

Legal Briefing

Ted Lowery considers a challenge to the contents of a Notice of Adjudication

Siteman Painting and Decorating Services Limited v Simply Construct (UK) Limited [2018] SC GLA 64

Before Sheriff S Reid

In the Sheriffdom of Glasgow and Strathkelvin at Glasgow

Judgement delivered 4 December 2018

The facts

During May 2016 Simply engaged Siteman to provide painting and decorating services at a site in London. On 16 August 2017 Siteman commenced adjudication claiming a sum of £105,140.82 plus VAT that Simply had refused to pay. The Scheme applied requiring the notice of adjudication to set out briefly the nature and a brief description of the dispute. Siteman's notice of adjudication identified the dispute as relating to "... the sums due and payable ... in respect of the proper value of the works undertaken... following [Simply's] failure to pay amounts applied for... within [Siteman's] payment applications." The notice also included a statement as to the gross and net sums claimed.

In a decision dated 14 September 2017 the Adjudicator awarded Siteman some £68,868.23 including VAT. On 31 May 2018 Siteman commenced proceedings in the Sheriff's Court to enforce the decision.

Simply disputed the adjudicator's jurisdiction on two connected grounds. Firstly, it was said that because the wording in the notice of adjudication was so nebulous and ill-defined this had prevented Simply from properly responding to it and Siteman had thereby failed to refer a clear and precise claim to adjudication. In support of this argument Simply observed that the notice of adjudication did not identify whether Siteman was claiming interim payments, a final account or damages, did not cross-refer to any contractual provisions, and failed to identify and/or attach copies of the particular payment applications that Siteman had in mind.

Second, Simply contended that on a proper reading of the

notice of adjudication, it purported to refer multiple disputes to adjudication including disputes concerning interim payment applications, variations, unpaid VAT and possibly a final account and damages claims. Simply said they had not consented to multiple disputes being referred at the same time so the result was that the adjudicator lacked jurisdiction.

The issue

Could enforcement be prevented on either of the grounds advanced by Simply?

The judgment

The Sheriff started by noting that Simply's primary submission at the hearing that there was no crystallised dispute was different from the case set out in its pleaded defence that the wording of the notice of adjudication was defective. Where the pleaded defence acknowledged that a dispute had arisen, the Sheriff found that it was not open to Simply to now mount a "no disputes" argument.

Hence on the first ground, the question was whether or not the contents of the notice of adjudication were sufficiently clear and the Sheriff concluded that they were. The Sheriff considered that the statutory requirement to provide a brief description of the dispute was satisfied by the wording that appeared in the notice, by the references within that wording to other documentation comprising Siteman's payment applications and in the specific context of a precisely quantified sum claimed for the works undertaken.

The Sheriff added that where the notice of adjudication was a contractual document, then applying the usual principles of contractual construction, the notice stood to be construed in a sensible manner in the context of the terms of the contract and the (contractual) payment applications previously submitted. In these circumstances, the Sheriff concluded that Simply could not have been in any doubt that the dispute referred to adjudication concerned the proper value of the works undertaken, as set out in Siteman's preceding payment applications.

Turning to Simply's second ground then the Sheriff considered the issue to be comparatively straightforward and he concluded that a single dispute had been referred, namely

Legal Briefing

what sum was due to Siteman in respect of the proper value of the works undertaken by it with specific reference to the previous payment applications.

Commentary

It is unusual to see a challenge to jurisdiction based upon the inadequacy of the contents of a notice of adjudication. This is probably because most adjudication rules do not require a great deal of detail in the notice of adjudication: for example the current TeCSA Rules require the notice to identify the dispute in general terms only.

Here, the Sheriff noted that the repetition of the word “brief” in the Scheme confirmed that minimal detail was required to meet the necessary threshold of specificity and he observed that in this respect, Parliament had set “a low bar”. It follows that a notice of adjudication would have to be drastically bereft of basic information, say for example a notice that omitted a claim figure and both contract and document references, for there to be any real doubt over the adjudicator’s jurisdiction.

Ted Lowery
January 2019