

Construction Law

Construction Sector Update from one of Yorkshire's leading law firms

Spring 09 issue

Adjudication update

Welcome to the latest Construction Update

Over the last 3 months, we have noticed a series of cases in the Technology and Construction Court (TCC) that provides some useful reminders about the principles of adjudication, and demonstrates the TCC's robust approach to the enforcement of adjudicators' decisions.

We thought it might be useful to update you on some of these cases.

The decision in **Westwood Structural Services Ltd v Blythwood Management Company Ltd** emphasises this robust approach. The court did

not look behind the adjudicator's decision, but did say it thought the adjudicator had got it right. The TCC's comments in this case highlight that technical attempts to avoid payment are unlikely to succeed.

Gipping Construction Ltd v Eaves Ltd is another example of the TCC firmly backing an adjudicator's decision. The fact that the adjudicator did not have an on-site inspection to look at alleged defects did not amount to a breach of natural justice. The inspection was entirely at the adjudicator's discretion. The court would not criticise an adjudicator for deciding not to have a site visit where the adjudicator believed in good faith that he had sufficient information before him to reach his decision within the fairly short period

allowed; and where it had not been and could not be established that it was essential a site visit take place.

Recent cases have made clear that where one party wants to challenge an adjudicator's jurisdiction, it is necessary for them to make a clear and full reservation of their position during the adjudication proceedings. **Euro Construction Scaffolding Ltd v SLLB Construction Ltd** highlights the fact that a party wishing to challenge an adjudicator's jurisdiction should do so as early as possible. All correspondence with the adjudicator should include a statement that it participates in the adjudication without prejudice to its jurisdictional challenge.

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by Sarah Hodgson



and Anjon Mallik

Tee off at Gordons' Seminar



Our fourth annual construction seminar will take place on Thursday 26 March at Wetherby Race Course, from 1.00pm.

The seminar entitled 'Straight Down the Fairway- avoiding construction disputes' is a case study on construction procurement and will examine a number of highly relevant issues.

Case study

A prestigious new golf course is being developed in Yorkshire. The contractor has carried out much of the work but encounters problems with the ground conditions. The recession is biting and funding for the project is affected.

The scope of the overall project is scaled down, impacting on projected income. One of the key sub-contractors becomes insolvent. The contractor has a number of claims against the developer, but will he get paid? If not, what are his options?

The case study will include a video film highlighting critical issues arising out of a typical construction project. We will explore the legal and commercial risks, the implications and consequences, strategic options and solutions.

The seminar will be of interest to developers, contractors and sub-contractors, professional consultants, funders and property agents.

If you would like to attend this and are not already doing so, please contact Rob Cowling on:

**01274 709 505
to book a place.**

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Gordons LLP
Let's get down to business

Adjudication update continued...

Even where a party maintains a challenge to the adjudicator's jurisdiction however, they will still be liable to pay the adjudicator's costs. In **Linnet v Halliwells LLP** the responding party had argued that the adjudicator did not have jurisdiction, and had refused to sign the adjudicator's terms and conditions. They still participated in the adjudication, however, in one letter inviting the adjudicator to resign but, in the alternative, to proceed with a revised timetable for the adjudication. The court found that in those circumstances,

the responding party was liable to pay the adjudicator's fees. The only way to escape this liability is for the responding party to withdraw from the adjudication.

YMCS Ltd v Grabiner reminds us of how the "slip rule" works. This allows an adjudicator to retrospectively correct a genuine mistake or accidental clerical error in his decision. The adjudicator can not revisit his decision on the merits of the case and must make any correction within a reasonable time. Both parties should therefore check an adjudicator's decision

carefully as soon as it is received. Either party may apply for an error to be corrected, or the adjudicator may correct an error on his own initiative.

Bovis Lend Lease Ltd v The Trustees of the London Clinic is a move away from the position that an adjudicator's decision must stand or fall in its entirety. The TCC indicated that if the employer had succeeded in arguing that one of the disputes referred to the adjudicator had not crystallised, it would have been willing to sever that dispute from

the adjudicator's decision on a dispute that had crystallised.

If you are involved in an adjudication that relates to more than one dispute, you might think about asking the adjudicator to give a decision that separates the issues and allocate costs and expenses against each issue (if the adjudicator has the power to decide how costs should be shared).

Please contact any member of the team for further information.

Right good fun at our Yorkshire quiz

The construction team held their annual quiz night at The Adelphi pub in Leeds on Thursday 5 February.

This year's Yorkshire themed quiz included 8 teams from: PDR Construction Ltd, Quarmby Construction Co Ltd, GMI Construction Group Plc, Rex Procter & Partners, WYG Management Services Ltd, Stace LLP, CJ Ellmore & Co Ltd and Wood-Mitchell Building Group Plc.

Quiz master Anjon Mallik successfully hosted the evening with first place going to Stace LLP. The team won bottles of

champagne, 'Jim Fixed it for Me' badges and much sought after Yorkshire Terrier mouse mats to remind them of their triumph!

In the wooden spoon position were gallant losers Wood-Mitchell Building Group Plc who went away with Yorkshire pudding mixes and a cardboard cut out sheep!

The night proved to be a real success, much fun was had by all and £400 was raised for our charity of the year, The Ear Trust.



Who's who in the construction team



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