



Adjudication – *RMP Construction Services Ltd v Chalcroft Ltd*

On 21 December 2015, Stuart-Smith J handed down his decision in *RMP Construction Services Ltd v Chalcroft Ltd*¹, an action for summary judgment in the Technology and Construction Court to enforce an Adjudicator's decision.

The case is of relevance for a number of reasons. Firstly, it fell to Stuart-Smith J to consider the Adjudicator's decision regarding the formulation of the contract and whether the Adjudicator had jurisdiction and was validly appointed under the Scheme. Secondly, the TCC considered whether a validly appointed Adjudicator's decision should be enforced even if the Adjudicator had erred in his decision.

The issue arose due to a disagreement between the parties as to the formulation of the construction contract appointing RMP. It was clear that there was no conformed contractual document. In the circumstances, RMP alleged that the contract was formed by an email sent to them by Chalcroft on 5 December 2014, accepting an offer put forward by RMP. Conversely Chalcroft argued a number of alternative formulations of the contract including that it was formed by (or incorporated) a Letter of Intent or by an unsigned sub-contract order accepted by the parties conduct, with either formulation being sufficient to constitute incorporation of standard form JCT wording. The formulation of the contract was crucial because the underlying issue in contention at Adjudication was the payment mechanism provided for by the contract. If RMP's

interpretation of the contract formulation was correct, Chalcroft did not serve a pay less notice in time and the Adjudicator's conclusion on RMP's entitlement was correct. However, if one of Chalcroft's interpretations was correct, it was at least reasonably arguable that the pay less notice was valid and in time, and that the Adjudicator's conclusion on RMP's entitlement was incorrect.

In the decision, the Adjudicator found in favour of RMP but it was noted, and Stuart-Smith J agreed, that on either party's version of formulation, there was a construction contract and the parties had not identified an adjudicator nominating body within it. Therefore, the Scheme applied and the Adjudicator had been validly appointed.

On considering whether a decision will be enforced even if the Adjudicator has made an error as to the facts, or the law, Stuart-Smith J concluded that it would be provided that the Adjudicator:

- had jurisdiction to resolve the dispute that was referred to him; and
- addressed the correct question without bias or breach of natural justice (which would justify overturning his decision).

Any comments or queries?

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1. [2015] EWHC 3737 (TCC).

The decision illustrates the pitfalls of relying on unsigned or draft agreements and conversations not incorporated into the key contractual documentation. It is essential that the parties to contracts (and those parties' Insurers, where possible) do what they can to ensure that key contractual provisions are clearly set out in the contractual documentation, particularly those which relate to fundamental issues such as payment mechanisms, in order to prevent the parties spending time and money in proceedings to establish what the terms of the agreement were.

This case is also a further reminder of the Court's willingness to uphold an Adjudicator's decision even if the Adjudicator errs in law or fact. It was acknowledged that the Adjudicator may have reached the wrong conclusion as to the terms of the contract. However, this did not prevent the Court from enforcing the decision. A warning to all about the rough and ready nature of adjudications!

A copy of the judgment can be found [here](#).

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