

# Repeat vexation of the legal system can result in summary judgment or strike out (*Hodgson v National House Building Council*)

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**Dispute Resolution analysis:** The National House Building Council (NHBC) sought an application for summary judgment and to strike out Hodgson's claim for debt due under a settlement agreement, or alternatively for breach of such settlement agreement, in connection to NHBC's liability to pay remedial costs for construction defects in a bungalow owned by Hodgson. The court dismissed the application on the basis that Hodgson's claim was more than merely arguable after an extensive consideration of the facts of the claim, the evidence furnished to the court, and the novelty of Hodgson's claims as against prior arbitration determinations. The court found that there were a substantial number of complex issues to be considered at trial, but that these issues could only be considered in respect of one of Hodgson's claimed construction defects. Hodgson's other claims were dismissed as the court found they had been determined in prior proceedings. Written by Oliver Browne, partner at Latham & Watkins LLP.

*Hodgson v National House Building Council* [\[2018\] EWHC 2226 \(TCC\)](#)

## What are the practical implications of this case?

The court's findings confirm that repeat vexation of the legal system through the court's re-consideration of claims with issues of a manifestly similar nature to prior proceedings is of such paramount interest to the public that it can constitute grounds for summary judgment or a strike out (even where a party to the proceedings was not a party to the proceedings or arbitration wherein the issue was initially considered). The court's conclusions make clear that any such public interest argument will be subject to a comprehensive examination and merits-based analysis of the facts of the relevant issue. Where the court concludes that an issue was not definitively previously determined, the implication is the court will find that the party has the right to pursue such issue at trial. Conversely, where the court concludes an issue was definitively previously determined (including issues that were previously brought, dealt with, and abandoned due to lack of evidence or being withdrawn) the implication is that the court will only permit such issue to be pursued provided that it is not unfair to the other party or the public.

## What was the background?

PA Groves Limited (Groves) constructed a bungalow for Hodgson in 2002 which benefited from a National House Building Council (NHBC Buildmark policy (the Policy) under which Groves was liable to rectify certain damage caused by construction defects (notably, NHBC was liable were Groves ever to be incapable of satisfying its liability).

In September 2004, Hodgson commenced arbitration proceedings against Groves under the Policy and obtained a partial award. Hodgson subsequently initiated secondary arbitration proceedings against Groves and obtained a preliminary award on jurisdiction and costs, which Hodgson claimed from NHBC due to Groves' insolvency. A settlement agreement between Hodgson and NHBC was agreed in March 2010 (the SA), under which Hodgson agreed to discontinue his arbitration proceedings and submit claims to the NHBC for repayment under the Policy in respect of his remedial costs demanded and not otherwise subject to arbitration determination (or excluded by the Policy). NHBC rejected Hodgson's claims on the basis that they were previously determined and in September 2017 Hodgson commenced proceedings against NHBC in respect of these rejected claims, or alternatively for breach of the SA.

In November 2017, NHBC applied for summary judgment (on the grounds that: (i) Hodgson's claims were excluded by the Policy, (ii) Hodgson had sold the bungalow without having undertaken remedial works and thus could not be entitled to an indemnity against a loss not suffered, and (iii) Hodgson no longer held the benefit of the Policy); and strike out (on the grounds that Hodgson's claims were previously determined and therefore an abuse of process).

## What did the court decide?

The court first considered summary judgment and concluded NHBC's submissions, as formulated, were not appropriate due to a lack of relevant authorities and a substantial number of complex issues that would necessitate

further examination of the law and the facts to determine, for example: (i) if Hodgson's claims would be considered against the Policy or the SA, (ii) the relevance of Hodgson's ownership of the bungalow and remedial works progress, and (iii) the retroactivity status of Hodgson's loss and remedial costs.

The court next considered strike out and concluded that although issue estoppel could not arise, Hodgson's claim against NHBC was capable of constituting an abuse of process and being struck out pursuant to the public interest of avoiding repeat consideration of manifestly similar issues (as set out in *Michael Wilson & Partners Ltd. v Sinclair* [2017] EWCA Civ 3). After extensive consideration of the similarities between each of Hodgson's claimed itemised construction defects as against prior arbitration determination, the court concluded that only one of Hodgson's claimed construction defects was novel (in whole or in part) and capable of pursuit at trial. Accordingly, a full examination of the complexities identified by the court in the parties' summary judgement submissions could only be pursued by Hodgson in respect of this one claim. The court dismissed Hodgson's other claims, whether by summary judgment or strike out (the court declined to make this academic distinction).

## Case details

- Court: High Court of Justice, Queen's Bench Division, Technology and Construction Court
- Judge: Mrs Justice Jefford DBE
- Date of judgment: 29 August 2018

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