



CONSTRUCTION, ENGINEERING AND  
INFRASTRUCTURE  
INTERNATIONAL ARBITRATION  
PROFESSIONAL NEGLIGENCE  
GENERAL COMMERCIAL  
ADJUDICATION

## Arthur Graham-Dixon

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### PRACTICE

Arthur has a broad practice in all areas of Chambers' work and regularly acts as sole counsel in the Technology and Construction Court.

As junior counsel, Arthur has been heavily involved for over three years in a very high-value international arbitration concerning the design, procurement and construction of a major airport in the Middle East (conducting cross-examination at a 42-day trial), alongside various High Court claims relating to domestic construction projects.

As sole counsel, Arthur has successfully advanced and defended multiple adjudication enforcement proceedings. Examples include **Meadowside Building Developments Ltd** [2019] EWHC 2651 (TCC), in which the other side's action was successfully resisted on an unprecedented basis (a champertous funding agreement and scope for abuse of process). **Meadowside** is also a leading and widely published case on the impact of insolvency on enforcement actions, cited with approval by the Supreme Court in **Bresco**.

Other notable cases as sole counsel include **Indigo Projects London Ltd** [2019] EWHC 1205 (TCC) (adjudication enforcement and company voluntary arrangements) and **Fresh Lime Construction Ltd** [2020] EWHC 3734 (TCC) (assignment of right to enforce adjudication decision).

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### CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

Arthur has experience in a wide range of domestic and international construction work. Recent examples of work include:

- Junior on a c. £35m dispute on the design, procurement, and construction of a UK abattoir, with complex technical issues (refrigeration) and a wide range of legal issues involving contractual limitation periods and UCTA; implied/inferred novation; and duty to warn. <https://www.thelawyer.com/top-20-cases-2021/>. The case settled shortly before trial.

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- Currently being led by Rupert Choat KC of Atkin Chambers in a multi-million pound dispute concerning alleged defects in the construction of a University building, including a strike out application: **University of Manchester v John McAslan and Partners Ltd** [2020] EWHC 3392 (TCC) (judgment on costs).
- Ongoing work advising in a multi-million pound dispute concerning delay and defects in a contract for the design and supply of equipment for a gas-fired power generation plant.
- Led by Rupert Choat KC of Atkin Chambers in a multi-million pound TCC dispute arising out of the delayed construction of a care home.
- Within a team of counsel, successfully defended adjudication proceedings arising out of a final account claim for c. £2m (contract based on NEC3 ECC Option A). The claims were rejected in their entirety.
- As sole counsel, instructed by a Defendant facing default judgment for c. £150,000, identified that proceedings had not been served in accordance with the Service Regulation (1393/2007). The Claimants discontinued proceedings.
- As sole counsel, defended three sets of adjudication proceedings simultaneously advanced by a main contractor across three projects, seeking remuneration on the basis of actual cost in the absence of any express payment terms. The contractor recovered just 15% of its overall claim.
- As sole counsel, acted in a final account dispute relating to the construction of a boutique jewellery shop (settled).
- As sole counsel, drafted defence and counterclaim together with RFI in a defects dispute between a residential homeowner and a contractor.
- Advised on an employer's ability to seek injunctive relief against its project manager in circumstances where the project manager had entered into a non-disclosure agreement with a contractor in relation to the project without the employer's knowledge.
- Advised on Final Statement conclusivity provisions in the JCT Design and Build Contract 2011.
- Advised on a payment dispute between a residential homeowner and a contractor, in particular on the availability of liquidated damages.
- Advised on application of CPR 17.4 (amendments after expiry of limitation).

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## INTERNATIONAL ARBITRATION

- Working within a team of counsel for over three years on a very high-value international arbitration concerning the design, procurement, and construction of a major airport in the Middle East (foreign seat and foreign applicable law), culminating in a 42-day trial. During that time:
  - Responsible principally for the part of the case involving the main terminal building, with counterclaims pleaded at c. US\$ 500 million.
  - Heavily involved in the preparation of the cross-examination of factual and expert witnesses and conducted the cross-examination of an expert lasting c.  $\frac{2}{3}$  of a day.
  - Principal responsibility for producing the sections of written opening and closing submissions (both liability and quantum) in connection with (among other parts of the case) the main terminal building.

- Leading responsibility for the drafting and review of the pleadings, witness evidence, and expert evidence relating to the main terminal building issues.

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## PROFESSIONAL NEGLIGENCE

- As sole counsel, acted in c. £800,000 multi-party High Court claim concerning sale of property, defects and architects' certificates (settled).
- Advised on a professional negligence claim concerning an architect's supervisory work.
- Much of Arthur's experience in construction and international arbitration work has involved cases in which allegations of professional negligence have been central to the dispute. This includes, of the cases described above, the disputes in relation to:
  - The design and construction of a UK abattoir <https://www.thelawyer.com/top-20-cases-2021/>;
  - The design and construction of a University building: see e.g. **University of Manchester v John McAslan and Partners Ltd** [2020] EWHC 3392 (TCC) (judgment on costs); and
  - The design, procurement and construction of a major airport in the Middle East.

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## GENERAL COMMERCIAL

- As sole counsel, successfully obtained summary judgment in c. £175,000 High Court claim in respect of unpaid invoices on behalf of a recruitment company, together with indemnity costs, interest on costs, and a further 10% of the awarded sum, having originally settled the pleadings and a Part 36 offer.
- As sole counsel, successfully defended a Defendant facing default judgment for c. £150,000, having identified that proceedings had not been served in accordance with the Service Regulation (1393/2007). The Claimants discontinued proceedings after the point was raised in correspondence.
- As sole counsel, acted for a defendant in multi-party litigation involving a debt claim pursued by an assignee under a factoring agreement, defended by (*inter alia*) a counterclaim in contract and/or restitution against the assignor (also pursued under a Part 20 claim). Settled shortly before trial.
- As sole counsel, following a strike out and summary judgment application, obtained a full recovery with 100% costs recovery, in a claim for the repayment of a £60,000 loan.
- As sole counsel, acted in Commercial Court proceedings in a claim for the repayment of a £300,000 loan (settled).
- Advised on a claim under a director's guarantee in respect of overdue interim payments owed by an insolvent company.
- Advised on defending a claim for lost profits brought by a contractor after the employer exercised a termination-at-will clause under a letter of instruction.
- Advised on prospects of a claim arising out of a failure to progress a planning application for a development where (had planning permission been granted) the defendant would have been obliged to pay the claimant to undertake the development.

- Advised on scope and effect of expert determination clause arising under an agreement for sale of a property.
  - Advised on contractual termination and claims for delayed completion under an agreement for sale of a property.
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## ADJUDICATION

Arthur's experience covers the interrelationship of the insolvency and adjudication regimes, as well as issues of jurisdiction (including nomination process), breaches of natural justice, the meaning of construction operations in s. 105 of the HGCRA 1996, the statutory residential occupier exclusion, hybrid contracts, non-compliance of contracts with s. 108 of the HGCRA 1996, and serial adjudication. Recent examples of work include:

- Sole counsel in **Meadowside Building Developments Ltd (in liquidation) v 12-18 Hill Street Management Company Ltd** [2019] EWHC 2651 (TCC), the leading case interpreting the Court of Appeal's decision in **Bresco v Lonsdale** and cited with approval in the Supreme Court's decision in **Bresco v Lonsdale**. Separately from the wider principles concerning adjudication enforcement and the insolvency regime, Arthur succeeded on behalf of the defendant in resisting enforcement on the unprecedented ground that the claimant's funding arrangement was champertous and so gave rise to a question of abuse of process which could not be determined summarily.
- Sole counsel in **Indigo Projects London Ltd v Razin & Anor** [2019] EWHC 1205 (TCC), the first case interpreting the Court of Appeal's decision in **Bresco v Lonsdale**, in which the enforcing claimant was under a company voluntary arrangement (CVA).
- Sole counsel in **Fresh Lime Construction Ltd v Seymour Realty Ltd** [2020] EWHC 3734 (TCC), successfully obtaining summary judgment in the TCC on an assigned claim to enforce an adjudication decision, against a Defendant outside the jurisdiction, having advised on the application to substitute the assignee as claimant, and obtaining indemnity costs of the whole proceedings.
- As sole counsel, drafted responsive witness statement with a view to defending anticipated adjudication enforcement proceedings on grounds of no jurisdiction due to multiple contracts. The other side did not commence enforcement proceedings.
- As sole counsel, defended three sets of adjudication proceedings simultaneously advanced by a main contractor across three projects, seeking remuneration on the basis of actual cost in the absence of any express payment terms. The contractor recovered just 15% of its overall claim.
- Within a team of counsel, successfully defended adjudication proceedings arising out of a final account claim for c. £2m (contract based on NEC3 ECC Option A). The claims were rejected in their entirety.
- As sole counsel, currently defending smash-and-grab adjudication for a post-termination final payment under a contract based on the JCT Intermediate Building Contract 2016 form.
- As sole counsel, successfully enforced an adjudication decision in the Technology and Construction Court (*ex tempore* judgment) and obtained indemnity costs against the resisting party.
- As sole counsel, successfully enforced an adjudication decision in the County Court at Central London (*ex tempore* judgment), successfully resisting an application for a stay of execution on financial grounds, and obtained indemnity costs against the resisting party.

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- As sole counsel, made a non-party costs order application in the Technology and Construction Court against the director to a company resisting adjudication enforcement proceedings.
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## NOTABLE CASES

**Meadowside Building Developments Ltd (in liquidation) v 12-18 Hill Street Management Company Ltd** [2019] EWHC 2651 (TCC); [2020] Bus. L.R. 917; [2020] B.L.R. 65; (2019) 186 Con. L.R. 148

**Indigo Projects London Ltd v Razin & Anor** [2019] EWHC 1205 (TCC); [2019] Bus. L.R. 1957; [2019] B.L.R. 454; (2019) 184 Con. L.R. 251; [2019] B.P.I.R. 861

**Fresh Lime Construction Ltd v Seymour Realty Ltd** [2020] EWHC 3734 (TCC)

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## QUALIFICATIONS AND AWARDS

2016-2017 BPTC, City Law School

Lord Mansfield Scholar, Lincoln's Inn

Hardwicke Scholar, Lincoln's Inn

BPTC Scholarship, City Law School

2015-2016 GDL, City Law School

While studying, led a case to the SEND Tribunal (part of the First Tier Tribunal) on behalf of the parents of an excluded child (acting through the School Exclusion Project)

Contract Law coursework prize, City Law School (an essay on penalty clauses)

GDL moot final (Supreme Court before Lord Mance)

Member of City Law School team the Vis Moot (the leading international arbitration moot)

2011-2015 BA in Classics (Literae Humaniores 1A), University of Oxford, Double First (7<sup>th</sup> in university)

Hugh Oldham Scholar, Corpus Christi, Oxford

Three Isaiah Berlin prizes, Corpus Christi, Oxford

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## LEGAL TEXTS

Arthur is a contributing editor of the new Hudson's Building and Engineering Contracts (14th ed., 2020).

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## ADDITIONAL INFORMATION

Arthur is a member of TECBAR, COMBAR and the Society of Construction Law.