

Payment before true valuation adjudication: Davenport Builders v Greer on S&T v Grove

Further to our previous article commenting on the importance of the recent Court of Appeal Decision in S&T v Grove to “smash and grab” adjudications, the Technology and Construction Court has now applied that Decision and commented in particular on the need to pay a smash and grab award before a true valuation adjudication can be commenced.

Davenport made an application for payment; Mr and Mrs Greer failed to serve any payment or pay less notice and failed also to pay the sum notified in the application. Davenport duly succeeded in a “smash and grab” adjudication based on its application.

Six days after the “smash and grab” adjudication decision, the Greers started their own adjudication seeking a true valuation of Davenport’s account. The outcome of that adjudication was that the Greers did not have to pay any sum to Davenport.

Davenport sought summary judgment to enforce the payment awarded in the first adjudication decision and the Greers sought to avoid payment, relying on the second adjudication decision.

Davenport argued, with reference to S&T v Grove, that the second adjudication decision could not be relied upon as the first adjudication award was not paid before the second adjudication was commenced.

Judge Stuart-Smith decided that where an order has been made by an adjudicator on a “smash and grab” basis, the paying party “must discharge that immediate obligation before he will be entitled to rely upon a subsequent decision in a true value adjudication”.

Of course, there is a distinction between not being able to rely on a true value adjudication and not being able to commence such an adjudication until after payment.

Mr Justice Stuart-Smith went on to confirm that, to ensure cashflow as intended by the Construction Act, a true value adjudication may be commenced “when (and only when) he has paid the sum ordered to be paid by the earlier adjudication.”

However, he also added “that does not mean that the Court will always restrain the commencement or progress of a true valuation commenced before the employer has discharged his ...obligation.” Therefore, whilst S&T v Grove sets out the current position, we may yet see further cases testing the limits of the need to pay smash and grab adjudication awards before seeking a true value assessment.

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