

ADJUDICATION CASE SUMMARIES Q



LAST UPDATED 24th OCTOBER 2006

Quality Street Properties Ltd v Elmwood [2002] ScotCS 258/2002 S

This case concerned concurrent adjudication and litigation actions. The court held that the commencement of court action, without a mutual waiver of the statutory right to adjudicate, leaves the other party with the right to adjudicate in the interim period, irrespective of which action was commenced first.

Macob v Morrison (1999) BLR 93. *Shepherd v Mecright* 2000 BLR 489. *Fastrack v Morrison* 2000 BLR 168 considered.

Sheriff Principal Edward F Bowen QC. 8th February 2002.

Quarmby Construction Co Ltd v Larraby Land Ltd [2003] Adj.C.S. 04/14

The employer was seeking damages for delay against the main contractor. In July 2001 the parties reached an agreement about this matter in correspondence. On 20th July 2001, the contractor wrote as follows:

"We were extremely disappointed to receive your notice of adjudication dated 13th July 2001, particularly as you had indicated that you wished to resolve our differences without the need for proceedings. As you are well aware, there are a number of live issues between us, not least your refusal to honour valuation no. 12. However, for purely commercial reasons only, we are prepared to pay you the sum of £43,196.85 in full and final settlement of your claims relating to liquidated and ascertained damages under the contract. The sum is calculated as the difference between your claim for £60,000 offset against outstanding interim certificate no. 12, in the sum of £14,300.55 plus VAT, i.e. £16,803.15.

This payment will not constitute an admission that these sums are due and owing to Larraby Land Limited, nor that Quarmby Construction Company Limited waives its rights to challenge certificates issued by the Architect."

The employer replied on 23rd July, accepting that offer. Subsequently, the contractor applied for a further extension of time, which the architect refused. The contractor referred this matter to adjudication. The adjudicator held that the contractor's claim was not barred by the agreement of 2001, and he awarded an extension of time. The contractor then brought proceedings to enforce the adjudicator's award and recover liquidated damages which it had paid to the employer.

His Honour Judge Grenfell gave judgment for the contractor. Judge Grenfell's reasoning may be summarised as follows:

- (1) Despite Judge Lloyd's reasoning in *Shepherd*, section 108 of the Construction Act should not be construed unduly restrictively. Furthermore, *Shepherd* should be distinguished on its facts from the instant case.
- (2) The adjudicator was correct to consider whether the parties' dispute had been compromised by the July correspondence.
- (3) Nevertheless, the compromise issue went to the adjudicator's jurisdiction. Therefore, the court had to consider that same issue again, before enforcing the adjudicator's decision.
- (4) On the facts, the contractor's present claim for extension of time had not been compromised by the July agreement.

In *Quarmby* the second agreement was a stand alone agreement, which did not incorporate and was not subject to any adjudication provision. Accordingly, the court analysed the second agreement in order to determine whether there was a surviving dispute which could be adjudicated.

HHJ Grenfell. Leeds Technology and Construction Court 14th April 2003

Quietfield Ltd v Vascroft Contractors Ltd [2006] All E R (D) 17

A contractor unsuccessfully submitted a dispute regarding Extensions of Time (EOT) to adjudication because the certifying architect under a JCT 1998 had failed to deal with an application for an EOT. Relying upon the outcome of this first adjudication, the Claimant employer successfully submitted a Liquidated Damages Claim (LAD) dispute to adjudication. A defence of entitlement to EOT's was rejected by the adjudicator on the basis that this matter had already been the subject of and settled by a prior adjudication. The claimant here sought enforcement of the second adjudication. Enforcement was refused because the

NADR ADJUDICATION CASES SUMMARIES

grounds for the EOT were new and distinct from those considered at the first adjudication. The second adjudicator should thus have given them proper consideration before reaching his decision.

Emcor Drake & Scull v Costain [2004]; David McLean v Albany [2005]; William Verry v Furlong [2005] considered.

His Honour Mr Justice Jackson. TCC. 2nd February 2006.