



New Issues or old? Can an Adjudicator accept new information?

William Verry (Glazing Systems) v Furlong Homes Ltd

Having been granted an extension of time under the contract until 2 February 2004, Verry made a further request to an extend time to 24 June 2004. Furlong rejected this claim on the grounds that Verry had provided nothing that would add to the extension of already granted. Furlong then commenced an adjudication relating to the final account for the works undertaken by Verry and which encompassed Furlong's entitlement to extension of time. Within its Referral Notice Furlong sought a decision that the extension of time awarded to 2 February was correct, or, in the alternative, that the Adjudicator should decide upon Verry's entitlement

In its Response to the Referral, Verry sought an extension of time to 27 July 2004, to which Furlong raised its objection asserting that Verry were advancing a new extension of time claim. Following submissions relying upon authorities such as *Nuttal v Carter* and *AWG v Rockingham*, the Adjudicator decided that he had jurisdiction to consider Verry's extension of time submission in its Response and decided that Verry were entitled to an extension of time to 27 July 2004.

Furlong, in the enforcement proceedings that followed, contended that the adjudicator did not have the jurisdiction to consider Verry's "new claim" for an extension of time.

HHJ Coulson QC decided that there were three questions to answer:

1. Whether the extension of time within Verry's Response was a new claim for an extension of time which had not been made before?
2. If it was a new claim, whether Verry were entitled to rely upon it in an adjudication?
3. If Verry were not entitled to rely upon it in principle whether they were able to rely upon it in fact because, by their conduct, Furlong had given the adjudicator jurisdiction?

In answering the first question, HHJ Coulson QC was of the view that Verry's response was a more detailed explanation for the claim originally made, and that a new completion date had been sought as a consequence of the work on site continuing until 27 July 2004.

On the second question the Judge said that even if the extension of time claim was a new one, it formed part of the dispute which was referred by Furlong.



Finally the Judge noted that Verry were responding to the claim made by Furlong, Furlong having commenced the adjudication. Verry, accordingly were entitled to take whatever points it liked to defend itself and the Adjudicator was obliged to consider same.

The Judge held, in a nutshell, that if you are a Claimant, you can only adjudicate on the issues raised in the Referral Notice. If you are a Defendant, then that restriction is relaxed and you can make ask the Adjudicator to consider extra facts as part of the Defence.

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