



## LEGAL BRIEFING

### *TAYLOR WOODROW CONSTRUCTION v RMD KWIKFORM LTD*

Mr Justice Ramsey  
[2008] EWHC 825 (TCC)

#### ***The Facts***

This was an application under sections 32 and 45 of the Arbitration Act 1996 (“the Act”) to determine a preliminary point of law in relation to arbitral proceedings.

The claimant engaged the defendant for the design, supply and erection of scaffolding. In 2000 the scaffolding collapsed onto adjoining roads and onto a railway line. This led to a claim by the claimant of £600,000 and to the conviction of the defendant in relation to offences concerning the state of the scaffolding. In turn, the defendant claimed £180,000 as sums due under the sub-contract.

The claimant’s solicitors wrote to the defendant in November 2003 (“the Letter”) enclosing a draft particulars of claim. The Letter enquired whether the defendant wished to rely on clause 26 of the standard conditions of sub-contract (“the Sub-Contract”) which provided that disputes should be referred to arbitration, or whether it would be agreeable to the matter being litigated.

In December 2006, the claimant commenced High Court proceedings. The defendant sought to stay the proceedings to arbitration under section 9 of the Act. The claimant applied for the appointment of an arbitrator. The defendant claimed that it had not been served with a Notice of Arbitration in accordance with clause 26.1 of the Sub-Contract, and had not been asked to agree the appointment of an arbitrator. The claimant relied on the Letter as fulfilling the purposes of a notice to commence a claim under clause 26.1.

Although an arbitrator was appointed, the parties agreed that the Court should determine a number of issues pursuant to sections 32 and 45 of the Act.

#### ***The Issues***

There were essentially two issues before the court.

- (i) whether section 14(1) or section 14(2) of the Act applied to this case and therefore whether in accordance with clause 26 of the Sub-Contract arbitral proceedings were to be regarded as having commenced; and
- (ii) whether the Letter was sufficient notice to commence arbitration.

#### ***The Decision***

It was held that if the parties agreed that arbitral proceedings shall be commenced on receipt by the other party of a notice referring disputes to arbitration that is sufficient to be an agreement for the purpose of section 14(1) of the Act. In essence, what is required is an agreement as to when arbitration proceedings are to be regarded as commenced. In the present case, it was held that clause 26.1 of the Sub-Contract did not amount to such

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agreement. It merely stated that any dispute, question or difference shall be referred to arbitration. It also contained a provision that the arbitrator was to be agreed, with a default position if there was no agreement. Given the lack of agreement, section 14(2) applied. In this case the primary method of appointment was for the arbitrator to be appointed by the parties. The arbitral proceedings are commenced when one party serves a notice in writing requiring them to either appoint an arbitrator or agree to the appointment of an arbitrator under section 14(4).

Having established that section 14(4) applied in this case, the next issue for the Court was whether or not, the Letter was sufficient to commence arbitration proceedings under section 14(4).

Mr Justice Ramsey held that the Letter did not make it objectively clear that the claimant was referring the dispute to arbitration or that, it was requesting the defendant to commence the process of agreement of an arbitrator. In the Judge's opinion, the Letter was written in the context of seeing whether the defendant would insist on arbitration, not in the context of intending to start the process of arbitration. Therefore the Letter could not be construed as being sufficient to commence arbitration proceedings and the application by the claimant for the appointment of an adjudicator was invalid.

***Comment***

This case clarifies the requirements for the parties having agreed (within section 14.1 of the Act) when an arbitration is to be regarded as commenced for the purposes of limitation and the test for compliance with the requirements of sections 14(4) where the parties have not so agreed.

In short when giving notice to the other party of a reference to arbitration, it must be made clear that the person giving the notice is intending to refer a dispute to arbitration.

***Birgit Blacklaws  
June 2008***

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