



SHEPHERD+ WEDDERBURN

What is the savvy way to handle a “smash and grab” adjudication, either claiming money or defending against it?

Iain Drummond

21 May 2019

---

## Your Speaker Today

---



Iain Drummond  
Partner, Solicitor Advocate  
Shepherd and Wedderburn  
DL: 0131 473 5767  
E: [Iain.Drummond@shepwedd.com](mailto:Iain.Drummond@shepwedd.com)

---

# Agenda

---

- What are they?
- Why pursue a 'smash and grab' claim?
- Considerations for pursuing and defending 'smash and grab' claims
- Particular considerations for 'smash and grab' adjudications
- Counter strategies
- Conclusions

---

## What are they?

---

- background
- to improve payment practices
- to counter set-off abuse
- pejorative description is undeserved?

---

## Why pursue a 'smash and grab' claim?

---

- opportunism
- genuine grievance
- cash-flow
- strategic positioning
- motive should attract criticism?

---

## Considerations for smash and grab claims

---

- technical and procedural aspects to the fore
- *Caledonian Modula v Mar City Developments* 2015 BLR 694, Coulson J, at 37.
- *Henia Investments v Beck Interiors* 2015 BLR 704, Akenhead J, at 17
- all to play for?

---

## Considerations for smash and grab claims (application or default notice)

---

- is there a right to make an application? (*Volkerlaser v Nottingham City Council* [2016] EWHC 1501 (TCC); *Grove Developments v Balfour Beatty Regional Construction* [2016] EWHC 168 (TCC).
- is the application in a valid form? (*Jawaby Property Investment v The Interiors Group* [2016] EWHC 557 (TCC))
- personal bar and waiver (cp. estoppel in *Jawaby Property Investment v The Interiors Group*)
- application submitted on time and unambiguously refers to correct payment period (*Henia Investments v Beck Interiors*)
- application submitted correctly?

---

## Considerations for smash and grab claims (payment and pay less notice)

---

- payment notice or pay less notice issued? (*Jawaby Property Investment v the Interiors Group*)
- PN or PLN issued correctly and on time?
- PN or PLN refer to correct application and payment period?
- PN or PLN state the sum due and basis of calculation? (compare *Muir Construction Limited v Kapital Residential Limited* [2017] CSOH 132 with *Grove Developments Ltd v S&T (UK) Ltd* [2018] EWHC 123 (TCC) / [2018] EWCA Civ 2448).
- other reasons why no payment is due? (*Volkerlaser Ltd v Nottingham County Council* [2016] EWHC 1501 (TCC))

---

# Particular considerations for smash and grab adjudications

---

- Issues with adjudication notice
- Issues with adjudicator appointment
- Issues with adjudication procedure

---

## Counter strategies

---

- Prepare and undertake subsequent counter Adjudication on value? (*Grove Developments Ltd v S&T (UK) Ltd* – and see Court of Appeal judgement)
- Accept short term pain and reconcile in next valuation
- Recovery of any over-payment?

---

## Conclusions

---

- The effectiveness of ‘smash and grab’ claims has been blunted.
- But remain an effective tool and are here to stay.
- A ‘smash and grab’ claim is unlikely to be as straightforward as first seems.
- Beware or take advantage of the likely opportunities to disrupt the claim.



SHEPHERD+ WEDDERBURN

[www.shepwedd.com](http://www.shepwedd.com)

---

**Edinburgh**

1 Exchange Crescent  
Conference Square  
Edinburgh EH3 8UL  
T +44(0)131 228 9900  
F +44(0)131 228 1222

**Glasgow**

1 West Regent Street  
Glasgow  
G2 1RW  
T +44(0)141 566 9900  
F +44(0)141 565 1222

**London**

Condor House  
10 St. Paul's Churchyard  
London EC4M 8AL  
T +44(0)20 7429 4900  
F +44(0)20 7329 5939

**Aberdeen**

Commercial House  
2 Rubislaw Terrace  
Aberdeen AB10 1XE  
T +44(0)1224 621 166  
F +44(0)1224 623 103

---