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## LEGAL BRIEFING

### *An appealing decision*

### *Lead Technical Services Limited v CMS Medical Limited*

Court of Appeal, Buxton, Rix and Moses LJ [2007] All ER (D) 270

#### ***The Facts***

This was an appeal from an order that an adjudicator's decision be enforced summarily. The first instance judgment is dated 17 March 2006.

A dispute arose between the parties in respect of fees. That dispute was referred to adjudication. The adjudicator decided that certain fees were due and owing. The defendant refused to pay. The first instance judge decided, as a result of a summary judgment application, that the amount of the adjudicator's decision should be paid.

#### ***The Issues***

CMS Medical appealed the decision, raising two issues. First, they said that there was an earlier agreement which was supplanted by a signed deed. The appropriate nominating body in the deed was TeCSA. Lead Technical Services had applied to the ICE for the nomination of an adjudicator. CMS argued that the ICE was the wrong appointing body. As a result, the adjudicator appointed by the ICE had no jurisdiction.

Second, CMS stated that there was an oral agreement that LTS's fee would be capped at £20,000. As there was a dispute about that issue, and it was an oral agreement not a written one, then there was no contract in writing for the purposes of section 107(3) of the HGCR.

The dispute between the parties in respect of the deed was whether the services of the planning supervisor were included. The adjudicator had taken the view that the deed did not include the services of the planning supervisor and was therefore fatally flawed and did not come into force. The first instance judge did not consider the evidence relating to the scope of the deed, but nonetheless enforced the decision.

#### ***The Decision***

Lord Moses LJ considered that the deed was legally binding even if there was some confusion about the services or fees. There was a real prospect of proving that the agreement between the parties was contained in the deed. As a result, the adjudicator did not have jurisdiction because he was appointed by the wrong body.

In respect of the oral fee cap, evidence supported CMS's contention that there was a real prospect of demonstrating that there was an oral agreement. Letters between the parties showed that there were discussions about a cap of £20,000. Evidence in respect of a meeting also demonstrated that there were discussions about a fee cap of £20,000. Finally, LTS had invoiced to the sum of £21,000. It was much later that they brought the claim for £90,000. It appeared that there may well have been an oral cap.

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In conclusion, Moses LJ allowed the appeal, stating that this was one of the rare cases where an adjudicator's decision should not be enforced. Both Rix LJ and Buxton LJ agreed.

***Comment***

Few cases dealing with adjudication reach the Court of Appeal. Of those that do, the Court of Appeal's message has been clear; enforcement of adjudicators' decisions is paramount, save for exceptional circumstances. In this case it was arguable that part of the agreement may not have been recorded in writing (a requirement of the legislation introducing adjudication in the UK). As a result, the decision was not enforced.

***Nicholas Gould***  
***June 2007***

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