

Technology & Construction Court (HH Judge Thornton QC) 4/1/2000

Text:

Application for summary judgment under CPR Part 24 to enforce an adjudicator's decision, purported referred to him by virtue of s.108 Housing Grants, Construction and Regeneration Act 1996 and The Scheme for Construction Contracts (England and Wales) Regulations 1998. The first defendant ('Morrison') was the main contractor on a construction project for the new Leisure World and Arena complex in Coventry. The claimant ('Fastrack') was the brickwork sub-contractor. Morrison complained of poor progress by Fastrack and said that part of Fastrack's sub-contract work was to be given to others. Fastrack disputed Morrison's right to do so, and threatened proceedings for loss of profit and damages. Fastrack submitted interim application, no.12, for interim payment, but no payment was made by Morrison. Morrison informed Fastrack that other bricklayers were to be employed to expedite part of the work. Fastrack sent a letter from their solicitors to Morrison stating that this was without contractual justification and was a breach of contract. Fastrack treated this letter as an acceptance of Morrison's alleged repudiation of the contract and withdrew from the site. Fastrack made a further interim application, no.13. Morrison responded with a notice of set-off in respect of its alleged entitlement to damages and additional completion costs of the sub-contract. Fastrack went to adjudication in respect of interim application no.12, and was awarded 35,199.70. Fastrack then issued a second notice of adjudication claiming a sum higher than the gross sum forming interim application no.13. The sum claimed, 483,357.48, was reduced to 478,959.93 in the subsequent Referral Notice documentation. Morrison contended at all material times that the second adjudicator had no jurisdiction as there was no current dispute which could be referred to adjudication. The adjudicator held that he had jurisdiction and awarded 120,601.68 to Fastrack, including the sum of 35,199.70 awarded on the previous adjudication.

HELD: (1) Whether or not the reference was wholly or partly lacking in jurisdiction would depend on the nature and extent of the dispute that had purportedly been referred to adjudication by the referring party. Therefore a particular dispute could be correctly characterised as being in the form "what sum is due?" without any particular or finalised sum being included as part of that claim. Furthermore: a claim and its submission did not necessarily constitute a "dispute" for the purposes of s.108 of the Act; a dispute only arose when a claim had been notified and rejected; a rejection could occur when an opposing party refused to answer the claim; and a dispute could arise when there had been a bare rejection of a claim to which there was no discernible answer in fact or in law. *Halki Shipping Corp v Sopex Oil Ltd (1998) 1 WLR 726* considered. (2) On the facts, there were disputed issues which had arisen separately to the issue of interim application no.13 and all were in dispute by the date that the notice of adjudication was served. Those disputed issues had been referred by Fastrack to Morrison, had been rejected by Morrison and had therefore ripened into disputes by the time the second notice of adjudication had been served. The adjudicator therefore did have jurisdiction to conduct the adjudication and to make an award in favour of Fastrack. Summary judgment for Fastrack in the sum of 85,401.98

Appearances:

Simon Hargreaves instructed by Allsop (Warwickshire) for Fastrack.

Darryl Royce instructed by Hammond Suddards (Leeds) for Morrison

References:

LTL 17/1/2000 (Unreported elsewhere)