Goldswain v Beltec Ltd
[2015] EWHC 556 (TCC); TCC; Akenhead J

In February 2012, Edward Goldswain and Jacqueline Hale (the claimants) appointed Beltec Ltd (Beltec), a firm of structural engineers, to prepare a design for the excavation and underpinning of the basement of their flat in Finchley (the Property) to create additional accommodation.

AIMS Plumbing and Building Services Ltd (AIMS) were appointed as contractor to carry out the works in September 2012. On 26 September 2012, Beltec visited the Property pursuant to a separate retainer with AIMS to inspect the initial pin which was to be constructed. Beltec noticed that the initial pin had not been constructed in accordance with its design. Beltec subsequently explained its design to AIMS and provided AIMS with copies of Beltec’s drawings. Beltec did not report the problems to the claimants and did not carry out further inspections.

The temporary works were completed in October 2012 but were defective. The claimants noticed cracks appearing in the Property and after heavy rain, the cracks worsened and the Property collapsed on itself. The Property was later demolished.

On 31 January 2014, the claimants issued proceedings against Beltec and AIMS claiming for losses arising from the damage. AIMS did not file a defence and judgment in default was entered into. The court assessed damages at almost £290,000.

The claimants argued that Beltec failed to exercise the appropriate level of skill and care when designing the basement. The claimants also argued that Beltec were negligent in failing to warn the claimants of AIMS’ mistakes following the visit to the Property in 2012.

Decision
Akenhead J dismissed the claim against Beltec.
Those involved in such projects should take care to clearly establish the scope of their responsibilities, including the extent to which any site visits are required and carefully consider the capabilities of those involved on the project.

Paice v MJ Harding (t/a MJ Harding Contractors)  
[2015] EWHC 661 (TCC); TCC; Coulson J

On 25 March 2013, Gary Paice and Kim Springall (the claimants) engaged MJ Harding (t/a MJ Harding Contractors) (MJH) to construct and fit out two residential houses in Surrey (the Contract). The works commenced in or around April 2013. By September 2013 the works had come to a halt and there was a dispute as to who validly terminated the Contract.

The claimants commenced two adjudications in respect of MJH’s interim applications which had not been paid (the First and Second Adjudications). In both adjudications the adjudicator Mr Silwinski (the adjudicator) found in favour of MJH and the claimants were ordered to pay MJH the total sum of £258,022.31 plus VAT and interest. The claimants failed to pay the sums ordered.

Following a successful enforcement hearing by MJH, MJH submitted its final account in the sum of £397,912.48.

In August 2014, the claimants contacted the adjudicator’s office by telephone and spoke to the adjudicator’s office manager/wife at length about the dispute, including the claimants’ dissatisfaction with the First and Second Adjudications and MJH’s final account claim. The adjudicator was not a party to the conversation but was ‘briefly outlined’ about the call.

The claimants subsequently rejected MJH’s final account. MJH commenced adjudication proceedings in September 2014 for £397,912.48 (the Third Adjudication). A different adjudicator was appointed who decided that, in the absence of a valid payless notice by the claimants, the claimants were required to pay the sums claimed by MJH.

The claimants subsequently served a notice of adjudication on 14 October 2014 (the Fourth Adjudication) and sought a declaration as to the true value of the Contract works and repayment from MJH. The adjudicator was appointed as the adjudicator by RICS.

Prior to the Fourth Adjudication, MJH wrote to the adjudicator and asked him to identify any previous contact with the claimants. The adjudicator responded that there had been ‘no contact ... at all’. In the Fourth Adjudication, the adjudicator ordered that MJH was liable to pay £325,484 to the claimants, inclusive of his fees (the Award).

The claimants sought summary enforcement of the Award. MJH challenged the claimants’ application on the grounds that there was apparent bias by the adjudicator and that he lacked jurisdiction. A witness statement of the adjudicator was submitted in support of the claimants’ application disputing MJH’s allegations against him.

Decision
Coulson J declined to enforce the adjudicator’s Award.

The court held that that the nature of the telephone conversations, including the claimants’ complaints about the final accounts which were the subject of the Fourth Adjudication, were material conversations that went beyond purely procedural matters. It was ‘self-evident’ that the conversations should have been disclosed to MJH and that the adjudicator should have asked the parties if they had any objections to his continuing to act.

The court also held that the adjudicator’s unequivocal denial to MJH was misleading. The adjudicator’s ‘aggressive’ witness statement supporting the claimants’ application also called into question the adjudicator’s objectivity. The judge held that this would lead a fair-minded observer to conclude there was a ‘real possibility’ of bias. Regarding MJH’s alternative jurisdiction challenge, Coulson J held that there was a reasonable prospect of finding that the issues in the Fourth Adjudication were the same or substantially the same as the Third Adjudication.

Significance
This case highlights that, as is highlighted by previous case law, adjudicators should be cautious of engaging in unilateral conversations with the parties and should disclose such conversations before any subsequent adjudication. The case also serves as a reminder for parties in adjudication that, where possible, contact with the adjudicator should be in writing and copied to the other parties, particularly if any further adjudications in relation to the project are likely to be referred to the same adjudicator.  

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