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IN THE HIGH COURT OF JUSTICE
TECHNOLOGY AND CONSTRUCTION COURT
[2019] EWHC 2134 (TCC)

No. HT-2019-000035

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday, 15 April 2019

Before:

MR JUSTICE WAKSMAN

B E T W E E N :

ICCT LIMITED

Claimant

- and -

SYLVEIN PINTO

Defendant

MR MESFIN appeared on behalf of the Claimant.

THE DEFENDANT appeared in Person.

JUDGMENT

(Please note this transcript has been prepared without the aid of documentation)

MR JUSTICE WAKSMAN:

- 1 This is an application for summary judgment, to enforce the decision of an adjudicator, Mr Andrew Bingham, in a written award dated 2 July 2018. The contractor, who was claiming unpaid monies and who referred the matter to adjudication, is the current claimant, ICCT Limited, and the employer under the relevant contract and present defendant, is Mr Sylvein Pinto.
- 2 Mr Pinto has at all stages acted in person here. He has at in this hearing presented his arguments succinctly and politely, and with not a little sophistication. That is perhaps unsurprising because he is a professional person, being a certified accountant. As some of his emails make plain, he has obviously had some experience of the legal process including, for example, tribunals and I shall refer to that in a little more detail later on. I have, of course, made sure in the course of these proceedings that the hearing has been conducted in such a way as not to cause him any prejudice by reason of the fact that he is not represented.
- 3 The adjudication dispute arose out of the fact that Mr Pinto engaged ICCT to undertake some works, to put it neutrally, in relation to his basement and, in particular, to stop some leaks. He had had more or less unsuccessful experiences with others in dealing with this problem. The adjudicator found in favour of the claimant and made an award that the claimant's claim, which is £6,456 including VAT (£5,830 net), on a day work basis was due. He also claimed his fees of £3,726 including VAT which Mr Pinto did not discharge and so ICCT has paid those fees itself. On the basis that it is the winning party, ICCT seeks to enforce the award, together with the fees it has had to pay.
- 4 So far as the law is concerned, on an application for summary judgment the claimant has the burden of showing that there is no real prospect of a successful defence at trial and no other compelling reason for a trial. So far as the law in the context of adjudication enforcement is concerned, it is trite law that it is not possible on a summary judgment application to resist enforcement simply on the basis that the defendant disagrees with the adjudicator's decision or thinks, however strongly and in however much detail, that the adjudicator has got it wrong.
- 5 So far as the substantive merits are concerned, the court in the normal case will simply not engage in the process of attempting to second guess what the adjudicator has decided for obvious reasons. One of those is that the adjudicator's decision, albeit that it can be enforced, is only a provisional decision. It can be overturned subsequently in litigation which either party can bring against the other if they are unhappy about the adjudication decision. Subject to certain exceptions, the principle underlying the scheme is that the party that has received a decision in its favour should be paid there and then and any other argument can arise subsequently. In other words, pay now and litigate later.
- 6 So far as the bases for interfering with or not enforcing an adjudicator's award, two are relevant here leaving aside the question of merits. One is where it can be shown that there is apparent bias or a real prospect of being able to show that and, secondly, where there is no jurisdiction. I will come back to those shortly but so far as the essential chronology is concerned, the invoice, which was sent by the contractors after they had left the site, was sent on 29 January 2018. It was for £5,380 plus VAT and it appears at page 283 of the bundle. This was twelve days labour at £400 per day over July 2017 and some materials at

£580, all exclusive of VAT. That sum was not paid. There was no “pay less” notice served in respect of it. On 20 April, the claimant sent to Mr Pinto a notice of intent to refer to adjudication and that is at page 284 of the bundle. That set out the brief description of the dispute.

7 In relation to some enquiries which I made this morning, one of the things which has emerged is that it appears that neither party has engaged in an adjudication before. I say that because the claimant had consulted with another builder who, in fact, had a part to play here. I think it may have been the builder who provided the shotcrete but who, in any event, explained something about the adjudication procedure and suggested that the claimant apply to the Chartered Institute of Building in order to find an adjudicator. That is what happened.

8 On 1 May 2018, the CIOB wrote back to Ms Jahr of the claimant referring to the adjudication and confirming the nomination of an adjudicator on behalf of the President of the Chartered Institute of Building. That is important because it means that the President has been the nominating party; that usually happens where neither party has agreed on or nominated an adjudicator itself.

9 I have seen, as has Mr Pinto albeit very recently, the underlying email from Ms Jahr to the CIOB which says nothing in the covering email other than, “Please find an application...” We have all looked at the application form. It does not state that any particular adjudicator is suggested. It is not even clear that there is a space on the form for that to be done. What is asked for is that there be an adjudication and the brief details of the adjudication dispute are set out and a fee of £300 is paid. I say that because there was a question-mark over whether the claimant had known the adjudicator at all before this dispute begun. Evidence has been put in from Mr Seamus Carr of the claimant that neither he nor anyone else at the claimant knew or had been in contact with this adjudicator prior to this adjudication commencing. The investigations which I caused to be made today have demonstrated that this is right because there is no reference to Mr Bingham in the reference to the adjudication at all. There is one further aspect of this which I will come to when considering the merits of the enforcement claim a little later.

10 The upshot was that Mr Bingham was appointed by the letter of 1 May. The appointing party - in other words the party seeking the adjudication, that being the claimant by Ms Jahr - on 2 May, he writes an email for the attention of Angela (that is Ms Jahr) saying that he has been appointed and could they provide a contact reference for Mr Pinto and then he will send out formal documents to both parties, reminding them that the deadline from service of notice of intention to adjudicate is seven days. That is acknowledged on 3 May by Ms Jahr and she provides to the adjudicator Mr Pinto’s email address.

11 It seems that there was a little delay as far as that is concerned because on 9 May, Mr Bingham wrote to Ms Jahr that he had not yet received the referral from the claimant and Ms Jahr begins her email “Hi Tony, has the responding party acknowledged receipt?” Then she says that she has just seen Mr Bingham’s email which has gone into the junk mail. He says that he had not acknowledged receipt, “...because the normal approach is to serve your referral. What do you intend?” and then she comes back to say:

“Hi Tony, we are just preparing our referral and will be submitting it within the next seven days.”

12 The upshot of all of that, it appears, is that the adjudicator only got his copy of the referral on 4 June. That appears from page 294 where he writes to both parties (on 11 June), saying that “there were comments and photographs served yesterday” which he took to be the

defence of the respondent and I will come back to that in a moment. However, he goes on to say, "The receipt of the referral was 4 June." He says that any reply to the defence must be by 15 June. Then he says the adjudicator's decision is to be given on 2 July and that is because he is acting on the basis of 28 days to process the adjudication.

- 13 Originally, when the adjudicator wrote to Mr Pinto on 7 June, he having received the referral on 4 June which obviously included some material from the claimant, he said to Mr Pinto:

"The ICCT documents of 31 May served in this matter are now with your good self and me as the adjudicator. My task is to decide the issue. Do you have anything more to say? If I don't hear from you today, I will press on with the information and issue the decision."

- 14 Mr Pinto came back to say that he wanted more time, he said, because of paternity leave and other matters and Mr Bingham said he could have until the Monday at 4.00 p.m. for service by email. He had also said, Mr Pinto, on the 7th he was going to forward emails he sent to Seamus Carr and Angela for the time being prior to his comprehensive reply. That he did and that was forwarding the underlying complaints which he made to Mr Carr of the claimant company before the matter went to the adjudication but after the dispute had arisen.

- 15 So there were some emails which went on 7 June itself and then on 10 June, which was the Sunday, Mr Pinto sent another email which had some photographs showing the leaks from the basement walls and the tubes inserted into the basement walls which he said were without prior discussion or permission. That was the basis on which the adjudicator then said he assumed that this was that was being submitted for the defence. It was not and on 11 June itself, Mr Pinto served some further documents in relation to this. There is quite a lengthy email which was sent on 11 June, on the Monday, referring to the three emails he had previously sent and then dealing with some more matters but which ended up with saying that he wished to make a counterclaim for what he said was unnecessary shotcreting working, loss of his time, some unauthorised work, and damage to his paving.

- 16 He then, importantly, attached to that email a letter from Dampcoursing Limited, which attached a lengthy report dated 7 March, which dealt with the position of the leaking basement saying there was a considerable amount of water entering into it. There were various areas of weakness within the existing concrete by active water leaks together with poor finishing. It had been previously waterproofed but with limited effect and for the work to be done, it was said that they would initially cut out the areas of leaking concrete and plug them to prevent further ingress, "We will further apply a band of resin between the walls and the soffit." Then there was some work to be done in relation to a channel but then the whole thing would be subject to a Newton 500 membrane system. That ended with a quotation which said that there was £3,700 for cutting out and sealing the leaking area of concrete and then applying the two coats of the epoxy resin, and then everything else was to install the Newton 500 system.

- 17 The point that Mr Pinto was making to the adjudicator at this stage was to say that you could infer from this that the work for the leaks as opposed to epoxy resin was £700. I am not sure that this is clear from the document but, either way, the point he was making is that would only cost £700; and thus much less than the £5,000 which he had spent where the works to cure the leak had not yet been completed. So that was the purpose of his remark. That was on 11 June.

- 18 On 15 June, the claimant came back with its responses to all of Mr Pinto's points. He wanted to put in a reply to all of that and asked to be able to do that because of the fact that

he was busy until 25 June. The adjudicator allowed that to be done and that then is what he did.

19 That, however, gave rise to another point. The first paragraph of his email of 25 June said:

“I’m unhappy you’re known to or friends with Seamus Carr and Angela Jahr... [and then] ...a psychiatrist will say that however much they try to be impartial, there can be effectively unconscious bias.”

20 The response to that which came the same day, later in the afternoon, in fact twelve minutes later from Mr Bingham was to say:

“Please help me with your point number 1. I have no knowledge of Seamus Carr, nor Angela Jahr, nor anyone connected to them or their company. Please explain.”

21 Mr Pinto says:

“I thought you knew them because they address you as Tony. I’ve been involved in court cases and tax tribunals over the years on behalf of clients. I’ve never addressed any judge or court official with their first name. So if you do not know them, please ignore point number 1.”

That is what he said about that.

22 He actually came back to that email from Mr Pinto a bit later the same day, at 4.16 pm, to say:

“Thank you, Mr Pinto. A simple misunderstanding. Addressing me by my first name gave you the wrong impression. There is no connection in any form with the referring party, or their people, and the adjudicator.”

From the other material which I have recited today, I am quite sure that is, indeed, the case.

23 Following all those communications, the award was given. It recited the various exchanges between the parties. The executive summary said that the new basement required a great deal of repair work. It was much more than Mr Pinto thought was needed and he terminated the task before it was completed. The agreed price for the repairs was a daily rate. The decision is he should pay the sum to ICCT.

24 I am going to read most of this award because it is short. In the main narrative it is recounted that ICCT said that the workmanship of the basement builder, that is the previous one, was poor, and the previous waterproofing was limited, said Dampcoursing Limited, and they referred to active water leaks which I have already recited. ICCT was a concrete waterproofing company who have been in business for 18 years. Mr Carr had inspected and agreed to repair the leaks and recommend a reinforced wall of shotcrete which would be done by a specialist applicator. He agreed to do the repair work, two men at £400 per day plus materials. There was no lump sum price agreed and that much is common ground. The extent of the repairs was by no means clear given the poor work of the basement builder and then the adjudicator said that he formed the view that:

“Mr Pinto became conscious about the number of days it was all taking. He soon decided that the men and the ICCT were disreputable and stopped them attending.”

25 Then he says on the particular issues, “Were they bound in contract?”:

“Yes, it was an oral contract. It was a day work contract and there was no cap on it.”

26 As far as the issue, “Was there evidence of the operatives failing to work reasonably and diligently and economically?” which was the core of Mr Pinto’s complaint, he said this:

“Mr Pinto began to realise the repair works were extensive. The clock was ticking. Mr Pinto said from day two onwards that it became apparent they did not have a clue what they were doing. The adjudicator observes if that was the case, there would be likely evidence of Mr Pinto complaining to Mr Carr. He had made up his mind. I honestly did not think it would take more than a day for the two of them and he convinced himself he was being taken for a ride, but there is simply not enough evidence to support that position.”

27 He then refers to the damp coursing quote of £25,000 and that that would be evidence of the basement having £25,000-worth of repair needed. He said:

“It was unsurprising that the piecemeal works of ICCT had come to less than a quarter of that sum. In short, a great deal of work is or was required to the basement. No basement waterproofing can be done on the cheap, hardly can this be done in a few days. Dampcoursing Limited proves the point.”

Then he referred to Mr Pinto saying:

“We honestly believed sealing the leaks was only one day’s work for two people.”

28 He noted Mr Pinto’s contention that ICCT went beyond this leak prevention to carry out a vast improvement such as digging channels, although the claimant’s evidence was that the channels were something, in fact, that Mr Pinto himself had initiated. However, at any rate, the adjudicator recorded Mr Pinto’s point that it was like holding the tiger’s tail. You cannot hang on on the one hand and you cannot get off on the other hand.

29 He also referenced Mr Pinto’s degree level qualifications which Mr Pinto had cited and being aware of hydraulic pressure and so on. The adjudicator took the view Mr Pinto became concerned on day one.

“He was sufficiently knowledgeable but he hung on. He allowed the works to continue. This election, together with Mr Pinto’s own ability to appreciate what happened, does not convince the adjudicator that the ICCT’s operatives were as bad as being made out. Mr Pinto took the position of dispensing with their services. That is the sum that is claim. There is insufficient evidence to show anything less.”

Then, “Does the counterclaim succeed?”:

“No, because ICCT had promised a repair but it was prevented from completing the work by Mr Pinto.”

30 I should add that there was a dispute about the fact that it appeared that the shotcrete company, which was a separate contractor for these purposes although suggested by Mr

Carr, had left the concrete in a bad state on a newly constructed pavement by Mr Pinto. That was dealt with in the underlying points in the sense that Mr Carr said that that was not anything to do with him, that was the shotcrete people, but, in any event, that was not a major part of the claim. There the award rested.

- 31 After the award was given and Mr Pinto was complaining about the fact that it had not gone his way and he was now having to pay, he returned to the topic of knowledge of the adjudicator and he sent an email to Ms Jahr who had been suggesting that they give some time for payment rather than having to litigate it further. He said, “Do you know the adjudicator?” That on 29 August and he followed it up on the 30th with Ms Jahr “Can you provide an answer to the question below?” Then she said on the 30th:

“This wasn’t the email I was expecting. I understand you raised the question with the adjudicator originally and he informed you he had never had any dealings with anyone from ICCT Limited. That is correct. I never met or spoke to him. All my communications were by email. However, he came highly recommended.”

- 32 There is something of a mystery about that phrase. Mr Pinto is very suspicious about it. Following the enquires that I made today, what we have back from Ms Jahr, though it is not formal evidence, is that she cannot now recall where that actually came from. It does not matter, in my judgment, because it is plain from the emails which we now have seen that there was no prior knowledge of Mr Bingham which in any way informed the reference because the reference, in fact, did not suggest any particular adjudicator at all. This is either surplusage from Ms Jahr or is irrelevant, in my judgment, now that we have the underlying circumstances to the referral and that materials going to that provided.

- 33 Because Mr Pinto did not pay, these proceedings were commenced on 6 February.

- 34 There are three points which Mr Pinto has made clearly today as to why this judgment should not be enforced. The first goes to jurisdiction, the second goes to natural justice, and the third goes to the merits. So far as jurisdiction is concerned, it is correct that section 106 of the Act does not, where there is a construction contract, mandate that there is the adjudication procedure where the works are to a residential dwelling. On the face of it, these are works to a residential dwelling and Mr Pinto has confirmed that in his submission this morning.

- 35 On that basis, there would not have been jurisdiction for the adjudicator to undertake the adjudication process simply where the contractor had referred it and regardless of the position of the other party. However, it is well-established in law that even if there is not formal adjudication jurisdiction, an ad hoc jurisdiction can arise where both sides engage fully in the adjudication process on the merits thereof unless there has been a reservation of rights which are sufficient in the circumstances. Pausing there, Mr Pinto argues that that principle surely cannot apply where there is no jurisdiction so that any adjudication which comes thereafter is illegal in the sense of unlawful or prohibited by law in some way.

- 36 These are perhaps subtle points but I am quite satisfied Mr Pinto’s argument is wrong here. There is no blanket ban against adjudications for work done to residential premises and they are quite often agreed in the context of residential construction contracts. It is simply the fact that the mandatory scheme will not cover such disputes. So it does all turn on whether there has been full engagement in the process without any suitable reservation of rights.

- 37 All of that is set out in some detail in the *Promet* case to which I have been referred, which is a decision of Mr Nissen QC who undertakes a comprehensive review of the authorities. That is dated 17 July 2015. There is no difficulty about reservation here because there was not any reservation at all.
- 38 It is right to say that in relation to the party who is said to have waived the jurisdictional point, one has to look at what the party did or did not do objectively. In this particular context, what that means is that the jurisdictional point is capable of being waived and will be waived where it is one that was in the actual or constructive knowledge of the parties seeking to invoke the jurisdictional point, i.e. Mr Pinto. Mr Pinto says, subjectively, he was not, in fact, aware of the residential dwellings exception, as it were, prior to entering into the adjudication. I rather suspect that the claimant was in the same position since it appears to be the first time it has used this process and did so on the basis of the suggestion from somebody else, but I am afraid the fact that Mr Pinto was not aware of it himself does not help him. The general principle is that ignorance of the law is no excuse. He came to this point very recently, in fact I think yesterday, when he submitted points on jurisdiction for the first time but Mr Pinto, who is a professional albeit going into this adjudication process for the first time, is, I am afraid, deemed to know what the law is and this is not some arcane jurisdictional point. Therefore, subject to anything else which he might raise, Mr Pinto has fully engaged with this process and, on that basis, an ad hoc adjudication came into being and any jurisdictional point was waived.
- 39 In this context, however, Mr Pinto says that is not a fair outcome because, in truth, he was pushed into all of this by way of duress in terms of the adjudicator and that is because when the adjudicator first got in contact with him, he suggested that if he wanted to add anything, he had to do so that day. In fact, as my recital of the chronology has shown, it was not quite like that and, in the event, Mr Pinto submitted emails on the 7th, the 10th, and the 11th, and then a final long response to the claimant's reply submissions which themselves had come on the 15th. Whenever he asked for an extension, he actually got it and in the context of a paper adjudication with relatively small sums in amount, it is impossible to criticise the adjudicator for the process that was undertaken. Everything that Mr Pinto wanted to say he, in effect, said. So there is no question of duress here and therefore there is no question not to find that there was an ad hoc jurisdiction.
- 40 Mr Pinto, however, made a yet further point which was that even if he (and, it seems, the claimant) did not know about the residential dwellings exception, surely the adjudicator did and he must therefore have a duty of care to Mr Pinto to advise him that he had no jurisdiction. I understand the argument. I understand why Mr Pinto might think that is a good idea, but I am afraid as a matter of law it is simply not the case nor is there any material before me by which I could say, for example, that the adjudicator knew he had no jurisdiction but out of bad faith in relation to both parties, somehow decided not to say anything about it. The adjudicator was entitled when he received the referral, which on the face of it appeared to be applying the scheme, referred to works, referred to the responding party and when the responding party engaged, had no obligation to enquire any further especially, as in this case, there was no reservation of rights in any way at all. So I afraid there is nothing in the jurisdiction
- 41 Then I turn to the question of apparent bias. My recital of the facts has, more or less, itself disposed of this point. There is no basis on which I can find that Mr Carr or through him Ms Jahr, are lying about their past knowledge of Mr Bingham or that he is lying about the past association. We have now double checked that to make sure that, for example, there was no specific request for the adjudicator in the period between 20 April when the notice to refer was issued and 1 May when the appointment was made. In that short period, as we have

now seen from the emails, there was a straightforward application which was asking, effectively, the President of the institute to nominate an adjudicator which is what he did. Therefore, there is no question of some prior association here. The reference to “highly recommended” is not explained and it is not clear whether when Ms Jahr referred to it whether there ever had been a recommendation or what it was about but, in my judgment, and notwithstanding Mr Pinto’s submissions, that does not now take the point any further.

42 Mr Pinto has referred to the fact, as is the case, that Mr Bingham has been the subject of litigation in terms of his role before in a case where it turned out that he had received a significant amount of his income as an arbitrator from one particular party and that the way in which he dealt with enquiries about that was unsatisfactory. It appears that one of the institutions is now investigating Mr Bingham about all of that. However, that is completely irrelevant to this process. It would effectively amount to similar fact evidence as well. There is no reason at all to consider that a fair minded observer would think that Mr Bingham has been the subject of bias in this case and where there is absolutely nothing in the documents to suggest it, then what may be the case in different circumstances and with regard to a separate arbitration matter do not take the matter any further.

43 I would only add this, that even if there had been a recommendation in terms of saying that Mr Bingham was a good adjudicator or a good tribunal, that in itself would not have impugned his impartiality because the truth of the matter is that parties nominate adjudicators and arbitrators all the time. Sometimes the arbitration agreements actually ask for three names and that is because the parties can submit names and if there is a dispute about it, then there is a procedure for resolving that dispute. So the mere fact that one party nominates a particular individual by itself is neither here nor there. In this case, it does not matter because, firstly, there was no nomination of Mr Bingham by the claimant and, secondly, they did not know each other or have any kind of financial dealings in relation to previous adjudications in the past. For all those reasons, it cannot be said that there is an arguable point on natural justice here, and by that I mean not merely the question of apparent bias but also the question of the underlying procedure.

44 Mr Pinto’s final point is really a merits point and so one has to approach it with caution because, as I think he understands, it is not for me to act as an appeal from the adjudicator’s decision and it is not for me to second guess it. The fact that he may think that the adjudicator has got it wrong and badly wrong is not sufficient to prevent enforcement. How he put it to me was that this falls into one of those cases where the adjudicator’s reasoning, as it were, is so incoherent and betrays such a lack of understanding of what the claims are all about that it hardly amounts to an adjudication award, properly so-called, at all.

45 There were various points made in correspondence and in the skeleton argument about this but I think the best example from Mr Pinto’s point of view was how he said the adjudicator had completely misunderstood and dealt incoherently with the point about the damp course letter and quotation. Mr Pinto’s point is that all he was trying to do was to show how £5,000 purely for dealing with the leaks itself would be excessive in support of his argument that there were two men here for twelve days really doing little or nothing. They could not have been doing anything because if they had, they would already have sorted out the leaks. However, what the adjudicator did first off, and he was entitled to do this, was that he was entitled to look at the narrative in the damp coursing letter which showed the state of the basement and the fact that there was active leaking going on, and the fact that if this was going to be dealt with properly, then it was going to be a very expensive job.

46 The adjudicator was perfectly entitled to draw from that the inference that even with regard to stopping the leaking in any effective way, it is simply not realistic to assume that it could

necessarily be done in two days and that is really the point that he was making under his paragraph 8.5. He takes onboard and quotes Mr Pinto's argument that he did not think the workers knew what they were doing after day two. He did not think it would take more than a day for two of them. He was taken for a ride. The adjudicator said and he was entitled to say, though Mr Pinto will disagree with it, that there is simply not enough evidence to support the position. Then when he says that it is unsurprising the piecemeal works come to less than a quarter of the £25,000, a great deal of work was required. No basement waterproofing can be done on the cheap. It cannot be done in a few days and he used the damp coursing materials simply to show that point. Yet again, he emphasised Mr Pinto's belief that sealing the leaks was only one day's work for two people.

47 He also said that Mr Pinto said that they went beyond this to carry out a vast improvement but the adjudicator's view of all of this was that, on the one hand, if it was not going to take more than a day or two, and it was still going on, Mr Pinto had the option of terminating it there and then and reducing his exposure. However, if he allowed them to keep continuing, he was being continually exposed to the ongoing charge of £400 and that it was not unrealistic that it should end up being as many days as that because of the nature of the leaks to the basement however much Mr Pinto may have thought it could all have been done very quickly.

48 Therefore, the way in which all of this was dealt with at pages 6 and 7 of the award, I am afraid to say, cannot begin to be seen as dealing with the essential complaints incoherently or with a real and fundamental misunderstanding of what the dispute was. That he knew what the dispute was is shown by the way in which he set out the particular issues to which he had to give 'yes' or 'no' answers, and for the substance of the matters to give the reasons for it. So far as the end product was concerned, he was entitled to find that Mr Pinto took the position of dispensing with the services. Indeed, there is an email from Mr Pinto at one point which is saying:

“We cannot go on with day work and either we call it a day or you give me a fixed quote.”

So, from that point of view, it was a termination and it is a day work basis, which was the contractual way in which this operation had been agreed.

49 Then finally, on the counterclaim about repairs, his short reasoning was that they promised to repair but they could not complete the job by reason of what Mr Pinto says.

50 Mr Pinto, as I have indicated, might disagree with all of that, he might disagree with it profoundly, but I am afraid to say that at the end of the day, all of this is a disagreement with what the adjudicator found and it is not permitted to engage in the merits on all of this. The reality is that if there is to be a full investigation and full litigation of all of this, then I am afraid that has to come with court litigation hereafter.

51 So having considered Mr Pinto's submissions carefully and in the detail that will be apparent from this judgment, I am afraid to say that I do not find that there is real prospect of a successful defence. Therefore, there ought to be judgment for the claimant in the sums claimed.

CERTIFICATE

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