



ARTICLE: **Enforcement of an Adjudicator's Decision**

CASE: Harris Calnan Construction Co. Ltd -v- Ridgewood (Kensington) Ltd [2009] EWHC 2738 (TCC)

On 15th November 2007 HHJ Peter Coulson QC gave his judgment in respect of Harris Calnan application to enforce an adjudicator's decision.

The claim related to the enforcement of a decision given by the adjudicator following an adjudication run on behalf of Harris Calnan by their consultants Alway Associates (London) Limited. This practice, Silver Shemmings acted for Harris Calnan in respect of the enforcement proceedings which were issued in October 2007.

During the adjudication process Ridgewood raised an objection as to the jurisdiction of the adjudicator. Ridgewood sought to argue that the adjudicator did not have jurisdiction. They did not, however, reserve their position as to any finding made by the adjudicator and according to HHJ Peter Coulson QC it was his view that they therefore agree to be bound by the adjudicator's decision and they could not then at a later date challenge that jurisdiction.

The Judge went on to state that even if he was wrong about this and there was some way in which Ridgewood could challenge that adjudicator's decision then he considered, on the facts of the case, it could not be argued that the adjudicator was wrong in the conclusion that he reached. The Judge agreed with the adjudicator that there was a contract in writing between the two parties and therefore he had jurisdiction to decide the dispute that was put to him. As the Judge simply stated;

'A party who has a jurisdictional challenge in adjudication has a clear choice. He can agree that the adjudicator should decide the question of jurisdiction, and to be bound by that result. Alternatively, he can reserve his right to argue that, whatever the adjudicator decides, the adjudicator did not have jurisdiction to reach that conclusion.'

The contractual document that Ridgewood were arguing over was in fact a letter of intent. The Judge referred to recent cases where it had been held in one case that a letter of intent could not form a contract because not all of its terms were in writing. However, as the Judge pointed out, 'All these cases turn on their facts. In the present case the letter of intent made plain that there was complete agreement as to the parties to the contract' and the other relevant issues which included the amount of retention, the cost of the contract, the amount of liquidated damages and the contractual period as well as the standard form of contract to be incorporated.

A further point that was raised by the Defendant in the enforcement proceedings, as well as the lack of jurisdiction of the adjudicator, was an argument that the claim form was not properly served and therefore the proceedings were invalid. This is because the Defendant is a company based in Jersey. The Defendant held that the Claimant had not obtained the permission of the Court to serve the claim form out of jurisdiction.

The Judge found that this was a bad point as he held that permission of the Court for service outside the jurisdiction was not required where the claim was one '...which the Court has power to determine under the Judgments Regulations and... (b) (iii) The Defendant is a party to an agreement conferring jurisdiction to which Article 23 of the Judgments Regulations refers'.

The Judgments Regulations is a council regulation which has direct effect in the United Kingdom and Article 23 provides that if the parties, one or more of whom is domiciled in a Member state are agreed that a Court has jurisdiction to settle any disputes that have arisen then that Court shall have jurisdiction. The agreement to this should be evidenced in writing. The Judge held that the letter of Intent which incorporates the JCT 2005 form gave jurisdiction to that Court and accordingly it was the Judge's view that the Claimant did not require the Courts permission to serve the claim form out of jurisdiction.

The last item that the Judge dealt with in his Judgment related to the costs of the enforcement proceedings. An application was made by Harris Calnan for indemnity costs. As the Judge stated;

'Regrettably, it is not uncommon for a Defendant to fail to pay on the adjudicator's decision, thereby obliging the Claimant to issue enforcement proceedings. Therefore it is also not uncommon for the Defendant to refuse to cooperate such that the Claimant has to go to the expense of pursuing the enforcement proceedings through this sort of summary judgment hearing.'

The Judge held that he had carefully gone through the points raised by Ridgewood in order to satisfy himself that the decision was properly enforceable. It was quite clear in his view that this was a proper decision and not one that could be challenged. It was his view that the amount ordered by the adjudicator should have been paid 'months ago'. He further went on to state that 'this Court will not encourage parties who have no defence to a Claim based on adjudicator's decision, to use up valuable Court time and resources of the successful party in running unmeritorious points that are doomed to fail'.

Based on that, he felt it was appropriate to award indemnity costs in this matter.

Whilst only a short Judgment, it is one that really reinforces previous decisions that if a party intends to dispute the jurisdiction of an adjudicator then he must do so at the outset of the adjudication proceedings and must also reserve his position. Secondly, if it is clear to the Court that there can be no challenges to that decision and the only reason that a challenge has been made is to defer payment then the Courts will not only award Judgment in the Claimant's favour but will also, where appropriate, make an indemnity costs award. Included in the indemnity costs order were costs for both Counsel and instructing Solicitor attending the hearing. Throughout the Defendant had never accepted liability and the letter to which the Judge refers in the final part of his Judgment was faxed to the Court on the day of the hearing and was not seen by ourselves until shown it by the Judge in Court. The Judge held that even though the Defendants' were not represented at the hearing, they had been served with the order for directions and had failed to comply with it. For those reasons and also for the fact that the Claimants had complied with the directions given the Judge felt it reasonable to award indemnity costs in this particular instance.

This judgment goes to reinforce the Courts' determination to support adjudicators and to enforce their decisions unless it can be shown that those decisions were made outside of the adjudicators' jurisdiction.

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