

What's in a Name? Recent Case Determines Using a Trading Name Does Not Invalidate a Notice of Adjudication

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Recently, in the case of *MG Scaffolding (Oxford) Ltd v Palmloch Ltd* [2019] EWHC 1787 (TCC), the Technology and Construction Court (“TCC”) held that the adjudicator did not lack jurisdiction and the notice of adjudication was valid, in circumstances where the adjudication was commenced and pursued against the responding party’s trading name.

The adjudication was commenced by MG Scaffolding (Oxford) Limited (“**MGS**”) against “MCR Property Group” (“**MCRPG**”). This was in fact a trading name for the correct contractual counterparty called Palmloch Ltd (“**Palmloch**”).

Background

In 2017, Mr Binfield, an employee of Craven Scaffolding Ltd, was asked by Mr Lewin to provide a quote for a scaffolding scheme which he did in the sum of £38,154. Mr Lewin’s email address ended in ‘@mcrproperty.com’ and the postal address where the quotation was sent was addressed to ‘MCR Property Group, Universal Square, Manchester’.

The Purchase Order (“**PO**”) subsequently raised was headed ‘Palmloch Limited’ and a reference given ‘Palm/016’. The PO stated “Please invoice to: Palmloch Limited”, with the same postal address as that to which the quotation had been sent.

Mr Binfield subsequently moved to MGS and on 21 February 2018, Ms Phillips of MGS emailed a quotation reference PC5953 in the same sum of £38,154 to Mr Lewin. On 8 March 2018, the previous PO was re-issued with ‘Craven Scaffolding Ltd’ deleted and ‘MG Scaffolding’ inserted in manuscript. This PO was still therefore in the name of Palmloch.

Following the commencement of work on 12 March 2018, invoices were presented, as requested, to Palmloch. Various communications during the course of the works took place with Mr Lewin emailing from his ‘@mcrproperty.com’ email address.

The Adjudication

On 7 December 2018, MGS (the “**Referring Party**”) commenced an adjudication against MCRPG

(the “**Responding Party**”) by notice of adjudication sent via email from MGS to Mr Brown of Palmloch (the “**Notice of Adjudication**”).

MGS claimed payment of the sum it alleged to be outstanding on the basis that the Responding Party did not issue a valid pay less notice following an application for payment.

The adjudicator was appointed on 10 December 2018 by the Royal Institution of Chartered Surveyors (“**RICS**”). The referral notice was served on 14 December 2018. On 17 December 2018, a letter with an ‘MCR’ logo and footed with ‘MCR Property Group is a trading name of MCR Management Limited’, was sent from Mr Brown to the adjudicator. It contended that:

“MCR Property Group does not recognise any claim or issue requiring resolution from an adjudicator. MCR Property Group is no more than a brand name and holds no assets of its own. MCR Property Group has no debt outstanding with the referring party. Any claim, if any, requiring adjudication or dispute resolution should be directed towards the company whom the referring party has a dispute”.

This was taken to be a jurisdictional challenge by the adjudicator and MGS was given until 19 December 2018 to provide a response. On 7 January 2019, the adjudicator stated in a non-binding view that he was not persuaded by the Responding Party’s challenge to jurisdiction, and that he would proceed to make a decision.

Following further correspondence on the matter between the parties and the adjudicator, the adjudicator indicated that the true contracting party was Palmloch but that the party named in the Notice of Adjudication could reasonably be construed to be the responding party on the basis that it was confirmed by Palmloch that MCRPG was a trading name for Palmloch.

Upon a request by Palmloch for 14 days to submit a substantive response to the Notice of Adjudication, the adjudicator permitted Palmloch 3 days. Palmloch’s ‘substantive response’ started by reaffirming its position *“that this adjudication has been commenced against the incorrect party and that your jurisdiction in this matter is invalid”*.

TCC Judgment

The starting point, Mr Adam Constable QC says, is whether the parties to the adjudication are also the parties to the relevant construction contract, and, indeed, the subsequent enforcement proceedings. He confirms that MGS started an adjudication using the trading name of a legal entity which the Defendant (Palmloch) accepts was the correct contracting counterparty.

In further considering whether the Notice of Adjudication identified the correct responding party, Mr Adam Constable QC provides that he must *“objectively assess the notice as a whole against its contractual setting, and consider how it would have informed a reasonable recipient, concentrating on substance rather than form”*.

He concludes that *“In the present case, there could not possibly have been any lack of clarity to the reasonable recipient as to the identity of the legal entity intended to be the responding party”* and that *“A reasonable recipient construing the Notice in context would have understood the use of the trading name as an unambiguous reference to Palmloch; and that is, indeed, how the Notice was construed in fact by the recipient”*.

As such, it was found that the Notice of Adjudication was effective in commencing a valid

adjudication, contrary to Palmloch's allegation that by using its trading name, the Notice of Adjudication was invalid.

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