects Limited* [2019] EWHC 2547 where it was held that a common misunderstanding of the applicability of the Housing Grants, Construction and Regeneration Act 1996 could not create an estoppel by convention. It was determined that the contractor's payment notice would still be invalid, even if the estoppel argument was successful. The case was taken to the Court of Appeal, which dismissed the appeal. It is common ground before me, and it is clearly right because I have read both the decision at first instance by O'Farrell J and also referred briefly to the decision in the Court of Appeal, that nothing said in that case had any relevance to the estoppel argument that was raised in this adjudication. More significantly for present purposes, again that seems to have been picked up and relied upon by the adjudicator, in circumstances where he had not referred it to either party for them to make submissions.
11. Mr Lacey has submitted that it may well be that in fact the adjudicator was not relying upon that authority but was simply referring to it for the sake of completeness. However, it seems to me that that is difficult to reconcile this with his holding that a common misunderstanding of the applicability of the Construction Act could not create an estoppel by convention. It appears to me that he was clearly of the view that by a parity of reasoning a common misunderstanding of what was required of the payment notices previously in this case could not create an estoppel by convention. Be that as it may, the question I have to ask is whether or not this was a serious breach of natural justice, which in my view it was, and, if so, did it go to the heart of the case and did it make a material difference to the outcome? It seems to me difficult not to conclude that it was a key point in the adjudication and it clearly was, on the face of it, if not the determinative a very significant factor in the decision-making process. Did it make a material difference? On the face of it again in my judgment, it did. It was a substantive and substantial defence put forward and clearly the adjudicator understood that it was a substantial and substantive defence. It is difficult not to conclude in those circumstances that his decision on that point clearly had a material impact on his decision overall because, if he had found for John Henry on the estoppel, then that really would have been an end of the case for LMND.
12. The question is whether or not Mr Lacey is able to persuade me, that regardless of all this, the merits of the estoppel case were so poor that I can conclude, along the lines of the approach suggested by Mr Adam Constable KC in the *Corebuild* case, that I should not refuse summary judgment on the basis that the estoppel defence on any objective analysis was always hopeless. In support of that argument Mr Lacey has deployed a number of ingenious submissions.

13. First, he has referred me to a non-waiver clause, which appears in both the framework agreement and I think in slightly different terms in the sub-contract conditions. That of course was a clause which was directed to the impact of waiver. It was not specifically directed to an estoppel, whether an estoppel by convention or otherwise. As Mr Lacey accepted, the difference between waiver and estoppel and the extent to which that clause could properly operate as an effective contracting out, against estoppel by convention would require some teasing out in legal proceedings. It was something that I referred to in an earlier decision of mine, the case of *Liddle* at paragraph 39, where I formed the view in a similar sort of case that it could not be relied upon as a definitive answer to this being raised as a defence. It seems to me that the same applies here. There is no clear statement or principle in any leading textbook or authority to which Mr Lacey has been able to refer me which shows that a clause such as this must apply to prevent an estoppel by convention from being relied upon. He also referred me to two further cases, more recent cases, but it seems to me that neither of those establish any principle which differs from those which have already been referred to and therefore they cannot be relied upon as saying that this was an estoppel case which was always bound to fail.
14. In all of the circumstances, and unusually, I am bound to accept that this was a breach of natural justice and that the consequence is that the decision should not be enforced.
15. I deal more briefly with the second natural justice argument which is a failure to decide a defence that by reason of payments already made there should be a substantial deduction from any decision in favour of LMND. That was an argument raised in the defence at section six under the heading "Right to recover double payments" and, as I have said, the factual basis was that a number of payments already made related to the payments claimed in this adjudication and they ought therefore to be deducted from any recovery that LMND would otherwise have. In the submissions, reference was made to the decision of the Court of Appeal in *S&T (UK) Limited v Grove Developments Limited* [2018] EWCA Civ 2448 and, understandably given that this was a smash and grab adjudication, that submission addressed the argument which they no doubt anticipated might be made to the effect that it would not be legitimate to seek to argue that allowance should be made for these earlier payments in the context of a payment notice type adjudication where the *Grove* rule required payment to be made before any proceedings could be taken seeking to rely upon other matters. What the adjudicator did in relation to that was issue three of his decision at paragraph 71, 72 and 73 where he identified the arguments. In paragraph 75 he said this: "Fundamentally the arguments proffered by JHG ignore the premise that if the notified sum is outstanding for payment this sum must be paid prior to commencing a true value claim", and he said in paragraph 76 that JHG has only paid a proportion of the notified sum.
16. The criticism made by Mr Frampton of this is that what the adjudicator did was wrongly refuse to entertain these claims on the basis of a mistaken view of his jurisdiction, and he referred me to the decision of His Honour Judge Keyser KC sitting as a Judge of the High Court in the Technology and Construction Court in the case of *Morganstone v Ltd v Birkemp Ltd* [2024] EWHC 933 TCC as support for that. The decision of the judge clearly identifies the reason he decided that the adjudicator had gone wrong in that case was that there was a true value adjudication where the adjudicator had decided that he was not entitled to consider cross claims or set offs which were not dealt with in the payment notice that had been issued. As His Honour Judge Keyser determined, that was clearly wrong by reference to authorities to which he referred. In this case Mr Frampton submitted that similarly the adjudicator had taken a wrong approach because he had taken an unduly restrictive view of his own jurisdiction. However in my judgment that argument simply does not apply here. Instead, the adjudicator had made a decision which was not just open to him but in my view was clearly right, which was that given that this was a notified sum adjudication he could not take into account and

should not take into account arguments like this, unless or until if he found in the referring parties' favour as he did, that that judgment or that liability had been discharged. Thus I do not accept the premise or that this ground avails John Henry. Ultimately, however, in the end that does not matter, because they have already succeeded on ground one.

17. For these reasons, I am satisfied that I should not enforce the adjudicator's decision.
18. That concludes my judgment on this point.

**End of Judgment.**

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.