



---

## LEGAL BRIEFING

### *A.R.T. Consultancy Limited v Navera Trading Limited*

TCC HHJ Peter Coulson QC [2007] EWHC 1375

#### ***The Facts***

A.R.T. were engaged by Navera to carry out design and construction work to a property in London. They made claims for payment and then commenced adjudication. The adjudicator ordered a payment of £100,369 to A.R.T. together with the interest and fees. In these proceedings A.R.T. sought to enforce that decision.

#### ***The Issues***

Navera raised two jurisdictional challenges. First, that the parties did not agree that the contract was governed by the JCT Minor Works Form. Second, even if the JCT was incorporated, not all of the terms of the contract were in writing.

The tender document clearly set out that the JCT Minor Works Form of Building Contract would be the basis of the contract document. The tender was accepted and after commencement on site, A.R.T. would send a copy of the JCT agreement. All relevant provisions had been completed by the architect. Navera argued that despite the JCT Form, some elements had not been recorded in writing.

#### ***The Decision***

HHJ Coulson QC held that the JCT Minor Works Form had been incorporated, and that the contract was in writing. Navera was unable to identify any specific particulars that had not been recorded in writing. As a result, the adjudicator had reached the correct conclusion and had jurisdiction under the written contract. The parties had clearly intended at the time that the works commenced to contract on the JCT terms.

The only other issue related to design. Navera argued that the design works had not been incorporated in the JCT Contract. Once again, there appeared to be no evidence that the parties intended to include the design package. The design work had been carried out at a much earlier date, and there appeared to be no intention between the parties at the time that the work commenced on site should retrospectively include the design package in the construction contract. Further, there was no reason why the design and construction work should be included in one packaged contract.

Finally, the general assertions made in respect of A.R.T.'s financial position meant that His Honour refused to order a stay. The decision was therefore enforced summarily.

#### ***Comment***

This is another case that demonstrates the willingness of the court to find that the terms of a standard form contract have been incorporated into the agreement of the parties. In this case all of the essential terms between the

---

---

parties had been captured in writing (the onus then being on the defendant to show that some essential term had not been reduced to writing, but they could not), and so the decision was enforced.

*Nicholas Gould*  
*December 2007*