

**CONSTRUCTION ADJUDICATION, AND ITS PLACE WITHIN THE REALM OF ALTERNATE DISPUTE
RESOLUTION.**

Construction adjudication was first introduced in the United Kingdom through the Housing Grants Construction and Regeneration Act 1996 which provides for an accelerated process for deciding disputes. Adjudication has recently been introduced into the construction industry in South Africa as an alternate dispute resolution mechanism, although at this point there is no enabling legislation to this effect. The aim of adjudication within the construction industry is to facilitate a fast and relatively cheap resolution to disagreements during the construction process.

A speedy form of dispute resolution seems appropriate in the construction industry due to it being unsuitable for contracting parties to halt construction for lengthy periods of time while issues between parties are ventilated through costly mediation, arbitration or litigation. It is therefore unsurprising that adjudication has been introduced into the four Construction Industry Development Board endorsed ("CCDB") forms of contract. The standard terms of the CCDB agreements direct that adjudication will follow the rules of the Joint Building Contracts Committee ("JBCC") and that the Adjudicator will be appointed in terms of such rules.

The JBCC Adjudication rules confirm that the parties shall appoint the adjudicator by mutual agreement at any time but not later than five working days after the date on which the disagreement was deemed to be a dispute. Where the parties have failed to make an appointment within such period, the Chairman of the Association of Arbitrators may be requested to appoint an adjudicator.

In terms of the JBCC Adjudication rules, the referring party shall submit full details of a dispute arising in terms of the 'Dispute Resolution' clause of the respective agreements, together with copies of all relevant documents to the adjudicator for determination on confirmation of the Adjudicator's appointment. The other party may within ten days therefrom submit a written response to the details of the dispute. The claimant is given an opportunity to respond to the other parties representations within five days.

The Adjudicator will act as an expert, independently with fairness and impartiality to both sides and will ensure that each party is furnished with a copy of any written communication sent to or

received from either party. The Adjudicator will decide on liability to be apportioned, if any, between the parties for payment of his fees and disbursements and will adopt the most cost and time effective procedure consistent with fairness to determine the dispute.

Should a party to the adjudication be dissatisfied that the adjudicator has correctly and without prejudice fulfilled his role as adjudicator, a notice of dissatisfaction may be given to the adjudicator and other relevant party. This notice must be given within a prescribed period of time, failing which the adjudicator's decision shall become final and binding on the parties.

In the matter of *Stefanutti Stocks (Pty) Limited v S8 Property (Pty) Limited*, a standard JBCC Principal Building Agreement was used which contained a dispute resolution clause which refers parties to adjudication in the event of an issue becoming a dispute. In this case, Stefanutti, (the contractor) referred a dispute to an adjudicator and S8 filed a notice of dissatisfaction meaning that the matter would go to arbitration. The court took the view that the notice of dissatisfaction served on the parties within the prescribed time would not have the effect of nullifying the outcome of the adjudication – the parties would still be able to finally resolve the dispute by making use of the alternative dispute resolution forums or by litigation. Essentially, until such time as the issues were ventilated via arbitration or litigation the parties had to give effect to the order of the adjudicator and an appropriate remedy could then be sought if it was later found that the views of the adjudicator were incorrect.

The challenge that South Africa currently faces with regard to this newly adopted form of alternate dispute resolution is a distinct lack of suitably qualified adjudication practitioners. It is for this reason that the Construction Adjudication Association of South Africa (“CAASA”) has been established.

CAASA is a voluntary association not for gain. CAASA was formed in response to the increase in the number of construction disputes being referred to construction adjudication and provides an accessible, informal, regular and open platform for discussing construction adjudication issues, problems and practices within South Africa.

At present, the University of Pretoria offers a programme in construction adjudication. This course seeks to provide people, with both a legal and/or a construction background, with the tools necessary to effectively adjudicate on construction disputes. While it does not appear that this

programme is necessarily a pre-requisite for entry into the profession, it appears as though it is a welcomed development into a relatively new field of alternate dispute resolution.

Since this form of alternate dispute resolution is relatively new to South Africa, it is clear that adjudication has found acceptance in the South African construction industry, however there is still some way to go before its potential can be realised in full.

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