

NOTICE OF ADJUDICATION: HOW IMPORTANT IS IT TO GET THE NAME RIGHT?

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IN *MG SCAFFOLDING (OXFORD) LTD V PALMLOCH LTD*^[1], THE TECHNOLOGY AND CONSTRUCTION COURT ENFORCED AN ADJUDICATION DECISION, EVEN THOUGH THE NOTICE OF ADJUDICATION INCORRECTLY REFERRED TO THE RESPONDING PARTY BY A TRADING NAME SHARED BY SEVERAL COMPANIES AT THE SAME ADDRESS.

The decision is the latest in a line of cases which indicate that the courts will look at the substance of an adjudication notice over its form when ascertaining its validity and serves as a valuable reminder of the importance of getting the notice of adjudication correct at the outset so as to avoid enforcement delays later.

BACKGROUND

In a dispute related to a scaffolding contract, MG Scaffolding (Oxford) Limited commenced an adjudication against MCR Property Group by notice of adjudication. However, the validity of the notice was challenged on the basis that MCR Property Group was a mere trading name for Palmloch Ltd. The adjudicator considered that Palmloch was indeed the true responding party – on whom the notice should therefore have been served – but held that MCR Property Group could reasonably be, as a trading name, construed as the responding party. MG Scaffolding was eventually successful in the adjudication and issued proceedings for summary judgement to enforce the decision, which Palmloch sought to resist on the basis that the adjudicator lacked jurisdiction as the notice of adjudication had been served on the wrong party.

REMINDER: REQUIREMENTS TO THE NOTICE OF ADJUDICATION

The notice of adjudication is a prerequisite to adjudication which initiates the proceedings and sets out the scope of the dispute. Under paragraph 1(3) of the Scheme^[2], the notice of adjudication must set out:

- the nature and a brief description of the dispute and of the parties involved;
- the details of where and when the dispute arose;
- the nature of the redress sought; and
- the names and addresses of the parties to the contract.



THE JUDGE CONSIDERED THAT THERE WAS NOTHING INHERENTLY FATAL ABOUT THE COMMENCEMENT, PURSUANCE AND ISSUANCE OF AN ADJUDICATION DECISION IN THE TRADING NAME OF A LEGAL ENTITY WHERE THE DECISION IS SUBSEQUENTLY ENFORCED AGAINST THE TRUE LEGAL ENTITY.

THE DECISION

In *MG Scaffolding* the judge based his approach on the substance of the notice rather than interpreting literally whether the requirements for a valid notice were met. He held that, when considering whether a notice of adjudication has identified the correct responding party, the court must objectively assess the notice, construed as a whole against its contractual setting, and consider how it would have informed a reasonable recipient, concentrating on the substance rather than the form. Referring to *Durham CC v Kendall (t/a HLB Architects)*^[3], where a notice was deemed valid even though it referred to the responding party by its trading name, the judge considered that there was nothing inherently fatal about the commencement, pursuance and issuance of an adjudication decision in the trading name of a legal entity where the decision is subsequently enforced against the true legal entity.

This decision is notable in two aspects:

- In contrast with *Durham*, where the trading name was used by only one party, in this case MCR Property Group was a trading name used by a multitude of companies trading from the same address. Nevertheless, the judge held that there could not have been any lack of clarity to the reasonable recipient as to the identity of the intended responding party.
- MG Scaffolding maintained throughout the adjudication that MCR Property Group was the proper responding party, before eventually acknowledging that the responding party was Palmloch when issuing proceedings for summary judgement. However, the judge held that the notice of adjudication had to be determined objectively and not by reference to the subjective intentions of the referring party.

CONCLUSION

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Whilst understandable in the context of the case, favouring the substance of the notice of adjudication over its formal requirements could lead to difficulty where, for example, many registered entities trade under the same name, or where sister companies undertake separate scopes of work on a project under a single trading name. *MG Scaffolding* also raises questions as to how strictly the other requirements of a notice of adjudication must be complied with and whether, again, the substance of the notice will be favoured over its form. Nevertheless, in order to avoid costly and unwanted delays in the adjudication process, parties should always seek to comply strictly with the formal requirements of notice of adjudication.

[1] [2019] EWHC 1787 (TCC)

[2] The Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649).

[3] [2011] EWHC 780 (TCC)

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