Knapman R.J. Ltd. v Richards [2006] Adj.L.R. 10/12

JUDGMENT : JUDGE PETER COULSON QC : TCC. 12th October 2006

Introduction

1. This is an application by the Claimant contractors to enforce an Adjudicator's decision in their favour in the sum of £19,339.93p, together with interest accruing from the date of the Adjudicator's decision on the 7 August 2006. The application is opposed by the Defendants on two grounds. First, it is said that the Claimant is seeking to enforce part of the decision and to repudiate the rest. Second, it is submitted that the Defendants have a legitimate set-off arising out of the Adjudicator's decision which extinguishes the claim.

2. Despite the relatively modest sum at stake, I have been furnished with one very full lever arch file for this morning's hearing, lengthy skeleton arguments and copies of a number of authorities. Although there is a considerable amount of material before me, with the assistance of Counsel, I have concluded that the issues for me to decide are relatively straightforward. They are:

   i) Is the Claimant seeking to enforce the parts of the Adjudicator's decision that it likes, whilst at the same time seeking to repudiate other parts that it does not like and, if so, is that a reason not to enforce the decision?

   ii) Does it follow logically from the Adjudicator's decision that the Defendants are entitled to a particular sum by way of liquidated damages which could then be set-off against the sums found by the Adjudicator to be due to the Claimant?

The Contract.

3. By a contract dated the 24 September 2004, the Defendants engaged the Claimant to build two detached houses at Broadlands House, Bascombe Road, Churston, in Devon. The completion date was the 16 September 2005. The architect was Mr Graham Thursfield. The contract incorporated the JCT Intermediate Form.

4. There were provisions at clauses 2.3 to 2.5 of the Form which allowed for extensions to the contract completion date of the 16 September 2005. Clauses 2.6 and 2.7 provided as follows:

   "Certificate of non-completion

   2.6 If the contractor fails to complete the works by the date for completion or within any extended time fixed under clause 2.3 then the architect/the contract administrator shall issue a certificate to that effect.

   In the event of an extension of time being made after the issue of such a certificate such making shall cancel that certificate and the architect/the contract administrator shall issue such further certificate under this clause as may be necessary.

   Liquidated damages for non-completion

   2.7 Provided:

   - the architect/the contract administrator has issued a certificate under clause 2.6 and

   - the employer has informed the contractor in writing before the date of the final certificate that he may require payment of or may withhold or deduct liquidated and ascertained damages

   the employer may not later than five days before the final date for payment of the debt due under the final certificate either

   2.7.1. require in writing the contractor to pay to the employer liquidated and ascertained damages at the rate stated in the appendix for the period during which the work shall remain or remain incomplete and may recover the same as a debt or

   2.7.2 give a notice pursuant to clause 4.2.3(b) or clause 4.6.1.3 that he will deduct liquidated damages at the rate stated in the appendix for the period during which the work shall remain or had remained incomplete".

   The liquidated damages figure in the appendix to the contract was £200 a day.

5. The adjudication provisions of the JCT Form are set out in clause 9A. It is unnecessary for me to set out all of those detailed provisions here. However, clauses 9A.7.1 to 9A.7.3 are important. They provided as follows:

   Effect of Adjudicator's decision

   9A.7.1 The decision of the Adjudicator shall be binding on the parties until the dispute or difference is finally determined by arbitration or by legal proceedings or by an agreement in writing between the parties made after the decision of the Adjudicator has been given.

   9A.7.2 The parties shall without prejudice to their other rights under this contract comply with the decision of the Adjudicator and the employer and the contractor shall ensure that the decision of the Adjudicator is given effect.

   9A.7.3 If either party does not comply with the decision of the Adjudicator the other party shall be entitled to take legal proceedings to secure such compliance pending any final determination of the referred dispute or difference pursuant to clause 9A.7.1.

The Adjudicator's Decision

6. The notice of intention to refer a dispute to adjudication was served by the Claimant on 4 July 2006. In it the Claimant sought a variety of declarations to the effect that:

a) The Defendants were responsible for the supply of windows and doors;
b) Practical completion was achieved on 29 April 2006;
c) The Claimant was entitled to an extension of time of 30 weeks from 16 September 2005 to 29 April 2006;
d) The Claimant was entitled to the repayment of the sum of £41,600 deducted by the Defendants by way of liquidated damages.

It follows from this that the only money claim in the adjudication was the return of the liquidated damages said to have been wrongfully deducted.

7. In the event in his decision of 7 August 2006 the Adjudicator rejected much of this claim. He found, contrary to the Claimant's case, that it was the Claimant who was responsible for the supply of windows of doors. He also found that this element of the work was unsatisfactory and incomplete. He found, again contrary to the Claimant's case, that practical completion had never been achieved and, therefore, significant works remained outstanding. In addition, he found that the Claimant was only entitled to an extension of time of 13 weeks until 9 December 2005.

8. The sum of £19,339.93p which the Adjudicator decided should be repaid by the Defendants to the Claimant was calculated as follows:

13 weeks x 7 days x £200 liquidated damages per day = £18,200

Interest from 9 December 2005 to 7 August 2006 = £1,139.93

Those two sums added together are £19,339.93p and that is that sum which the Claimant now seeks to enforce.

Events after the Decision

9. On 9 August, the Defendants' solicitors, a firm in which the First Defendant is a partner, wrote to the Claimant's solicitors in the following terms:

"We refer to the Adjudicator's decision dated 7 August 2006 and received on 8 August 2006.

The Adjudicator decided at 10 that the works are not practically complete as at 7 August 2006. Your client is some 8 months late in completing the works. Accordingly, our client is entitled to continue to deduct liquidated damages from sums becoming due. Accordingly, we calculate that your client's obligation to pay liquidated and ascertained damages from 9 December to the date of the Adjudicator's decision is 241 days at £200 per day i.e., £48,200. We have already deducted £44,800. This allows for the Adjudicator's decision and his award to your client.

In accordance to the exception allowed in relation to the compliance with Adjudicator's decisions where the consequence of the decision is that further liquidated damages are due to the employer, we intend to set-off these further liquidated and ascertained damages from the Adjudicator's decision.

In our calculation, after the further liquidated damages have been set off against this decision, you are indebted to us in the sum of (balance of LDs) please send your cheque made payable to £3,400 by return."

10. On the same date the Defendants' solicitors sent the Claimant a notice of default under clause 7.21 of the contract. The specified defaults were:

"7.2.1(a) You have unreasonably suspended the work since 24.05.06 when the drains were remedied. This was the last time a labour force of any significance attended the site.

7.2.1(b) You have failed to proceed regularly and diligently with the work since 24.5.06.

7.2.1(c) You have neglected to comply with supervising officer's instruction number SO4 removal of defective work under clause 3.14.1.

As you are aware, it has been shown that you are responsible for completing the work so please reply by Monday 14 August 2006 setting out your proposals for the completion of the contract."

11. The Claimant's solicitor replied on 14 August. I will not set out the entire letter because it is lengthy. The letter recorded the fact that the Claimant maintained that it was not responsible for the supply of the external doors and windows and that practical completion had been achieved. It went on to say this:

"However, and without prejudice to our client's position as set out above and in the adjudication proceeding, it is prepared to assist the employer in resolving the matter of the alleged defective external door and window frames. By reference to the instruction number SO4 issued by you on 14 June 2006 we understand that you are of the opinion that the said frames should be constructed by incorporation of mortice and tenon joints. The specification and drawings forming part of the contract documents are silent on the matter of the type of joints to be utilised. Furthermore it was you who provided the details and documentation to architectural craftsmen resulting in their quotation of 18 July 2005 which was subsequently accepted by you. We invite you to produce a copy of all the documentation you provided to architectural craftsmen resulting in their quotation of 18 July 2005.

To the best of our client's knowledge and belief there is no British Standard or Code of Practice that states that oak door and window frames should incorporate a mortice and tenon joint. We invite you to produce all of the evidence that you rely on in support of your position that the external doors and window frames should incorporate mortice and tenon joints. Furthermore we would ask you to make reference to those parts of the contract documents where our client has an obligation to supply the said frames incorporating a mortice and tenon joint.

Upon you producing the information and document mentioned in the last two paragraphs then our client will put forward proposals in respect of remedial works, but strictly on the basis that it is without prejudice to its position as adopted in the adjudication proceedings."

12. Amongst the documents with which I have been provided is a statement by the First Defendant. He refers to that letter of 14 August and says in his statement:

"15 This [the reply of 14 August] was unacceptable to us as it did not address the true nature of the defective windows and as the Claimant's obligation was to comply with the decision and that they were bound by the decision until the dispute is finally determined. The best that can be said of their letter of 14 August was that they merely offered to assist the employer in resolving the defects and would reinvestigate matters. This was far from being bound by the decision of complying with the decision. They were in effect saying that they do not accept the Adjudicator's decision and would investigate for themselves and decide for themselves whether the findings of the Adjudicator are acceptable to them. The Claimant totally ignored the point that there were no longer alleged defects but defects had been found by an Adjudicator to exist...

17 By this stage the Claimant was some 8 months late even allowing for the extension of time that the Adjudicator had granted (against an original 12 month contract period). We expected the Claimant to accept the decision and set about completing the work as quickly as possible so that the works could be certified as practically complete and we could commence phase 2 which was to fit out the shelves that the Claimant was to build...

20 We took the view that Ashfords letter of 14 August demonstrated that the Claimant was not going to take seriously the position he now found himself in and was not going to comply with the parts of the Adjudicator's decision that were adverse to his wishes. We could either put up with their refusal to perform and accept their assistance or we could treat their refusal to perform seriously. Given all the delays that had gone on before and given that the works were 8 months late on the Adjudicator's determination of the extension of time we decided that it was time to act on the Claimant's unacceptable refusal to accept the Adjudicator's decisions.

21 Accordingly, on 24 August we wrote to the Claimant and terminated their employment, see the letter appended RR8, and alternatively terminated the contract because their refusal to comply with the Adjudicator's decision was a fundamental breach of contract."

13. It follows from all this that there is (and will continue to be) a major dispute between the parties as to contractual responsibility for the windows and doors and the circumstances in which the contract came to an end. As I have indicated, however, the application before me is limited to the enforcement of the money part of the Adjudicator's decision. That is resisted by the Defendant on the grounds previously identified. I look first at the relevant principles to be deduced from the authorities and then go on to consider those two issues.

Principles

14. The general principle is that Adjudicators' decisions must be enforced. In the classic statement of principle by Dyson J. (as he then was) in ***Macob Civil Engineering Ltd v. Morrison Construction Ltd*** [1999] B.L.R. 93, paragraph 24, he said:

"The intention of Parliament in enacting the Act was plain. It was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional interim basis, and requiring the decisions of adjudicators to be enforced pending the final determination of disputes by adjudication, litigation or agreement."

15. This approach as been re-stated in a number of later cases many of which are concerned with the increasingly creative ways in which a party who fails to succeed in adjudication endeavours to resist enforcement. Perhaps the clearest recent statement of the general principle can be found in the judgment of the Court of Appeal (Chadwick LJ) in ***Carillion Construction Limited v Devonport Royal Dockyard Limited*** [2005] EWCA Civ 1358 at paragraphs 85 to 87. The material parts read as follows:

"85. The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator. The courts should give no encouragement to the approach adopted by DML in the present case; which (contrary to DML's outline submissions, to which we have referred in paragraph 66 of this judgment) may, indeed, aptly be described as 'simply scrabbling around to find some argument, however tenuous, to resist payment'.

86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels 'excess of jurisdiction' or 'breach of natural justice'...

87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position."

16. There have been a number of cases in which the question of a set-off against an Adjudicator's decision has been considered: see, for example, ***VHE Construction plc v RBSTB Trust Co Ltd*** [2000] B.L.R. 187; ***David McLean Housing (Contractors) Limited v Swansea Housing Association Limited*** [2002] B.L.R. 125; ***Ferson Contractors -v- Levolux AT Limited*** [2003] B.L.R. 118 and ***Balfour Beatty Construction -v Serco Limited*** [2004] EWHC 3336 (TCC). ***Ferson*** was

a decision of the Court of Appeal, where the issue concerned whether the Adjudicator's decision overrode specific contract terms. Mantell LJ said:

*"30 But to my mind the answer to this appeal is the straight forward one provided by Judge Wilcox. The intended purpose of s.108 is plain. It is explained in those cases to which I have referred in an earlier part of this judgment. If Mr Collings and His Honour Judge Thornton [in **Bovis Lend Lease v Triangle Developments** [2003] BLR 31] are right, that purpose would be defeated. The contract must be construed so as to give effect to the intention of Parliament rather than to defeat it. If that cannot be achieved by way of construction, then the offending clause must be struck down."*

17. *In **Balfour Beatty** Jackson J said, having reviewed a number of the authorities:*

"53 I derive two principles of law from the authorities, which are relevant for present purposes.

a. Where it follows logically from an adjudicator's decision that the employer is entitled to recover a specific sum by way of liquidated and ascertained damages, then the employer may set off that sum against monies payable to the contractor pursuant to the adjudicator's decision, provided that the employer has given proper notice (insofar as required).

b. Where the entitlement to liquidated and ascertained damages has not been determined either expressly or impliedly by the adjudicator's decision, then the question whether the employer is entitled to set off liquidated and ascertained damages against sums awarded by the adjudicator will depend upon the terms of the contract and the circumstances of the case."

18. More recently still, Ramsey J, in ***William Verry Limited v The Mayor and Burgesses of the London Borough of Camden*** [2006] EWHC 761 (TCC) set out those principles again. He also went on to say:

*"28 Whilst on the facts of **Ferson -v- Levolux** paragraph 30 might be argued to be obiter, the Court of Appeal set out in clear terms the principle which applies to the implementation of the intention of Parliament. It is that principle which I intend to follow in approaching the two issues which arise in this case. In my judgment, the effect of those statutory provisions and of the passages in **Levolux** is generally to exclude a right of set-off from an adjudicator's decision...*

29 The particular issue of whether liquidated damages can be deducted when the adjudicator's decision deals with extensions of time but does not deal with the consequential effect on an undisputed or indisputable claim for liquidated damages raises, I consider, a distinct question of the manner and extent of compliance with the adjudicator's decision. It does not, in my judgment, raise a question as to the ability to set-off sums generally against an adjudicator's decision."

19. I approach the two issues in this case respectfully adopting the principles set out by Jackson J in ***Balfour Beatty*** and Ramsey J in ***William Verry***.

Issue 1 : Is the Claimant seeking to enforce those parts of the Adjudicator's decision that it likes, whilst at the same time seeking to repudiate other parts which it does not like and, if so, is that a reason not to enforce any part of the Adjudicator's decision?

20. The Defendants say that, by commencing these proceedings but by refusing to accept the Adjudicator's decision in respect of, for example, the Claimant's responsibility for windows and doors, the Claimant is seeking to take the benefit and avoid the burden of the decision. It is asserted by Mr Collie on behalf of the Defendants that "this Court should not enforce a quarter of an Adjudicator's decision whilst at the same time allowing the Claimant to repudiate half of the decision".

21. Mr Collie said, by reference to the doctrine of approbation and reprobation, that the Claimant could not reprobate the part of the decision but seemed to approbate another part of it. He relied on the line of cases which include ***Shimuzu Europe Ltd. v Automajor Limited*** [2002] B.L.R. 113 and (in particular) ***R Durtnell & Sons Limited v Kaduna Limited*** [2003] B.L.R. 225. In those cases a party who accepted and/or relied upon the decision of an Adjudicator at one point was prevented at a later stage from changing its mind and objecting to the Adjudicator's jurisdiction. The principle is essentially one of estoppel.

22. Mr Collie fairly accepted that there was no authority for the precise proposition that he advanced, namely that a party cannot be entitled to seek to enforce one part of an Adjudicator's decision if that same party has demonstrated an unwillingness to be bound by some other part of that same decision. In my judgment it is not easy to shoehorn the ***Durtnell*** principle into a case of this sort. After all, this is a case where the Claimant is actually seeking to enforce the money element of the Adjudicator's decision. There is no suggestion from either side of any jurisdictional issue at all. Therefore the principal point in ***Durtnell*** and the other cases simply does not arise.

23. Notwithstanding Mr Collie's full submissions on this point, I have concluded that this is not the sort of case where the approbation/reprobation principle is relevant or applicable. If he is right and the Claimant is in breach of its contractual obligation to comply with the Adjudicator's decision, then the Defendants have an immediate remedy. The remedy is provided by clause 9A.7.3 of the contract (paragraph 5 above) which allows the Defendants to take legal proceedings to secure compliance pending any final determination. I do not consider that it is appropriate, where the contract provides the Defendants with a remedy to meet the very complaint that they make, to deprive the Claimant of its entitlement (pursuant to that same adjudication decision) to sums by way of

liquidated damages which the Adjudicator found had been wrongfully deducted. Merely because there is a possible claim under clause 9A.7.3 accruing to the Defendants, which has not yet been quantified, should not mean that this Court declines to enforce the decision of an Adjudicator.

24. I do accept Mr Collie's submission that the Adjudicator's decision must be read as obliging the Claimant to supply and install the doors and windows. Whilst it is true, as Mr Collings pointed out, that the Adjudicator does not expressly say that that is what the Claimant must do, it seems to me that it is implicit in his decision (that the supply of doors and windows was part of the Claimant's contractual obligations) that the Claimant was obliged in consequence to supply those doors and windows and install them in a proper fashion, and that their failure to do so was, and would continue to be, a breach of contract. I also accept that it is at least arguable that, in their letter of 14 August 2006, the Claimant was showing a reluctance to comply with that part of the Adjudicator's decision. On any view, there is a less than enthusiastic embrace of the Adjudicator's decision on that point. But, for the reasons I have given, the existence of an arguable case as to a possible breach of contract by the Claimant, and/or a possible claim accruing to the Defendants under clause 9A.7.3, should not deprive the Claimant of the money awarded by the Adjudicator. Not to enforce the decision on this ground would, in my judgment, be contrary to the principles in ***Macob*** and ***Carillion***.

25. It is often the case that, if an Adjudicator deals with underlying contractual rights, such as the contractual liability for a particular element of the work, or extensions of time, there will be no immediate financial consequence of that decision, although such consequences may become apparent thereafter once the decision is complied with or not complied with. This case is no different. The only slight complication here is that there is also a money sum found to be due by the Adjudicator to the Claimant. In my judgment, arguments about the possible failure to comply with one part of the decision do not affect both parties' obligation to comply with all parts of the decision including, in this instance, the award of the money sum. Compliance and non-compliance are merely easier to identify if the Adjudicator decides on a sum of money rather than a declaration as to contractual rights.

26. For all those reasons, therefore, I respectfully reject Mr Collie's suggestion that by enforcing the decision I am in some way allowing the Claimant to act outside the contract or to repudiate a part of the Adjudicator's decision. The Claimant may be found to have failed to have complied with that decision, and that would be a matter which, as I have said, would give rise to a claim, amongst other things, under clause 9A.7.3, but it is not in my judgment a matter that is relevant or appropriate to consider on an enforcement application of this kind.

Issue 2: Does it follow logically from the Adjudicator's decision that the Defendants are entitled to a particular sum by way of liquidated damages which could then be set-off against the sums due?

27. This issue is framed by the first point of principle set out in the judgment of Jackson J in ***Balfour Beatty*** (paragraph 17 above). If it follows logically from the adjudicator's decision that a sum is due to the Defendants by way of liquidated damages then the Defendants can set off that sum. If there is no such logical consequence, there is no entitlement to set-off.

28. I have concluded, for three separate reasons, that it is not the logical consequence of the Adjudicator's decision that the Defendants can recover liquidated damages. I deal with each reason briefly below:

a) Exhaustive review of delay

29. In my judgment the Adjudicator did not carry out an exhaustive review of delaying factors and the overall entitlement on the part of the Claimant to an extension of time. Indeed, I consider that this is a point that the Adjudicator himself makes. At paragraph 4.01 of his decision he says:

"Having dealt with the points at issue I shall now reach my findings on the Referring Party's claim for an extension of time due to being delayed by the Responding Party. In this adjudication the Referring Party claimed that they were delayed for three reasons. During the course of the adjudication it became apparent that there were other heads of the claim from the Referring Party for an extension of time. However, as these did not form part of the Referring Party's referral notice, I have not dealt with them here."

He then goes on to set out the three delaying factors which he considered.

30. Accordingly, if the Adjudicator's decision does not address whether or not the Claimant is entitled to an extension of time for reasons other than the three he specifically identified, it cannot be said that his decision should be treated as if it had concluded that (other than the specific extension of time he awarded) the Claimant had no entitlement to any extension of time. That, however, is the effect of the Defendants' submissions. The Defendants say that, because only 13 weeks' extension of time has been awarded, it logically follows that the Claimant is liable for liquidated damages for the whole of the remaining period. But it does not so follow, because the Adjudicator expressly said that he had not considered any reasons for delay other than the three he expressly identified.

31. On behalf of the Defendants, Mr Collie's helpful skeleton argument endeavoured to deal with the passage at paragraph 4.1 of the Adjudicator's decision. In so doing I believe that Mr Collie only succeeded in demonstrating how and why the extension of time decision was not based upon a comprehensive review of all delaying factors. Mr Collie, in his skeleton, picks up the paragraph 4.01 reference and then makes the point that this arose out of a witness statement of Mr Thursfield which dealt with other extensions of time, or potential extensions of time, amounting to a further three weeks and one day. Mr Collie makes the point that this period of three weeks and one day was not included in the extension granted by the Adjudicator, but that the Claimant had not thought to

correct that decision. Mr Collie says that even if an extra extension of three weeks and one day was taken into account, it was still the case that the Claimant owed the Defendant more liquidated damages than were to be repaid.

32. In other words, Mr Collie is himself submitting that it is at least arguable that the decision was not a complete review of all the delaying matters, but saying that these other matters only resulted, at most, to a further extension of three weeks and one day. In my judgment, on an application of this sort, that can only confirm my conclusion that, because the Adjudicator did not embark on an exhaustive review of all delaying factors, it would be quite wrong and unfair for this Court to treat his decision as if it was such a review.

b) Not within the claims made

33. Secondly, it is plain to me that the Claimant's claim in the adjudication did not include a claim for any extension of time after 30 April 2006. In the adjudication, the Claimant said that practical completion was achieved on 30 April. The Claimant had no alternative claim before the Adjudicator to the effect that, if they were wrong about Practical Completion, they were entitled to an extension of time beyond that date. Thus again, it seems to me clear that the Adjudicator was not dealing with any full extension claim in the adjudication. The Court cannot therefore conclude that it logically follows from the Adjudicator's decision that the Claimant is not entitled to an extension of time after 30 April, when it was not even a matter that was formulated for the Adjudicator to consider.

c) No Clause 2.6 Certificate

34. The third reason why I consider that an entitlement to liquidated damages does not follow from the Adjudicator's decision concerns the absence of a clause 2.6 certificate. The Defendants' entitlement to deduct liquidated damages is dependent on such a certificate. It is a condition precedent to the deduction of liquidated damages (see paragraph 4 above). Following the Adjudicator's decision as to an extension of time based on the three delaying factors only, if the contract administrator had considered it appropriate, he could have issued a clause 2.6 certificate. He has not done so. It seems to me, therefore, that there is no entitlement on the part of the Defendant to deduct liquidated damages, because there is no certificate.

35. It is said by the Defendants that there is no need for such a certificate because the Adjudicator clearly took all relevant matters into account in deciding that the extension of time should go up to 9 December, so that, effectively, the Adjudicator's decision is itself the equivalent of a clause 2.6 certificate. But the decision does not purport to be any such thing. No claim was made to the Adjudicator for a declaration that a clause 2.6 certificate should be issued or a declaration that, after a particular date, the Defendant was entitled to deduct liquidated damages. The Adjudicator makes no mention in his decision of clause 2.6 or a certificate prepared under that provision. Indeed, one asks rhetorically how the decision could be the equivalent of a clause 2.6 certificate when the Adjudicator expressly said that he had not considered all matters relating to delay?

36. The interplay between Adjudicators' decisions and the existing contract machinery is not always easy and it can give rise to difficulties. In my judgment the Court should, as a rule, not assume that the parties have abandoned any part of the existing contract machinery unless it can be demonstrated that the Adjudicator has expressly been asked to do something, or decide something which, under the contract, would normally be the responsibility of either one of the parties or the contract administrator. Here, as I have said, neither party asked the Adjudicator to deal with any point under clause 2.6. Nor is such a request clearly implicit. Indeed, it is plain that, if the Adjudicator had been asked to declare the contents of a clause 2.6 certificate he would have declined to do so, for the very reason set out in paragraph 4.01 of his decision, namely that he had not undertaken a full review of all the delaying matters.

d) Summary as to Issue 2

37. For all these reasons I conclude that the Adjudicator did not reach any definitive conclusion as to the full extension of time due to the Claimant. No specific entitlement to liquidated damages follows logically from the Adjudicator's decision. I note in passing that this was precisely the same result in ***Balfour Beatty v Serco*** (see paragraph 54 of the judgment of Jackson J).

Conclusion

38. There is nothing which would or could prevent judgment from being entered in the sum awarded by the Adjudicator of £19,339.93p. All debates concerning delays, repudiation and the like can be dealt with either by an Adjudicator or by the Court or an Arbitrator, depending on which method of dispute resolution the parties choose. The Claimant is entitled to judgment for the sum sought. In the absence of an application to stay, the judgment sum will be payable, together with interest, within 14 days.

Mr Nicholas Collings (instructed by Ashfords, Exeter) for the Claimant

Mr Peter Collie (instructed by Roger Richards, Paignton) for the Defendants