



LEGAL BRIEFING

Michael John Construction Limited v St Peter's Rugby Football Club

TCC, HHJ Wilcox [2007] EWHC 1857

The Facts

In October 2003, St Peter's Rugby Football Club, occupiers of a clubhouse and sports field in Cardiff, engaged Michael John Construction (MJC) under a JCT IFC 1998 contract. The Club required that their site be cleared of the former clubhouse in order for it to be sold to developers. The work reached practical completion in August 2004. Problems arose regarding payment of the contractor's invoices. MJC referred the dispute to adjudication in May 2005.

Unable to distinguish the true identity of the Employer, an unincorporated Football Club, MJC served the Adjudication Notice on the current trustee, Mr. Matthews, 'on behalf of St Peter's RFC'. The Adjudicator awarded £92,571 plus interest and costs in favour of MJC.

In August 2005 it was then disclosed during the Part 24 enforcement proceedings that the true trustees at the time the contract was entered into were Mr. Golledge, Mr. Childs, and Mr. Carpanini. A second adjudication was then commenced between MJC and the three original trustees, including Mr. Matthews as the signatory. The adjudicator again made an award in favour of the contractor. When the Part 24 application came before the court, HHJ Coulson QC ruled against the defendant (see *Michael John Construction Ltd v Golledge & Ors* [2006] EWHC 71, TCC, 27 January 2006). Both the three original trustees and their agent Mr. Matthews (Director of Development and signatory at the time of the contract) were held to be personally liable.

The Issue

The Club then served a Notice of Arbitration on MJC in the name of 'St Peter's RFC'. It was not accepted by the claimant as a valid notice since it did not reflect the findings of the enforcement action. During the arbitration, the arbitrator permitted further evidence that had not been put before the court or the adjudicators, and determined that the identity of the parties who concluded the construction contract was in fact Mr Matthews on behalf of himself and the Club. The claimant appealed under s67 of the Arbitration Act 1996.

The Decision

When determining the preliminary issue which arose as to the effect of the judgment in the enforcement proceeding, HHJ Wilcox stated that the arbitrator was misled when he acceded to the defendants' submission that any determination in enforcement proceedings in the High Court was provisional. He stated that:

"The arbitrator was wrong in law to ignore the judgment as to the issue of parties and furthermore failed to consider whether or not there were exceptional circumstances warranting the adducing of further evidence. Had he done so, he could not have failed to conclude that the evidence now relied upon could, with reasonable diligence, have been adduced before the

enforcement court...”

The appeal was allowed and the court determined that there was no arbitration agreement between MJC and Mr Matthews as representative of the Club. The respondent was to pay the costs of the claimant of the arbitration and of the preliminary issue.

Comment

This case is interesting because the arbitrator found that he was bound by the decision of the court. The usual position would be, where a contract includes an arbitration clause, that the parties may adjudicate (if the contract provides for adjudication or is caught by the Housing Grants Act) and then disputes could be finally resolved in arbitration.

There were 2 adjudications here, and then an enforcement in the Technology and Construction Court. The Judge had to make a decision as to the identity of the defendant in order to deal with the enforcement. In the subsequent arbitration, it was not therefore possible to deal with all of the issues “afresh”. A binding decision had been made by the court as to the identity of the defendant, and the arbitrator was bound by that decision.

Nicholas Gould
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