



## LEGAL BRIEFING

### *Allied P&L Ltd v Paradigm Housing Group Ltd* [2009] EWHC 2890 (TCC)

#### *The Facts*

Allied P&L Limited ("Allied") a building contractor was engaged by Paradigm Housing Group Limited ("Paradigm") to construct 40 dwellings and other works at 95 London Road, Bishop's Stortford, Hertfordshire. The contract provided for interim payments based upon a monthly "Notice of Payment" which was due for payment 15 days later. In the absence of any extensions of time the works were to be complete by 15 April 2008.

The works ran into delay. The reasons and responsibility for the delay remained an issue between Allied and Paradigm. On 29 January 2009 the Employer's Agent issued its Notice of Interim Payment no.15 in the gross sum of £2,418,727. After allowing for retention and previous payments this left a net sum of £30,229.00.

The sum was not paid and Paradigm's solicitors issued a "Notice of Withholding Payment" in relation to Interim Payment no.15. Paradigm cited nine grounds for withholding. Allied rejected the grounds and demanded payment. On 19 May 2009 Paradigm issued a Notice pursuant to clause 10 of the contract ("Clause 10 Notice") which, in accordance with the contract, allowed Allied 9 working days from the receipt of the Clause 10 Notice to rectify the breaches of contract (as alleged by Paradigm). If the breaches were not remedied Paradigm made clear its intention to terminate the contract which it did on 4 June 2009.

On 6 July 2009, Allied commenced adjudication proceedings asking the adjudicator to decide that the Paradigm had wrongly terminated the contractor's employment and to award it sums due under the contract, damages for repudiatory breach and loss of profit.

On 10 July 2009 Paradigm raised two objections which it classified as jurisdictional. The first was whether, as Paradigm had not received a letter of claim, this meant that the adjudication was premature. The second was whether, as the contract was now at an end, the dispute should properly be the subject of legal proceedings or arbitration (not adjudication). In the Response it repeated that its reserved its rights in relation to the jurisdictional objections made on 10 July and stated that:

*"the losses have not yet crystallised and with no ongoing contract, the dispute is not a matter which is best decided by adjudication due to the contested nature of some of the evidence. Paradigm believe that this dispute would be best dealt with by a Court or by Arbitration when such evidence can be fully tested."*

The adjudicator decided in favour of Allied and awarded it £274,279.35 plus interest and that Paradigm should be responsible for his fees of £13,800.35. Paradigm refused to comply with decision so Allied commenced enforcement proceedings in the TCC.

#### *The Issues*

The issues were:

- (i) whether there was a crystallised dispute and if so what it encompassed;
- (ii) whether any part of the adjudicator's decision could be enforced or severed; and
- (iii) whether any effective reservation was made as to the jurisdiction of the adjudicator during or before the adjudication.

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### *The Decision*

Mr Justice Akenhead enforced the decision in full even though he considered that various aspects of the dispute had not in fact crystallised at the time the notice of adjudication was served. The Judge emphasised that having reserved its position on jurisdiction appropriately and clearly, a party can continue to participate in the adjudication and then, if the decision goes against it, formulate a potential challenge to enforcement.

The reason the adjudicator's decision could be enforced nonetheless in this instance was because of the ineffective reservation of Paradigm's rights in relation to the jurisdiction of the adjudicator. The Judge indicated that if the position had been reserved effectively the Court would have severed the decision. However, in this context the adjudicator's jurisdiction in respect of Allied's claims was un-challengeable.

### *Comment*

A party must clearly and unambiguously reserve its position in relation to jurisdiction. However, special care needs to be taken as there are clear distinctions between complaints that a formality or perceived formality of the contract has not been followed (such as a letter of claim must precede a notice of adjudication) or that adjudication is not an appropriate forum and knock-out jurisdictional challenges such as "no dispute".

The consequences of a quasi-contractual complaint being dressed up as jurisdictional objection are that, if it is found to be ineffective, the party in question will be found to have submitted to the jurisdiction of the adjudicator (subject to the ineffective reservation). Following this, the decision will be enforced even if there were other, more compelling, grounds that would have been an obstacle to enforcement if raised.

The Judge was robust in his approach to costs and the need for proportionality in relation to the simplicity of the application and the costs incurred. In general terms, a successful claimant will usually have the costs it claims reduced by the TCC on summary assessment but most practitioners have grown to expect a recovery rate of 70-85% for adjudication enforcements. However, in this case, Allied recovered just 59% of its costs and was unable to recover at all for a project specific surveyor/consultant who assisted their legal team.

**Theresa Mohammed**  
January 2010

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