

TCC reviews enforceability and severability of adjudicators' decisions

The decision of Mr Justice Coulson in *Pilon Limited –v- Breyer Group plc* [2010] EWHC 837 (TCC) addresses some interesting issues on adjudication enforcement and is probably one of the most important judgments to have been handed down this year.

The judgment clarifies the law in relation to two main issues:

- The enforceability of adjudicators' decisions where an adjudicator has wrongly disregarded a Defence.
- The enforceability of part of an adjudicator's decision.

Adjudicator's failure to consider the defence

The Judge, Mr Justice Coulson, confirmed that if an adjudicator takes an erroneously restrictive view of his own jurisdiction, his decision may be unenforceable if the failure to consider a defence is deliberate and material. This is a welcome clarification of the relevant test to be applied. In the *Pilon* case, the Judge's view was that an adjudicator cannot just rule out a defence merely because there is no mention of it in the Notice of Adjudication. Furthermore, if the claiming party encourages the adjudicator to limit his jurisdiction to its advantage (as in this case where *Pilon* sought a tactical advantage by putting forward an erroneous statement of the adjudicator's jurisdiction) they should be made to "suffer the consequences".

Severability of the adjudicator's decision

An earlier decision of the TCC (*Cantillon –v- Urvasco*) confirmed that it was possible to sever a decision and the "good" decision be separated from the "bad" decision and subsequently enforced by the TCC.

In *Pilon*, Coulson J suggested the TCC may be willing to re-consider whether it is permissible to sever a single dispute provided this can, in fact, be done.

