Neutral Citation Number: [2022] EWHC 209 (QB)

Case No: QA-2020-000096

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2022

Before :

MR JUSTICE EYRE

- -

Between :

RAHEEL SHAH	**Claimant/Respondent**
- and -	
1) KEN POWER **2) LEE KYSON**	**Defendants/Appellants**

- -
- -

Nicholas Isaac QC and Carl Fain (instructed by way of direct access) for the **First Appellant**
The Second Appellant appeared in person
Michael Paget (instructed by way of direct access) for the **Respondent**

Hearing date: 11th January 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MR JUSTICE EYRE

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time of hand-down was 10.00am on 11 February 2022

Mr Justice Eyre:

Introduction.

1. On 3rd July 2018 the Defendants acting as appointed surveyors under the Party Wall etc Act 1996 ("the Act") made an award ("the Award") purportedly under the Act against the Claimant and in favour of the owners of the property which adjoined his and which was said to have been damaged by works he had undertaken. By his order of 3rd March 2020 HH Judge Parfitt declared the Award to be null and void on the footing that the Defendants had no jurisdiction to make an award against the Claimant. The Defendants appeal that decision with the permission of May J on the ground that the judge erred in law and that they did have jurisdiction.

2. The appeal turns on the question of whether a dispute can arise for the purposes of section 10 of the Act in circumstances where works have been performed by a purported building owner who did not serve a notice under the Act; who does not accept the applicability of the Act; and who did not seek to invoke the Act but where the purported adjoining owner contends that the Act applies and seeks to invoke the dispute resolution mechanism provided by section 10 of the Act. Putting it a little more shortly: can the Act be invoked unilaterally so as to apply retrospectively to works already undertaken and in respect of which no notice under the Act has been served?

The History.

3. The Claimant is the owner of 34, Bull Lane, Dagenham. That is a semi-detached property adjoining and sharing a party wall with 36, Bull Lane which is owned by Sotiris and Androulla Panayiotou.

4. The Claimant performed works on his property in 2017. He did not serve any notice under the Act in respect of those works and he has maintained throughout that they did not fall within the scope of the Act. Mr and Mrs Panayiotou asserted that the works had caused damage to their property and that the Claimant had removed the chimney breast. The Claimant says that his works did not affect the chimney breast which had been removed previously.

5. Mr and Mrs Panayiotou engaged Lee Kyson, the Second Defendant. Mr Kyson took the view that the Act applied and he approached the Claimant and his planning consultant who disagreed and said that the Act had no application and who did not participate in the steps which followed. Mr and Mrs Panayiotou then appointed Mr Kyson as their surveyor under section 10 of the Act. Mr Kyson operated the default procedures laid down in section 10 and Ken Power, the First Defendant, was appointed by Mr Kyson on behalf of the Claimant.

6. By the Award of 3rd July 2018 the Defendants determined that the works performed by the Claimant had been notifiable works under the Act; that those works had caused damage to 36 Bull Lane; that compensation of £4,223.49 net of VAT was payable together with surveyors' fees of £4,630 inclusive of VAT. The Claimant did not pay those sums and the Defendants each commenced proceedings in Sevenoaks Magistrates' Court to recover the sums payable to them pursuant to section 17 of the Act. Those proceedings were stayed when the Claimant began his proceedings in Central London County Court and which resulted in the order now being appealed.

Judge Parfitt's Reasoning.

7. Judge Parfitt gave an *ex tempore* but fully reasoned and considered judgment. He first set out the history then, at [9] – [11], he summarised the parties' contentions. The judge noted that Mr Paget put the mantra "no notice no act" at the forefront of the Claimant's case and that the case was more fully expressed as being that:

> "…the dispute resolution provisions in section 10 of the 1996 Act are circumscribed to deal with disputes arising out of works or intended works which are to be carried out under the 1996 Act and such works are works for which notice under the 1996 Act has been given. Once notice has been given than the nature and extent of the matters can be brought before the surveyors for dispute resolution pursuant to the 1996 Act is relatively wide but the notice provision is a necessary and essential in group gateway prior to the surveyors having the jurisdiction given to them by Parliament under the 1996 Act."

8. The judge summarised the Defendants' argument as being that:

> "… The nature and width of the language used in section 10 (1) and 10 (10) of the 1996 Act is wide enough to encompass any dispute arising at work to which the 1996 Act relates or is connected, regardless of whether or not a notice has actually been served."

9. The judge added that the Defendants had contended that a "wide and purposive construction" should be given to the jurisdiction of the surveyors under section 10 because of the "obvious benefit" to parties of having "the efficient dispute resolution mechanism of the 1996 Act" and because it would be unattractive if by choosing to ignore the notice requirements of the Act a building owner could deprive an adjoining owner of the benefits and protections intended to be given to that adjoining owner by the Act.

10. At [13] the judge explained that his analysis of the authorities had caused him to conclude that the Claimant's interpretation of the law was correct. He said that he regarded the heart of the dispute as being "an issue about the extent to and the circumstances in which the 1996 Act replaces common law rights in favour of its own dispute resolution procedures."

11. Judge Parfitt then rehearsed the provisions of the Act which were of potential relevance. Having done so he noted, at [23], that it was accepted that the court had power to declare the Award invalid if the Defendants had lacked the jurisdiction to make it. The dispute before him was as to whether or not the Defendants had had jurisdiction when they made the Award. That, in turn, depended on whether the presence or absence of a notice marked the dividing line between that which was within and that which was without the surveyors' jurisdiction.

12. The judge next explained his analysis of the authorities noting that some of them concerned legislation which had preceded the Act and which had been in different terms.

13. First, at [26], the judge referred to *Woodhouse v Consolidated Property Court* (1993) 66 P & C R 234 which he said was "often cited as authority for the general proposition that the dispute mechanism in the Act is limited to matters defined within the Act and works that are permitted by the Act because they are consequent upon a notice having been served or works that are envisaged by a notice that has been served." Judge Parfitt recorded that he had taken on board Mr Fain's submission that the Court of Appeal was

in that case dealing with the effect of the London Building Acts (Amendment) Act 1939 which was in materially different terms from the Act. It was in the light of that point that the judge turned to consider *Blake v Reeves* [2009] EWCA Civ 611, [2010] 1 WLR 1 which was a decision of the Court of Appeal decided under the Act.

14. The judge's understanding of the effect of *Blake v Reeves* was at the heart of his decision. He regarded it as directly addressing the issue which he had to determine of the division between those matters in respect of which surveyors appointed under the Act had jurisdiction and those over which they had no jurisdiction. Judge Parfitt noted Etherton LJ's characterisation, at [14], of the purpose of the Act and its predecessors as being "to constitute a means of dispute resolution which avoids recourse to the courts". He then interposed the following passage, at [31]:

> "... One of the points made most strongly, by Mr Kyson was that because the purpose of the Act is `a means of dispute resolution which avoids recourse to the courts' a construction of the 1996 Act which avoids recourse to the courts must necessarily be right. It seems to me that that is specious on a number of grounds. The question here is the hard edged line between the surveyors' jurisdiction under the 1996 Act and the common law and it is no answer to that question to say well it would be very good if all these matters could be resolved by parties going to surveyors rather than going to the courts because that is [to] ignore the necessary distinction altogether on the basis that it is always better for parties to use surveyors rather than the courts. That seems to me a misunderstanding of both the intentions of parliament when it was drafting and putting into effect the 1996 Act but also a misunderstanding of what the Court of Appeal is saying. The 1996 Act and its predecessors are beneficial for neighbouring owners within their own terms and those terms do not need to be stretched without limit simply because there is a perceived public good in parties being able to remedy matters without going to the court. In short the jurisdictional issue cannot be avoided by reference to an asserted general benefit to the public from having surveyors determine their disputes."

15. Judge Parfitt noted the Defendants' argument that section 10 of the Act was in wide terms and not expressly limited by any reference to notice. However, he explained, at [35], that this had not caused the Court of Appeal in *Blake v Reeves* to conclude that the surveyors should have as wide as jurisdiction as possible. Rather, in the judge's view, the effect of [20] – [23] of Etherton LJ's judgment was to draw a "clear distinction between the common law and rights and remedies arising out of the common law and the dispute resolution mechanism under the Act." He said that the difficulty with the Defendants' position was that it "inevitably mixes them up or ignores the distinction in favour of the surveyors being able to determine what are essentially common law rights"

16. At [36] and [37] the judge explained that the Defendants' argument boiled down to the surveyors "being given the power by the adjoining owner without the consent of the building owner to determine an issue of an alleged right to damages and the quantum of those damages just because that right arose from works done by the building owner that should have been subject of a notice under the 1996 Act." In his judgment that was contrary to the effect of *Blake v Reeves* which was that surveyors appointed under the Act did not have jurisdiction to determine common law claims. Judge Parfitt saw the Court of Appeal as placing the line of distinction in terms of the surveyors' jurisdiction "not as to whether or not the parties are in dispute in the wide ambit sense to be to derived from the language of section 10" but as to whether the dispute was one for which the Act provided a remedy. He concluded that "in short section 10 does not create

a free standing right to have party wall disputes resolved but only a right to have disputes arising under the other provisions of the 1996 Act resolved."

17. The judge saw the distinction between rights arising under the common law and those arising under the Act and its predecessors as being long-standing and referred in that regard to the decisions in *Selby v Whitbread* [1917] 1 KB 736 and *Louis v Sadiq* (1997) 74 P & C R 325. Judge Parfitt saw the latter case as having relevance to the current case and as holding that in the absence of a notice the procedures under the Act including the dispute resolution mechanism were not triggered.

18. At [42] the judge said that the "clear outcome" of these Court of Appeal decisions addressing the jurisdiction of surveyors under the Act and the interrelationship between the Act and the common law was that the Defendants had acted without jurisdiction in making the Award.

19. At [43] – [47] the judge explained why he was not dissuaded from that view by the decisions of HH Judge Thornton QC in *Crowley v Rushmoor BC* [2009] EWHC 2237 (TCC); of HH Judge Grant in *Bridgland v Earlsmead Estates Ltd;* or of HH Judge Luba QC in *Schmid v Hulls & another*. Those decisions were also cited to me and I will reflect on Judge Parfitt's analysis of them in my discussion of them below.

The Parties' Contentions in Outline.

20. Unsurprisingly, the arguments advanced to me largely mirrored those which had been put before Judge Parfitt.

21. Mr Isaac QC and Mr Fain say that the Defendants did have jurisdiction. They contend that the purpose of the Act is to provide a mechanism to resolve disputes between the owners of adjoining properties and to enable such disputes to be resolved without resort to the courts. The language of the Act and in particular of section 10 is in wide terms and should be interpreted widely having regard to the purpose of the Act. In the light of that purpose the jurisdiction of surveyors appointed under the Act depends on the notifiability of the works in question and not on whether a notice was in fact served. It follows that there can be a dispute for the purposes of the Act even if no section 3 notice was served before the works were performed. If he had served such a notice the Claimant would have been invoking the Act but the Act can be engaged even if it not invoked by the person performing the relevant works.

22. Mr Isaac and Mr Fain submit that the approach taken by Judge Parfitt has the "bizarre effect" that a building owner who acts unlawfully by undertaking notifiable works without serving the requisite notice can deprive the innocent adjoining owner of the right to use the dispute resolution mechanism provided by the Act. They say that, on the judge's reasoning, the adjoining owner is, in those circumstances, "deprived of the choice as to whether to bring a claim in nuisance in court or to engage the dispute resolution mechanism under the Act" and is required to proceed by way of the courts. Mr Isaac and Mr Fain contend that this was an undesirable result which was not compelled by the decision in *Blake v Reeves,* which was not a case concerned with the notice/no notice dichotomy. They say also that the approach taken by Judge Parfitt is contrary to the views expressed in other first-instance cases.

23. Mr Kyson represented himself. He adopted the submissions which had been made by Mr Isaac and Mr Fain on behalf of Mr Power adding that in making the Award he and Mr Power had proceeded on the footing that the Act had come into play.

24. Mr Paget contends that Judge Parfitt was correct and that the mantra of "no notice, no act" accurately summarises the true legal position. The Act cannot be applied unilaterally so as to supersede the parties' common law rights and obligations. The approach contended for by the Defendants would, Mr Paget says, enable an adjoining owner to assume that the mechanism of the Act has been triggered as if the building owner had served a notice which, *ex hypothesi*¸ had not been served. This would make the requirement to serve a notice superfluous and would lead to practical difficulties in defining the dispute between the parties. Mr Paget accepts that once the Act has been triggered certain steps, such as the appointment of a surveyor under section 10 (4), can be taken unilaterally but he contends that "engaging the whole Act cannot be done unilaterally".

25. Mr Paget says that the judge's conclusion followed from the distinction drawn in *Blake v Reeves* between disputes arising under the provisions of the Act and the enforcement of common law obligations. He says that the Defendants' case involves giving the adjoining owner rights which are not contained in the Act. The Act could have been drafted so as to give the adjoining owner a right unilaterally to invoke the dispute resolution mechanism which it contains. However, no such provision was included and the Act did not provide a procedure which an adjoining owner could use against a building owner who was passive in the sense of choosing not to invoke the Act.

The Relevant Provisions of the Act.

26. Section 2(1) provides that:

> "this section applies where lands of different owners adjoin and at the line of junction the said lands are built on or a boundary wall, being a party fence wall or the external wall of a building, has been erected."

27. Section 2(2) gives a building owner rights including at 2(2)(g) the right:

> "to cut away from a party wall, party fence wall, external wall or boundary wall any footing or any projecting chimney breast, jamb or flue, or other projection on or over the land of the building owner in order to erect, raise or underpin any such wall or for any other purpose"

28. Section 3 provides for party structure notices in these terms:

> "(1) Before exercising any right conferred on him by section 2 a building owner shall serve on any adjoining owner a notice (in this Act referred to as a "party structure notice") stating—
> (a) the name and address of the building owner;
>
> (b) the nature and particulars of the proposed work including, in cases where the building owner proposes to construct special foundations, plans, sections and details of construction of the special foundations together with reasonable particulars of the loads to be carried thereby; and
>
> (c) the date on which the proposed work will begin.
>
> (2) A party structure notice shall—

(a) be served at least two months before the date on which the proposed work will begin;

(b) cease to have effect if the work to which it relates—

(i) has not begun within the period of twelve months beginning with the day on which the notice is served; and

(ii) is not prosecuted with due diligence.

(3) Nothing in this section shall—

(a) prevent a building owner from exercising with the consent in writing of the adjoining owners and of the adjoining occupiers any right conferred on him by section 2, or

(b) require a building owner to serve any party structure notice before complying with any notice served under any statutory provisions relating to dangerous or neglected structures."

29. Section 4 provides for the service by an adjoining owner of a counter-notice and section 5 provides that a dispute is deemed to have arisen if an owner on whom a notice or a counter-notice has been served does not serve a notice indicating his consent within fourteen days of the service of the notice or counter-notice.

30. Section 10 sets out the Act's procedure for the resolution of disputes. At section 10(1) it provides that:

(1) Where a dispute arises or is deemed to have arisen between a building owner and an adjoining owner in respect of any matter connected with any work to which this Act relates either—

(a) both parties shall concur in the appointment of one surveyor (in this section referred to as an "agreed surveyor"); or

(b) each party shall appoint a surveyor and the two surveyors so appointed shall forthwith select a third surveyor (all of whom are in this section referred to as "the three surveyors").

31. Sub-sections 10(2) – (11) set out further details of the procedure for the appointment of surveyors including, at 10(4), for the other party to appoint a surveyor on behalf of a party who has refused or neglected to make an appointment.

32. Section 10(12) says that:

"An award may determine—

(a) the right to execute any work;

(b) the time and manner of executing any work; and

(c) any other matter arising out of or incidental to the dispute including the costs of making the award;

but any period appointed by the award for executing any work shall not unless otherwise agreed between the building owner and the adjoining owner begin to run until after the expiration of the period prescribed by this Act for service of the notice in respect of which the dispute arises or is deemed to have arisen."

33. Section 10(17) provides a right of appeal to the county court against any award made under the section.

34. Section 20 defines "adjoining owner" and "building owner" thus:

> "`adjoining owner' and `adjoining occupiers' respectively mean any owner and any occupier of land, buildings, storeys or rooms adjoining those of the building owner …"
>
> "`building owner' means an owner of land who is desirous of exercising rights under this Act"

Discussion and Conclusion.

35. As I will explain below the issue of whether or not the Defendants had jurisdiction to make the Award is ultimately a matter of the correct interpretation of the Act. In the light of that some of the arguments advanced by counsel and some of the points which influenced the judge are in my judgement irrelevant to the question to be decided.

36. Although he noted that they were dealing with legislation in different terms from the Act the judge had regard to the decisions of the Court of Appeal in *Woodhouse v Consolidated Property Court* and in *Louis v Sadiq*. In *Zissis v Lukomski & another* [2006] EWCA Civ 341, [2006] 1 WLR 2778 the Court of Appeal was considering the interrelation between appeals under the Act and applications for declarations as to the validity of awards. At [27] Sir Peter Gibson said:

> "I pay tribute to Mr Bickford-Smith's industry and learning in putting before us the predecessor legislation and the authorities under it, but I prefer to start my consideration of the appropriate procedure for an appeal under section 10 (17) with the provisions of the 1996 Act and the current procedural rules under the CPR. There are dangers in seeking to apply directly to cases governed by the 1996 Act statements in cases decided under the earlier legislation …"

37. In the light of that warning I will address myself to the wording of the Act and to cases addressing its terms without reference to those concerned with its predecessors.

38. In support of his contentions Mr Paget made reference to the approach of textbook writers. He said that Mr Isaac in *The Law and Practice of Party Walls* (2nd ed) and the editors of *Party Walls Law and Practice* (4th ed) identify court proceedings rather than a unilateral invocation of the Act as the appropriate redress where a building owner has commenced notifiable works without serving notice. Similarly he points out that at [35] the "Party Wall etc Act 1996 Explanatory Booklet" issued by the Department for Communities and Local Government in May 2016 says that "the Act contains no enforcement procedures for failure to serve a notice" and that the appropriate redress where works are being performed without notice having been given is application to the court. This material is helpful as an indication that the writers in question are not aware of authorities confirming that an adjoining owner had a choice of the kind for which Mr Isaac and Mr Fain now contend. If, however, the Act properly interpreted gives that choice the absence of earlier authority to that effect would not prevent the conclusion that Judge Parfitt erred in law. Similarly, the passages in *Party Walls Law and Practice* where the editors expressed the view that the Act can only be invoked by the "service of a valid initiating notice" and that liability for works undertaken before service of a notice is governed solely by the common law are of limited assistance. The authorities cited for those propositions were decided under the 1939 Act and, as I have just noted it cannot safely be assumed that the same approach applies under the Act.

39. The judge placed considerable emphasis on the distinction between common law rights and those deriving from the Act. I agree that there is a distinction and that it is an important one. However, the existence of the distinction does not, without more, assist in determining the limits of the jurisdiction of surveyors appointed under the Act. It would have been possible for Parliament to have provided that all disputes between the owners of adjoining properties are to be determined under the Act. It would also have been possible for Parliament to have provided, as the Defendants say it did, for an adjoining owner to have a choice between proceeding through the courts and invoking the provisions of the Act when confronted by works which would otherwise have been within the scope of the Act being performed by a building owner who has not invoked the Act. The question is whether the Act, when properly interpreted, has that effect. If it does then there would remain a distinction between rights arising under the Act and rights arising under common law but the ambit of the former would be wider than the Claimant accepts is the position.

40. The question is, therefore, one of interpretation of the Act guided by the authorities in which its terms have been considered.

41. Before me as they did before the judge the Defendants argued that in interpreting the Act the court should have regard to its beneficial purpose of providing a system for resolving disputes without recourse to the courts. The terms in which Judge Parfitt rejected that argument at [31] of his judgment and which I have quoted above are unimpeachable. I only need to expand on that passage to address the argument the Defendants advanced before me by reference to the approach enunciated by Lewison LJ in *Pollen Estate Trustee Co Ltd v Revenue & Customs Commissioners* [2013] EWCA Civ 753, [2013] 1 WLR 3785 at [24] where he said:

> "The modern approach to statutory construction is to have regard to the purpose of a particular provision and interpreted its language, so far as possible, in a way which best gives effect to that purpose."

42. The Defendants are right to say the court is to apply that approach to the construction of the Act. However, the approach which the Defendants were urging upon the court goes beyond that set out by Lewison LJ. First, the Defendants were contending that because the purpose of providing a dispute resolution mechanism which removes the need to apply to a court is beneficial that warrants giving a wide interpretation to the Act. That is a step beyond the approach of identifying the purpose of legislation and interpreting the legislation in question with a view to giving effect to that purpose. Second, the Defendants' argument fails to distinguish between two different purposes. One potential purpose is to provide an out of court mechanism for resolving a particular limited set of disputes or for resolving such disputes in particular circumstances. The other potential purpose is to provide such a mechanism for resolving disputes between adjoining property owners generally or for resolving such disputes in a wider range of circumstances. The Defendants' argument assumes that the latter is the true purpose of the Act (because, it seems, of the benefit of out of court resolution) but that does not necessarily follow. The Act does provide a mechanism for resolving some disputes without recourse to the courts but the crucial question is one of identifying which those disputes are. As will be seen shortly in *Blake v Reeves* Etherton LJ envisaged the Act applying only in particular circumstances; having the purpose of providing a dispute resolution mechanism in certain limited circumstances; and as applying only to a limited category of disputes. The benefits of an out of court dispute resolution

mechanism do not warrant extending the ambit of the Act beyond that which follows properly from the language used by Parliament. The purpose of the Act is, in my judgement, to be seen as that of providing a dispute resolution mechanism for those disputes which, when the Act is construed properly, fall within its scope. The same point is an answer to the Defendants' argument that the judge's decision deprives an adjoining owner of the choice between seeking redress through the courts and using the dispute resolution mechanism of the Act. That argument begs the question of whether and in what circumstances the Act provides such a choice. Again that question is to be answered by reference to the terms of the Act. If the Act does not provide such a choice then it follows that the judge's decision has not deprived the adjoining owners of that choice. Similarly, I found unpersuasive the Defendants' contention that the judge's decision had a "bizarre effect" in that it meant that by not invoking the Act a building owner can deprive an adjoining owner of the opportunity that owner would otherwise have had of using the mechanism of the Act. It is again a question of the proper interpretation of the Act. The statutory provision of a dispute resolution mechanism which cannot operate unilaterally against a building owner but under which a building owner can be bound if he or she invokes it is no more or less bizarre than a statutory provision which enables an adjoining owner to bring such a mechanism into play unilaterally. The question is which route did Parliament take in the Act.

43. It is against that background that I turn to consider whether the decision of the Court of Appeal in *Blake v Reeves* lays down guidance on the interpretation of the Act in relation to the question I have to consider. To the extent that the relevant terms of the Act were definitively interpreted there then such interpretation must be applied to the circumstances of this case.

44. In that case the building owner had served a notice under section 6 of the Act. The adjoining owner had not responded and by virtue of section 6(7) a dispute was deemed to have arisen. Surveyors were appointed and made an interim award. That addressed the validity of the initial notice but did not authorise the performance of works. The building owner commenced work believing incorrectly that the interim award permitted this. The adjoining owner then incurred legal fees in engaging lawyers to prepare court proceedings for an injunction to restrain further work. In a further award the surveyors authorised performance of the works but directed the building owner to pay the adjoining owner's legal costs of preparing for the contemplated court proceedings. The building owner successfully appealed to the county court on the footing that the surveyors' jurisdiction to resolve disputes and to direct the payment of costs did not extend to directing the payment of the costs of actual or contemplated litigation.

45. On the adjoining owner's appeal to the Court of Appeal the issue was the meaning of "dispute" for the purposes of section 10 of the Act. Mummery and Moses LJJ agreed with the judgment given by Etherton LJ.

46. At [14] Etherton LJ summarised the background to the Act and said that the procedures which it provided were "intended to constitute a means of dispute resolution which avoids recourse to the courts." Before me the Defendants stressed this as identifying the purpose of the Act and as being a matter justifying the adoption of a wide interpretation of the jurisdiction given by the Act to surveyors. It is, however, to be noted that Etherton LJ immediately followed those words with this passage at [15]:

> "Broadly, the 1996 Act is intended to apply in three situations: where an owner of land wishes to build on the boundary line with an adjoining property and there is no existing party structure (section 1); where an owner wishes to carry out work to a party structure (sections 2to 5); and where an owner wishes to carry out certain works of excavation near to a building or structure of an adjoining owner (section 6). Section 10 of the 1996 Act provides for the resolution of disputes by one or more surveyors appointed under its provisions."

47. In each of the instances envisaged by Etherton LJ the works concerned are yet to be performed and in each the emphasis is on the building owner wishing to perform works. That passage was intended as an overview but it was at the very least indicative that Etherton LJ did not regard the Act as operating to provide a mechanism resolving all disputes between a building owner and an adjoining owner and that indication became stronger as the judgment proceeded.

48. Mr. Isaac appeared in *Blake v Reeves* and there, as before me, he pointed to the width of the language used in the Act and contended that it would be unjust and absurd if the adjoining owner were required to bring court proceedings to recover the costs of preparing to seek an injunction. At [19] Etherton LJ explained that the essence of the reasoning of HH Judge Viljoen at first instance had been that the Act was "concerned only with settling disputes between the parties directly or indirectly related to the contemplated works, and that it does not envisage or provide for litigation between the parties but it but rather is intended to avoid such litigation."

49. Etherton LJ concluded that the Act did give surveyors a power to direct the payment of costs but that it was a limited power. He said, at [21]:

> "The power to order payment of such costs under section 10 of the 1996 Act is, however, restricted to costs connected with the statutory dispute resolution mechanism. As a matter of interpretation, the "dispute" mentioned in section 10(1), (10)(b), (12)(c) and (13)(c) is a dispute arising under the provisions of the 1996 Act, whether an actual dispute within section 1(8) or a deemed dispute under section 6(5) or section 6(7), or a dispute under some other provision, such as section 7(2) (compensation for loss and damage resulting from execution of work executed pursuant to the 1996 Act), section 11(2) (responsibility for the expenses of work),section 11(8) (expenses of making good damage under the 1996 Act) or section 13(2) (objection to building owner's account of expenses). I agree with Judge Viljoen that, by contrast, proceedings in court to enforce common law or equitable remedies, such as damages or an injunction for trespass or nuisance or the threat of them, fall wholly outside the 1996 Act. That is equally true of preparations for such proceedings."

50. At one point Mr. Paget submitted that in that passage Etherton LJ was listing all the circumstances in which a dispute can arise under the Act. I disagree. In referring to a dispute under section 1(8), a deemed dispute under section 6 (5), and to disputes under section 7(2) and to the other instances Etherton LJ was giving examples of circumstances in which a dispute can arise under the Act but he was not purporting to give a definitive list of such circumstances. He was, however, saying that for surveyors appointed under the Act to have jurisdiction the dispute in question must be one "arising under the provisions of the 1996 Act".

51. At [22] and [23] Etherton LJ explained that his interpretation of the Act was consistent with practice and policy adding:

> "… The purpose of the 1996 Act is to provide a mechanism for dispute resolution which avoids recourse to the courts. A power of the appointed surveyors under the 1996 Act to make provision for costs incurred for the purpose of actual or contemplated litigation in court would be inconsistent with that statutory objective. Such litigation, resulting from non-compliance with the dispute resolution mechanism, falls entirely outside the statutory dispute resolution framework.
>
> 23 Further, the appointed surveyors have no power under the 1996 Act to grant common law or equitable relief for causes of action in trespass or nuisance: compare *Woodhouse v Consolidated Property Corpn Ltd* [1993] 1 EGLR 174; *Louis v Sadiq* [1997] 1 EGLR 136. Those were the causes of action for the contemplated and threatened proceedings by the adjoining owner. Leaving aside the 1996 Act, neither counsel could suggest any example of Parliament conferring on one or more persons, whether or not lawyers, power to make orders for payment of the costs of actual or contemplated litigation, where the court alone or some body other than those persons has the power to determine the substantive dispute and grant the substantive relief claimed. …"

52. The issue in *Blake v Reeves* was whether the surveyors did or did not have power to make a direction as to the costs of contemplated court proceedings. However, in determining that question the Court of Appeal considered the proper interpretation of section 10 of the Act which is the source of the jurisdiction which the Defendants purported to exercise here. The court's conclusion as to the meaning of "dispute" in section 10 was central to its decision. It is right that the question of whether a notice was needed for the Act to apply was not in issue before the Court of Appeal. Accordingly, the court did not address the correctness or otherwise of the "no notice, no act" mantra. However, the court did have to determine what is necessary for appointed surveyors to have jurisdiction. In undertaking that exercise it identified a dispute within the meaning of section 10 as being the foundation of the jurisdiction and ruled that such a dispute had to be a dispute arising under the Act. The decision is, accordingly, binding authority for the proposition that the reference in section 10 to a "dispute" is to be understood as a reference to a "dispute arising under the provisions of the Act". In my judgement Judge Parfitt was entirely right to say, at [37], that the effect of the decision was that "section 10 does not create a free standing right to have party wall disputes resolved but only a right to have disputes arising under the other provisions of the 1996 Act resolved."

53. That conclusion means that I must consider whether the dispute between the Claimant and Mr and Mrs Panayiotou was a dispute which had arisen under the provisions of the Act. If it was then the Defendants had jurisdiction to make the Award but if it was not then they did not have such jurisdiction.

54. For the following reasons I am satisfied that there is no dispute arising under the provisions of the Act in circumstances such as those here where a purported building owner has performed works without serving a notice under the Act and without invoking or seeking to invoke the Act. It follows that the judge was correct in his conclusion that the Defendants had no jurisdiction to make the Award.

55. There are a number of factors which lead to the conclusion that there was no dispute arising under the provisions of the Act in the circumstances of this case.

56. The first is the need to remember that a dispute cannot be said to one arising under the provisions of the Act merely because it is between the owners of adjoining properties.

Where, as here, work has been performed without a notice having been served under the Act there can be a dispute but the question is whether that is a dispute arising under the provisions of the Act. The Defendants' argument comes close to being an assertion that there is a dispute arising under the provisions of the Act whenever the Act could have been invoked. That does not necessarily follow. Something more than the mere fact of a dispute is needed and close reference to the terms and operation of the Act is necessary to discover if the particular dispute between such neighbours is a dispute arising under the provisions of the Act.

57. The Act provides a mechanism for resolving disputes between building owners and adjoining owners but here the Claimant did not purport to exercise the rights which the Act gave to building owners. In that regard the Act's definition in section 20 of a building owner as "an owner of land who is desirous of exercising rights under this Act" is of significance. The Defendants say that the Claimant fell within that definition because he exercised rights given by section 2 of the Act. There are a number of difficulties with that analysis. The first is that the rights given by section 2 can only be exercised after the service of a notice under section 3. More significant is the point that neither when he performed the works nor after he had done so did the Claimant purport to be acting or to have acted in exercise of rights given by the Act. In those circumstances he cannot readily be seen as having been at any stage "desirous" of exercising such rights. The language of the definition is most apt to describe a person who is expressly seeking to exercise rights given by the Act and to do so in the future rather than a person who has already performed works and who has done so without reference to the Act. This is strongly suggestive that the intention is for the Act to operate prospectively rather than retrospectively (though once the Act has come into operation it is clear that the dispute resolution mechanism can apply to events which happened before an award but after the Act's operation was triggered). This, in turn, supports the "no notice, no act" mantra and the view that the Act does not come into play unless a notice has been served. It would have been possible for the Act to have defined a building owner as any person who has performed or who wishes to perform works on or near the boundary of adjoining properties and/or who has or who wishes to perform works affecting an adjoining property. That was not done instead a building owner is defined by reference to the desire of that person to exercise rights under the Act.

58. If a person does not invoke the Act and does not seek to assert rights under the Act then, in my judgement, it is hard to see how a dispute about his past actions can be said to be a dispute arising under the provisions of the Act. This impression formed by reference to the term a "dispute arising under the Act" is reinforced by the fact that the purpose of the Act is to provide a mechanism for the resolution of disputes avoiding recourse to the courts. For one party to be able to impose that mechanism unilaterally is not readily compatible with the subject's general right of recourse to the courts. If the effect of the Act is that one party can unilaterally impose a binding out of court dispute resolution mechanism then a clear indication of that effect would be expected. This is so even where, as the Act provides at section 10(17), there is a right of appeal to the courts. There is no such incompatibility with the right of recourse to the courts if the Claimant's interpretation is right and voluntary invocation of the Act by way of a notice is necessary if the Act is to come into operation. Read as a whole the Act is more readily seen as creating a mechanism which only comes into play when invoked by the person

seeking to perform works even though when the Act has come into play the adjoining owner can take certain steps unilaterally.

59. As already noted it would have been possible for the Act to have been drafted so as to provide a compulsory mechanism for resolving all disputes about works affecting adjoining properties. If that had been the intention the Act would have applied without the need for consent or invocation but the fact that the Act provides for the giving of notice in advance of the performance of works is suggestive that the dispute resolution mechanism cannot be imposed unilaterally on a person who has performed works.

60. Here there was a dispute as to whether the Act applies. That is not readily characterised as being a "dispute arising under the provisions of the Act".

61. I have already explained that the list set out by Etherton LJ at [21] was a list of examples of disputes arising under the provisions of the Act not a list of all the circumstances in which there could be such a dispute. It is, nonetheless, of note that the examples given were all of instances where the dispute can be identified by reference to a particular provision of the Act. That is a powerful indication of the kind of matters which can be disputes for the purpose of section 10. In the context of this case it is to be noted that there is no provision which expressly addresses the situation where works have already been performed without reference to the Act; without invocation of the Act; and in circumstances where the purported building owner does not accept that the Act applies. There is nothing equivalent to the provisions, for example, in sections 5 ,6(7), and 13(2) deeming that a dispute has arisen nor any provision equivalent to that in section 11(2) providing that a particular kind of dispute falls within the scope of section 10.

62. If the Defendants are right and the Claimant performed works which were not authorised under the Act his actions were a trespass and/or a nuisance in respect of which Mr and Mrs Panayiotou could have obtained an injunction and/or an award of damages from the court. The Defendants' construction of the Act amounts to reading it as giving surveyors appointed under the Act the power to award damages for those torts albeit doing so under the guise of an award of compensation under the Act. In the absence of such a power being contained expressly in the Act it is hard to see on what basis issues as to whether the Claimant's actions were lawful and whether and to what extent they caused loss could properly be described as being disputes "arising under the provisions of the Act". Moreover, such a reading cannot readily be reconciled with Etherton LJ's statement, at [23], that "the appointed surveyors have no power under the 1996 Act to grant common law or equitable relief for causes of action in trespass or nuisance". Etherton LJ cited *Woodhouse v Consolidated Property Corpn Ltd* and *Louis v Sadiq* when setting out that proposition but even though those decisions were in respect of the legislation preceding the Act the position that does not detract from either the clarity or the force of Etherton LJ's statement nor from its incompatibility with the construction of the Act which the Defendants advance.

63. The Act does provide a mechanism for resolving disputes without recourse to the courts. Such a mechanism has benefits for both the parties to such a dispute. It is undoubtedly the case that it will very often be sensible and desirable for the owners of adjoining properties to employ that mechanism to resolve disputes which have arisen. Nonetheless, it is to be noted that it is not the sole means of resolving such disputes and that property owners whose interests are harmed by the actions of their neighbours are not without redress even if the Act does not come into play. A property owner who

performs works affecting a neighbour's property without having given notice under the Act loses the benefits of the Act (or rather does not gain those benefits). Such a property owner puts him or herself at risk of court proceedings. In such circumstances the adjoining owner does not have the benefit of the mechanism provided by the Act but does have the right to resort to the court. I agree with Judge Parfitt's assessment, at [35] – [36], that the Defendants' arguments failed to respect the distinction between rights and liabilities arising at common law and those under the Act.

64. As with many questions of construction the issue is to a greater or lesser extent a matter of impression. The factors I have just summarised combine in causing me to conclude that the dispute between the Claimant and Mr and Mrs Panayiotou was not a dispute arising under the provisions of the Act. It follows in the light of my understanding of the effect of the decision in *Blake v Reeves* that it was not a dispute for the purposes of section 10 of the Act and that the surveyors did not have jurisdiction to make the Award.

65. Mr Isaac and Mr. Fain relied on a number of first instance authorities as instances where they said a different approach had been taken and which they submitted demonstrated that the "no notice, no act" mantra was incorrect and that despite the decision in *Blake v Reeves* the Defendants should properly be held to have had jurisdiction. Despite the skill with which that argument was advanced I do not accept that the authorities to which Mr. Isaac referred me warrant any modification of the conclusion I have reached in the light of *Blake v Reeves.*

66. In *Rodrigues v Sokal* [2008] EWHC 2005 (TCC) HH Judge Toulmin CMG QC had to consider the question of whether the fact of an award having been made under the Act precluded court proceedings for damages on the part of an adjoining owner in respect of works performed by a building owner before the latter had served notice under the Act.

67. The building owner had commenced works in March or April 2004 and then served a notice under the Act on 15th May 2004. Subsequently a surveyor was appointed and made an award concluding that none of the building owner's works had damaged the party wall in question. The adjoining owner commenced proceedings arguing that the works performed before the notice had been served were not protected by the procedure under the Act with the consequence that the award did not govern liability for those works and so did not preclude the damages claim. The defendant building owner sought the striking out of the claim contending that the award governed responsibility for works performed before the notice as well as those which followed it.

68. It is to be noted that in *Rodrigues v Sokal* the building owner had served a notice and that as Judge Toulmin said, at [29], "there [was] no dispute that the works undertaken by the Defendant come within the Act, nor that a dispute [had] arisen in relation to works encompassed by the Act."

69. At [57] Judge Toulmin set out his understanding of the law in the following terms:

> "My understanding of the law is that until such time as the Party Wall etc Act 1996 is invoked and either the building owner has obtained consent or acquires a statutory authority under the s.10 procedure, the building owner cannot rely upon a statutory defence under procedures with which *ex hypothesi* he has failed to comply. If the building owner subsequently obtains authority for building works which were started without authority, that authority abates the common law rights from the time of the

> subsequent consent or when the Party Wall etc Act procedure was successfully invoked. If the works were never or would never subsequently have been authorised, the common law rights continue."

70. The judge then went on to explain that when the Act had been invoked it superseded the parties' rights and liabilities at common law. The consequence of that was that the award was conclusive as to the position in respect of all the works which had been performed both before and after the service of the notice by the building owner.

71. The decision is, therefore, authority for the proposition that when a building owner invokes the Act by serving a notice the dispute resolution mechanism governs all relevant works including those undertaken before the notice was served. It does not, however, assist with the question with which Judge Parfitt was concerned namely the situation where the building owner has never served a notice under the Act. Indeed, it is noteworthy that when expressing his understanding of the law Judge Toulmin emphasised the need for the building owner to obtain authority under the Act by serving notice for the Act to come into effect. However, little weight can be placed on that point given that the judge was not considering the possibility of the Act coming into play as the result of unilateral action by the adjoining owner.

72. In *Crowley v Rushmoor BC* [2009] EWHC 2237 (TCC) Judge Thornton QC was determining a contribution claim under the Civil Liability (Contribution) Act 1978. The claimant had performed works for the defendant and in the course of those works damage had been caused to an adjoining property. The owners of that property had made a claim which had been settled by Mr. Crowley and the issue before Judge Thornton was the contribution which the defendant should make to the settlement.

73. In those circumstances Judge Thornton had to consider the basis on which each of the claimant and the defendant could have been liable to the adjoining owners. At [101] the judge found that the Act was engaged and that a notice indicating Rushmoor's proposals should have been served pursuant to sections 3 and 6. He then said:

> "Any dispute as to these proposals had to be settled by the arbitration provisions of the Party Wall Act by a surveyor or surveyors appointed by the two adjoining owners. These provisions of the Party Wall Act are mandatory and it is no answer to the non-service of the requisite notice that it was not appreciated or foreseen that the Party Wall Act would be engaged."

74. No notice had been served and Judge Thornton explained that in those circumstances the adjoining owners had a number of routes through which compensation could have been obtained. He said:

> "102. If, as in this case, where the work proceeded without the adjoining owner [sic but in context the building owner] serving the requisite notice and it then becomes clear that a notice should have been served, [the adjoining owner] had three separate routes by which he could recover compensation or damages for himself and other resident family members for the resulting damage.
>
> 103. Firstly, the relevant arbitration provisions provided for by the Party Wall Act can always be operated retrospectively. These provisions involve the appointment of surveyors to resolve disputes arising in connection with any matter connected with any work to which the Party Wall Act relates. The surveyors so appointed would have jurisdiction to award appropriate compensation for any damage resulting from excavation or demolition work close to the flank wall and the adjoining planter which could and

> should have been, but had not been, made subject to an appropriate award prior to work starting and which undermined and damaged the foundations and the property that they supported (see sections 7(2),10(1), 10(12), 10(13)(c)) and 17 of the Party Wall Act).
>
> 104. Secondly, any failure to serve the requisite notice before work started would amount to a breach of statutory duty which would allow a court to award damages representing the compensation that would have been awarded by the surveyors appointed under the Party Wall Act for any damage caused by the work that would have been avoided had the notice provisions of the Party Wall Act been complied with.
>
> 105. Thirdly, [the adjoining owner's] rights to claim damages for negligence, nuisance, trespass or withdrawal of support are not affected by the Party Wall Act (see section 9). A building owner such as [the adjoining owner] whose party wall rights have been interfered with by an adjoining owner may recover common law damages for any loss caused by that interference if it has been caused by any one or more breaches of these causes of action. In particular, a failure to comply with the provisions of the Party Wall Act could constitute a significant negligent omission by an adjoining owner such as Rushmoor if that failure arose from a lack of due care. If that negligent omission caused [the adjoining owner] foreseeable damage which would have been avoided had the provisions of the Party Wall Act been complied with, Rushmoor would then be liable in damages for negligence."

75. At [106] and [107] Judge Thornton addressed the question of whether there could be a claim for damages for breach of statutory duty if a notice under the Act should have been served but had not been. At [107] he referred to counsel's citation of an unreported county court case and then in these terms his assessment that there could be such a claim:

> "The Recorder [in the unrelated proceedings] did not address, because there was no need to, the question of whether a court could award as damages the sum that the surveyors could have awarded as compensation had the Party Wall Act been engaged, but had wrongly not been operated, by the [building] owner. If an [adjoining] owner may not claim such loss as damages for breach of statutory duty, it could leave such a party without a remedy as a result of the offending party's failure to operate the mandatory statutory provisions of the Party Wall Act. For those reasons, and assuming that the claim is limited to the sum that the surveyor or surveyors would have awarded as compensation under the Party Wall Act, I conclude that such a claim is one of those rare claims for damages arising from a breach of statutory duty, in this case the failure to engage the Party Wall Act, that permits an affected private individual to claim and recover damages for breach of statutory duty."

76. The Defendants rely on [103] as stating that the Act can be brought into play retrospectively and that it can be invoked unilaterally by an adjoining owner as one of three alternative routes of redress where a building owner has failed to serve a notice under the Act.

77. Judge Parfitt did not accept this analysis of Judge Thornton's judgment. He said, at [44], that it appeared to him that Judge Thornton was "expressly contemplating the parties both operating the procedures under the Act or at least was not obviously addressing a unilateral appointment…". I cannot agree with the first part of that analysis. I do not accept that Judge Thornton can be regarded as having expressly contemplated a joint retrospective application of the Act. It is rather harder to determine what that judge did have in mind. It is right that at [103] – [105] he does appear to be listing alternative routes of redress which were open to the adjoining owner and

between which the latter had a choice and each of which could have been brought into operation without the cooperation of the building owner. However, the justification given, at [107], for the existence of a claim for breach of statutory duty was that without such a claim an adjoining owner would be without redress for a building owner's failure to serve a notice and that suggests Judge Thornton did not contemplate a unilateral invocation of the Act by the adjoining owner.

78. Even if the judgment in *Crowley v Rushmoor BC* is properly to be seen as expressing the view that an adjoining owner can bring the Act into operation unilaterally it can carry only very limited weight. It was an *obiter* statement in circumstances where the adjoining owners had not sought to invoke the Act but had brought court proceedings seeking damages. Moreover, the question of an adjoining owner's unilateral invocation of the Act does not appear to have been the subject of argument before Judge Thornton. Rushmoor BC's defence to the contribution claim had been directed instead to the question of the damages claim. In those circumstances reference to that judgment does not assist in determining the matters before me and does not affect my assessment of the proper application of the approach in *Blake v Reeves.*

79. It is also to be noted that Judge Toulmin was considering these matters before the decision of the Court of Appeal in *Blake v Reeves.* In addition although Judge Thornton's judgment was handed down just under three months after the decision he does not appear to have been referred to it. It follows that both judges were considering matters without the benefit of Etherton LJ's interpretation of the meaning of "dispute" for the purposes of section 10.

80. In *Bridgland v Earlsmead Estates Ltd* (unreported Birmingham County Court TCC List 2015) the claimants brought proceedings claiming, *inter alia*, damages for breach of statutory duty in respect of a building owner's failure to serve a notice under section 3 of the Act (which was said to have deprived the claimants of the opportunity to serve a section 4 counter-notice) and in respect of a failure to undertake demolition works in such a way as to avoid unnecessary inconvenience to the adjoining in breach of the duty under section 7. HH Judge David Grant addressed the defendant's application to strike out those parts of the claim alternatively for summary judgment.

81. Judge Grant struck out the claim under section 3 in short terms because it had been based on a misunderstanding of the effect of a counter-notice under section 4. He dealt at rather greater length with the claim relating to section 7. The defendant there had argued that section 7 could not come into play if the relevant building owner had not served a section 3 notice. In considering that question the judge drew, at [23], a distinction between having rights and exercising those rights. He concluded that a building owner who had not served a section 3 notice could still be exercising rights given by section 2. Judge Grant appears to have proceeded on the basis that there was a duty on the building owner to comply with section 7 even if no notice had been served and to have taken the view that in such circumstances redress would be under the Act rather than by way of a claim for breach of statutory duty.

82. It is apparent that Judge Grant envisaged the dispute resolution mechanism of the Act applying even if a building owner had not served a notice under section 3. That, however, was not necessary for his decision which was considering whether a failure to comply with section 7 could give rise to a claim for damages for breach of statutory duty. Judge Grant considered Judge Thornton's decision in *Crowley v Rushmoor BC*

and the contemplation there, at [104], of a claim for breach of statutory duty in respect of a failure to serve a notice under the Act. Judge Grant concluded that Judge Thornton's approach which had related to section 3 did not assist him in his consideration of section 7. He also noted the apparent tension in Judge Thornton's judgment between the reference at [107] to the lack of a remedy in the absence of a claim for breach of statutory duty and [103] with its contemplation of the mechanism of the Act applying and providing redress to the adjoining owner.

83. It does appear that Judge Grant envisaged that the mechanism of the Act could be brought into play retrospectively by the unilateral actions of the adjoining owner. That, however, was not necessary for his decision. Judge Parfitt expressed some reservation about Judge Grant's distinction between having and exercising rights. He also explained that neither that distinction nor the decision made by Judge Grant as to a claim for breach of statutory duty assisted in resolving the issue in the current case. I agree. Judge Grant was not referred to *Blake v Reeves* nor to the question of when a dispute arose for the purposes of the Act. The understanding as to the operation of the Act which he expressed in those circumstances does not advance matters here.

84. In *Schmid v Hulls & another* (unreported Central London County Court 2016) HH Judge Luba QC had to consider a case in which a notice had been served but where the building owner subsequently contended that it had not been a valid notice such as to bring the Act into play. The appointed surveyors concluded that the notice was invalid but that notwithstanding that invalidity there was a dispute in respect of which they had power to make an award and they then made an award. The building owner appealed on the footing that the invalidity of the notice deprived the surveyors of jurisdiction under the Act.

85. Judge Luba concluded that in the circumstances of the case the building owner was not able to rely on the invalidity of his own notice. However, the judge went on to consider what the position would have been if the building owner had not been precluded from asserting the notice's invalidity. Judge Luba gave the Act a wide scope and took the view that the surveyors had jurisdiction notwithstanding the absence of a valid notice. He rejected the contention that the adjoining owner's remedy in respect of works which had already been performed without notice having been served lay in court proceedings and said, at [57]:

> "…The new statutory regime deliberately sets out a dispute resolution mechanism for disputes relating to works within the purview of the Act. Nothing, it may be thought, could have been clearer than the content and header of section 10 which is "Resolution of Disputes". That selection, in very broad terms, gives jurisdiction for the resolution of disputes: "in respect of any matter connected with any work to which this Act relates." Those words are more than sufficient, in my judgment, to embrace the matters addressed in this award."

86. Judge Parfitt accepted that Judge Luba's judgment supported the Defendants' case but characterised this part of the judgment as being "*obiter* and made without full argument on the point". Judge Parfitt noted that Judge Luba did not appear to have been referred to *Blake v Reeves* and said that if Judge Luba had been he would have been unlikely to have reached the conclusion he did. I agree and Judge Luba's view expressed in such circumstances cannot alter the conclusion I have reached.

87. It follows that the dispute between the Claimant and Mr and Mrs Panayiotou was not a dispute arising under the provisions of the Act. As such it was not a dispute over which the Defendants had jurisdiction and there was no error of law in Judge Parfitt's conclusion that the Award was null and void by reason of that lack of jurisdiction. The appeal, therefore, is dismissed.