



Multiple adjudications – how many adjudicators?

March 2016

Obtain consent or use different adjudicators

The recent case of *Deluxe Art & Theme Ltd v Beck Interiors Limited* [2016] EWHC 238 (TCC) concerned the refurbishment of Lanesborough Hotel at Hyde Park Corner, London. The main contractor, Beck Interiors Ltd (Beck) engaged a sub-contractor, Deluxe Art & Theme Ltd (Deluxe) to carry out the joinery work.

Matters started to go awry in the summer of 2015, culminating in a string of three adjudications, all referred by Deluxe. The timeline developed as follows:

- The first adjudication concerned variations and acceleration costs and concluded with the adjudicator's decision to award Deluxe £73,000 on 10 July 2015.
- The second adjudication was in respect of Deluxe's claim for an extension of time and prolongation costs, and the adjudication notice was issued on 22 October 2015. The decision was issued on 4 December 2015 and awarded Deluxe a further £120,000 and an extension of time until 30 June 2015.
- The third adjudication related to Beck's failure to halve the retention rate from 5% on practical completion. This adjudication notice was issued on 9 November 2015,

approximately three and a half weeks before the second adjudication had concluded. The third decision was issued on 11 December 2015, awarding Deluxe £39,000.

RICS had referred each of these to the same adjudicator, Matthew Bastone. Beck expressed their objection to the adjudicator dealing with both overlapping adjudications by way of a letter on 24 November 2015. They subsequently refused to comply with the awards issued in respect of adjudications two and three.

Deluxe sought summary judgment to enforce the adjudication awards and the matter was put before Mr Justice Coulson in the TCC.

The key issue was one of jurisdiction, namely whether an adjudicator can deal with more than one dispute at the same time without the consent of all parties.

Paragraph 8 (1) of the Scheme for Construction Contracts 1998, which governs construction adjudications, provides an ostensibly clear answer. It states:

Any comments or queries?

Alan Stone
Partner

+44 20 3060 6380
alan.stone@rpc.co.uk

“The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract.”

So without such consent, an adjudicator may not adjudicate at the same time on more than one dispute. However, this provision has usually been understood to apply to a party referring multiple disputes in the same adjudication rather than simultaneous adjudications running alongside one another.

The court considered in the first instance whether or not adjudications two and three could be regarded as the same dispute. If both adjudications were the same dispute, then this exclusion of the adjudicator’s power would not apply. This was dismissed for various reasons, not least that a dispute over an extension of time (encompassing loss and expense) is not the same as a dispute about a retention. Mr Justice Coulson also relied upon Deluxe’s approach in referring the disputes separately, stating that “it might be thought that it would take a very unusual set of circumstances to conclude that the disputes referred to in the adjudication notices, started at different times, both formed part of the same dispute.”

Turning to the issue of multiple disputes being heard in concurrent adjudications with the same adjudicator, the judge found that it made “no sense” for this to be treated any differently than multiple disputes in the same adjudication, where the only difference was

that the latter were recorded on the “same piece of paper”. On the proper construction of paragraph 8 (1), an adjudicator can only deal with more than one dispute at the same time with the consent of the parties. The conclusion was that the adjudicator did not have jurisdiction to hear adjudication three and Beck were able to avoid the final award of £39,000 as they had not given the requisite consent to the adjudicator acting.

Mr Justice Coulson emphasised the importance of the consent of all parties and indicated the possibility that such consent could be implied or waived by recipients either failing to raise an objection or delaying in doing so. It is essential for any construction professionals and their professional indemnity insurers to ensure that, if they find themselves on the receiving end of multiple concurrent adjudications, objections under paragraph 8(1) are raised promptly and consistently, in order to avoid inadvertently submitting to the adjudicator’s jurisdiction.

Mr Justice Coulson also gave a direct and salutary warning to those legal professionals conducting construction enforcement proceedings not to waste the Court’s time by drowning the parties in paperwork. He considered the six lever arch files provided in this case to be “promiscuous and unnecessary” and described this approach to documents as a failure to comply with the court guide, which could cause a Court to refuse to hear a matter.

About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 78 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol.

“... the client-centred modern City legal services business.”

At RPC we put our clients and our people at the heart of what we do:

- Best Legal Adviser status every year since 2009
- Best Legal Employer status every year since 2009
- Shortlisted for Law Firm of the Year for two consecutive years
- Top 30 Most Innovative Law Firms in Europe

We have also been shortlisted and won a number of industry awards, including:

- Winner – Law Firm of the Year – The British Legal Awards 2015
- Winner – Competition and Regulatory Team of the Year – The British Legal Awards 2015
- Winner – Law Firm of the Year – The Lawyer Awards 2014
- Winner – Law Firm of the Year – Halsbury Legal Awards 2014
- Winner – Commercial Team of the Year – The British Legal Awards 2014
- Winner – Competition Team of the Year – Legal Business Awards 2014
- Winner – Best Corporate Social Responsibility Initiative – British Insurance Awards 2014

Areas of expertise

- | | | |
|-------------------------|-------------------------|------------------|
| • Banking | • Employment | • Private Equity |
| • Commercial | • Insurance | • Real Estate |
| • Commercial Litigation | • Intellectual Property | • Regulatory |
| • Competition | • Media | • Reinsurance |
| • Construction | • Outsourcing | • Tax |
| • Corporate | • Pensions | • Technology |

