

Trading names and Adjudication referrals - can a jurisdictional challenge succeed?

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An interesting challenge of jurisdiction case was recently heard in the Technology and Construction Court concerning an Adjudication brought against the trading name of the responding party.

In *MG Scaffolding (Oxford) Ltd v Palmloch Ltd* [2019] EWHC 1787 (TCC), the Defendant argued that the Notice of Adjudication incorrectly named the responding party and so was invalid - therefore, the Adjudicator lacked jurisdiction to make a decision.

In short, the Court disagreed holding that the use of a trading name was sufficient provided that the reasonable recipient could understand that this was a reference to the correct legal entity.

Background

A quotation for scaffolding was provided in 2017 by Mr Binfield of *Craven Scaffolding Ltd* at the request of Mr Lewin. Mr Lewin's email address ended in @mcrproperty.com and the postal address to which the quotation was sent was "MCR Property Group, Universal Square, Manchester".

A Purchase Order was subsequently raised by Mr Lewin on "Palmloch Limited" headed paper with a reference "Palm/016". The instructions given in the Purchase Order were to invoice "Palmloch Limited" at the same address that the quotation to *MCR Property Group* had been sent.

Mr Binfield subsequently moved to *MG Scaffolding (Oxford) Ltd* and shortly afterwards issued a new quotation to *MCR Property Group*. In response, the original Purchase Order was manuscript amended to refer to *MG Scaffolding (Oxford) Ltd* in place of *Craven Scaffolding*. The headed paper and reference for *Palmloch Limited* remained.

The work commenced on 12 March 2018. Invoices were presented to *Palmloch Limited* as requested. Correspondences were exchanged during the course of the works to Mr Lewin at his "@mcrproperty.com" email address.

A dispute over payment arose. *MG Scaffolding* commenced an adjudication against *MCR Property Group*. The Notice of Adjudication was emailed to Mr Lewin using his @mcrproperty.com email address. *MCR* disputed jurisdiction on the grounds that it was not the correct responding party.

The adjudicator took the view that *Palmloch Limited* was the true contracting party and that it could reasonably be construed from the use of the trading name that *Palmloch Limited* was intended to be the responding party. This was on the basis that the responding party had asserted that *MCR Property Group* was a trading name for *Palmloch Limited*.

Findings

Whilst considering his findings, Mr Adam Constable QC referred to *Total M& E Services v ABB Building Technologies* (2002) 87 Con LR 154 in which there was a clear case of misdescription. He noted that a misdescription of a party in a Notice of Adjudication does not of itself affect the validity of the Notice, although that may be different if there was a genuine lack of clarity as to the proper parties.

In this case, there could not possibly be any lack of clarity as to the identity of the legal entity intended to be the responding party. The Court held that this was not a case where the referring party had started an adjudication against the "wrong" contracting party, i.e. a different legal entity to who the contract was with. Rather, the adjudication was started using a *trading name* of a legal entity which the Defendant accepted as the correct contracting party.

The Notice of Adjudication must be assessed objectively and construed as a whole against its contractual setting; consideration should be given to how it would be read by a reasonable recipient, concentrating on the substance rather than the form.

A reasonable recipient would have understood the use of the trading name as an unambiguous reference to *Palmloch Limited*,

as it was in fact construed. Accordingly, the Court gave summary judgment for the Claimant.

Lessons to be taken

When commencing adjudication proceedings, it is important to be clear as to who are the correct contractual parties to the dispute. Best practice remains to name the underlying legal entities. However, if a trading name is used for the relevant contracting party, this does not necessarily invalidate the Notice of Adjudication, if it can be understood by a reasonable recipient to whom it refers, having assessed it objectively and construed it as a whole against the contractual setting.

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