

Three into one: multiple payment applications deemed a single dispute

Published 21 December 2021

Executive Summary

1. Under the Housing Grants, Construction and Regeneration Act 1996 (“Construction Act”), a party may refer “a dispute” that arises under a construction contract to adjudication. The Construction Act prevents more than one dispute being referred to adjudication as a part of the same adjudication proceedings. Should there be more than one dispute, an adjudicator may lack jurisdiction.
2. In *Quadro Services Ltd v Creagh Concrete Products Ltd* [2021] EWHC 2637 (TCC), the TCC had to decide whether three separate, but cumulative, payment applications should be treated as a single dispute or whether, in fact, there were three separate disputes, one for each application.
3. The Defendant asserted they were separate disputes, claiming therefore that the adjudicator had no jurisdiction and the adjudicator’s decision would be unenforceable. However, the Court rejected the argument and held the adjudicator had jurisdiction to consider all three payment applications to determine the sum due.

Background

4. Quadro entered into an oral agreement to provide construction labour with Creagh. The agreement was a construction contract for the purposes of the Construction Act.
5. During the course of the contract, Quadro submitted applications for payment and raised invoices for the amounts claimed. Creagh failed to make payment in respect of three of Quadro’s invoices, totalling £40,026. No pay less notices were issued in respect of any of Quadro’s applications.
6. Quadro commenced an adjudication. Both the Notice of Adjudication and Referral Notice stated that the dispute concerned the non-payment of the three applications.
7. Creagh’s solicitors subsequently wrote to the adjudicator challenging jurisdiction. They asserted that the adjudicator did not have jurisdiction, as the adjudication referred to three disputes, one in relation to each invoice. This was said to be contrary to the statutory right to refer no more than one dispute to adjudication at a time, without the parties consent.
8. The adjudicator issued his decision rejecting the jurisdictional challenge, finding that a single dispute had been referred to and awarded Quadro the total sums due under the applications, with interest. Creagh refused to pay, so Quadro issued proceedings to enforce the adjudication decision.

The Court’s decision

9. The TCC held that the adjudicator was correct to conclude that he had jurisdiction because only one dispute had been referred to him. The dispute was whether the Claimant was entitled to payment of the sum of £40,026.
10. The court applied the principles set out in *Witney Town Council v Beam Construction (Cheltenham) Limited* [2011] EWHC 2332 (TCC), in relation to what constituted “a dispute”. In *Witney*, the court used the example of an adjudicator considering the validity of 50 variations forming part of a payment application, but *Akenhead J* made clear that does not mean that there are 50 disputes that must be referred separately to adjudication. The validity of each variation can be sub-issues to the single dispute as to the amount due under one interim payment.
11. In *Quadro*, although the three payment applications could have been determined separately, Creagh had simply not paid. The payment applications were cumulative, with each application built on the previous one, with a clear link between them. The applications were deemed to be sub-issues in the wider dispute about the balance due under the construction contract.
12. The TCC also remarked that, if Creagh’s argument were right, the parties would have to incur the very significant cost and inconvenience of starting numerous adjudications in order to claim a single claimed balance under a single contract. This undermines the purpose of adjudications, namely to make it an efficient, swift and cost-effective resolution of disputes on an interim basis.

Conclusions

13. The case illustrates that the courts, and adjudicators, can adopt a broad view of what a dispute is for the purpose of adjudication.
14. Referring Parties should think carefully when drafting the Notice of Adjudication and Referral Notice if they are referring one dispute, with potential sub-issues, or multiple disputes.
15. Respondents will be aided by the decision when considering whether to raise a jurisdictional challenge and whether the issues are actually separate disputes, or there are clear links between payment applications, meaning that they are sub-issues rather than separate

Authors



Mark Roach

London - Walbrook

+44 (0)20 7894 6314

mroach@dacbeachcroft.com



James Davies

London - Walbrook

+44 (0)20 7894 6979

jzdavies@dacbeachcroft.com