



LEGAL BRIEFING

Rok Building Ltd v Celtic Composting Systems Ltd (No. 2) [2010] EWHC 66 (TCC), Mr Justice Akenhead

The Facts

In the second adjudication between the parties in relation to the same contract Rok, the subcontractor, argued that it had completed its works on 8 June 2009. Celtic, the main contractor, argued that completion had not been achieved at all. The decision as to when, and if, completion had occurred had a financial impact as, if Rok was right, Celtic was required to release half of the retention monies (calculated at 3 per cent of the value of work done from time to time). The issue also determined, at least in the short term, the extent to which Celtic was entitled to liquidated damages for delay.

The adjudicator issued his decision which, in summary, found that the work had reached completion on 8 June 2009 as argued by Rok, that accordingly Celtic should have released the first moiety of retention and that liquidated damages were only deductible up until the date of completion.

Upon receipt of the adjudicator's decision, Celtic immediately emailed the adjudicator asking him to correct it. There were several clear "slip rule" amendments included in the list to the effect that the adjudicator had misnamed Celtic as Rok. However, Celtic also invited the adjudicator to open up a payment certificate arguing that, if Certificate Number 15 was revised to take into account the adjudicator's decision, little or no net sum would be due to Rok let alone interest.

Clause 28 of the CIC Model Adjudication Procedure 4th Edition (which was applicable here) provided that:

"The Adjudicator may, within 5 days of delivery of the decision to the Parties, correct his decision so as to remove any error arising from an accidental error or omission or to clarify or remove any ambiguity".

On this basis the adjudicator amended the two clerical errors highlighted. However he refused to go beyond this as he regarded the remaining points as going to the "heart of my Decision".

Celtic refused to pay any monies to Rok and, on enforcement, argued that the adjudicator had acted in breach of the rules of natural justice and should have corrected his errors using the slip rule.

The Issue

The most interesting issue for adjudication practitioners was the question as to whether the adjudicator had applied the slip rule correctly.

The Decision

Mr Justice Akenhead held that the adjudicator had applied the slip rule correctly and fairly for the following reasons:

- (i) Clause 28 of the Adjudication Procedure provides the adjudicator with the discretion to correct his decision to "remove any error arising from an accidental error or omission" or to "clarify or remove any ambiguity". He does not have a right to correct, reconsider or redraft substantial parts of his decision and in effect change his mind on material points of principle;

-
- (ii) It must be the adjudicator who is, and was here, best placed to determine whether there really was an “accidental error or omission”;
 - (iii) As there was no ambiguity in his decision, and indeed this was not argued by Celtic, it was unnecessary for the Judge to consider the second part of Clause 28;
 - (iv) Insofar as the adjudicator was invited in effect to re-visit his decision on the facts, the law or the merits, there was nothing obviously accidental in what the adjudicator had decided;
 - (v) Given the complex calculations provided to the adjudicator prior to his decision, which were described as “less than comprehensible”, it was perhaps not surprising that Celtic considered he had got the calculation wrong. However, Celtic could not avoid payment pursuant to an adjudication decision by revising certificates after the decision was issued; and
 - (vi) It was simply not arguable to say that the adjudicator acted unfairly or contrary to the rules of natural justice in refusing to correct as requested by Celtic.

The decision was enforced.

Comment

This judgment provides useful guidance to practitioners as to the scope of the slip rule in circumstances where an adjudicator refuses to implement it. A clear distinction must be drawn between correcting a decision so as to “remove any error arising from accidental error or omission” and wholly reconsidering and redrafting substantive parts of a decision.

Claire King
May 2010
