

Abbey Healthcare (Mill Hill) Ltd (Respondent) v Augusta 2008 LLP (formerly Simply Construct (UK) LLP) (Appellant)

Case ID: 2022/0124

Case summary

Issues

Was the majority of the Court of Appeal wrong to find that the collateral warranty in this case was a "construction contract" for the purposes of section 104(1) of the Housing Grants, Construction and Regeneration Act 1996?

Facts

Simply was engaged to carry out the construction of a care home under a building contract. In 2017, a long lease of the care home was granted to Abbey. In 2018, fire-safety defects were discovered in the care home. Another contractor rectified the defects. In 2020, the freeholder of the care home requested that Simply execute a collateral warranty in favour of Abbey. After initially refusing, Simply executed a collateral warranty, under which Simply warranted that it "has performed and will continue to perform diligently its obligations under the contract".

The freeholder and Abbey both began adjudication proceedings in respect of the defects, and both were awarded sums against Simply by the adjudicator. The freeholder and Abbey both applied to the court for summary judgment to enforce the adjudicator's awards. As regards Abbey's application, Simply maintained that the collateral warranty delivered to Abbey was not a construction contract under s. 104(1) of the Housing Grants, Construction and Regeneration Act 1996 and that, accordingly, the adjudicator had had no jurisdiction. The Judge agreed and dismissed Abbey's summary judgment application. Abbey successfully appealed to the Court of Appeal and was granted summary judgment. Simply now appeals to the Supreme Court.

Judgment appealed

[\[2022\] EWCA Civ 823](#)

Parties

Appellant(s)

Simply Construct (UK) LLP

Respondent(s)

Abbey Healthcare (Mill Hill) Ltd

Appeal

Justices

Lord Briggs, Lord Hamblen, Lady Rose, Lord Richards, Lady Simler

Hearing start date

29 April 2024

Hearing finish date

29 April 2024

Watch hearing

29 April 2024 [Morning session](#) [Afternoon session](#)

Watch Judgment summary

09 July 2024 [Judgment summary](#).