

WFW ACHIEVES LANDMARK HIGH COURT RULING ON ENFORCEMENT OF ADJUDICATION DECISIONS IN CASES OF FRAUD IN CONSTRUCTION PROJECTS

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In a significant decision handed down on 17 April 2019 in *PBS Energo AS v Bester Generacion UK Ltd*, the English High Court refused to enforce an adjudication decision on the basis that there was a properly arguable defence that it had been obtained by fraud. The case, in which Watson Farley & Williams (“WFW”) acted for the successful party Bester Generacion UK Ltd (“Bester”), is the first occasion in which the court has refused to order enforcement in such circumstances.

The case revolved around a May 2016 contract between Bester and PBS Energo A.S (“PBS”) for the engineering, procurement, construction and commissioning of a biomass-fired energy-generating plant in Wrexham, Wales. A dispute arose between the parties and PBS purported to terminate the contract, initiating proceedings against Bester in the High Court, in relation to which a trial is listed for July 2019. In parallel adjudication proceedings, Bester was ordered to pay PBS £1.7m pursuant to a contractual provision that it should pay for works performed up to the date of termination. PBS issued proceedings to enforce said decision and sought summary judgment. Bester contended the decision was procured by fraud and therefore should not be enforced. The High Court agreed and confirmed it might refuse to summarily enforce adjudication awards on the grounds of fraud – provided a properly arguable case that could not have been made at the time of adjudication can be shown.

This landmark ruling could have important repercussions for the construction industry given that the adjudication process (introduced by the Housing Grants, Construction and Regeneration Act 1996) is founded on the “pay now, argue later” principle, enabling parties to resolve disputes quickly and economically, whilst maintaining cash-flow in the course of a construction project. It should be noted that cases of fraud are exceptional. Parties will not be able to rely on vague allegations, or matters which they were or should have been aware of at the time of the adjudication. In the vast majority of cases, the fundamental policy of “pay now, argue later” will still prevail.

The WFW London Dispute Resolution team advising Bester was led by Partner Rebecca Williams, supported by Senior Associates Mark McAllister-Jones and Andreas Efstathiou and Associate Alexander Creswick.

Rebecca commented: “I’m honoured that, working closely with counsel, we were able to achieve this ground-breaking successful decision for our client. It not only sets down a precedent that helps businesses that have been the victims of fraud potentially achieve redress, but also demonstrates the growing reputation for excellence of WFW’s disputes practice, especially in the construction sector”.

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