



**Enforcement of an Adjudicator's Award by way of Summary Judgement;
use of experts' reports**

**KIER REGIONAL LIMITED (t/a WALLIS) v. CITY & GENERAL
(HOLBORN) LIMITED [2006] EWHC 848 (TCC)**

This case concerned an application by ("Kier") a building contractor for summary judgment to enforce an adjudicator's award.

By a contract dated 6 November 2001, made between City & General (Holborn) Limited ("CG") and Kier Regional Limited, trading as Wallis ("Kier"), Kier agreed to carry out works of refurbishment and rebuilding at the site of the former Patent Office Library in London.

A number of delays and problems arose during the course of the works and which generated five different Adjudications. In Adjudication No.2, the Adjudicator awarded to Kier, in addition to an extension of time of 31 weeks previously granted by the Contract Administrator, an extension of time of 28 weeks.

Following Adjudication No.2, Kier made an application for loss and expense within its Interim Application No.32 in the sum of £1,330,012.

On 13 August 2004, the Contract Administrator issued Interim Certificate of Valuation no.32 including loss and expense in the sum of £527,192, but which did not include any additional loss and expense in respect of the extension of time awarded in Adjudication No.2.

Kier was dissatisfied, and on 14 September 2004 it commenced a further adjudication as to whether it was entitled to an ascertainment and Interim Certificate for loss and/or expense for £1,330,012 based on contract preliminary rates as set out in Application No.32. This was Adjudication No.3 and Mr Ellis was again appointed as Adjudicator.

CG served a Notice of Response on 23 September 2004 and which included two expert reports. Kier in its Reply asserted that CG had introduced new expert evidence which Kier had not seen before and invited the Adjudicator to ignore.

On 28 October 2004, the Adjudicator delivered his written decision which in large part accepted the arguments of Kier assessing Kier's entitlement to loss and expense in the sum of £1,246,487.40. On the two expert reports submitted by CG the Adjudicator stated he agreed with Kier in that the expert reports provided new evidence not known to the parties at the time the dispute crystallised and therefore were not to be taken into account in the Adjudication.



CG refused to make the payments and the matter proceeded to enforcement proceedings, the issue being: did the Adjudicator's refusal to pay regard to the two expert reports, cause his decision to be invalid?

The Honourable Mr Justice Jackson held that whilst there was persuasive argument that the Adjudicator ought to have taken the two expert reports into account, such an error was not one which could invalidate his decision. From the Adjudicator's decision, the Adjudicator had considered the arguments advanced by CG, but at worst he made an error of law which caused him to disregard two pieces of relevant evidence, namely the expert reports. In the light of the Court of Appeal's decision in Carillion Construction Ltd v Devonport Royal Dockyard Limited, that error would not render the Adjudicator's decision invalid.

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Date: May 2006

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