

Deluxe Art & Theme Limited v. Beck Interiors Limited [2016] EWHC 238 (TCC)

Published 23 June 2016

Executive Summary

Disputes in respect of extensions of time on the one hand, and retention on the other, were separate disputes for the purposes of being referred to adjudication. However, due to the clear wording of paragraph 8(1) of the Scheme for Construction Contracts and the lack of consent from the parties, the adjudicator did not have jurisdiction to decide more than one dispute at a time.

Facts

Beck (the main contractor) engaged Deluxe as a sub-contractor to supply and install joinery items in the Lanesborough Hotel at Hyde Park Corner, London.

In July and October 2015, Deluxe commenced two adjudications in respect of extensions of time and loss and expense. In November 2015, Deluxe referred a third adjudication (to the same adjudicator as used in the first two) concerning the failure by Beck to reduce the rate of retention from 5% to 2.5% upon practical completion of the sub-contract works.

The adjudicator decided in favour of Deluxe in all three adjudications and Deluxe sought to enforce the decisions of adjudications 2 and 3 ("the Adjudications") through summary judgment.

Beck sought to resist Deluxe's application on the basis that, pursuant to paragraph 8(1) of the Scheme for Construction Contracts ("the Scheme"), without the consent of all parties, the adjudicator had no jurisdiction to adjudicate on more than one dispute at a same time.

Summary

One dispute or two?

First, Coulson J considered whether the Adjudications were distinct disputes or whether they were part of the same dispute. If the latter, Beck's argument would fall away.

Coulson J decided that the adjudications comprised separate disputes on the basis that:

1. Deluxe themselves considered that there were two separate disputes.
2. The adjudicator himself had ruled that the two were distinct and Deluxe could not seek to ignore the adjudicator's conclusion.
3. Coulson J referred to *Whitney Town Council v. Beam Construction (Cheltenham) Ltd (2011)*, which held that "a useful if not invariable rule of thumb is that, if disputed claim No 1 cannot be decided without deciding all or parts of disputed claim No 2, this establishes such a clear link and points to there being only one dispute". As the extension of time claim was capable of being decided without reference to the retention claim, the two were therefore separate.
4. Deluxe referred the claims in two separate adjudication notices and the disputes were described in very different terms. Coulson J stated that "whilst...the mere fact of two notices may not be determinative, it might be thought that it would take a very unusual set of circumstances to conclude that the disputes referred to in the adjudication notices, started at different times, both formed part of the same dispute."

Referring more than one dispute at a time

In distinguishing *Whitney Town*, Coulson J held that that there was a clear requirement under paragraph 8(1) of the Scheme for consent from all the parties. As Beck had not consented, the adjudicator did not have the necessary jurisdiction to decide the third adjudication. His decision was therefore unenforceable.

Further, in response to Deluxe's argument that paragraph 8(1) was ultra vires s.108(2)(a) of the 1996 Construction Act (which provides that a party could "give notice at any time of his intention to refer a dispute to adjudication"), Coulson J held the

Scheme was not unlawful. The parties could adjudicate at any time. The restriction on referring only one dispute at a time did not "unreasonably fetter or impinge upon the underlying right to adjudicate at any time".

Comment

It is clear from this decision that if the parties wish an adjudicator appointed under the Scheme to deal with more than one dispute at a time in separate adjudication proceedings, then they need to consent to it. In the absence of such consent, the referring party will have to wait until one adjudication has concluded before referring another to the same adjudicator.

Authors



Mark Roach

London - Walbrook

+44 (0)20 7894 6314

mroach@dacbeachcroft.com