



## LEGAL BRIEFING

### *VGC Construction Ltd v Jackson Civil Engineering Ltd*

[2008] EWHC 2082, TCC, Mr Justice Akenhead

#### **The Facts**

Jackson engaged VGC to provide various construction services relating to the provision of ducts and cabling on the M3 Motorway. The sub-contract overran by 26 weeks. Following the submission of applications for payment 13 and 14, and the imposition of various set-offs by Jackson, VGC commenced adjudication. The Referral Document made reference to a claim of £300,000 for delay and disruption. Accompanying it was a schedule that included the following statement:

It is apparent from the attached analysis [a Programme ... ] that, as a result of numerous delays and additional works during the currency of the Sub-Contract Period ... together with additional works instructed after the Sub-Contract Period passed, that VGC suffered delays and consequently loss due to no fault of their own.

The adjudicator issued his decision that, in effect, there was a net sum due to VGC of £745,657.64, including the £300,000 delay and disruption claim. That decision was not honoured and VGC instituted enforcement proceedings.

#### **The Issues**

Jackson submitted three grounds of opposition to the summary judgement:

- (i) The claim for the £300,000 was originally made in Applications 13 and 14 with no breakdown or supporting documents. The claim was later separated from the Final Account and was due to be the subject of a separate submission which never came. The question of whether this claim was withdrawn was a factual dispute that could not be resolved by summary judgement.
- (ii) The claim of £300,000 was unsubstantiated and so nebulous that there could be no dispute in respect of it.
- (iii) The claim for the £300,000 was entirely or substantially new so the adjudicator had no jurisdiction to deal with it.

#### **The Decision**

Summary judgment was granted. The Judge held:

- (i) on a proper interpretation of the evidence, it was clear that VGC had not entered into a binding agreement to withdraw its claim for delay and disruption.
- (ii) A claim expressed in one line and only briefly described would not necessarily always be classified as being nebulous or ill-defined if, having regard to the surrounding circumstances, it was given context. In the instant case, having regard to the surrounding circumstances and VGC's application as a whole, it must have been clear to Jackson what the claim for delay and disruption was referring to.

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- (iii) The parties had expressly agreed upon the appointment of an adjudicator to resolve the disputes that had arisen between them, and the adjudicator had jurisdiction to deal with exactly those disputes to which he referred to in his decision. Thus, there was no merit in the challenge to his jurisdiction to adjudicate on the disputes before him.

***Comments***

This case confirms the importance of raising jurisdictional challenges during the course of the adjudication. Despite the fact that the delay and disruption claim was only expressed in one line, the Judge felt that the parties had given the adjudicator jurisdiction to resolve the dispute. There was no challenge to the adjudicator's jurisdiction in the Response which asked the adjudicator to dismiss the claim in its entirety. Rather, this affirmed the adjudicator's jurisdiction. Therefore, by engaging in the adjudication by disputing the claim, Jackson could not avoid the effect of the decision of the adjudicator.

Charlene Linneman  
December 2008

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