



Broad justice is natural in adjudication: court rejects defence based on alleged procedural unfairness

In *Home Group Ltd v MPS Housing Ltd* [2023], the TCC rejected a defendant's submission that there had been a breach of natural justice by reason of it allegedly being unable to digest and respond to extensive material served in an adjudication.

Background

Home Group Limited (“**HG**”) engaged MPS Housing Limited (“**MPS**”) under a JCT Measured Term Contract for maintenance and repair works (the “**Works**”) to some of HG’s properties in the South-East of England (the “**Contract**”).

On 11 May 2022, MPS purported to terminate the Contract. HG asserted that MPS’s purported termination was a repudiation of the Contract and referred the validity of the termination to adjudication. By a decision dated 25 November 2022, an adjudicator found that the purported termination was invalid and that MPS had repudiated the Contract.

By a letter dated 23 December 2022, HG requested payment from MPS of c.£8.3m plus VAT by 6 January 2023 otherwise it would take action to recover its losses. The letter gave no more than a high-level breakdown of how the c.£8.3m sum had been calculated and no supporting documentation was provided.

By a letter dated 4 January 2023, MPS contended that HG had not provided the information or level of detail required to allow MPS to respond to the claim. In response HG suggested using a sampling method based on a random 5% of the orders HG had placed with third parties for the Works under the Contract.

MPS was invited to attend HG’s offices to review available evidence in relation to the agreed sample (the “**Sampling Method**”). MPS did not agree to the Sampling Method and instead requested a spreadsheet which showed a minimum of eight categories of information for each individual work order.

On 10 February 2023, HG provided MPS with a draft quantum expert report of 155 pages with 76 appendices, which comprised 202 files in 11 sub-folders, amounting to 338 megabytes of data (the “**Draft Report**”). MPS indicated it would need until 19 May 2023 to provide a response. HG refused to permit such an extended period, to which MPS contended that “*it was impossible for us to commence a meaningful review*” without the extension. On 28 February 2023, HG repeated its previous offer for MPS to attend the HG office to access its various systems and review its evidence. At no time did MPS take HG up on this offer.

The Second Adjudication

On 13 March 2023, HG referred the matter to adjudication to recover its alleged losses. The referral included a formal version of the Draft Report previously provided. MPS had 13 working days to produce its response to the referral. On 15 March 2023, MPS raised jurisdictional challenges, namely, that no dispute had crystallised and that the case was too large and/or complicated to be suitable for adjudication. On 16 March 2023, the adjudicator, Mr Pye, reached a non-binding view that he had jurisdiction. By a decision dated 28 April 2023, the adjudicator concluded that MPS was liable to HG in the sum of c.£6.6m plus interest and 85% of his fee (the “**Second Adjudication Decision**”).

MPS sought to resist enforcement of the Second Adjudication Decision on the basis that it was unable to properly digest and respond to the material served with the referral within the time given, such that it

HAWKSWELL KILVINGTON LIMITED

2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk



amounted to a breach of natural justice which led to a material difference in the outcome.

Held

The Judge, Mr Justice Constable, enforced the Second Adjudication Decision in full for the following reasons:-

Adjudication decisions must be enforced even if they contain errors of procedure, fact or law.

An adjudication decision will not be enforced where there has been a breach of natural justice which has led to a material difference in the outcome. However, the Court should examine such defences with a degree of scepticism.

The Judge determined that both complexity and constraint of time to respond are inherent in the adjudication process and are no bar in themselves to adjudication enforcement. In circumstances where the Adjudicator has given proper consideration at each stage to both of these issues and concluded that they can render a decision which delivers broad justice between the parties, the Court will be extremely reluctant to conclude otherwise.

The Judge described MPS' position that it needed to fully evaluate each and every work order as "*wholly unrealistic*". In cases involving large amounts of data, an adjudicator is entitled to proceed by way of sampling and/or spot checks. The way in which this is carried out is a matter of substantive determination by the adjudicator. An argument that the adjudicator has erred in their approach will not give rise to a valid basis to challenge enforcement.

The Court determined that MPS ought to have adopted HG's Sampling Method to inspect the underlying data when that proposal was made some months earlier. Moreover, MPS failed to actively

engage in analysing the other material, including the Draft Report, as soon as it was made available to them (some 7 weeks earlier), which the Judge described as "*strategically driven in an attempt to create a jurisdictional challenge that no dispute had crystallised*".

The Judge determined that MPS were able to, and did, properly and thoroughly engage in the substance of the claim within the time available. MPS had produced a comprehensive response which provided a clear agenda for determination of the dispute and were able to advance arguments based upon the material.

Analysis

The case serves as a reminder to respondent parties that if it appears a formal dispute might be unavoidable, one should begin preparing for that eventuality at an early stage; and think carefully before rejecting any invitation to engage with the claimant party in reviewing available evidence.

Upon enforcement, the TCC are unlikely to have sympathy for arguments of insufficient information, complexity, or a lack of time where an adjudicator has decided that they are able to do broad justice between the parties.

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2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk