



## LEGAL BRIEFING

### *Majorboom Ltd v National House Building Council* [2008] EWHC 2672 (TCC), Mr Justice Coulson

#### **The Facts**

This case concerns an application by the claimant, Majorboom Ltd, for permission to appeal under section 69 of the Arbitration Act 1996 on several questions of law arising from an arbitrator's award.

Majorboom Ltd developed a property in Manchester by converting it into flats. Following completion of the flats a company, Stonebridge House Management Company Limited ("SHMC"), was set up to manage the property. Mr Angel, a director of Majorboom Ltd, was also a director of SHMC as well as a third company, Invoke, who owned one of the newly developed flats. Defects arose and the defendant, National House Building Council ("NHBC"), held Majorboom Ltd liable. In an arbitration between the parties, Majorboom Ltd contended that notices were not given during the Initial Guarantee Period in respect of the alleged defects, in accordance with Rule 27 of the NHBC rules, and that therefore they were not liable.

In a preliminary hearing before the arbitrator, the crucial issue arose as to whether or not the nature of Mr Angel's duties and obligations in his various roles as director in the separate companies overlapped and whether such notices received by one company might be regarded as being received by another company. The arbitrator concluded that Mr Angel was in a position where he knew and/or should have known about the allegations and notices of defects to the property. He therefore had actual or constructive notice of the defects in writing and accordingly the notices fell within Rule 27.

Majorboom Ltd applied for permission to appeal against that decision under section 69(3) of the Arbitration Act 1996. To succeed it would need to satisfy the court, pursuant to section 69(3) of the Arbitration Act 1996, that:

- (i) the determination of the questions raised would substantially affect the rights of one or more of the parties;
- (ii) the question was one which the tribunal was asked to determine;
- (iii) on the basis of the findings of fact in the award, the decision of the tribunal was obviously wrong or the question was one of general public importance and the decision of the tribunal is at least open to serious doubt; and
- (iv) it was just and proper for the court to determine the question.

#### **The Issues**

- (i) Whether the claimant, as a director of SHMC, had actual, constructive or imputed knowledge of written notices of defects from the owners of the flats to SHMC;
- (ii) Whether the claimant was actually or constructively notified to the same extent as SHMC or its managing agent; and
- (iii) Whether such actual, constructive or imputed knowledge can encompass a letter from SHMC's managing agent.

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### ***The Decision***

Mr Justice Coulson held that the issues raised by Majorboom Ltd were principally matters of fact. They were not questions of law which could be appealed to the court under section 69 and, to the extent that the issues raised were properly described as matters of law, they were not matters of general public importance. Further, the Judge rejected the suggestion that the duties and rights of a person who is a director of more than one company at the same time is a point of law of general interest. Again, he held that such issues are generally entirely dependent on the facts.

It was also held that the Arbitrator was probably right in reaching the conclusion as to the 'deemed knowledge' of Mr Angel regarding the notices and that his decision was:

an appropriate and fair conclusion to be drawn from the material which he set out in his Award. This is not a case in which it could be said that the Arbitrator's Award encompassed some sort of glaring injustice.

Accordingly, Mr Justice Coulson refused the application for permission to appeal as the issues were not points of law and, in any event, the arbitrator was not obviously wrong.

### ***Comment***

With his judgment in this case, Mr Justice Coulson reinforces the general rule that courts try to uphold arbitral awards (*Zermalt Holdings SA v Nu-Life* [1985] 2 EGLR 14). Parties therefore need to look carefully at their alleged questions of law in applications for permission to appeal and ensure that they fall within the ambit of section 69(3) of the Arbitration Act 1996. Applications should not "have the effect of dressing up findings of fact as an issue of pure law."

Stacy Sinclair  
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