



LEGAL BRIEFING

(1) Mentmore Towers Ltd (2) Good Start Ltd (3) Anglo Swiss Holdings Ltd v Packman Lucas Ltd [2010] EWHC 457 (TCC), Mr Justice Edwards-Stuart

The Facts

The Defendant provided engineering services to the Claimants who were registered in Jersey and set up to acquire and develop properties in London. Following the suspension of works on the project in question the Defendant commenced adjudication proceedings against the Claimants for its outstanding fees at the time of the suspension. The adjudicator agreed that the Claimants should pay the outstanding sums but the Claimants refused to pay and the Defendants had to enforce the awards (for which it had to issue and serve proceedings out of jurisdiction).

The Claimants still refused to pay and charging orders were made final on 16 October 2009. The day before the charging orders were made final the Claimants issued court proceedings alleging overpayments to the Defendant.

In November 2009 the Defendants were granted a stay of those court proceedings pending, amongst other things, compliance with the adjudicator's awards. In granting the stay Akenhead J concluded that there was "unreasonable and oppressive behaviour and some elements of bad faith involved in the Claimants pursuing these claims without first honouring the adjudicator's decision..." In reaching this conclusion he noted that the Claimants had put forward exaggerated claims.

The Claimants subsequently issued three Notices of Adjudication in which they reduced their claims for the overpayments. On 26 February 2010 the Defendants applied for an injunction to prevent the Claimants from taking any further steps in those adjudications.

The Issues

- (i) Do the courts have the power to grant an injunction restraining a party from pursuing an adjudication?
- (ii) Are the criteria for granting an injunction to restrain an adjudication the same as those ordering a stay in the courts?
- (iii) Would Akenhead J's decision to grant a stay in the courts have been different if the claim had not been significantly exaggerated?
- (iv) Should the Claimants be restrained from pursuing the adjudications?

The Decision

At the hearing it was accepted that the court had jurisdiction, under Section 37 of the Senior Courts Act 1981, to grant an injunction to restrain the pursuit of an adjudication. The Judge could see no reason why a referral to adjudication that is unreasonable or oppressive should not be restrained by application of the same principles that would apply to an application made on similar grounds for the stay of the same claim made by litigation. However, it did not follow that because a court would order the stay of a particular claim it would automatically restrain the pursuit of the same claim by way of adjudication. The fact that a particular claim was being pursued by way of an adjudication, rather than litigation, may affect the court's view as to whether or not it amounts to unreasonable and oppressive behaviour. That said, it may be more unreasonable to bring adjudication proceedings. For example, the successful respondent may be unable to recover his costs of resisting the claim.

The Judge did not believe that Akenhead J would have reached a different conclusion had the Claimants not exaggerated the extent of the alleged overpayment in the original Court Proceedings. Akenhead J's conclusion about the existence of unreasonable and oppressive behaviour was not, in his view, dependant upon his finding there was some bad faith in putting forward claims that were significantly exaggerated. That was simply an aggravating factor.

The Judge then concluded that the injunction to restrain the adjudications should be granted. The courts have said "again and again" that adjudicator's awards should be strictly enforced unless there has been some excess of jurisdiction or breach of natural justice. "That is the "pay now argue later" approach the underlines the legislative purpose". The Claimants had persistently refused to honour the adjudicator's awards, put the Defendants to the trouble and expense of taking steps to enforce the awards and obtain charging orders and even refused to instruct London solicitors to accept service of proceedings. In the circumstances, the referrals were simply another way to circumvent the policy of the Housing Grants Act and it was therefore both unreasonable and oppressive for the Defendant to be subject to further adjudication proceedings.

Comment

Injunctions restraining adjudications are rarely granted given the right of the parties under the Housing Grants Act to refer disputes "at any time". It may be that this Judgment encourages an increase in the number of injunction applications with one party seeking to argue that oppressive and unreasonable behaviour should prevent the adjudication from proceeding. However, the Claimants' behaviour in this case was held to be exceptional. Both Akenhead J and Mr Justice Edwards-Stuart considered it "oppressive and unreasonable" and Akenhead J also emphasised that the Claimants had acted in bad faith. In practice then, the circumstances in which such an injunction would be granted may be limited although, no doubt, the extent of the court's willingness to grant such injunctions will be tested in the months to come.

Claire King
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