

Make Your Arguments at the Right Time

In a recent case, a claim was made for summary judgment after an adjudicator made a decision regarding a construction dispute. The defendant tried to resist the judgment by claiming that it had received a large amount of new evidence, relating to the claim, which had not been taken into account in the adjudication process and that this omission prevented it from being able to defend the claim effectively. It was argued that this constituted a denial of natural justice. The contention was that the claim was not 'crystallised' and thus the adjudicator did not have jurisdiction over it.

One of the observations of the Court was that a failure to complain about a breach of natural justice during the course of the adjudication will be persuasive evidence that there has been no breach. Therefore, making that argument to defend against the subsequent enforcement proceedings will be a lost cause.

The moral of the story is to be sure to make your arguments at the right time. Failing to advance early on in the proceedings a line of argument on which your case depends can be an expensive error.

We can advise you on all commercial and civil disputes.