

Equitix ESI CHP (Wrexham) Limited v Bester Generacion UK Limited

Luke Wygas represented the successful claimant in this enforcement decision. The adjudicator's decision was for approximately £11,000,000 plus interest. The Defendant resisted enforcement for a number of reasons, the two most interesting were that the operations were excluded operations under Section 105 (2) of the Act and secondly that there was a reservation of rights.

The Judge rejected the argument in relation to Section 105 (2) on account of the fact that whilst the project related to a power plant, the operations in question were not excluded operations. In effect the Judge underlined that the exclusion in Section 105 (2) was a very narrow one.

As to the reservation of rights, the Judge considered that in detail, including the surrounding correspondence. The Judge then held that the reservation was one which was limited to a very specific issue and therefore was not relevant.

The Defendant also applied for a stay of enforcement. The crux of this argument was that Claimant was an SPV, but it had decided, given the delays caused by the Defendant, not to continue with the project. The Judge considered that this changed the financial position from when the contract was originally signed. On that basis the Judge found that he had to "hold the ring" between the parties, the best option was to order payment of £4,500,000 by the Defendant to the Claimant, order the Defendant to pay a further £1,000,000 into court and then stay enforcement of the rest of the decision.

Not only does this decision clarify the issue of excluded operations under Section 105 (2), but it also shows that when SPVs are involved in construction contracts (as is often the case), court may be more willing to stay, at least part, of an adjudicator's decision.