

Insights

THIRD TIME'S A CHARM: CAN A SINGLE DISPUTE INCLUDE MULTIPLE SUB-ISSUES IN ADJUDICATION?

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“Quick and dirty” is not a phrase that we usually associate with dispute resolution. However, as many construction practitioners will know, *adjudication* provides an exception.

Speed has its benefits but it rarely makes things simple. As our colleague, Ravinder, explained in her *blog*, adjudication is not always a straightforward process. Many disputes involve multiple, complex issues. This creates fertile ground for challenge, and adjudicators find themselves engaged with *jurisdictional arguments* more often than not.

One such argument is whether the issues referred to adjudication comprise one or multiple disputes. Our blog focuses on the courts' approach to this question in the recent case of *Quadro Services Ltd v Creagh Concrete Products Ltd*.

WHAT HAPPENED?

Quadro entered into an oral agreement with Creagh to provide construction labour. The agreement was a construction contract for the purposes of the *Construction Act 1996*. In the absence of express adjudication wording, the *Scheme for Construction Contracts* applied. Under the Scheme, and in contrast with some standard form contracts, the adjudicator cannot determine more than one “dispute” at a time without the parties' consent.

What followed will be a familiar story to many: Quadro raised applications for payment and Creagh failed to issue any pay less notices in response.

At issue were three applications raised between July and October 2020. Quadro's applications were cumulative in nature, meaning that each application requested payment for the full value of work completed, minus the previous applications for payment. The applications remained unpaid by Creagh and a dispute arose. Quadro referred the dispute to adjudication, seeking payment of £40,026 plus interest. The Referral Notice made clear that the:

“dispute concerns [Quadro's] entitlement to payment of £40,026 (including VAT) in respect of agreed invoices dated 24 July 2020, 27 August 2020 and 12 October 2020.”

Creagh challenged the adjudicator's jurisdiction to determine more than one dispute at a time without the parties' consent. Creagh argued that Quadro had referred three disputes, because:

"Each application, its validity, whether a pay less notice was issued and the sums due in terms of that application is a separate dispute."

The adjudicator engaged with but dismissed Creagh's jurisdictional challenge and awarded Quadro the full sums claimed. Creagh refused to pay, so Quadro issued proceedings to enforce the adjudicator's award.

JUDGMENT

The sole issue before the court was whether Creagh's jurisdictional challenge had a real prospect of success. To succeed, Creagh would have to persuade the court that Quadro referred three disputes to adjudication, not one. Both parties' submissions relied on the decision in *Witney Town Council v Beam Construction (Cheltenham) Ltd*, which provides well-established guidance on what is meant by "*a dispute*".

Quadro argued that *Witney Town* makes clear that a single dispute can involve sub-issues. Creagh submitted that if claims can be individually decided, then there is a strong indication of multiple disputes. This, Creagh argued, follows on from the "useful if not invariable rule of thumb" (*paragraph 38(vii)*). In short, if one claim cannot be decided without reference to another it points to there being only one dispute.

Creagh's case was that each payment notice could be decided without reference to the other and, as such, there were three disputes. To support its argument, Creagh relied on the decision in *Deluxe Art & Theme Ltd v Beck Interiors Ltd*, where Coulson J, as he was then, applied *Witney Town*. In that case, it was found that a dispute about retention was separate from one concerning extensions of time and loss and expense.

Watson J disagreed with Creagh's interpretation of the authorities and enforced the adjudicator's award. In the judge's opinion, *Deluxe Art v Beck* did not mean that "if it is possible for issues to be decided independently, they cannot form sub-issues to a wider dispute...". Further, and unlike the present case, *Deluxe Art v Beck* concerned different disputes, described in different terms, and raised in separate adjudication notices.

In addition, Watson J agreed with the decision made in *Prater Ltd v John Sisk & Son (Holdings) Ltd*, where Veronique Buehrlen QC, sitting as a judge, said:

"I do not read Akenhead J's guidance in the Witney case as meaning that unless each claim cannot be decided without deciding all or part of the other claims, each claim constitutes a separate dispute. Clearly a single dispute in the context of a construction contract may include several distinct issues..."

Finally, Watson J said that to allow Creagh's arguments would put parties to significant costs and inconvenience when trying to recover a single claimed balance. This would be contrary to the "efficient, swift and cost-effective" principles underpinning adjudication.

KEY TAKEAWAYS

In our view, the judgment is unsurprising. Succeeding on narrow, technical challenges to jurisdiction is not easy. In the present case, and where the Scheme applies, Watson J's decision is a helpful reminder to parties considering a jurisdictional challenge on the ground of multiple disputes that:

- One dispute can include numerous sub-issues.
- These sub-issues might be capable of independent determination from one another.
- Whether they are sub-issues or separate disputes is a question of fact.
- It is important to consider the fundamental principles of adjudication when determining the scope of a dispute.

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