

## BE AWARE OF THE IMPORT OF ADJUDICATION IN BUILDING AGREEMENTS

*Adjudication is a very specific method of dispute resolution and, judging from the issues raised in the recent judgment in Steffanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd (October 2013), is a mechanism that parties to JBCC contracts need to understand – whether to save unnecessary litigation costs or to enable informed partaking in the adjudication process.*

The standard agreement frequently used in the building industry, the Joint Building Contracts Committee Services 2000 Principal Building Agreement, or known in its shortened form as the “JBCC 2000 agreement”, provides for adjudication of disputes in certain instances.

A brief discussion of the facts and the outcome of a recent judgment will highlight the mechanism of adjudication. The matter dealt with a dispute between *Steffanutti Stocks (Pty) Ltd* (‘Steffanutti’), the building contractor, and *S8 Property (Pty) Ltd* (‘S8’), the employer, which Steffanutti referred to adjudication. The provisions of the standard JBCC under discussion were the following:

*“40.1 Should any disagreement arise between the employer or his principal agent or agents and the contractor as to any matter arising out of or concerning this agreement either party may give notice to the other to resolve such disagreement.*

*40.2 Where such disagreements is not resolved within ten (10) working days of receipt of such notice it shall be deemed to be a dispute and shall be submitted to:*  
*40.2.1 Adjudication in terms of the edition of the JBCC Rules for Adjudication current at the time when the dispute is declared. The adjudicator shall be appointed in terms of such Rules.*

...

*40.3 The adjudicator’s decision shall be binding on the parties who shall give effect to it without delay unless and until it is subsequently revised by an arbitrator in terms of 40.5. Should notice of dissatisfaction not be given within the period in terms of 40.4, the adjudicator’s decision shall become final and binding on the parties.*

*40.4 Should either party be dissatisfied with the decision given by the adjudicator, or should no decision be given within the period set out in the Rules, such party may give notice of dissatisfaction to the other party and to the adjudicator ..... ..*

*40.5 A dispute which is the subject of a notice of dissatisfaction shall be finally resolved by the arbitrator as stated in the schedule .... ”*  
(Our emphasis)

The adjudicator's determination was in Steffanutti's favour and S8 was ordered to pay the former a certain amount of money. S8 however did not agree with the determination and gave notice of its dissatisfaction pursuant to clauses 40.3. - 40.5 of the JBCC (quoted above). It also refused to pay the amount determined, arguing that it was not obliged to do so as it had formally noted its dissatisfaction. This prompted Steffanutti's approach to Court for an order obliging S8 to pay, on the basis that an adjudication determination is binding in the interim and must be complied with, whether or not a dissatisfaction was noted.

The Court upheld Steffanutti's argument. It explained that adjudication, as inherited from the United Kingdom's legislation in this regard, provides an accelerated process for dispute resolution. Generally an adjudicator's decision may be rejected by either party – but importantly, it remains provisionally binding on the parties unless and until overturned subsequently. The parties must therefore perform in terms of the adjudicator's determination, despite an objection thereto having been lodged. This ensures speedy interim resolution of disputes so that the agreement can continue.

In South Africa, adjudication is included in major construction agreements, such as the JBCC agreement, and is regulated contractually. It is similar to the UK procedure. A proper interpretation of the provisions contained in clauses 40.1 – 40.5 clearly shows the following intended sequence:

- The parties must give prompt effect to the adjudicator's decision.
- If a party is dissatisfied, it must 'live with it', but can deliver a notice of dissatisfaction within the prescribed period, failing which the determination will become final and binding.
- If the dissatisfied party has given such notice, he can have the decision reviewed in subsequent arbitration.
- If he is successful, the decision will be set aside.
- But until that has happened, the decision stands and he has to comply with it.
- The agreement and the rules of adjudication allow for enforcement of the adjudicator's decision as a contractual obligation by a court.

Contact us at [StoffelA@stbb.co.za](mailto:StoffelA@stbb.co.za) for further assistance.

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