

ADJUDICATION

Same Dispute: Final Account

Pay now, argue later: When is "later"?

- ▶ Court of Appeal clarifies "pay now, argue later" in relation to final account disputes.
- ▶ Clarifies when a paying party can challenge the valuation in a payment application.
- ▶ Reminder of the risks of failing to issue a valid pay less notice.

What's it about?

The Housing Grants, Construction and Regeneration Act 1996 provides that if a paying party doesn't issue a valid pay less notice against a payment application, it must pay the full amount applied for.

The Scheme under the Act provides that a second adjudicator must resign from a dispute that has previously been referred to adjudication in which the previous adjudicator gave a decision. Usually, where that has happened, the dispute must go to court instead, which takes longer.

In *Harding v Paice* [2015] EWCA Civ 1231, the contractor submitted its final account, the employer disputing the account but not issuing a pay less notice. The first adjudicator decided that, absent any pay less notice, the employer must pay the amount applied for. The employer then began a second adjudication to determine the true value of the final account.

Clearing up a point of uncertainty, the Court of Appeal upheld the decision at trial that the employer was entitled to refer the disputed valuation to adjudication and drew a distinction between:

- 1 the technical failure to provide a pay less notice; and
- 2 a dispute over the amount properly due.

The decision on (1) did not prevent the later adjudication on (2).

Why does it matter?

The Court of Appeal declined to review the earlier decision in *ISG v Seevic*, concerning an interim account and stating that it had no application to final accounts. It therefore appears that:

- ▶ **Interim accounts:** Without a valid pay less notice, the paying party cannot refer a valuation dispute to adjudication and the proper valuation must be established in the next interim payment.
- ▶ **Final accounts:** A dispute as to the proper valuation may be referred to adjudication despite a previous adjudicator's decision that in the absence of a pay less notice the employer had to pay the amount applied for in full.

Now what?

Harding is a reminder of the importance of issuing a valid pay less notice where a payment application is disputed. If not, there will be a risk of the receiving party becoming insolvent before any overpayment is recovered on a later interim certificate. Also, attempting to correct a mistake in a subsequent interim certificate may not just reduce the amount payable but could result in a negative valuation.

The team at Addleshaw Goddard LLP will be happy to discuss the options with you. Please contact Joe Wilkinson or Susanna Hayward.

Who to contact

JOE WILKINSON

Partner

0113 209 2332

07775 586366



SUSANNA HAYWARD

Associate

0113 209 4938

07720 338605



10-6345420-1

addleshawgoddard.com

Doha, Dubai, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

© 2016 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged.

This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances.

Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice) and in Hong Kong through Addleshaw Goddard (Hong Kong) LLP (a limited liability partnership registered in England & Wales and registered and regulated as a foreign law firm by the Law Society of Hong Kong, operating in Hong Kong as a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance) in association with Francis & Co. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request.

The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications.

If you prefer not to receive promotional material from us, please email us at unsubscribe@addleshawgoddard.com.

For further information please consult our website www.addleshawgoddard.com or www.aglaw.com.