



LEGAL BRIEFING

Fitzroy Robinson Ltd v Mentmore Towers Ltd and others: application to adjourn a trial [2009] EWHC 3070 (TCC), Mr Justice Coulson

The Facts

In July 2009, Mr Justice Coulson decided on the liability issues in this case. A 4 day quantum hearing was then set to start on 07 December 2009, with a Pre Trial Review on 20 November 2009. The day before the Pre Trial Review, the defendants indicated to the court (for the first time) that they wished to adjourn the trial.

The fundamental issue with the application to adjourn the trial was that the experts had failed to meet and prepare a joint statement as directed by the court. The defendants' expert had no instructions to take part in any such meeting, and had not been involved since the defendants' pleading had been submitted back in September 2009. The dates for submission of pleadings, disclosure and witness statements had also slipped as a result of the parties' conduct.

During the course of his preparations for the Pre Trial Review, and counsel's submissions during that hearing, it became apparent to Mr Justice Coulson that there were very few authorities dealing with an 'ordinary' application to adjourn a trial. He therefore agreed to provide written reasons for his decision.

The Issue

What are the relevant principles to be applied in a case where the adjournment was said to be necessitated by the parties' failure to comply with the earlier directions of the court, and this non-compliance was said to make a fair trial difficult, if not impossible?

The Decision

Mr Justice Coulson refused the defendant's application to adjourn the trial. He held that when considering a contested application at the 11th hour to adjourn the trial, a court should have specific regard to:

- (i) The parties' conduct and the reason for the delays;
- (ii) The extent to which the consequences of the delays can be overcome before the trial;
- (iii) The extent to which a fair trial may have been jeopardised by the delays;
- (iv) Specific matters affecting the trial, such as illness of a critical witness and the like; and
- (v) The consequences of an adjournment for the claimant, the defendant, and the court.

The defendants' conduct was a significant factor in this case. First, they had failed to instruct their expert to prepare for the trial in accordance with the court's directions. Secondly, the defendants had alleged that the delay in expert evidence may make a proper trial impossible. However, they were unable to give adequate reasons or analysis in support of this allegation.

The defendants also stated that the reason the dates had slipped was because the parties had been negotiating and attempting to settle the case. Mr Justice Coulson did not

accept this as a good reason for failing to comply with court orders. The expectation is that parties should always be trying to resolve their dispute, even when preparing for trial. Furthermore, he pointed out that at the beginning of liability hearing, nearly 7 months ago, he had expressed his surprise that no attempt to mediate had taken place. Since then, the parties have had a considerable amount of time in which to attempt mediation prior to the quantum hearing; however, they failed to do so.

In order to overcome the parties' delays, Mr Justice Coulson moved the trial back by one week, allowing the experts a further week to consider the issues and prepare a joint statement. He held that the quantum trial had not been jeopardised by the delays, and there was no risk of an unfair trial. Both parties would be on an equal footing during the limited time for preparation of the expert evidence.

Mr Justice Coulson concluded by referring to the popularity of adjudication:

"it demonstrates that the absence of what Dyson LJ once called "the grinding detail" inherent in the traditional approach to the resolution of construction disputes does not mean that the outcome of a broader-based assessment is regarded by the participants as any the less satisfactory or fair."

Comment

A party should carefully consider its conduct leading up to the trial prior to submitting an application for adjournment of the trial. If the court directions have not been complied with, causing delay to the pre-trial procedures, the court most certainly will take this into when assessing the appropriateness of adjournment.

Stacy Sinclair
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