

Thomas Crangle successful in Court of Appeal – Bresco Electrical Services Ltd v Michael J Lonsdale (Electrical) Ltd

On 24 January 2019, the Court of Appeal decided the case of Bresco Electrical Services Ltd v Michael J Lonsdale (Electrical) Ltd [2019] EWCA Civ 27, in which Thomas Crangle acted, unled, for the successful Respondent in the Lonsdale appeal.

At first instance (reported at [2018] EWHC 2043 (TCC)), Fraser J. had held that a party in liquidation could not commence an adjudication. The adjudicator would have no jurisdiction to determine such a dispute, the provisions in the Insolvency Act instead taking precedence. Accordingly an injunction had been granted to prevent the continuation of an adjudication in which Bresco (who was in insolvent liquidation) made various claims against Lonsdale.

The Court of Appeal has held that, whilst Fraser J. was incorrect to conclude the adjudicator did not have jurisdiction, the injunction was nevertheless properly granted. The reason for that decision was (in accordance with Thomas Crangle’s submissions) that it would be an “*exercise in futility*” to allow the adjudication to proceed any further in circumstances where there was no prospect of it producing a decision capable of being enforced. According to Coulson L.J., there was a “*basic incompatibility*” between adjudication on the one hand and insolvency on the other. The appropriate solution was therefore to grant an injunction to prevent the nascent adjudication. It would, as per paragraph [54] of Coulson L.J.’s judgment, be only in “*exceptional circumstances*” that a company in insolvent liquidation (and facing a cross claim) could refer a claim to adjudication, succeed in it, and then avoid a stay of execution. Such an adjudication was, as such, futile.

Whilst the adjudicator may have technical jurisdiction to determine such a dispute, any decision would not lead to a “meaningful result” (i.e. be enforced). The injunction remained in force for those reasons.