JUDGMENT : **McDougall J** : Equity Division. New South Wales Supreme Court. 22nd July 2004.

1 The issue in these proceedings is whether a determination made on 12 July 2004 ("the Determination") by the first defendant ("Mr Davenport") under the *Building and Construction Industry Security of Payment Act* 1999 (NSW) ("the Act") should be quashed.

2 The plaintiff ("ESSB") and the second defendant ("Lipman") agreed that this issue would be determined in a final hearing. The first defendant, Mr Davenport, has indicated that he is in the process of filing a submitting appearance whereby he submits save as to costs. A copy of his letter to ESSB's solicitors informing them of that fact and enclosing a signed form of submitting appearance is exhibit PX2 in the proceedings. I am satisfied that it is appropriate to determine these proceedings on a final basis without Mr Davenport's participation.

3 ESSB submits that the Determination is vitiated by:
(1) denial of natural justice;
(2) the failure by Mr Davenport to "consider" certain matters, including a relevant provision of the contract and ESSB's submissions thereon (s 22(2)(b), (d) of the Act); and
(3) by way of overall submission, that the payment claim did not comply with s 13(2)(a) of the Act.

The facts

4 ESSB as principal and Lipman as contractor are parties to a contract dated 19 March 2002 ("the contract") for a project known as the NEETA City Shopping Centre Redevelopment. It is accepted that the contract is a construction contract for the purposes of the Act.

5 On about 31 May 2004, Lipman served on ESSB a document purporting to be a payment claim under s 13 of the Act. The claim comprised a number of elements. The total amount claimed was $2,324,815, including GST.

6 On about 15 June 2004, ESSB provided a payment schedule to Lipman. This was done within the time permitted by s 14 of the Act. ESSB admitted liability to pay an amount of $14,393. It is not clear, but does not matter, whether this amount includes or excludes GST.

7 It will be necessary to return to the details of the payment claim and the payment schedule.

8 On 28 June 2004, Lipman made application for an adjudication of its payment claim.

9 On 30 June 2004, Mr Davenport accepted the adjudication appointment.

10 On 5 July 2004, ESSB lodged its adjudication response - within the time permitted by s 20(1) of the Act.

11 On 12 July 2004, Mr Davenport made his Determination. He found that ESSB was liable to pay Lipman an amount totalling $1,096,202, including GST, together with interest from 21 June 2004, and all of the fees of the adjudication.

The payment claim

12 Lipman's claim comprised four elements (this classification of the payment claim takes account of the way that it was refined through the process of payment schedule, adjudication application, adjudication response and determination.)

13 The first element of the claim was for time-related costs referable to a number of extension of time claims. For convenience, I will refer to this as Claim A.

14 The second claim, referred to by the parties as Claim B, was for costs relating to extension of time claim number 9.

15 The third claim, referred to by the parties as Claim C, was for time-related costs relating to an alleged direction of the superintendent under the contract to vary the order of work for, and the handover of, a new car park.

16 The fourth claim, referred to by the parties as Claim D, was for costs relating to extension of time claim number 50.

17 To jump ahead: I note that, for Claim A, Mr Davenport allowed a total of $584,670. For Claim B, he allowed $85,770. For Claim C, he allowed $326,107. (All these amounts are exclusive of GST.) For Claim D, he allowed nothing. Claim D may, therefore, be disregarded for the purposes of these proceedings.

18 Lipman pressed Claim A under clause 36 of the contract. There was some difference as to whether it was pressed under clause 36.2(b) (as ESSB submitted to Mr Davenport), or under clause 36.4(d) (as Lipman submitted to Mr Davenport). It is necessary neither to resolve that dispute nor to set out the terms of those provisions.

19 ESSB said that clause 36 was not applicable; that the only clause giving rise to a claim for time-related costs was clause 34.9; and that clause 34.9 did not apply to Claim A because there was no "compensable cause" as required by that clause.

20 I set out the relevant provisions of clause 34.9 and the provisions relating to the definition of "compensable cause":

*"**1 Interpretation and construction of Contract** …*

***compensable cause** means:*

a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor); or

b) those listed in Item 26; …

34.9 Delay damages

For every day the subject of an EOT for a compensable cause and for which the Contractor gives the Superintendent a claim for delay damages pursuant to subclause 41.1, damages certified by the Superintendent under subclause 41.3 shall be due and payable to the Contractor.

PART A

Annexure to the Australian Standard General Conditions of Contract

AS 4000 – 1997 *…*

26 Delay damages, other compensable causes (page 1, clause 1 and subclause 34.9)

Nil – except for delay damages caused by:

(a) a breach of the Contract by the Principal; or

(b) failure by the Principal in giving possession of the site but only for each working day of delay commencing 60 working days after the date specified in Item 22 of this Annexure Part A."

21 Lipman pressed Claim B under clause 34.9. ESSB agreed that clause 34.9 was properly invoked. It said, however, that the claim was defeated by clause 56. I set out clause 56.3(b), (c) and clause 56.4

"***56.3*** *…*

(b) The Contractor further acknowledges that the Woolworth's [sic] Supermarket operates under Extended Hours. The Contractor agrees that if, during the course of the Works, any tenants, including but not limited to, Woolworths, complain that the carrying out of the Works in any manner is disturbing or otherwise interfering with their trading, then, unless the Superintendent otherwise directs, the Contractor will alter its hours and/or methods of work to minimise disturbance to Woolworths and other tenants. For the purposes of this clause, altering hours of work includes, without limitation working after hours (including after the Extended Hours, if necessary) and altering methods of work includes, without limitation, utilising hand tools rather than power driven tools.

(c) To the extent allowed by law and despite ***clause 20****, the Contractor acknowledges that in supervising and giving directions under this* ***clause 56****, the Superintendent as the agent of the Principal, has the sole discretion to make decisions or give directions in the best interests of the Principal and not necessarily in the best interests of the Contractor. The Contractor agrees to fully comply with the Superintendent's directions and decisions from time to time to enable compliance with this* ***clause 56****.*

56.4 *The Contractor will not be entitled to:*

(a) any EOT under ***clause 34****;*

(b) any delay damages under ***clause 34****; and*

(c) any variation, additional cost or expense under ***clause 36*** *or otherwise, whether under the Contract or at law or in equity,*

in relation to complying with this ***clause 56****."*

22 Lipman pressed Claim C under clause 32. Again, it is not necessary to set out that clause. ESSB said, as with Claim A, that it was only clause 34.9 that gave rise to a claim for time-related costs (which Claim C was); that, again, there was no compensable cause; and, further, that the claim was defeated by clause 56.4.

The adjudication application and adjudication response

23 The issues for Mr Davenport's consideration were relatively clearly defined. That is because Lipman provided him with submissions in support of its adjudication application. Those submissions took the form of a point by point response to ESSB's payment schedule. The relevant part of the payment schedule was set out and answered. Thus, as to any point made by ESSB in its payment schedule, (for example, as to the applicability in fact or law of a particular clause of the contract), it is possible to go to the particular paragraph in response and see precisely the position that Lipman took.

24 As to Claim A, (which, it will be remembered, the parties referred to as the time-related variation costs claim - nomenclature adopted in the Determination), Lipman submitted to Mr Davenport that the claim was not "claimed by the [sic] Lipman pursuant to clause 34.9 of the contract as a "compensable cause" as delays caused by variations are not "compensable causes"."

25 It submitted instead, that the claim was justified by clause 36.4(d).

26 ESSB in its adjudication response, accepted that clause 34.9 did not apply because there was no compensable clause. (So much was common ground - that is the very point that Lipman had made in its payment schedule.) ESSB said, however, that if clause 34.9 did not apply, then there was no other contractual entitlement to the payment.

27 As to Claim B, the parties took the positions defined by the payment claim and the payment schedule. That is to say, Lipman relied on clause 34.9; ESSB accepted that clause 34.9 was in principle applicable; but ESSB said that the claim was answered by clause 56.4.

28 As to Claim C, the parties again took the position as defined by the payment claim and the payment schedule. Lipman stated that the claim was pressed under clause 32. It did not rely on clause 34.9. However, in distinction to its stated position relating to Claim A, Lipman did not explicitly disavow reliance on clause 34.9. At the same time, Lipman did not attempt to refute ESSB's analysis, in the payment schedule, that clause 34.9 was not available because there was no compensable cause. ESSB submitted that clause 34.9 did not apply, because there was no compensable cause; that there was no other source of contractual entitlement; and that, in any event, the claim was answered by clause 56.4.

The Determination

29 Somewhat surprisingly, given the agreed position of the parties, Mr Davenport concluded that Claim A was within clause 34.9.

30 He noted that ESSB *"relies upon an argument that a variation under the contract is not a* ***"compensable cause"*** *within the meaning of clause 34.9 of the contract"*. He appears to have overlooked (or not to have regarded as significant) that Lipman, in its adjudication application, conceded this to be the case. He appears further to have overlooked (or not to have regarded as significant) that Lipman had explicitly disavowed reliance on clause 34.9 as a source of entitlement for Claim A.

31 Mr Davenport then analysed clause 34.9. He concluded that it did apply in the circumstances of Claim A.

32 As to Claim B, Mr Davenport dismissed the clause 56.4 defence. He said: *"I cannot see in clause 56.4 any waiver of the entitlement given by clause 34.9 to delay damages."*

33 As to Claim C, Mr Davenport referred back to his analysis of clause 34.9. Again, he dismissed the clause 56.4 defence. He did this because he was not satisfied that the relevant direction of the superintendent (to reschedule the works) was given under clause 56.

The principles

34 It was not disputed that the Determination of an adjudicator made under the Act is, in principle, amenable to judicial review. The parties accept the relevant principles as stated in:

Abacus Funds Management Ltd v Davenport [2003] NSWSC 935
Musico v Davenport [2003] NSWSC 977
Brodyn Pty Limited v Davenport [2003] NSWSC 1019
Abacus v Davenport [2003] NSWSC 1027
Multiplex Constructions Pty Ltd v Luikens [2003] NSWSC 1140
John Holland Pty Limited v Cardno MBK (NSW) Pty Limited [2004] NSWSC 258.

35 In ***Multiplex***, Palmer J said at [34]:

"34 It seems clear enough that relief will be granted where the adjudicator's determination is the result of jurisdictional error: see ***Musico*** *at paragraphs 42ff. Jurisdictional error will arise where, for example, the adjudicator's decision:*

– was given in bad faith or was procured by fraud;
– was one which the adjudicator had no power under the Act to make;
– was made without complying with the limited requirements of natural justice provided by s.17(5), s.20(1), (2) and (3), s.21(1), s.21(4)(a) and s.18(4) of the Act; and see paragraph 15 above;
– did not deal with the question remitted for adjudication;
– determined a question not remitted for adjudication;
– did not take into account something which the Act required to be taken into account; or
– was based upon something which the Act prohibited from being taken into account.

See generally Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147, at 171."

36 In ***Musico***, I said at [107]-[108]:

"107 If that be Grosvenor's position it is, in my opinion, wrong. It may readily be accepted that the Act provides for a somewhat rough and ready way of assessing a builder's entitlement to progress claims. It may also be accepted that the procedure is intended not only to be swift, but also to be carried out with the minimum amount of formality and expense. Nonetheless, what an adjudicator is required to do is to decide the dispute between the parties. Under the scheme of the Act, that dispute is advanced by the parties through their adjudication application and adjudication response (which, no doubt, will usually incorporate the antecedent payment claim and payment schedule). If an adjudicator is minded to come to a particular determination on a particular ground for which neither party has contended then, in my opinion, the requirements of natural justice require the adjudicator to give the parties notice of that intention so that they may put submissions on it. In my opinion, this is a purpose intended to be served by s 21(4) of the Act (although the functions of s 21(4) may not be limited to this).

108 It follows, in my opinion, that where an adjudicator determines an adjudication application upon a basis that neither party has notified to the other or contended for, and that the adjudicator has not notified to the parties, there is a breach of the fundamental requirement of natural justice that a party to a dispute have "a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it". (See Lord Diplock in O'Reilly at 279.)"

37 The parties accepted that the authorities show (as is demonstrated by the passages to which I have referred) that relief in the nature of prerogative relief may be granted in cases (among other things) of denial of natural justice and of jurisdictional error.

Analysis: Claim A

38 ESSB submitted that there was a denial of natural justice. It relied upon what I said in *Musico* at [107]-[108].

39 ESSB submitted that Mr Davenport had denied it natural justice because he determined Claim A on a basis explicitly disavowed by Lipman and not said by ESSB to be relevant, without giving ESSB notice of his intention so to do. It submitted that he should have availed himself of his power to call for further submissions under s 21(4) of

the Act. (The same facts were relied upon to support alternative arguments but, in view of the conclusion to which I have come, it is not necessary to deal with them separately. They are adequately identified in ESSB's amended summons and written submissions.)

40 Lipman submitted that ESSB had, in fact, dealt with the point. It referred to ESSB's payment schedule, noting that:
(1) ESSB had characterised two claims (claims B and D) as made under clause 34.9;
(2) ESSB had argued at some length that claims A and C could not be justified under the contractual provisions said to support them (clauses 36 and 32, respectively), but could only be justified, if at all, under clause 34.9; and
(3) ESSB had argued that claims A and B did not fall within clause 34.9, because there was no compensable cause.

41 Lipman pointed, further, in submissions to the adjudication application in which, as I have said, clause 34.9 was explicitly disavowed (in relation to Claim A) because there was no compensable cause.

42 Finally, in this context, Lipman pointed in submissions to a number of passages in the adjudication response where ESSB had argued that clause 34.9 was the only relevant clause, but was not available.

43 Accordingly, Lipman submitted, ESSB had, in fact, addressed the clause 34.9 issue and had not been denied procedural fairness. It submitted that, if Mr Davenport had erred in finding that there was a compensable cause (as that expressions is defined by the contract) it was an error within jurisdiction; something that he was as much entitled to get wrong as to get right (to paraphrase the words of Lord Reid in ***Anisminic Ltd v Foreign Compensation Commission*** [1969] 2 AC 147, 171).

44 I do not think that Lipman's submission is correct. The thrust of ESSB's argument in its adjudication response was that the contractual term relied upon by Lipman in support of Claim A did not, in fact, authorise it. It is correct to say that ESSB supported this argument by referring to clause 34.9 as the only source of power. However, it dealt with the inapplicability of clause 34.9 very briefly by saying that, "a variation under the Contract is not listed as a "*compensable cause*"" and that *"a variation ... is (deliberately) not a "**compensable cause**" giving rise to an entitlement to claim delay damages"* (paragraph 29(a)(iv), (v)).

45 It is not surprising, given the explicit attitude of Lipman, that ESSB dealt with the point so briefly.

46 I have no doubt that, if Mr Davenport had notified the parties of his intention to decide Claim A by reference to clause 34.9, ESSB would have dealt with the matter in greater detail. I have no doubt that, among other things, it would have reminded Mr Davenport that (as he appears to have overlooked, or regarded as not significant) Lipman had explicitly disavowed reliance on clause 34.9 and conceded that it was not available.

47 It is correct to say that not every departure from the rules of natural justice will entitle the aggrieved party to relief: ***Stead v State Government Insurance Commission*** (1986) 161 CLR 141. But where the denial of natural justice affects, in a real way, the ability of the aggrieved party to put its case on a particular issue, relief will ordinarily be granted. As the High Court put it in ***Stead*** at 147: "*All that the appellant needed to show was that the denial of natural justice deprived him of the possibility of a successful outcome. In order to negate that possibility, it was, as we have said, necessary for the Full Court to find that a properly conducted trial could not possibly have produced a different result.*"

48 In my judgment, that principle, although stated in terms of Court proceedings, is capable of application directly to the present case. It would have to be demonstrated that, had Mr Davenport raised with the parties his intention to decide Claim A by reference to clause 34.9, the further submissions of the parties (or of ESSB in particular) "could not possibly have produced a different result".

49 Given that it is common ground between the parties that clause 34.9 could not apply because there was no compensable cause, and given that the common position of the parties appears to me to be correct, I do not think that this test could be met. That is because I cannot accept that a reasonable adjudicator in the position of Mr Davenport would continue to hold a view of the contract that both parties would have said was wrong; particularly where, as I have just indicated, I think that their position was correct.

50 I therefore conclude that ESSB has made out its case in relation to Claim A on the basis that it was denied natural justice. It is, accordingly, unnecessary for me to consider ESSB's alternative arguments on Claim A.

51 I add only that the question of natural justice affects both parties. Clearly enough, it affects the party against whom the unheralded argument is deployed. In this case, ESSB was directly affected because it was denied the possibility of a successful outcome on this point. However, the party in whose favour the unheralded argument is deployed is equally affected. That is because that party may be deprived, through the process of judicial review, of the benefit of a determination that it could have sustained on other grounds. This latter point may not be particularly relevant to the present case, because of the view that I have expressed as to the correct basis upon which the parties jointly approached clause 34.9. However, in other cases, it is clear that the position may not be so obvious; and, therefore, that a determination in breach of the rules of natural justice may work injustice on the successful party.

Analysis: Claim B

52 The issue relating to Claim B is whether it was open to Mr Davenport to conclude that clause 56.4 did not apply. ESSB accepts that it was open to him to err, and that if he erred within jurisdiction, relief would not lie. It said,

however, that clause 56.4 was so obviously a complete answer to Claim B, that Mr Davenport's alternative view must mean, necessarily, that he had not "considered" the matter as required by s 22(2)(b) of the Act.

53 I dealt with what is entailed in the obligation to consider something in ***Musico*** at [117] as follows:

> *"117 An obligation to consider something requires "**an active intellectual process directed at that**" thing: **Tickner v Chapman** (1995) 57 FCR 451, 462 (Black CJ); or the application of one's own mind to it by obtaining an understanding of the relevant facts, circumstances and contentions, ibid at 476 (Burchett J); see also at 495 (Kiefel J). In any case where a determination of the issues before an adjudicator depended on the terms of the contract and their effect – i.e., to what obligations, properly construed, did the contract give rise – an adjudicator must necessarily form a view of these issues in the process of deciding the question of entitlement. In any such case, it would be impossible for an adjudicator to come to a view as to the quantification of a party's contractual entitlement without understanding that entitlement."*

54 On the face of the Determination, Mr Davenport did consider the application of clause 56.4. As I have pointed out, he referred to it and gave reasons - admittedly brief - for saying that it had no application. In those circumstances, it is very hard to argue that he did not "consider" the clause and its application to the facts of the case.

55 It may be that, by analogy with the principles of ***Wednesbury*** unreasonableness (***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1948] 1 KB 223), purported consideration of a point by an adjudicator could not be said to satisfy the obligation imposed by s 22(2)(b) or (d) if no reasonable adjudicator, having considered the point, could come to the conclusion that was expressed. However, because I have come to the view that Mr Davenport's conclusion on clause 56.4 can be supported, I do not express this as a concluded opinion.

56 ESSB submitted (to Mr Davenport and to me) that clause 56.4 was invoked because, as clause 56.3(b) contemplated might happen, the relevant delay was caused by the requirements of Woolworths. It relied on a letter of 4 June 2002 that was attachment 7 to the adjudication response. (Indeed, a subsidiary complaint made by ESSB was that Mr Davenport had failed to "***consider***" this document.)

57 I am not certain that the document in question goes as far as it should if ESSB's argument is to be accepted as a matter of fact. However, I am prepared to assume that it does.

58 There was other material, which Mr Davenport could accept if he wished, showing that Woolworths absolutely prohibited Lipman from carrying out work in the relevant area: see paragraph R 10.2 of Lipman's submissions attached to its adjudication application. Lipman submitted that the prohibition of work was conceptually different to the modification (under direction) of the hours or method of work. It submitted, therefore, that it was open to Mr Davenport to conclude, as he did, that clause 56.3(b) had no operation on the facts relevant to Claim B. If it did not, then clause 56.4 could not afford a defence to Claim B.

59 One possible difficulty with this argument is that Mr Davenport did not articulate it as a basis for his conclusion that clause 56.4 did not provide a defence to Claim B. Having said that, however, in my judgment, ESSB's challenge to Claim B fails. I do not think that it can be said, reading the Determination as a whole, that Mr Davenport failed to "consider" the applicability and effect of clause 56.4. If he came to the wrong conclusion (and I make no finding that he did), he was entitled so to do.

60 Further, I think, Lipman's submission should, in principle, be accepted. There was material that would have justified Mr Davenport in reaching the conclusion that he did. Whether or not he relied upon that material, and whether or not that conclusion was "correct", are different matters; but assuming incorrectness (and I make no finding of incorrectness) there is no reviewable error.

61 I do not think that ESSB's subsidiary complaint is made out. ESSB did not, in its adjudication response, refer to the document at tab 7 in connection with Claim B. It referred to it only in connection with Claim D. If ESSB did not think it worthwhile to draw the document to Mr Davenport's attention in connection with Claim B, I am unable to see how he can be said to have erred (which, in any event, is not shown) if he failed to "consider" the document in the context of Claim B.

Analysis: Claim C

62 For the reasons that I have given in relation to Claim A, I think that ESSB's challenge, on the ground of denial of natural justice, is made out. The situation is not quite as clear, in that Lipman did not, in relation to Claim C, explicitly disavow reliance on clause 34.9. However, the only asserted basis of the claim was clause 32. ESSB did not submit that Claim C could be supported under clause 34.9. It said, again, that there was no compensable cause to invoke the operation of clause 34.9. On no reading of the adjudication application (particularly in light of what was said in relation to Claim A on this point) could Lipman be seen to be taking an opposing view.

63 In the circumstances, it is unnecessary for me to consider ESSB's alternative arguments.

Analysis: The section 13(2)(a) issue

64 ESSB took the point, both in its payment schedule and in the adjudication response, that the payment claim was lacking in sufficient detail to comply with the requirement of s 13(2)(a), that a payment claim must relevantly identify the construction work to which it relates. This was so, ESSB said, because the construction work was identified merely by a number of line items (although, as I have indicated, the claim was supported by detailed submissions).

65 ESSB submitted that Mr Davenport had failed to "consider" this point because, it contended, he did not give the point "proper consideration" (see paragraph 12(v) of the contentions in its amended summons).

66 Mr Davenport did, in fact, refer to the submissions. He concluded that Lipman's payment claim *"contained information such that [ESSB] was able to and did meaningfully respond in the payment schedule"* and that ESSB "*clearly understood the nature and details of the claim"*.

67 A reading of ESSB's payment schedule and adjudication response supports that reasoning.

68 However, ESSB submitted, Mr Davenport rejected Claim D because (as he said in the Determination) he was not satisfied by Lipman's material that it had shown an entitlement to the amount claimed. Accordingly, he said, "there is insufficient information to enable me to determine any other amount".

69 In my judgment, that reasoning shows no inconsistency, let alone error (and let alone jurisdictional error). Mr Davenport was not satisfied that the asserted claim - which, presumably he was able to understand - was made out. The insufficiency of information related to any possible alternative entitlement. There is nothing in the language of the requirement in s 13(2)(a) to identify the relevant construction work that would require information of the kind that Mr Davenport referred to as being, in substance, available.

70 There is no basis shown upon which I could conclude that Mr Davenport failed to "consider" this submission as required by s 22(2)(d) of the Act.

Discretion

71 The grant of relief in the nature of prerogative relief is discretionary. See ***Multiplex*** at [94]. See also ***Brodyn Pty Ltd v Davenport*** [2004] NSWSC 254 and ***ACA v Sullivan; Austruc v ACA*** [2004] NSWSC 304.

72 In the present case, ESSB has succeeded on two of its challenges, but failed on the third. The challenges (leaving aside the s 13(1)(a) point) were to individual items within the Determination, not to the Determination overall. There is but one Determination. If I were to quash that Determination, Lipman would be deprived of the benefit of the entire Determination, including that portion which, as I have found, is not affected by reviewable error.

73 In the present case, if I were to grant relief, it would be on condition that ESSB pay Lipman the unaffected amount of the Determination ($85,770), together with interest thereon from 21 June 2004, in accordance with the Determination. If ESSB is not prepared to accept this condition then, in the exercise of my discretion, I would withhold relief.

74 ESSB, through its solicitor, has indicated that, in principle, it is prepared to accept the condition. In the circumstances, I think that the appropriate way to resolve the proceedings is to stand them over for an appropriate period of time, upon continuation of the present interlocutory regime, so that the amount in question can be paid. I should make it clear that, just as Lipman should be no worse off by way of the manner in which the Determination has been undermined, neither should ESSB be worse off by reason of the condition upon which relief is granted. Clearly, any payment by Lipman would be on terms that, among other things, it could be "***allowed for***" in accordance with s 32(3)(a) of the Act in any subsequent and final proceedings in relation to this contract.

75 The only orders that I make at this stage are:

(1) I continue, up until the making of final orders in these proceedings, or the further order of the Court, the orders made on 21 July 2004 and continued on 22 July 2004.

(2) I stand the proceedings over to 9.30 am on Tuesday, 27 July 2004 for the making of final orders.

(3) I give the parties leave to approach on short notice.

R.J. Cheney – Plaintiff instructed by Holding Redlich
1st Defendant - Submitting Appearance
S. Goldstein - Second Defendant instructed by Cowley Hearne