

## ADJUDICATORS' JURISDICTION

Technology and Construction Court supports adjudicators' power to decide their own jurisdiction where issues of substance and jurisdiction overlap - *Supablast (Nationwide) Ltd v Story Rail Ltd* [21.1.10]

In 2008, Story were engaged by Network Rail to carry out refurbishment works to a viaduct in Merseyside and invited Supablast to tender for grit blasting and painting work. Subsequently, Supablast quoted for (and were awarded) other works as well, notably steelwork repairs.

Ultimately, substantial additional works were undertaken, there were delay issues and a dispute arose over the final account. Accordingly, in September 2009, Supablast issued a notice of adjudication. Story contended that the adjudicator did not have jurisdiction to consider the matter, as there were two separate sub-contracts (one for the steelworks and one for all the other works) - normally, an adjudicator will only have jurisdiction where there is one dispute and, if the adjudicator does not have jurisdiction, the court will not enforce the decision.

The adjudicator made an award in Supablast's favour. In doing so, he held that there was only one sub-contract (which had been varied) and that it was within his jurisdiction to decide the matter.

Story did not comply with the adjudicator's decision and Supablast issued proceedings to enforce it in the Technology and Construction Court.

### Decision

The Judge granted Supablast's application for summary judgment to enforce the adjudicator's decision. He found, on the facts, that there had been one umbrella sub-contract for all the works and that there had been an "*absence of reality*" to Story's two sub-contract argument. He also noted that, even if there had not been an umbrella contract, there would be an estoppel by convention as both parties had proceeded on the basis that there was only one sub-contract.

As there was found to be one sub-contract, it was not necessary to consider the scope of the adjudicator's jurisdiction. However, the issue was considered as an aside and support was given to a line of thinking set out in recent cases that, where questions of substance and jurisdiction overlap, an adjudicator will have the jurisdiction to decide these facts, even if this will determine whether or not he has jurisdiction to decide the matter as a whole.

### Comment

Generally, adjudicators do not have authority to decide their own jurisdiction unless the parties have permitted them to do so. The *Supablast* case is the latest

decision indicating that, as stated in *Camillin Denny Architects Ltd v Adelaide Jones & Company Ltd* [2009]:

*"...there may be cases in which adjudicators properly appointed have jurisdiction to resolve jurisdictional issues if and to the extent coincidentally those issues are part of the substantive dispute referred to adjudication."*

Should a party wish to contest an adjudicator's appointment or decision, establishing jurisdiction should still be a first step. It should be borne in mind, however, that in cases where the adjudicator has been called to rule on facts that will also decide jurisdiction, the courts are increasingly likely to uphold the adjudicator's decision.

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