Draft is a Dangerous Word: You Can't Dispute a Final Statement Before It Exists, Court Rules

In *Oakland Wantage Care Home Ltd v Stepnell Ltd [2026] EWHC 1530 (TCC)*, the Technology and Construction Court clarified two important points under the JCT Design and Build Contract 2016: firstly, that a "draft" final account does not automatically qualify as a Final Statement that starts the clock running under clause 4.24, and secondly, that a notice to dispute a Final Statement can only be given after the Final Statement has been issued. Earlier correspondence challenging substantially the same valuation issues may not be enough to preserve the dispute.

Key takeaways

- **A "draft" final account containing forecast and provisional figures is unlikely to be treated as the contractual Final Statement. The test is how a reasonable recipient, with the relevant background knowledge, would understand the document.**

- **A notice disputing the Final Statement must dispute something "*in*" the Final Statement so, by definition, the notice must be given *after* that statement is issued. Earlier objections will not protect against conclusivity taking hold.**
- **Contractors should make Final Statements unmistakably final.**

- **For employers, be aware that old arguments won't save you. Each notice deadline has to be met on its own to avoid becoming liable for the full sum claimed.**

Factual Background

Oakland Wantage Care Home Limited ("**Oakland**") employed Stepnell Limited ("**Stepnell**") to design and construct a 65-bedroom care home at Grove Road, Wantage (the "**Works**") under a JCT D&B 2016 contract with bespoke amendments.

Practical completion was certified on 26 April 2021, triggering the 12-month rectification period. Around this time, the parties began discussing the final account.

On 17 February 2022, Stepnell sent Oakland's Employer's Agent by email a statement dated 15 February 2022, headed "Draft" and containing forecast and estimated figures (the "**2022 Statement**"). Oakland's Agent disputed the sums claimed in a response dated 7 March 2022 and suggested a lower figure was due to Stepnell.

Nothing further happened for close to two years, until Stepnell sent a further, updated final account statement on 9 February 2024 (the "**2024 Statement**"). Oakland did not respond. Stepnell began an adjudication seeking payment of the sum in the 2024 Statement.

The Adjudicator held that the 2024 Statement was the relevant Final Statement under clause 4.24.6 of the contract. Since no payment notice or pay less notice had followed it, this statement had become conclusive, i.e. it was now incontestable, and the full sum claimed was due.

Oakland paid the full amount awarded, then issued Part 8 proceedings seeking a declaration that it remained entitled to adjudicate or litigate the true value of the sums due under the final account. Its case was that the 2022 Statement was actually the operative Final Statement and had already been disputed in the March 2022 response, or alternatively, that even if the 2024 Statement was the Final Statement, prior correspondence disputing the underlying sums was enough to prevent conclusivity taking hold, leaving the true value open to challenge.

Held

The Judge, HHJ Jonathan Acton Davis KC, agreed with the Adjudicator and ruled that the 2024 Statement was the relevant Final Statement under the contract. Since no relevant notice had been served in response, the Judge held that the 2024 Statement had become conclusive, meaning the "true value" of Stepnell's final account could no longer be disputed and the value stated in the 2024 Statement was final.

Which statement was the Final Statement?

The legal test for interpreting contractual notices is the objective reasonable-recipient test, namely, how the notice would have been understood by a reasonable recipient aware of the surrounding facts of the matter.

Oakland argued that a reasonable recipient, aware of the final account negotiations ongoing since mid-2021, the covering email's reference to "*the Final Account*" and Stepnell's stated intention to "*settle the final account*", would have understood the 2022 Statement as the operative Final Statement.

Opposing this, Stepnell raised how the 2022 Statement was headed "*Draft*" and included forecast and estimated figures, with the promise of further information to come. Stepnell's position was that a reasonable recipient would not have considered the 2022 Statement to be final.

Stepnell also contended that the Adjudicator, an experienced quantity surveyor, looked at the 2022 Statement and treated it as a draft. Since he's an expert in this exact area, that's good evidence of how the reasonable recipient would read the document, Stepnell said.

The Judge agreed with Stepnell. He held it was not "*plain*" that a reasonable recipient would treat the 2022 Statement as Stepnell's Final Statement, and the 2024 Statement was therefore the correct one.

However, the Judge rejected the argument that an experienced adjudicator treating a document as a draft satisfies the objective "reasonable recipient" test. The test is a legal construct the court applies itself, by looking at the document's actual wording and the surrounding facts. It doesn't matter how experienced the adjudicator is, or what they personally made of it, since their view isn't evidence of how a reasonable person would read it: it is just one individual's opinion, and not one the Court is bound by or should automatically defer to.

Was the Final Statement conclusive?

Oakland's fallback argument was that clause 4.24.6 only required notice "*disputing anything in the Final Statement*" before the due date, and didn't require the dispute notice to postdate the Final Statement itself. On this reading, the March 2022 response, plus the general history of dispute between the parties, was sufficient to prevent the 2024 Statement becoming conclusive.

The Judge disagreed. Reading clause 4.24.6 closely, the clause required notice disputing something "*in*" the Final Statement, which presupposes the Final Statement already exists. Historic correspondence sent before the Final Statement was issued could never satisfy clause 4.24.6, however clearly it flagged that a dispute existed.

The 2024 Statement was therefore conclusive as to the sum due and Oakland could not challenge it further.

Comment

This case is a clear reminder that calling something a "final" account doesn't make it one. If a reasonable recipient would regard the account as a work-in-progress negotiation tool, then it isn't final, and any correspondence disputing the valuation will not carry over once a genuine Final Statement is served.

The practical lesson is a familiar one: wholly engage with the final account close-out process and follow the contractual procedures. Disputes like this may be avoided if contractors make Final Statements unmistakably final, and employers treat every statement received as a live trigger requiring its own timely response, regardless of what's already been said in earlier rounds of negotiation.

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London
Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk