



## CHANGE OF NAME

### DO YOU KNOW WHO YOU ARE CONTRACTING WITH?

*Roscco Civil Engineering Limited v Welsh Water Limited* Technology & Construction Court 15 July 2004

The Claimant, Roscco Civil Engineering Limited was engaged to lay and refurbish a series of pipes and service apparatus by the Defendant, Welsh Water Limited. The parties did not, however, execute any formal contract although there was a mutual understanding, following a letter from the Defendant's agents, that the contract would be based on the NEC Engineering and Construction Contract Option C.

In 1999, during the course of the works, the Claimant changed from being a partnership to a limited company. When dispute arose the Defendant referred the matter to adjudication, and in which the Claimant who obtained a favourable decision sought subsequently to enforce. In seeking to avoid enforcement of the decision the Defendant raised a retrospective challenge to the Adjudicator's jurisdiction in that his award had been made in favour of the incorrect party (i.e. the company, as opposed to the partnership).

The Claimant contended that the decision of the Adjudicator should be enforced by reason that the partnership had novated its rights to the limited company, and that the Defendant was estopped by convention (i.e. agreement) from claiming that the correct party to the adjudication was the partnership.

Whilst the Court rejected the Claimant's first argument, for it found that there had been no such novation, it did consider that there were grounds for allowing the enforcement of the Adjudicator's decision based upon the doctrine of estoppel.

At the commencement of the adjudication, the Adjudicator had raised the issue of whether the contracting party was the partnership or the limited company. In response to that request, the Court held that the Defendant was under a positive obligation, to "speak up". This it had failed to do, with effect that an estoppel by convention had arisen through its silence.

From this case, it is clear that care must be taken in properly identifying the parties to an adjudication, and moreover if there is any discrepancy in one of the identities given, then this should be raised with the Adjudicator at the earliest opportunity.

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