



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 80

CA36/26

OPINION OF LORD LAKE

In the cause

ENTEXOL LIMITED

Pursuer

against

SKED CONSTRUCTION LIMITED

Defender

Pursuer: Malone; HF Scotland LLP
Defender: McWhirter; DAC Beachcroft Claims Scotland LLP

25 August 2026

[1] The pursuer was engaged as a subcontractor by the defender for contract works they were carrying out for Scottish Power Energy Networks PLC. Disputes arose in relation to the subcontract which were duly referred to adjudications. The adjudicator's decision in the second adjudication was that the defender should make payment of £113,767 to the pursuers. In this action, the pursuer seeks to enforce that award. The defender argues that the adjudicator's award cannot be enforced because it was made in breach of the requirements of natural justice. The basis for the defender's contention was that in reaching a conclusion that "time was at large", the adjudicator departed from the four corners of the

submissions that had been made by the parties and took a novel approach to the material issues.

Enforcement of adjudicators' awards

[2] There was no practical dispute between the parties as to the law that applies to the issue of enforcement of the awards of adjudicators. It was common ground that while an adjudicator's award will generally be enforced summarily and the courts would be slow to decline to enforce an adjudicator's award, they would do so if the procedure which led to the award amounted to a failure to comply with the requirements of natural justice. These propositions were re-stated by Lord Braid in *Van Oord UK Limited v Dragados UK Limited* [2022] CSOH 30, [2022] SLT 521, paras [15] and [16]. Lord Braid went on to consider the authorities as to when it might be said that a breach of natural justice had occurred.

[3] I was referred also to *ATG Services (Scotland) Limited v Ogilvie Construction Limited* [2024] CSOH 94 and *Premier Modular Limited v Maidstone and Tunbridge Wells NHS Trust* [2026] EWHC 1404 (TCC). These reiterated the position noted in *Van Oord*. Although there is reference to the test for non-enforceability of an award being met when the adjudicator had gone off on a frolic of his or her own, the core issue is whether the parties have both had an opportunity to respond to the point(s) against them. If they are not so aware of the point or they were not given an opportunity to respond prior to the decision being made, there is an unfairness which vitiates the decision.

Issues in the adjudication and the adjudicator's decision

[4] In terms of the pursuer's notice of adjudication dated 30 September 2025, the dispute arises out of a payment notice issued by them on 30 November 2024 and a pay less notice

issued by the defender on 22 January 2025. There were various questions arising out of the pay less notice but the one that is material for the present action concerns a claim made by the defender that the sum due to the pursuer fell to be reduced by certain contra charges identified there. The adjudicator considered that he was required to determine the true value of works and in doing so has had regard to the pursuer's invoice and the defender's pay less notice.

[5] One element of the contra charges was a claim for costs said to have been incurred by the defender arising from the pursuer's failure to complete the contract works on time. The defender's position was that the completion date for the works was fixed as being 13 November 2024 by an instruction issued by them by email on 12 July 2024. The adjudicator did not accept that the email in question was an instruction as to the date for completion and also said that, in any event, a binding agreement as to time limits could not be imposed by a unilateral instruction. He said:

"118. Sked calls Mr Jackson's email an instruction, but it is not an instruction and even if I was to conclude otherwise, a binding agreement as to timely completion cannot be a unilateral instruction.

119. I have not seen evidence saying that Entexol agreed with this, or any other, completion date. Time is/was therefore at large.

120. With time at large in the Subcontract, it is important that Sked demonstrated the effect on its own operations if it wants to successfully claim for the costs of those delays. It would also need to show that Entexol had failed to complete the works in a reasonable time. It has done neither. For example, it would be unusual if events at its own risk did not affect progress, but there is no analysis provided to show this. Entexol says, for example, that it was delayed by Sked for over two weeks at Glenrothes.

...

124. I have decided that no damages are due for delay because (i) no completion date was ever agreed by the Parties and (ii) Sked has not demonstrated that Entexol caused delay to Sked's own operations."

The parties' positions

[6] The defender contended that in the course of the adjudication neither party had submitted that time was at large and that in reaching his conclusion in paragraph 119 that this was the position, to use the language of the authorities on the issue, the adjudicator was on a "frolic of his own". The defender was aware that the pursuer disputed that completion was required by 13 November 2024 as they contended but the adjudicator had not canvassed with the parties that he might not accept that date put forward by the defender and might decide there was no stipulated time limit. It was argued that, the adjudicator having rejected the defender's claim that the time for completion was fixed by the email of 12 July 2024 such that there was no fixed time and works had to be completed within a reasonable period, it was incumbent on the adjudicator to afford the defender an opportunity to establish what a reasonable period would be in the circumstances. Had the defender been given the opportunity to make submissions on this issue, they would have taken advantage of it. As matters stood, there had been no consideration of what the reasonable period would have been for the works to be completed.

[7] The pursuer submitted that the issue of the time by which works should have been completed was part of the defender's case before the adjudicator and not the pursuer's. Assessing the defender's submissions required the adjudicator to consider whether the works were late and that, in turn, required him to consider whether there was a binding date for them to have been completed. As the party that advanced a case of entitlement to make a contra charge, the defender bore the burden of establishing the date by which works ought to have been completed. It was accepted that neither party had contended before the adjudicator that time was at large. The conclusion in this regard was part of the answer to the defender's case before the adjudicator and arose from their contention to the effect that

there was a fixed date by which the works must be completed. It fell to be considered along with the point that they had not established that any loss resulted from the late finish of the works. It was submitted that the defender's position would have failed on this latter issue even if they had been successful in establishing the date by which works were to be completed and that this means that any error as to the time for completion was not material to the decision. They sought decree in terms of the first conclusion both as summary decree and on the basis of sustaining their first plea-in-law as to the relevancy of the defences.

[8] In addition to seeking the sum which the adjudicator found was due, the pursuer also argued that summary decree should be granted in respect of the third conclusion which sought payment of £10,000. It was submitted that payment of this sum was conditional on provision of further information to the defender by the pursuer and that this condition had now been purified. It was submitted that the necessary information had been forwarded by email and that unless the defender could identify what was missing, summary decree should be granted for that sum. In response, the defender contended that there was still a dispute in relation to this element of the case. There were documents that had not been provided by the pursuer. A list of those documents could be lodged.

Decision

[9] Although the adjudicator does refer in his decision to time being at large, this is a consequence of his decision on the matters put before him rather than the reason for that decision. He had been asked to decide whether the defender had established an entitlement to a contra charge against the pursuer's application for payment on the basis that the works were not completed in the time required by the contract. The defender claimed that the contract required that the works were completed by 13 November 2024 and the adjudicator

had to consider whether he accepted that date was the one by which the works were to be completed. It is apparent from paragraph 118 quoted above that he did not. That being the case, it had the consequence that the defender had not established a key element of this part of their case and the contra charge would not be allowed. The decision that there was no agreed date by which the works were done also had the consequence that obligation on the pursuer would be to complete the works within a reasonable time. It is perhaps open to question whether this would be described as meaning that time was at large rather than that the works would have to be completed within a reasonable time, but that does not affect the outcome. The defender had based their case on there being a requirement for the works to be completed within a particular timescale and they were unable to establish this. They had not put forward an alternative case that, in the event there was not a fixed contractual period, the works had not been carried out within a reasonable time. When the basis of decision is properly analysed, the reference to time being at large is something of a red herring. This was not a case in which the adjudicator undertook investigations or inquiries of his own. Instead, he rejected the basis of the case put forward by the defender. The defender was aware that this was a matter the adjudicator would have to decide if he was to uphold their submissions. The defender did not fail in their argument as to contra charges because “time was at large”, they failed to establish that the works should have been completed by the date they claimed.

[10] I do not accept the argument for the defender that, once the adjudicator was minded to reject the arguments advanced for the defender that it was a contractual requirement that the works be carried out by 13 November 2024, he was bound to notify the parties of this and invite further submissions. No such requirement would exist for proceedings in a court and adjudication is intended to be speedier and more informal. There are tight timetables

within which adjudications must be concluded which would make it impracticable to take such steps.

[11] I consider that the defender does potentially have a defence to the third conclusion. I cannot determine on the material before me that the pursuer has made out their case and I cannot resolve the disputed issue of fact which underlies it. Accordingly, I am not willing either to find the defences irrelevant in this regard or to grant summary decree.

Disposal

[12] On the above basis, I am satisfied that there is no relevant defence to the claim contained in the first conclusion. I therefore sustain the pursuer's first plea-in-law to the extent of finding the defence in that regard irrelevant and grant decree in terms of the first conclusion. The motion for summary decree in terms of the first conclusion therefore falls away. In relation to the sum of £10,000 claimed in the third conclusion, I reject the motions that I should sustain the pursuer's first plea in relation to the defence to it and that I should grant summary decree in terms of the third conclusion. The case will be put out By Order to determine what is required by way of further procedure.