



CONSTRUCTION, ENGINEERING AND
INFRASTRUCTURE
INTERNATIONAL ARBITRATION
PROFESSIONAL NEGLIGENCE
GENERAL COMMERCIAL
ADJUDICATION

Arthur Graham-Dixon

Call date: 2017 // agd@atkinchambers.com

PRACTICE

Arthur has a broad practice in all areas of Chambers' work and regularly acts as sole counsel in the Technology and Construction Court.

As junior counsel, Arthur is currently working on a US\$2 billion international arbitration concerning the design, procurement and construction of a major airport in the Middle East, alongside various High Court claims relating to domestic construction projects.

As sole counsel, Arthur has successfully advanced and defended multiple adjudication enforcement proceedings. Examples include **Meadowside Building Developments Ltd** [2019] EWHC 2651 (TCC), in which the other side's action was successfully resisted on an unprecedented basis (a champertous funding agreement and scope for abuse of process). **Meadowside** is also a leading and widely published case on the impact of insolvency on enforcement actions and was recently cited with approval by the Supreme Court in **Bresco**.

Other notable cases as sole counsel include **Indigo Projects London Ltd** [2019] EWHC 1205 (TCC) (adjudication enforcement and company voluntary arrangements) and **Fresh Lime Construction Ltd** [2020] EWHC 3734 (TCC) (assignment of right to enforce adjudication decision).

CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

Arthur has experience in a wide range of domestic and international work, from UK PFI contracts and cladding disputes to state-investor concession agreements and international energy disputes. Recent examples of work include:

- Currently being led by Chantal-Aimée Doerries QC, Head of Atkin Chambers in a £20m dispute on the construction of a UK abattoir, with complex technical issues (refrigeration) and a wide range of legal issues involving contractual limitation periods and UCTA; implied/inferred novation; and duty to warn. <https://www.thelawyer.com/top-20-cases-2021/>

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- Currently being led by Rupert Choat of Atkin Chambers in a multi-million pound dispute concerning alleged defects in the construction of a University building, including a strike out application: **University of Manchester v John McAslan and Partners Ltd** [2020] EWHC 3392 (TCC) (judgment on costs).
- Led by Rupert Choat of Atkin Chambers in a multi-million pound TCC dispute arising out of the delayed construction of a care home.
- Within a team of counsel, successfully defended adjudication proceedings arising out of a final account claim for c. £2m (contract based on NEC3 ECC Option A). The claims were rejected in their entirety.
- As sole counsel, instructed by a Defendant facing default judgment for c. £150,000, identified that proceedings had not been served in accordance with the Service Regulation (1393/2007). The Claimants discontinued proceedings.
- As sole counsel, defended three sets of adjudication proceedings simultaneously advanced by a main contractor across three projects, seeking remuneration on the basis of actual cost in the absence of any express payment terms. The contractor recovered just 15% of its overall claim.
- As sole counsel, currently acting in a final account dispute relating to the construction of a boutique jewellery shop.
- As sole counsel, drafted defence and counterclaim together with RFI in a defects dispute between a residential homeowner and a contractor.
- Advised on an employer's ability to seek injunctive relief against its project manager in circumstances where the project manager had entered into a non-disclosure agreement with a contractor in relation to the project without the employer's knowledge.
- Advised on Final Statement conclusivity provisions in the JCT Design and Build Contract 2011.
- Advised on a payment dispute between a residential homeowner and a contractor and in particular the availability of liquidated damages and the potential application of the 'penalty clause' rule following the Court of Appeal decision in *Triple Point*.
- Advised on application of CPR 17.4 (amendments after expiry of limitation).
- As sole counsel, drafted consent order and settled proceedings against a litigant-in-person in Court at a case management conference in respect of a residential defect dispute.
- As sole counsel, applied for a preliminary issue hearing in a residential defect dispute.

INTERNATIONAL ARBITRATION

- Part of a team of counsel drafting the response to a defence and counterclaim valued at over US\$2 billion. Individually responsible for producing the first draft of the response to a section spanning several hundred pages with a value in excess of several hundred million dollars.

PROFESSIONAL NEGLIGENCE

- As sole counsel, currently acting in c. £800,000 multi-party High Court claim concerning sale of property, defects and architects' certificates.
- Advised on a professional negligence claim concerning an architect's supervisory work.

GENERAL COMMERCIAL

- As sole counsel, successfully obtained summary judgment for c. £175,000 claim in respect of unpaid invoices on behalf of a recruitment company, together with indemnity costs, interest on costs, and a further 10% of the awarded sum, having originally settled the pleadings and a Part 36 offer.
- As sole counsel, currently instructed in ongoing Commercial Court proceedings in a claim for the repayment of a £300,000 loan.
- As sole counsel, currently instructed to make a strike out and summary judgment application in a claim for the repayment of a £60,000 loan.
- Advised on a claim under a director's guarantee in respect of overdue interim payments owed by an insolvent company.
- Advised on defending a claim for lost profits brought by a contractor after the employer exercised a termination-at-will clause under a letter of instruction.
- Advised on prospects of a claim arising out of a failure to progress a planning application for a development where (had planning permission been granted) the defendant would have been obliged to pay the claimant to undertake the development.
- Advised on scope and effect of expert determination clause arising under an agreement for sale of a property.
- Advised on contractual termination and claims for delayed completion under an agreement for sale of a property.

ADJUDICATION

Arthur's experience covers issues of jurisdiction (including nomination process), breaches of natural justice, the meaning of construction operations in s. 105 of the HGCRA 1996, the statutory residential occupier exclusion, hybrid contracts, non-compliance of contracts with s. 108 of the HGCRA 1996, and serial adjudication. Recent examples of work include:

- Sole counsel in **Meadowside Building Developments Ltd (in liquidation) v 12-18 Hill Street Management Company Ltd** [2019] EWHC 2651 (TCC), the leading case interpreting the Court of Appeal's decision in **Bresco v Lonsdale** and cited with approval in the Supreme Court's decision in **Bresco v Lonsdale**. Separately from the wider principles concerning adjudication enforcement and the insolvency regime, Arthur succeeded on behalf of the defendant in resisting enforcement on the unprecedented ground that the claimant's funding arrangement was champertous and so gave rise to a question of abuse of process which could not be determined summarily.
- Sole counsel in **Indigo Projects London Ltd v Razin & Anor** [2019] EWHC 1205 (TCC), the first case interpreting the Court of Appeal's decision in **Bresco v Lonsdale**, in which the enforcing claimant was under a company voluntary arrangement (CVA).
- Sole counsel in **Fresh Lime Construction Ltd v Seymour Realty Ltd** [2020] EWHC 3734 (TCC), successfully obtaining summary judgment in the TCC on an assigned claim to enforce an adjudication decision, against a Defendant outside the jurisdiction, having advised on the application to substitute the assignee as claimant, and obtaining indemnity costs of the whole proceedings.

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- As sole counsel, defended three sets of adjudication proceedings simultaneously advanced by a main contractor across three projects, seeking remuneration on the basis of actual cost in the absence of any express payment terms. The contractor recovered just 15% of its overall claim.
- Within a team of counsel, successfully defended adjudication proceedings arising out of a final account claim for c. £2m (contract based on NEC3 ECC Option A). The claims were rejected in their entirety.
- As sole counsel, successfully enforced an adjudication decision in the Technology and Construction Court (*ex tempore* judgment) and obtained indemnity costs against the resisting party.
- As sole counsel, made a non-party costs order application in the Technology and Construction Court against the director to a company resisting adjudication enforcement proceedings.
- As sole counsel, drafted (in a number of cases) court documents required to issue an adjudication enforcement action.

NOTABLE CASES

Meadowside Building Developments Ltd (in liquidation) v 12-18 Hill Street Management Company Ltd [2019] EWHC 2651 (TCC); [2020] Bus. L.R. 917; [2020] B.L.R. 65; (2019) 186 Con. L.R. 148

Indigo Projects London Ltd v Razin & Anor [2019] EWHC 1205 (TCC); [2019] Bus. L.R. 1957; [2019] B.L.R. 454; (2019) 184 Con. L.R. 251; [2019] B.P.I.R. 861

Fresh Lime Construction Ltd v Seymour Realty Ltd [2020] EWHC 3734 (TCC)

QUALIFICATIONS AND AWARDS

2016-2017 BPTC, City Law School

Lord Mansfield Scholar, Lincoln's Inn

Hardwicke Scholar, Lincoln's Inn

BPTC Scholarship, City Law School

2015-2016 GDL, City Law School

While studying, led a case to the SEND Tribunal (part of the First Tier Tribunal) on behalf of the parents of an excluded child (acting through the School Exclusion Project)

Contract Law coursework prize, City Law School (an essay on penalty clauses)

GDL moot final (Supreme Court before Lord Mance)

Member of City Law School team the Vis Moot (the leading international arbitration moot)

2011-2015 BA in Classics (Literae Humaniores 1A), University of Oxford, Double First (7th in university)

Hugh Oldham Scholar, Corpus Christi, Oxford

Three Isaiah Berlin prizes, Corpus Christi, Oxford

Atkin Chambers 1 Atkin Building Gray's Inn London WC1R 5AT

t: +44 (0)20 7404 0102

e: clerks@atkinchambers.com

www.atkinchambers.com

LEGAL TEXTS

Arthur is a contributing editor of the new Hudson's Building and Engineering Contracts (14th ed., 2020).

ADDITIONAL INFORMATION

Arthur is a member of TECBAR, COMBAR and the Society of Construction Law.