



# Bingham's Corner

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## HIGHLAND FLING

**What happens when a high-level solicitor comes up against a determined Scottish Subbie? This case is like watching an unstoppable force meet an immovable object.**

### ***THIS MCFARLANE SCOTTISH WARRIOR CHAP DIDN'T UNDERSTAND ALL THIS LAWYER FOOTWORK AND BECAME FURIOUS. THEN HE CAME AGAIN WITH ANOTHER ADJUDICATION***

In this dispute it's not easy to tell who won the competition. It was a competition designed to decide who made who more fed up. On one side the M&E subcontractor T Clarke (Scotland) Ltd, and their solicitors Brodies; on the other side under-floor sub-subcontractor MMAXX Underfloor Heating Ltd, owned by Neil McFarlane. Now then, Brodies are one of the top-notch solicitors in Scotland and construction is right up their street. Moreover, they know their adjudication territory, with massive experience.

Their opponent is not a solicitor, has no legal qualifications, and no in-depth knowledge of this adjudication malarkey. Neil McFarlane is just one of those who every day construction blokes who knows every ounce of under-floor heating stuff and puts his heart and soul into making his business survive. McFarlane against T Clarke, With Brodies at their side, stood no chance when Brodies started to run rings around him with their legal know-how.

But McFarlane stood up to them. He gave them building industry know-how. He began to run rings around the other side's legal team with sheer awkwardness. The two sides were not just at loggerheads, they became two Scottish clans utterly determined to defeat the other. As for the actual dispute about the monies said to be due on the account- tosh. It was the fight that mattered, a fight that went into the Scottish High Court and then into the Scottish Court of Appeal.

Seemingly the sub-subcontractor included supply and install heat pumps and under-floor heating. The relationship quickly soured said the first judge. McFarlane became fed up waiting for his money. He had heard of this adjudication thing, so triggered the starting pistol. I told you-

Brodies are damn good. The adjudication was torpedoed soon after it started. They argued to the adjudicator that he had no jurisdiction because McFarlane messed up the machinery for getting started. The adjudicator packed up. This McFarlane Scottish warrior chap didn't understand all this lawyer footwork and became furious. Anyway he came again with adjudication number two and, once again, Brodies got the next adjudicator to soon clear off on technicalities.

Can you hear the steam coming out of the sub-subcontractor's loins? Anyway he came again. It was adjudication number three. McFarlane claimed £184,740 but Brodies persuaded the adjudicator not to go away, but to award a mere £17,000. I don't know why but I do suspect that a talented set of lawyers versus the subbie that isn't much of a contest. McFarlane came with adjudicator number four. That's because he believed he had another good claim. Brodies persuaded the adjudicator to clear off, so he began number five. He is a toughie and I bet he will keep coming. That adjudication was completed and McFarlane lost. So T Clarke began adjudication number six and this time they lost. I bet McFarlane was "cock-a-hoop" (that's a Scottish noise for "yah-boo-sucks"). Hell, McFarlane started adjudication number seven and Brodies persuaded the adjudicator to go away by telling him McFarlane was unlikely to pay his fees. McFarlane came with adjudication number eight (the man is unstoppable). And, you guessed it, Brodies persuaded the adjudicator to go home. Damn it. McFarlane came with number nine and Brodies got that adjudicator to resign. Imagine how this sub-subcontractor fellow felt?

McFarlane deployed some tactics of his own. Bear in mind that the work itself is still on-going, or rather, the heat pumps are still being installed. Bear in mind too that any delay can easily torpedo the main contractor's programme. McFarlane adopted a non-cooperation attitude. He is alleged by T Clarke to have refused to address a health and safety issue that arose when a hose on his drilling rig failed. He threatened to walk off site because he knew that would terrify everyone. He logged unjustified (said Brodies) notices of delay; he bombarded T Clarke with correspondence; he claimed new payment terms applied and more besides. In short, he became, according to some, a damn nuisance at ground level. Mind you, he was saying something similar about the highfalutin legal stuff coming at him.

Then Brodies tried something novel. They went to the High Court for an Order banning McFarlane coming with more adjudications- it was costing T Clarke a mint in legal fees. McFarlane had got to the point that he and his company MMAXX could not give a damn. The judge at the first court said it would be wrong and unlawful to bar this robust McFarlane fellow coming to adjudication. The Court of Appeal said the same. So, Mr McFarlane can keep coming, keep mithering, bothering, poking. The Act of Parliament for adjudication is almost unstoppable. So who won? Brodies are far ahead of McFarlane in being clever construction lawyers. But McFarlane is far, far ahead of Brodies when it comes to under-floor heating. After all that's what T Clarke and Mr McFarlane were trying to get done. I nearly forgot.