

I'm at my limit: adjudication, delays, and enforcement



What is the law?

The Limitation Act 1980 (the 1980 act) provides a limitation defence in contractual disputes. Section 5 of the act provides that *“an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued”* (emphasis added). While originally drafted to catch only proceedings before the court, the 1980 act has been widened to include arbitral proceedings.

Adjudication is a common resolution mechanism for disputes between parties to construction disputes. Section 110(3) of the Housing Grants, Construction and Regeneration Act 1996 implies a statutory scheme (the scheme) for payment in instalments into construction contracts which do not contain such a scheme, to be adjudicated *“at any time”* if the parties cannot agree on the sum payable. Adjudications are ‘temporarily binding’, meaning that it is open for a party dissatisfied with the outcome of adjudication to seek a full and final determination of the subject matter in court or arbitral proceedings.

The case in point

In the recent case of *LJR Interiors Ltd v Cooper Construction Ltd* [2023] EWHC 3339 (TCC), the Court considered a question that had not fallen to be determined before, namely whether adjudication was an *“action”*, for the purposes of the 1980 Act.

The parties entered into a simple contract (i.e. not a deed) in August 2014 for LJR to carry out dry lining, plastering and screed works to a property. The works were completed in October 2014. In July 2022, nearly 8 years after completion, LJR issued a payment application (application 4) seeking payment of £3,256. This figure

was comprised of administration fees and charges that were contained in a previous payment application (application 3), but which had been unpaid due to disagreements between the parties.

Cooper did not pay application 4 and LJR referred the non-payment to adjudication. Cooper contended the claim for payment was time-barred, it being more than 6 years since application 4 was made. The limitation defence was not successful and the adjudicator determined that LJR was entitled to its payment.

Cooper did not pay and matters proceeded to the High Court. LJR sought enforcement of adjudicator's decision. Cooper counterclaimed seeking a full and final determination on the question of whether the claim was time-barred.

The decision

As to whether the 1980 act had any application to adjudication proceedings the High Court concluded that it did. In considering the definition of "*action*" in the 1980 act, while it is correct that adjudication was not expressly referred to, it did not need to be as the definition of "*action*" was not exhaustive.

As to the potential inconsistency between the application of a limitation period and the phrase "*at any time*" the court determined there was no inconsistency. The application of a limitation period did not mean an adjudication could not be commenced. It was a defence that could be deployed in an adjudication which the adjudicator would then be obliged to consider.

Even if it were the case that the 1980 act was not a matter for consideration in an adjudication, given the temporarily binding nature of adjudication decisions it was appropriate for the court to consider its application in the proceedings commenced by Cooper. In that context, taking into account the date on which the right to payment arose and the passage of time since then, the High Court had to determine conclusively that the right to seek payment of application 4 had been lost before the adjudication had commenced and consequently the adjudicator's decision could not stand.

How we can help

If you require advice or assistance in connection with any of the construction dispute issues arising out of this article or in relation to property disputes more generally please contact our team of experts in our [real estate construction team](#).



[Nitej Davda](#)

Partner