

JUDGMENT : His Honour Judge David Wilcox : 12th April 2002. TCC.

1. This is an application for summary judgment arising out of an adjudication by an adjudicator. The amount that is sought to be the subject of summary judgment is some £18,000 or so. The matter arises out of a contract between the parties in July of 2000, whereby the claimant was to supply to the defendant labour-only plastering works at a new building known as Kilder Moray Lodge in Scotland. A dispute arose over the non-payment by the defendant of monies, said by the claimant were due to them. The claimant requested the RICS to appoint an adjudicator, Mr. Chris Richards was appointed.
2. There is no issue as to whether or not the contract in this case is a construction contract, it clearly is. Part 1 of the Scheme for Construction Contracts England and Wales Regulations therefore apply. The dispute was identified firstly by the notice of intention, which is appended to the witness statement of Linda Page, it is exhibit 1, LP1. The notice was by Mr. Dennis Turnbull acting on behalf of Martin Girt, trading as Girt Construction. It says this in relation to the nature and description of the dispute:
"Failure to issue any notices of payment in accordance with the principal act, withholding sums without any notices of intention to withhold such sums, failure to release retention sums. Later in the letter we enclose a copy of our referral notice, a statement of claim which should be deemed to be in compliance with section 7, subsection 3 of the Scheme for Construction Contracts and which we shall issue to the adjudicator upon notice of his employment."
3. The scope of the reference is dealt with in the course of the award by the adjudicator, where he makes reference to the specific relief that both parties sought in relation to the adjudication. They are, respectively, one side asking for a sum of the order of £60,000, the other side saying that nothing further is due and, in fact, some £9,000 over-payment should be ordered to be returned.
4. I go to the Scheme itself. Under regulation 20, Adjudicator's Decision:
"The adjudicator shall decide the matters in dispute. He may take into account any other matters which the parties to the dispute agree should be within the scope of the adjudication, or which are matters under the contract which he considers are necessarily connected with the dispute."
5. Regulation 20 goes on to describe what further powers he has in relation to reopening of certificates and the like. Of course, in considering this matter, it is clear from the award that what the parties respectively had asked him to do and the relief that they respectively sought, they submitted to his jurisdiction, and expressly conferred upon him and the jurisdiction to determine what payment, if any was due to each other under that contract.
6. He set out the terms of the contract in the course of his extensive award. He also addressed himself to the norms of the industry:
"Industry norms would have been prescribed and should have been followed. A site measurement to be carried out, settling any disagreement about measurement resolved or at least clearly defined within 48 hours. An application would be submitted by Girt based on Girt's site measurement, which may have been amended and/or agreed before. Fourthly, notice issued by PBL in accordance with section 110 of the principal act certifying the value of the work intended to be included in the valuation, which may be less than Girt's application if agreement was not reached earlier. Retention at 5 per cent, an invoice issued for 95 per cent of certified valuation plus VAT. At 7, a notice issued by PBL in accordance with section 111 of the principal amount of any amounts it intended to withhold from payment, which sum may include contra-charges and set-offs and correction of earlier over-payments."
7. Then, two matters that are relevant to this particular application:
"At 8, presentation by Girt of a valid current CIS4 registration card or CIS6 tax certificate. Ninthly, if a CIS6 was presented, payment in full to Girt of the invoiced amount, less amounts notified earlier in step 7."
8. So far as the provisions in relation to the CIS4 registration card and the CIS6 tax certificate are concerned, I am told, and I accept that these were not matters extensively canvassed in the adjudication, and that neither party, in fact, seems to have had the opportunity to make submissions about the effect of these provisions so held by the adjudicator. On the face of it this may seem to be objectionable.

9. The adjudication award is in the sum of £18,160.66. It is significantly less than the sum claimed, which was of the order of £60,000. That sum of £60,000 was reduced by the adjudicator to a gross sum of £59,000-odd. The difference between that sum, £59,000-odd and £18,160, is accounted for by tax held due to the Revenue. What should happen to that tax, whether it should be paid over for the claimant to account to the Revenue, or be retained by the defendant, depends upon the tax status of the claimant depending upon whether he was in possession of the requisite revenue certificate.
10. It was clearly a matter that exercised the adjudicator. It was clearly a matter upon which the parties were not enabled to assist him. On behalf of the defendant, Mr. Bingham persuasively contends that the adjudicator, albeit conscientiously, went off on a frolic of his own. And since he was, in fact, adjudicating upon matters clearly outside his jurisdiction, this taints and fatally affects his award.
11. It is contended by the claimant that it is indeed unfortunate that a deduction was made in relation to tax because, at the end of the day, the appropriate certificate that would have enabled a gross payment to be made was, in fact, produced and filed with the Revenue. It is contended, that should not affect this application. which is for the net amount. I agree that that submission is well-founded.
12. If anybody has cause to complain that the adjudicator went off on a frolic on his own, albeit with the best of intentions, it is the claimant in this case, because he had no opportunity to address the adjudicator as to the significance of the tax position and to produce a researched argument in relation to that matter. At the end of the day, it is clear that the adjudicator was properly seized of a dispute as to how much was contractually due to the claimant from the defendant at that date. That amount in his award, was found to be £59,371.49. Any prejudice resulting from an arguable breach of natural justice was visited on the claimant who does now seek to impugn this award. There was no arguable prejudice to the defendant.
13. In the award, finally. The Adjudicator says:
"(1) Upon presentation to Page Bentley Limited by Girt Construction of a valid CIS6 tax exemption certificate issued by the Inland Revenue, Page Bentley Limited must forthwith pay to Girt Construction the sum of £53,371.49, together with any Value Added Tax that may be payable in accordance with HM Customs regulations. Or, in the event that Girt Construction presents a valid CIS registration card issued by the Inland Revenue, Page Bentley must forthwith pay to Girt Construction the sum of £18,160 together with any Value Added Tax that may be payable. They must also forthwith pay to Inland Revenue, under reference 79615, the credit of Girt Construction's account, the sum of £35,210.83."
14. The essence of the expressed award is that the adjudicator found a contractual entitlement to £53,371.49, but in the absence of the relevant certificate, the amount then payable was the sum of £18,160.66. That is all they are asking for in this claim. They are clearly entitled to that.

MR. HOBBS appeared on behalf of the CLAIMANT

MR. BINGHAM appeared on behalf of the DEFENDANT