



Technical

Adjudication - Part Two

Date: 17 Oct 2012

[Click here for Adjudication - Part One](#)

Introduction

1. This article is the second part to that which was posted on 27 September 2012.
2. All of the issues raised in (part one) and (part two) will be dealt with and answered at Ramskill Martin's Annual Seminar to be held on 22 November 2012 at Pride Park, Derby. Please refer to '*Training and Seminars*' on Ramskill Martin's website.

Check the rules of nomination and Adjudication

3. Recently our client was faced with a Notice of Adjudication on a project he had recently completed. His Commercial Director and the Contracts Manager on the project in question were both on holiday and there was no one else in his business able to assist him in preparing a defence. He wrote to the other side and asked for a freeze in the process until his team returned from leave, the other side rejected his request and the Referral was served.
4. Ramskill Martin were then employed to assist him but it was clear that without his team who had project specific knowledge raising a defence with a reasonable prospect of success was extremely unlikely. It was then noticed that the other side had approached the RIBA to nominate

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an Adjudicator when the contract stated that the nominating body was to be the RICS.

5. We pointed this out to the Adjudicator and the other side and rejected the Adjudicator's jurisdiction. The Adjudicator stood down and by the time the RICS had been approached and nominated an Adjudicator our client's staff had returned from annual leave and our client's position was successfully defended.

We will explain the rules of adjudication and the differences between the most commonly referred to rules of adjudication and highlight the importance of following the nomination procedures in the contract.

Act - does the new construction Act apply?

6. Recently we have encountered some confusion regarding whether the '*old Construction Act*' or the '*new Construction Act*' applied to a dispute.

We will briefly set out how to ascertain which rules apply and highlight some of the major differences between the '*old*' and '*new*' Acts.

Timescales - Understand these

7. As we probably all know adjudication is considerably quicker than most other forms of dispute resolution. To achieve this a strict timetable is applied to the process and here, by reference to actual adjudications we have been involved in, we will look at the various timescales that have been applied in real cases. The surprise will be the significant variance in various Adjudicators' approaches and we will also consider some of the successful arguments associated with this issue.

Increase the chance of success - present your case clearly

8. No two disputes are the same, and no two Adjudicators are the same either and these two variables can dramatically impact on the success or otherwise of your case. However in our experience you can improve your chance of success by being able to present your case clearly, succinctly and forcibly.

Here we will look at various ways that you can improve the presentation of your case (and this applies as equally when presenting a claim as when making a submission in an adjudication) and briefly look at the importance of the language used.

Oral agreements - avoid these

9. The 'new' Act has changed how such agreements should be dealt with in Adjudication.

We will look at how the approach has changed with regards oral agreements and also explain why, in our opinion, such agreements should still be avoided.

New arguments/information - avoid these

10. In this final section we will look at the issue which plagues most adjudications; the challenge that a Referral includes new arguments and/or new information.

Using past cases as working examples we will explain how we have dealt with these issues. We will explain how to best avoid such allegations, the arguments to raise in defence of such an allegation and a little trick employed to get over the argument in certain circumstances.

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