

## WHEN THREE BECOME ONE: CLAIMING MULTIPLE DEBTS IN ONE ADJUDICATION

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An important new decision from the English Technology and Construction Court (“TCC”) allows a quicker and more cost effective route to recover debts on construction contracts. The key issue in *Quadro Services Limited v Creagh Concrete Products Limited*<sup>1</sup>, was whether a claim for three outstanding payment applications was “a dispute” under the Housing Grants, Construction and Regeneration Act 1996 (the “Construction Act”), or multiple disputes. The court’s decision means parties can avoid the cost and inconvenience of pursuing numerous adjudications where several payments are outstanding. The decision also demonstrates the court’s continued support for the adjudication process in the face of technical challenges.

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### FACTUAL BACKGROUND

The parties entered into an oral agreement for Quadro to provide construction labour to CCP (the “Contract”). As the Contract did not contain adjudication provisions, the Construction Act and the Scheme for Construction Contracts (England and Wales) Regulations 1998 applied.

During the Contract, Quadro made several payment applications and raised invoices for the amounts claimed. No pay less notices were issued by CCP in response to Quadro’s applications. CCP’s Quantity Surveyor had approved the first and second invoices but did not respond to Quadro’s request for approval of the third invoice.

CCP did not pay the amounts outstanding, so Quadro commenced an adjudication for payment of the three outstanding invoices. As it is well established that an adjudicator may only decide one dispute at a time, CCP challenged the adjudicator’s jurisdiction on grounds that Quadro had referred three payment applications to adjudication, meaning three separate disputes. Although the adjudicator rejected that challenge and proceeded to award Quadro the sum claimed, CCP did not pay. Quadro subsequently applied to the TCC to enforce the adjudicator’s decision.

### JUDGMENT AND LEGAL ISSUES

A party to a relevant construction contract has a right to refer “a dispute” to adjudication at any time<sup>2</sup>. The issue for the TCC to determine was whether Quadro had referred three disputes to adjudication, given the three separate invoices, or whether there was only one dispute. The TCC also had to decide whether CCP’s defence had any real prospect of success.

The TCC noted comments in *Witney Town Council v Beam Construction (Cheltenham) Limited*<sup>3</sup> that “a sensible interpretation will be given to what the meaning of a dispute is” and “almost every construction contract is a commercial transaction and parties cannot broadly have contemplated that every issue between the parties would necessarily have to attract a separate reference to adjudication”. The TCC also referred to *Prater Limited v John Sisk & Son (Holdings) Limited*<sup>4</sup> where it was held that “clearly a single dispute in the context of a construction contract may include several distinct issues... One needs to look at the facts of each case and to use some common sense”.

The adjudication involved three separate payment applications, each of which could be considered in isolation. However, CCP had not raised any issues regarding the validity of the payment applications, any substantive dispute as to its liability to pay the invoices or issued any pay less notices. CCP had simply failed to pay. That it was possible to determine whether each individual invoice was due, without determining whether the other invoices were due, did not mean those issues could not be sub-issues of the wider dispute of whether Quadro was entitled to the sum claimed under the Contract. The payment applications were cumulative, with each application being for the full value of the work done, less previous payments. Each payment built on the previous one and there was a clear link between them.

The TCC said that if CCP’s arguments were successful, parties would incur the cost and inconvenience of pursuing numerous adjudications to recover a single sum under a single contract. There was no merit to CCP’s argument that because the third payment application had not been agreed, the three applications were distinguishable from each other and were not sub-issues of the wider dispute. No pay less notice was issued following the third application and none of the payment applications were disputed on substantive or procedural grounds.

The TCC held that the adjudicator was right to conclude that he had jurisdiction because Quadro had only referred one dispute to adjudication. CCP had no real prospect of successfully defending the claim on grounds that the adjudicator lacked jurisdiction and so gave summary judgment to Quadro enforcing the adjudicator’s award.

## PRACTICAL STEPS AND RECOMMENDATIONS

**"Quadro provides a useful reminder of the meaning of 'a dispute' under the Construction Act where adjudications concern multiple payment applications."**

*Quadro* provides a useful reminder of the meaning of “a dispute” under the Construction Act where adjudications concern multiple payment applications. Although the meaning of a dispute can frequently result in jurisdictional challenges, in this case the TCC adopted a common sense approach to its interpretation. Although the dispute between the parties concerned three unpaid payment applications, the wider issue was an entitlement to the total sum claimed under the Contract.

The judgment highlights the weight which the TCC gives to the notion of commercial common sense and the overarching objective of the adjudication process to promote efficient and cost-effective dispute resolution.

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Parties owed monies from construction projects will be relieved by this decision. It avoids the time and cost that would otherwise be incurred in having to pursue separate adjudications for each unpaid application. That said, the issue of multiple disputes in adjudications remains an area fraught with difficulty. While *Quadro* provides some overdue clarification to ensure payment and to avoid a successful jurisdictional challenge, parties must present an adjudication claim as a single dispute even though it may comprise multiple sub-issues. If in doubt, take expert legal advice.

*Trainee Maximilian O'Driscoll also contributed to this article.*

- [1] [2021] EWHC 2637 (TCC)
- [2] Construction Act, section 108(1)
- [3] [2011] EWHC 2332 (TCC)
- [4] [2021] EWHC 1113 (TCC)

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