

JUDGMENT : Newcastle Upon Tyne District Registry. TCC. 25th May 2001.

1. The first application is by the Defendants that the Claimant's claim should be struck out as disclosing no cause of action. The application is out of time (14 May 2000), however there is no serious prejudice to the Claimant's. The basis is this: the Defendants say that the contract they made was to pay the fees of the adjudicator, Mr. Gray, and not the Claimant, Faithful and Gould Ltd. The CV shows that Mr. Gray is personally a Chartered Surveyor and qualified to adjudicate. He is also Regional Director of Faithful and Gould Ltd a company which employs a large number of chartered surveyors.
2. The Defendants say that the rules require an adjudicator to be a natural person acting in his personal capacity (see Construction Contracts (Exclusion) Order 1998 Schedule 1, part 4). The reason for this is plain and simple. The role of an adjudicator must be carried out by one person (as opposed to a team, partnership etc), an individual. This work was done by such a person (Mr. Gray) who happens (like many others) to practice in a partnership or limited company who administer his fees and recover them for him I see nothing in the Regulations that requires the Claimant to sue for his fees in any personal/natural capacity. This application is both unattractive and untenable. The application to strike out is dismissed with costs.
3. The second application is by the Claimant for summary judgment on their claim for the fees of the adjudicator Mr. Gray, in the sum of £9,544.29. Before dealing with this, it is in my judgment important to look at the background.
4. The First Defendant, Arcal, are in administrative receivership and the Second and Third Defendants are the Receivers and employees or partners of Messrs Deloitte and Touche. It is worth saying in passing that the Claimants do not allege that Deloitte and Touche should be Defendants as opposed to Messrs Martin and Dawson (very sensibly). Arcal Ltd was in dispute with Admiral Construction Ltd and wished to seek an adjudication claiming the sum of £36,212.13. Reading between the lines, it seems likely that Arcal did not have the funds to pay for such an adjudication and hoped to do so from the proceeds of it.
5. There have been two previous attempts at adjudication and in both Mr. Kevin Hayes was appointed. In the first he completed his adjudication but was not paid and therefore did not deliver it. On the second the Defendants tried to get him to agree to treat his fees as an unsecured claim. He again refused and his appointment was terminated. The full history of this is set out in the statement of Martin Burns Tab 9 which I will not repeat.
6. Given this background, Mr. Gray proceeded with great caution and sought assurances that his fees would be paid personally by the Defendants. The correspondence is set out on Tab 6 and tells its own story. The Defendants never said they would pay and they never said they would not. In effect they agreed to be bound by the Adjudicator's decision. Unhappily that went against them and he did not award anything. He also ordered Arcal to pay his costs. Quite apart from their application to strike out, the Defendants have sought to mount practically every obstacle to this claim that human ingenuity could devise. They have done so without the courtesy of making any statements of truth to the court, and I am bound to agree with the Claimant's observation that it is difficult to see how they could have made such a statement and signed it. Most points are not now pursued, but I will deal with those that were.
7. The first and most substantial point was that Mr. Klein was not the agent of the Second and Third Defendants and thus had no authority to bind them to pay any fees. To be fair to Mr. Goldberg of counsel, this is the only point he advanced with any conviction. Mr. Howard Klein was the Chartered Surveyor appointed by Arcal Ltd. He did make a statement (Tab 13) but was not called and his statement relates solely to the application to strike out. There is effectively no evidence from the Defendants. However there is the correspondence at Tab 6 and from it I am able to conclude that it was Mr. Klein who issued the Notice of Adjudication on behalf of Arcal Ltd (who was in receivership). Mr. Klein in my judgment clearly believed that he was acting as agent for all the Defendants.
8. In so far as there is any suggestion of a distinction between the Defendants, Section 44(1)(b) of the Insolvency Act 1986 puts paid to that, as is confirmed in **Lawson -v- Hosemaster Co Ltd** (1965) J WLR

p1399 (Tab 5). In my view, the correct conclusion of all that correspondence is that the Second and Third Defendants also accepted that Mr. Klein was their agent (see 14, 16 and 19 June 2000). If there was any doubt that there was an agreed agency (in my view there is no doubt) there was certainly agreement by conduct and the Defendants would be estopped from denying the authority of Mr. Klein (see **Brodgen -v- Metropolitan Railway** (1877) LAC 666). Accordingly I reject this submission entirely and the allied points that go with it.

9. I would not wish to depart from this case without saying that I am both surprised and disappointed that a firm of the size, experience and reputation of Deloitte and Touche should have conducted themselves in this way. It does not reflect well upon them. And I hope the matter will be investigated at a very senior level. I give judgment for the Claimants in the sum of £9,544.29 with costs on an indemnity basis which I assess at £8081.50 (CPR Part 44, Rules 3 and 5).