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CONSTRUCTION AND ENGINEERING ALERT

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THE BINDING NATURE OF AN ADJUDICATOR'S DECISION

In a recent reportable judgment of *Stefanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd* decided in the Gauteng Division, Johannesburg on 23 October 2013, the court was called upon to assess and interpret the terms of the Joint Building Contracts Committee Contract (JBCC) regarding the enforceability of an adjudicator's award prior to the commencement and/or conclusion of arbitration proceedings. In assessing the wording of the JBCC regarding the enforceability of an adjudicator's award, the court also looked at a previous matter where similar wording was used albeit in a *Fédération Internationale Des Ingénieurs-Conseils* (FIDIC) contract.

The court concluded that an adjudicator's decision is binding on the parties and requires immediate implementation thereof. The agreement and the rules of adjudication allow for enforcement of the adjudicator's decision as a contractual obligation by a court. In addition the court found that accounts between the parties may be revised by future dispute resolution procedures which have no effect on the interim enforcement of the adjudicator's decision.

Based on the court's ruling, there is comfort for contractors that should they proceed to adjudication and receive a favourable decision, the contractor can enforce the adjudicator's decision regardless of whether the employer has commenced arbitration proceedings. It is probable that in future projects, employers and lenders may seek to amend the wording in the general conditions to limit the enforceability of an adjudicator's award.

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