

Construction Law Update

Challenges to Enforcement: No Breach of Natural Justice

This is the latest dispute between Vinci Construction UK Ltd (“Vinci”) and Beumer Group UK Ltd (“Beumer”) to arise out of a Sub-Contract concerning development works at Gatwick Airport. In this case, Beumer sought to resist enforcement of an adjudicator’s decision alleging breach of natural justice.

Background

In 2012 Vinci engaged Beumer to carry out Sub-Contract Works to the baggage handling system at the South Terminal of Gatwick Airport. The Sub-Contract was based on the NEC Engineering and Construction Sub-Contract (3rd Edition) with bespoke amendments. The Sub-Contract provided for Sections and liquidated damages for each section in differing amounts.

Following a Court judgment in its favour as to the enforceability of the liquidated damages provisions, Vinci issued a Payment Certificate setting out its entitlement to £9.6m of liquidated damages arising out of Beumer’s delay in completing the Sub-Contract Works. Beumer denied Vinci’s entitlement to liquidated damages and refused to pay. The dispute that followed was the 7th adjudication arising under the Sub-Contract and the 4th in which Mr Eggleston was appointed as the Adjudicator. In his decision (the “Decision”), Mr Eggleston found that Vinci was entitled to the payment of £9.6m plus interest. When Beumer did not pay, Vinci applied for summary judgment to enforce the Decision.

Beumer challenged enforcement on the following 3 arguments:

- i. The Adjudicator made findings which were inconsistent with findings made in previous adjudications and came to a conclusion on a matter which had already been decided.

- ii. The Adjudicator did not give any or any adequate reasons for the Decision.
- iii. The Adjudicator did not disclose or order Vinci to disclose material from a previous adjudication (between Vinci and another sub-contractor) which would have demonstrated inconsistency in Vinci’s position.

Inconsistent decisions

Beumer argued that the Decision was inconsistent with the Adjudicator’s Decisions in Adjudications 4 and Adjudication 6. However, it was held that all the Adjudicator had decided previously was the determination of monetary compensation claims in respect of Contractor’s Instructions and he had not been asked to determine claims for extensions of time. In Adjudication 7, the issues concerned Beumer’s claims for extensions of time based on Compensation Events. Therefore, there was no inconsistency.

Failure to provide proper reasons

Beumer’s second argument was that the Adjudicator failed to provide proper reasons for the Decision. The Court quickly dismissed this argument stating there was no difficulty in discerning the Adjudicator’s reasoning for his Decision. The extension of time claims were time barred and would have failed in any event for lack of supporting evidence.

Failure to disclose documents

Beumer also submitted that there had been a breach of natural justice because it had not been provided with documents from an earlier adjudication between Vinci and another contractor which it believed would demonstrate Vinci was advancing an argument inconsistent with its previous position. The Court rejected this argument stating that the Adjudicator did

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not order disclosure of the relevant documents because he had not been requested to do so and material was not provided which would have required him to order such disclosure or to resign. Further, Beumer had not requested that the Adjudicator order Vinci to disclose the documents in any of the 3 prior disputes referred to Mr Eggleston.

All 3 of Beumer's challenges to enforcement were dismissed and the Court ordered summary judgment in favour of Vinci.

Analysis

In this Judgment, the Court stressed that Adjudicator's Decisions will be enforced regardless of errors of fact and/ or law by the Adjudicator. A breach of natural justice may occur if the Adjudicator has been biased, failed to act impartially or there is a procedural irregularity. However, these are difficult obstacles to overcome. Should a party seek to challenge enforcement for a breach of natural justice, it must be the plainest of case.

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