

Insights

DARCHEM V BOUYGUES - ADJUDICATION BY AN INDIVIDUAL JOINT VENTURE PARTY

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SUMMARY

In this article, first published in PLC Construction, James Clarke and Adam Wade-Baylis consider the judgment in *Darchem Engineering Ltd v Bouygues Travaux Publics and another [2026] EWHC 220 (TCC)*.

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The Technology and Construction Court (TCC) has refused to enforce an adjudicator's decision on the basis that, on the proper construction of a contract, the claimant, as one of two participants in an unincorporated joint venture, was not a "Party" and so could not commence adjudication proceedings unilaterally in its own name.

BACKGROUND

The claimant, Darchem Engineering Ltd (Darchem), sought to enforce an adjudicator's decision for payment of £23.9 million by way of summary judgment, with the underlying dispute concerning the sub-contractor's claims against the main contractor. The contractor was an unincorporated joint venture of Bouygues Travaux Publics and Laing O'Rourke Construction Ltd, known as BYLOR. The sub-contractor was another unincorporated joint venture of Darchem and Framatome Limited (formerly Efinor Ltd) known as EDEL. The works under the sub-contract included the procurement, off-site manufacture, pre-fabrication, factory testing, delivery, pre-assembly, installation and testing of stainless-steel pools, pits and tanks for the Hinkley Point C nuclear power station.

Three adjudications, the third of which was subject to enforcement proceedings in the TCC, were brought by Darchem alone, with Darchem stating it was:

"acting jointly and severally as the Subcontractor in accordance with the Agreement and clause 12.6 of the Subcontract."

In each adjudication, BYLOR challenged the adjudicator's jurisdiction on the basis that Darchem was not a "Party" to the sub-contract and was not entitled to refer disputes to adjudication, although this challenge was rejected by the adjudicator.

The key issue for the TCC was whether Darchem satisfied the definition of "Party" as agreed in the sub-contract. Under the dispute resolution clause, any Party could refer a dispute to adjudication. If Darchem satisfied this definition, the adjudicator would have jurisdiction.

For more information about jurisdiction and enforcement, see [Practice notes, Adjudication: jurisdiction of the adjudicator](#) and [Practice note, Adjudication: enforcing the adjudicator's decision](#).

THE SUB-CONTRACT

The first page of the sub-contract identified the agreement as being made between, on the one hand, Bouygues and Laing O'Rourke (acting jointly and severally as the "Contractor"), and on the other, Darchem and Efinor Limited (acting jointly and severally as the "Subcontractor"), with all of the above together known as the "Parties".

Clause 12.6 provided that if "the Subcontractor comprises two or more companies acting in joint venture", each entity is jointly and severally liable to the contractor for the performance of the sub-contract works and all obligations. The clause also included a mechanism whereby the constituent companies of the EDEL joint venture could notify the contractor of their leader. If such notice was given, the leader would have authority to bind the sub-contractor and each of the constituent companies. The sub-contract also provided that, in the absence of notification, the contractor had discretion to rely upon each company as having authority to bind the sub-contractor and each of them.

THE CLAIM

Darchem asserted that it fell within the definition of a "Party" for the purposes of the dispute resolution clause. This contention was based mainly on Darchem being named as one of the four separate companies identified as the "Parties" to the sub-contract, with Darchem suggesting this conveyed an objective intention for each constituent company to be a separate party. Moreover, Darchem relied on the sub-contract specifying that Efinor/Framatome, acting jointly and severally with Darchem, was defined as the "Subcontractor". Darchem argued this clause gave unilateral and automatic entitlement to act severally in relation to the dispute resolution clause.

BYLOR put forward an alternative construction. It relied on clause 11.2(11) of the sub-contract, which explicitly defined "Parties" as "the Contractor and the Subcontractor". BYLOR argued this was the definition to be followed as Article 1 of the sub-contract stipulated that words and expressions shall have the meanings assigned to them in the conditions of sub-contract. BYLOR also argued that the overall drafting of the sub-contract indicated the parties intended a bilateral, rather than

multilateral, agreement. Accordingly, only the sub-contractor (comprising both constituent members of the joint venture) was entitled to refer a dispute to adjudication.

JUDGMENT

Mr Justice Constable held that Darchem was not a "Party" to the sub-contract in its own right and so could not refer the dispute to adjudication on behalf of the EDEL joint venture.

The Court gave several reasons for this:

- The sub-contract was drafted in a manner objectively consistent with a bilateral agreement, rather than one between four parties (that is, all individual constituent members of the BYLOR and EDEL joint ventures).
- There were numerous references to the singular, "either", "both" and "the other" in the context of the "Parties".
- Where a party was intended to be recognised individually, the sub-contract expressly provided for that. Specifically, where a constituent company suffered winding up, administration, liquidation and so on, the sub-contract provided that "a reference to that Party in this clause is deemed to be a reference to each such company individually". In contrast, there was no equivalent wording in the dispute resolution clause.

The Court then addressed Darchem's contention that, on the basis that all four constituent companies are defined under the sub-contract as being together known as the "Parties", each constituent company may be a separate "Party". However, the court found that it was "both linguistically and conceptually coherent to construe the wording as meaning simply that all of the entities named, together, are the constituent parts of the (two) Parties", namely the contractor and the sub-contractor. In the alternative, Darchem contended that clause 11.2(11), which provided that "The Parties are the Contractor and the Subcontractor" rendered the contractor and sub-contractor as additional "Parties". The Court rejected this on the basis that "the parties cannot credibly be taken to have intended to create six 'Parties' ". The linguistic markers in the contract and the absence of contractual guidance on this point were held to make this construction impossible.

The sub-contract included a process whereby a constituent company could be the nominated leader of the EDEL joint venture and could bind the sub-contractor and its members. No notification was given in this case. Moreover, BYLOR did not use its right to treat a constituent company of EDEL as having the authority to bind the sub-contractor. Therefore, Darchem had no entitlement to act unilaterally on behalf of the joint venture. Accordingly, "acting jointly and severally" was held to be no more than a reference to the fact that:

- Efinor/Framatone and Darchem acted together as the sub-contractor.

- Their liability to BYLOR was joint and several.

For these reasons, Darchem was not a "Party" under the sub-contract, and the application for summary judgment was rejected.

PRACTICAL IMPLICATIONS

This case is a useful reminder of the issues that can arise when companies in an unincorporated joint venture wish to allow one company to act on behalf of the joint venture. In the context of contractual dispute resolution clauses, if the intention is to allow each company in the joint venture to initiate proceedings independently, this must be expressly provided for in the contract. Simply stating that the constituent companies are acting jointly and severally, or are jointly and severally liable, is not enough. The court will usually treat the joint venture itself as the only "party" that can bring a claim (that is, by all constituent parties participating). To avoid this outcome, the contract must clearly define each company as a separate "party" and, crucially, treat them as such throughout the contract.

This case also stresses the importance of consistency in contractual drafting. The Court placed significant weight on the broader drafting of the sub-contract as being consistent with a bilateral agreement between the two joint ventures, rather than an agreement between the four constituent entities. Any clause conferring rights on a constituent company of a joint venture to act unilaterally must be clear and specific to be a deeming provision.

Another question arising from this decision, which was not addressed in the judgment, concerns whether a dispute resolution clause that restricts the right of constituent companies in a joint venture from referring disputes to adjudication is compatible with section 108 of the Housing Grants, Construction and Regeneration Act 1996 (Construction Act 1996). It was noted at paragraph 14 of the judgment that:

"Although Mr Buckingham KC makes analogous reference to section 108 [Construction Act] 1996 he does not contend that if Darchem falls outside the contractual definition of "Party" for the purposes of [the dispute resolution clause], the contract is non-compliant and Darchem nevertheless had a right to have brought an adjudication in any event pursuant to the Scheme".

Section 108 provides a mandatory statutory right for "a party to a construction contract" to refer a dispute arising under the contract for adjudication and is traditionally enforced by the courts in a strict and literal manner. However, the Court's interpretation of a party to the construction contract in this case may be considered restrictive, as it essentially prevents constituent companies of joint ventures from referring a dispute to adjudication unilaterally on behalf of the joint venture. That would be consistent with the treatment of unincorporated joint ventures in other dispute resolution forums, not least arbitration.

Although possible through careful drafting, the consequences of allowing a constituent company to refer disputes to adjudication unilaterally and in its own name must be considered. As the judgment emphasised, allowing the constituent companies of a joint venture to do this may lead to procedural ambiguity and absurd results, and potentially lead to disputes arising between the two (or more) participants under the joint venture agreement. Here, the Court considered that the failure to provide procedural safeguards in the sub-contract to "prevent the potential chaos of the situation", alongside the lack of a clear definition of "Party" was an indication that this was not the intended outcome.

For more information, see:

- [*Legal update, Joint venture member not a "Party" to the contract and cannot bring adjudication in own name \(TCC\).*](#)
- Practice notes:
 - [*Joint ventures: overview.*](#)
 - [*Contracts: interpretation.*](#)
 - [*Adjudication: section 108 and adjudication procedures: Party to a construction contract.*](#)

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