

Construction Law Update

Will the TCC Interfere in Ongoing Adjudications?

In the case of *Billingford Holdings Ltd & BFL Trade Ltd v SMC Building Solutions Ltd and another* [2019], the court rejected an urgent application for injunctive relief attempting to prevent an adjudicator and the other party to an adjudication from continuing with an ongoing adjudication.

Background

Billingford Holdings Ltd and BFL Trade Ltd (the “Applicants”) argued that Mr Dight, an RICs appointed adjudicator, lacked jurisdiction and injunctive relief was justified because “*the issues [were] so very clear it would be wrong for the court to allow the adjudication to run if there was no prospect of it reaching a binding decision*”.

The judge stated that although the TCC had jurisdiction to do so, it was only in *extremely* rare cases that it would use its powers to interfere with an ongoing adjudication, by either an injunction or an equivalent Part 8 declaration.

Instead, challenges to an adjudicator’s jurisdiction and other ‘*quibbles*’ should be taken up in enforcement proceedings to prevent disruption and delay to an adjudication’s short time-frame.

Postponement pending a substantive hearing?

The judge also declined the Applicants’ secondary request to suspend the adjudication pending the substantive hearing of the application for interim relief (which was not heard here due to the application being issued and served less than 24 hours earlier) as this would have effectively granted an extension of time and interfered with the adjudicator’s control of the procedure and timetable.

‘Extremely rare cases’

In declining the Applicants’ requests, the judge relied upon the judgment in *Dorchester Hotel v Vivid Interiors*, which held that the TCC’s jurisdiction to grant injunctive Part 8 declarations/injunctions should be

‘*exercised very sparingly*’ and stated that ‘*it will only be appropriate in rare cases for the TCC to intervene in an ongoing adjudication... Applications of this sort will be very much the exception rather than the rule.*’

The jurisdictional arguments put forward in this case were described as ‘*entirely run of the mill*’ and therefore not compelling enough to fall within the exception to the rule. The judge stressed the decision in *Dorchester* remained the key authority which had not been diluted in the decade since it was handed down.

Analysis

This case reaffirms the TCC’s reluctance to interfere with the adjudication process and highlights that an applicant’s arguments for injunctive relief would need to be particularly unique in order to persuade the court to disturb an adjudicator’s control during an ongoing adjudication.

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