

Adjudicator's Jurisdiction – General Objections Could Lead To Major Problems

For many, challenging an Adjudicator's jurisdiction is often the first step in responding to a Referral Notice. However, given the Courts' reluctance to enforce such challenges, care must be taken as to how such challenges are framed – particularly if the responding party intends to reserve its position on jurisdiction and continue to participate in the adjudication.

The Court's unwillingness to uphold challenges is perhaps not surprising given the comments made in *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* (2005), in which the Court held that, "To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest of cases) is likely to lead to a substantial waste of time and expense". The reason being, that adjudication is a quick and temporarily binding process, in which "The need to have the 'right' answer has been subordinated to the need to have and answer quickly".

Nonetheless, there are, of course, instances where a challenge is appropriate, and in those circumstances the recent case of *GPS Marine Contractors Ltd v Ringway Infrastructure Services Ltd* (2010) provides useful guidance on how such challenges should be made. GPS had instigated an adjudication against Ringway who then wrote to the Adjudicator advising that their client didn't accept that the Adjudicator had the requisite jurisdiction for a number of specific reasons, and added a general objection that, "There may well be further jurisdiction issues which we have not yet had time or opportunity to investigate. Our clients' position in this respect is reserved and the above list should not be understood to be exhaustive."

The Adjudicator disagreed and ultimately found Ringway liable to GPS. Ringway (unsurprisingly) refused to pay and GPS applied to the Court to enforce the Adjudicator's decision. The case came before The Hon. Mr. Justice Ramsey who held that, "Generally, a party who wishes to do so can object to the jurisdiction of an adjudicator and may seek to do so either in general terms or by making a reservation on a specific matter. The underlying issue is whether, taking account of the particular reservation, a party by participating in the adjudication has waived its right to object on grounds of jurisdiction."

The judge set out the following 3 circumstances in which a responding party may find themselves:

- A party might not raise an objection to jurisdiction and will proceed to participate in the adjudication. In that case, even if there were valid grounds upon which to challenge, the party has conferred jurisdiction and waived its right to object to any decision on jurisdictional grounds.
- Alternatively, a party might raise specific jurisdictional objections, which a Court may decide are unfounded. In that case, a party cannot rely on other grounds that were available but not specified during the adjudication.
- Finally, a party might make a general objection and, whilst that may be valid, it is certainly not desirable as it causes a number of practical difficulties. For instance, the Adjudicator is not able to fully investigate the objection and,

similarly, the referring party cannot assess whether it requires to abandon the adjudication and raise fresh proceedings.

In the circumstances, the Judge held that Ringway's general objection was enough to prevent there being a waiver of any jurisdictional argument. Nonetheless, given the weight the Court attached to the specific wording used by Ringway, it must remain the case that raising a general, unspecified, objection remains a risky strategy, particularly in light of the Court's over-riding position that, "It should only be in rare circumstances that the courts will interfere with the decision of an adjudicator" (Carillion v Devonport, 2005).

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