Case No: HT-2023-LIV-000025

Neutral Citation [2024] EWHC 10 TCC

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LIVERPOOL
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

35 Vernon Street
Liverpool
L2 2BX

Date: 27th November 2023

Before:

DISTRICT JUDGE BALDWIN

- -

Between:

BELLWAY HOMES LIMITED **Claimant**

-and-

SURGO CONSTRUCTION LIMITED **Defendant**

- -
- -

Mr Nicholas Kaplan (instructed by **Gateley Legal**)
for the **Claimant**
Ms Brenna Conroy (instructed by **Hay & Kilner LLP**)
for the **Defendant**

Hearing date: 22nd November 2023

Approved Judgment

Introduction – Claimant's application to enforce an adjudication decision

1. The Claimant applies by way of a summary judgment application dated 16th August 2023, within Part 7 proceedings, to enforce the "true value" adjudication ("TVA") decision of Mr Timothy G. Bunker dated 2nd May 2023 ("the decision"), wherein he decided that the Defendant is indebted to the Claimant in the sum of £148,431.70 plus interest and VAT. The application is supported by the following witness statements:-

   Robert Lockhart (9th June 2023 with exhibit)
   Michael Smyth (16th August 2023 and 2 x 9th October 2023 with exhibits)
   Martyn Cole (9th October 2023 with exhibit).

   The application is opposed by the Defendant, which relies upon the witness statement and exhibit of Jan Rzedzian dated 29th September 2023.

2. By Order of 13th September 2023, Pepperall J transferred the claim to Liverpool certifying that the application is suitable for hearing by a TCC District Judge.

3. I have been supplied with a hearing bundle and an authorities bundle and I shall refer to the hearing bundle pdf pagination thus [x]. Any below extracts from the decision are included verbatim, inclusive of typographical errors in that document. Counsel each supplied a skeleton argument which they supplemented orally during the remote hearing by Teams.

4. The Defendant's opposition to enforcement is a jurisdictional one and is advanced at this stage on only two of the three points raised in Mr Rzedzian's witness statement, the point under the sub-heading "No payment is due and owing" not being proceeded with.

5. The Defendant contends that:-

   (i) multiple disputes were referred without consent and subsequently determined by the Adjudicator when no jurisdiction to do so existed;
   (ii) alternatively, if there was jurisdiction to determine the dispute, that jurisdiction was then exceeded by the Adjudicator in going on to determine a true value payment due to the Claimant, having already decided that the payment application ("PA") was invalid in the context of the "smash & grab" aspect of the adjudication.

6. The Defendant's position is that these jurisdictional challenges are novel points which have not previously been decided and will be of significance to the construction industry. This is accepted by Mr Kaplan for the Claimant, as to

the first issue at least, at paragraph 5.2 of his skeleton argument, noting that this issue also features in another dispute between the parties in separate ongoing proceedings.

7. The Claimant rejects both challenges. It is said that only one dispute was referred, namely concerning the sums due on the application for payment dated 22nd December 2022, which was requested to be determined by one of two routes. Further, it is said that the Adjudicator, on rejecting the smash & grab, went on to do exactly what he was requested to do, namely to assess the true value of the PA.

Background and relevant extracts from the adjudication process

8. The contract in question is a sub-contract ("the contract") between Roundel Manufacturing ("R") and the Defendant dated 2nd October 2019, to supply and install kitchens in connection with a building development project whereby the Claimant engaged the Defendant as the main contractor. It is no longer in dispute that the Claimant is entitled to bring these proceedings following an assignment by R to the Claimant of all its rights in the sums due pursuant to the Adjudicator's decision. There is no dispute that the contract made provision for interim payments at cl. 9 [55] and for adjudication in accordance with the Scheme and the Act at cl. 32 [75].

9. On 22nd December 2022 R made a PA in the sum of £152,225.23 inclusive of VAT. The relevant email (not including attachments) is extracted at para. 41 of the decision [189]. No payment notice was issued nor (it was argued) was any valid pay less notice issued by the Defendant and the sum was not paid. The Claimant then referred matters for adjudication by means of a Notice of Adjudication dated 28th March 2023 [77]:-

> " *NATURE AND BRIEF DESCRIPTION OF THE DISPUTE*
>
> *5. The Referring Party submitted its Application for Payment for December 2022 on 22 December 2022 at 16:59 ("the Application "), which specified the sum due at the payment due date and the basis on which that sum was calculated, in the amount of £152,225.23.*
>
> *6. The Responding Party failed to issue either a payment notice or a payless notice and the Referring Party's primary position is that the Application became the notified sum which the Responding Party failed to pay on or before the final date for payment.*
>
> *7. Further or in the alternative, the Referring Party is entitled to an amount due up to end December 2022, calculated on a substantive basis, in such sum as the Adjudicator shall decide.*

8. The Responding Party failed to pay the amount due to the Referring Party in respect of the Application by the Final Date for Payment or at all.

NATURE OF THE REDRESS WHICH IS SOUGHT

9. The Referring Party seeks the following redress:
(1) a decision that, in respect of the Application, £152,225.23 is the sum due to the Referring Party on the Due Date or, alternatively, such sum as the Adjudicator shall decide;…"

10. The Referral Notice repeats the above and also contains the following [86, 91-2]:-

" *PARTICULARS OF THE DISPUTE*

15. The instant dispute concerns the Referring Party's entitlement to payment in respect of the Application.

…

28. … the Sub-Contract permitted or required the Referring Party (the payee) to do as it did and issue the Application to notify the Responding Party (the payer) of the sum that the payee considered would become due on the payment due date in respect of the payment, and the basis on which that sum was calculated. The Responding Party failed to issue a payment notice and, as a result, the Application became the 'notified sum'

…

True Value

33. Further or in the alternative, and should payment not be awarded on the basis of the default payment provisions, then the Adjudicator is requested to ascertain the true value of the Application.

…

36. The Application is a written application for payment, in sufficient detail to show the value of all work properly performed in accordance with the Sub-Contract with variations and all other sums or amounts which became payable under the Sub-Contract during or in respect of the period from commencement of the Sub-Contract Works to 31 December 2022, summarised below:"

11. After having rejected jurisdictional challenges, the Adjudicator, in the decision, states "The Issue" [186-7] as follows:-

> "*29. The issue within this dispute is the amount of Roundel's entitlement to payment for its sub-contract works.*
>
> *30. The parties argue this issue under the following two headings:*
> *1) Default Payment - "*Smash & Grab*" – being the amount determined by the validity of the correspondence and notices, in compliance with statute and the Conditions,*
> *and "in the alternative"*
> *2) "*True Value*" – being my determination of the correct valuation of Roundel's Sub-Contract Works.*
>
> *31. The matters that I address whilst resolving this issue are:*
> *Is Roundel's Application validly compliant with statute and the conditions?*
> *If so, then has Surgo issued a valid Pay Less Notice against the Application?*
> *If Roundel's Application is valid and Surgo has not issued a valid Pay Less Notice, then what amount of payment is Roundel's "smash & grab" default entitlement?and*
> *If the default "smash & grab" part of the claim is not successful, then what amount of payment is Roundel entitled to as a "true value" of the Sub-Contract Works?*"

12. His relevant conclusions as to the first bullet point at 31. above are [191-2]:-

> "*51.* ***Validity of Application***
> *Roundel's Application cannot be considered as an Application in relation to the 22 December 2022, or any other payment due date. It comprises no more than a number of accountancy summaries that do not seem to correlate with each other. It was not and cannot readily be demonstrated to be an Application stating the sum that the Contractor considers would become due to it. Certainly it is not in substance, form and intent an Application, and it is not free from contradiction and ambiguity.*
>
> *52. It follows that Roundel's Application does not meet the tests, under the Act, of being valid for the purposes of facilitating a default "smash and grab" payment…*
>
> *54.* ***Conclusion on "Smash & Grab" Entitlement***
>
> *It is for the foregoing reasons that I reject Roundel's claim that it is entitled to payment of the amount of its Application dated 22 December 2022 as being the Notified Sum.*"

13. He then continues:-

> "*55. Consequently, I now turn to the parties' entitlements arising under a "true value" valuation.*
>
> ***"*True Value*" entitlement***
>
> *56. Roundel's further claim is that, "in the alternative" Surgo is entitled to an amount calculated on a "substantive basis" (i.e., a "true value" Adjudication), and continues to rely upon its Application to Surgo dated 22 December 2022, and accompanying attachments.*"

14. After considering arguments as to whether the "Application" was a final account, he continues [193-4]:-

> "*60. …*
> *Having considered the parties contrasting submissions, my conclusion is that this Application is an ordinary application for payment, and there is nothing to indicate that it is a Final Account.*
>
> *61. **Roundel's invoices prior to issuing its Application date 22 December 2022***
> *Prior to December 2022, Roundel applied for payment on a basis of issuing invoices for each kitchen, as and when each installation was completed. This seems to be the method of application and payment that both parties wanted, but, as I conclude within paragraph 12, Roundel had already entered into a contract requiring regular Valuation Periods, as clause 9 of the Conditions.*
>
> *62. Roundel's Application, dated 22 December 2022, is as averred by Surgo, just a summary of previously invoiced sums, and did not add anything new. However, this is the first Application that complied with the clause 9 of the Conditions and valued the whole of the works that were carried out up to that date.*"

15. After concluding that the Defendant did instruct R to carry out the works for which payment was being sought, the Adjudicator arrives at a method for quantifying the "true value" of the works and reaches his conclusion [199]:-

> "*90. **Conclusion on "*True Value*" Entitlement***
> *Accordingly, I include the amount of **£ 146,118.82** within the Summary of the Amount of my Award.*"

16. In calculating interest, the Adjudicator makes the following findings [200]:-

> "*96. …*

The facts that are relevant to the calculation of interest on the amount of my Award are:

Amount of my Award	*£ 146,118.82*
Date of Application for Payment	*22 December 2022*
Final Date for Payment (calculated as being 60 days thereafter) (cl. 9.4 & 9.7)	*20 February 2023*

17. Ultimately, the relevant part of the decision is encapsulated thus, after adding interest [203]:-

> "***The DECISION***
>
> *I have considered all submissions and accordingly:*
>
> ***I DECIDE that:***
>
> 1) *In respect of Roundel Manufacturing Limited's Application, dated 22 December 2022,* ***£ 148,431.70*** *is the sum due to the Referring party,*
>
> 2) *Surgo Construction Limited shall pay Roundel Manufacturing Limited the sum due of* ***£ 148,431.70*** *(One Hundred and Forty Eight Thousand, Four Hundred and Thirty One Pounds & Seventy Pence) forthwith. Thereafter, further interest accrues against Surgo Construction Limited at the rate of* ***£ 33.03 per day****. VAT is to be levied in accordance with the requirements of HM Revenue & Customs;…*"

One Dispute or Multiple Disputes?

(a) The Claimant

18. Mr Kaplan submits, straightforwardly, that there is only one dispute concerning what sums were due arising out of the application for payment dated 22nd December 2022, two routes to answering that dispute being argued in the alternative by R on adjudication, namely a smash & grab route or a true value route.

19. He refers the Court to *Witney v Beam Construction* [2011] EWHC 2332 and in particular to Akenhead J's consideration of HHJ Thornton QC's judgment in *Fastrack v Morrison Construction* [2000] BLR 168 @ para. 20, which confirmed that a referral of more than one dispute is impermissible, but that in dealing with a jurisdictional challenge of this type, "*a careful characterisation of the dispute referred"* has to be made, "*not necessarily … determined solely by the wording of the notice of adjudication… (which) must be construed*

against the underlying factual background from which it springs". Akenhead J went on to give 7 pillars of guidance at para. 38 of *Witney* and Mr Kaplan emphasises two of those in particular, namely:-

> "*38. …*
> *(iv) What a dispute in any given case is will be a question of fact… Courts should not adopt an over legalistic analysis of what the dispute between the parties is, bearing in mind that almost every construction contract is a commercial transaction and parties cannot broadly have contemplated that every issue between the parties would necessarily have to attract a separate reference to adjudication.*
> *…*
> *(vii) Whether there are one or more disputes again involves a consideration of the facts. It may well be that, if there is a clear link between two or more arguably separate claims or assertions, that may well point to there being one dispute. A useful if not invariable rule of thumb is that, if disputed claim no. 1 cannot be decided without deciding claim no. 2, that establishes such a clear link and points to there only being one dispute.*"

20. Mr Kaplan then draws the Court's attention to extracts from Coulson on Construction Adjudication, namely at 7.100 – 7.101:

> "*…the word 'dispute' is not to be given a restrictive or particular meaning for the purposes of adjudication… the word 'dispute' [is] an ordinary English word, which should be given its ordinary English meaning…*
>
> *… a wide interpretation should be given to the word 'dispute' so that the Adjudicator's jurisdiction [is] preserved wherever possible... a court should approach the question of what comprised the dispute 'with robust common sense', which takes into account the nature of the dispute and the manner in which it has been presented to the Adjudicator.*"

and at 7.123:

> "*It would appear therefore that a party refers a single dispute to adjudication if it can be demonstrated that his claim, which may be made up of several different elements, can be fairly described as a single, disputed claim for a sum due (or some other relief, like an extension of time) under the contract… In practical terms, it is thought likely that a notice to refer will usually fall foul of the stipulation that it must contain a reference to only one dispute only where, as in Grovedeck, there is a attempt to refer disputes arising under more than one contract in a single notice of adjudication, or where, as in Bothma, the notice of adjudication refers to a number of disputes which, on analysis, are independent of one another.*"

21. On turning to R's Notice, Mr Kaplan asks the Court to find that a proper reading should lead to the conclusion of a close connection between the issues amounting to one overarching dispute, namely what sums, by either route, are payable as a result of the PA.

22. He then moves to tackling the Defendant's reliance upon *Deluxe Art v Beck Interiors* [2016] EWHC 238 and *Grove Developments v S&T (UK) Ltd* [2018] EWCA Civ 2448.

23. He argues that any reliance upon *Deluxe Art* is misplaced, noting that in that case the disputes were about "loss and expense" on the one hand and "retention" on the other. They had also been brought by separate notices, but the Claimant had requested that both adjudications be determined by the same adjudicator simultaneously. It is said that the character of the disputes in *Deluxe* are not redolent of those in this claim and that it should be seen as necessary to move on to true value here, once the smash and grab approach had been rejected. In essence, it seems to me, his argument can be framed as the Claimant having put forward two separate grounds for payment upon the Application, which were properly to be considered in sequence, dependent upon the decisions made along the way, as long as the dispute was properly framed. He further suggests that a plain application of "the rule of thumb" identified at 38(vii) of *Witney* in this case should not be determinative, on a proper "multiple issues within a dispute" approach.

24. Similarly, whilst acknowledging that Sir Rupert Jackson at para. 95 of *Grove* affirmed that "payment bargains" and "valuation bargains" are separate and distinct as arising from the statutory regime and the true valuation approach respectively, he notes that the background in *Grove* was that those disputes were raised in separate adjudication notices and that nothing said in *Grove* can be said to be determinative of a prohibition in bringing such bargains together as alternative routes for establishing a claim for the same (or perhaps "a") remedy for the same payment cycle.

(b) The Defendant

25. Ms Conroy, for the Defendant, following *Fastrack*, stresses the need to stand back and, set against the factual background, to ask whether one or multiple disputes have been referred. She relies heavily on the "rule of thumb" test and submits that the key lies in a proper analysis of whether the claims are entirely independent of each other.

26. She argues that two completely separate assertions were being advanced, namely a technical entitlement to payment via the smash & grab route compared to an entitlement to payment based on work done. Applying the rule of thumb, the smash and grab is, it is said, patently easily decided without reference to true value.

27. Ms Conroy also points out Sir Rupert Jackson's further observations at para. 97 of *Grove*, that the separate bargains are to serve different purposes:-

> "***97*** *…The employer has very little time to carry out a complex valuation. The contract in the present case allowed a period of 18 days for the preparation of a Pay Less Notice. Under the Scheme, the period is only ten days. Such a rushed process cannot sensibly lead to a definitive valuation of the work at any particular date. The mechanism is simply intended to generate a provisional figure for immediate payment. The adjudication provisions stand behind the notice provisions, in order to facilitate a more detailed valuation of the work at that date, if such is required…*"

28. Drawing on *Witney*, Ms Conroy stresses that there is no clear link between these claims and that they are entire and independent from one another and separate and stand-alone in analysis, procedure and purpose as a result. The true value dispute, it is noted, is completely subservient to the notified sum dispute. She argues that the disputes in question are not analogous to "sub-issues" within the PA, such as might materialise in a final account assessment, but rather they are independent entitlements to payment on different contractual bases.

29. When I asked Ms Conroy whether she could envisage any policy objection to these matters being conjoined in one dispute, she considered, for example, that it would produce an element of uncertainty, in terms of whether to concentrate efforts within the adjudication process, riskily, upon the smash & grab, or whether to throw everything at it to cover all the true value bases as well, which she contends would change the nature of adjudication and how to fight it.

30. Finally, Ms Conroy urges that it is not open to the referring party to attempt to square the circle within the Notice by making reference to "the amount due"[1], when the step back is taken. These are clearly independent entitlements, which, it is argued, should be determinative.

(c) Discussion

31. In my judgment, the paragraphs from Coulson on Construction Adjudication at 7.100 – 7.101 are a helpful starting point and I find it of assistance to approach matters by applying a broad interpretation to the concept of a "dispute" set alongside the robust common-sense approach as there advocated. Adding in the guidance at paragraph 7.123, this assists in framing the question in this way:-

> "Taking into account the nature of the dispute and the manner in which it was presented to the Adjudicator, can it fairly be described as a single, disputed claim for a sum due or a referral of a number of disputes which, on analysis, are independent of one another?"

[1] see points 7 and 8 at paragraph 9 above

32. Set upon this foundation, in my view the answer is clearly the former, for the following reasons:-

(i) The wording of the notice of adjudication clearly characterised the dispute as a failure to pay any sum due to the Claimant by the final date for payment, whether by means of a notified sum or by way of a substantive amount due up to the end of December 2022[2];

(ii) To characterise these as separate disputes would be to adopt too legalistic an approach to the exclusion of a task which was readily performed by the Adjudicator on the facts presented to him and within the timescale afforded by the Scheme. I cannot accept that any dilemma would be faced as to the extent to which the issues raised ought to be countered and no such difficulties appear to have been encountered in fact;

(iii) There is no real reliance by the Defendant upon a factual matrix which would allow a clear conclusion of true independence in fact. On the contrary, the distinction drawn by the Defendant is, in my view, a legalistic one, namely characterising a statutory regime for determining the sum due as a notified sum differently from a true value approach, based upon the singular regulated nature and outcome of the statutory regime;

(iv) The underlying facts, insofar as they assist, only amount to an alleged failure on the part of the Defendant to pay R any sum due by December 2022 for 14 more kitchens than originally contracted for [81-2]. Beyond that, factually, I agree with Mr Kaplan, the character of this matter is that there are two routes advanced to the same goal of determining a sum owed;

(v) Whilst the smash & grab claim can clearly be decided without deciding the true value claim, I am far from persuaded that this sort of "sum due pursuant to one payment application" dispute is the sort of thing envisaged as an arguably separate claim by Akenhead J at para. 38(vii) of *Witney*. There is certainly no obvious parallel or close comparison to be drawn with the "extension of time" and "true sum" issues considered in *Witney* in the context of the *Bothma v Mayhaven* case, referred to at para. 37 of *Witney* and in Coulson at para. 7.123. Indeed, the "complete subservience" issue[3] raised by Ms Conroy tends, if anything, to support a view that the true value issue could not be decided, sensibly, without deciding the notified sum issue, which analysis, in turn, can then, without too much difficulty, be characterised as establishing a clear link between the two;

(vi) In this Court's experience it is not unique to disputes between these parties for such issues to be combined within one adjudication referral, as alternative outcomes;

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[2] see para. 9 above
[3] see para. 28 above

(vii) Overall, the dispute can fairly and much more straightforwardly be described as a single, disputed claim for a sum due.

33. As such, it is necessary to move to the second issue.

Exceeding the jurisdiction found to exist

(a) The Claimant

34. Mr Kaplan is dismissive of this challenge, by way of suggesting that the jurisdiction to move on to assess the value of the PA is clear and that any errors in that regard can only be substantive legal questions and therefore not relevant to the adjudication enforcement process.

35. Whilst cautioning the Court to be sceptical of excess of jurisdiction arguments, save in the plainest of cases (see *Carillion v Devonport* [2005] EWCA Civ 1358 @ para. 87), Mr Kaplan goes on to point out that there is no evidence here of the Adjudicator wandering off piste, but rather, systematically, he addresses each issue put before him, to include what was always there, namely an alternative true value adjudication, should the notified sum approach fail.

36. Consistently, it is apparent that interest was also awarded from the date of final payment[4] at para. 96 of the decision and ultimately in respect of the "Application", a decision as to a principal sum owing was made (para. 203[5]).

37. In that the contract and the referral provided for an interim true value approach, it is said that this issue should be rejected.

38. Additionally, in response to the Defendant's submissions, Mr Kaplan reminds the Court that the referral notice is not simply reliant upon an "or such other sums" sub-clause, but rather specifically requests at para. 7:-

> "*Further or in the alternative, the Referring Party is entitled to an amount due up to end December 2022, calculated on a substantive basis, in such sum as the Adjudicator shall decide.*"

Thus, he submits, the Adjudicator was given a range of options, including the true value of the works at a given point in the interim payment cycle, namely at the end of December 2022.

(b) The Defendant

39. Ms Conroy begins by reminding the Court that the extent of the adjudicator's jurisdiction comes from the terms of the notice of adjudication (see *Pentan v Spartafield* [2016] EWHC 317 (TCC) @ para. 16.). Further, the Adjudicator

[4] see para. 16 above
[5] see para. 17 above

must only decide the issues referred, in the absence of the parties' agreement (see *McAlpine v Transco* [2004] BLR 352 QBD (TCC) @ 145 – 146).

40. She then cautions the Court to be wary of the impact of the use of the words "or such other amounts" by way of an extension of jurisdiction, see *Stellite v Vascroft* [2016] BLR 402 QBD (TCC) @ 85:-

> "*85. The Notice of Intention to Refer did not confer jurisdiction on the Adjudicator to consider alternative claims that did not affect the sums that might be due to Stellite in liquidated damages. Even allowing for some latitude, the words "or such other amount that the Adjudicator deems appropriate" cannot be stretched to encompass a claim for un-liquidated damages (or, logically, any other amount brought in any claim for money under the Contract). Those words simply allowed for the awarding of a lesser sum than Stellite had claimed if, for example, Vascroft established an entitlement to an extension of time under the Contract. Thus it did not confer jurisdiction on the Adjudicator to determine what was a reasonable time for completion, which could only be relevant to a claim for un-liquidated damages. This is reflected in and consistent with the fact that at no stage thereafter did the parties make any submissions by reference to a claim for un-liquidated damages (or a reasonable time for completion outside the context of a claim for liquidated damages).*"

41. Ms Conroy submits that "as night follows day", the finding of the Adjudicator that there was no valid "Payment Application" meant that he did not then have jurisdiction to go on to determine "a sum of money" due in any event. The value of the "Application" is different from the value of the works.

(c) Discussion

42. In my judgment, the Defendant's position here does not stand up to close scrutiny.

43. By reference to the Notice of Adjudication[6], the Adjudicator was told:-

(i) an Application for payment for December 2022 had been submitted on 22nd December (para. 5);
(ii) the Application became the notified sum (para. 6);
(iii) the Claimant was alternatively entitled to an amount due up to the end December 2022 calculated on a substantive basis in such an amount as the Adjudicator was to decide (para. 7);
(iv) no amount had been paid in respect of the Application by the Final Date for Payment or at all (para. 8).

[6] see para. 9 above

44. By way of alternative to the "default payment provisions", in the Referral Notice[7] the Adjudicator was asked or told:-

(i) should payment not be awarded on the default payment basis, to ascertain the true value of the Application (para. 33);
(ii) the written application was in sufficient detail to show the value of all work properly performed to 31 December 2022 (para. 36).

45. The Adjudicator identified two alternative arguments being put forward[8], namely "Smash & Grab" and "in the alternative" "True Value" (para. 30 of the decision).

46. The Adjudicator's conclusion was that the Application was not compliant with the statutory requirements for the purposes of succeeding in a smash & grab[9] (paras 51 – 2 and 54 of the decision). This was all in response to the Adjudicator's own question posed at para. 31 (first bullet point) of the decision, namely whether the Application was valid for the purposes of the "statute and the conditions". I do not accept that at para. 51 of the decision, or elsewhere, the Adjudicator was rejecting the Application as being capable of being an application for payment in any circumstances. That simply is not to be found from a plain and contextual reading of all the conclusions and the ultimate decision.

47. This is exemplified by the very fact that the Adjudicator then went on to complete his decision by continued reference to the "Application", e.g. at paras 56, 60, 61 62 and 96 as to interest on the sum awarded, together with paragraph 1 of "The DECISION"[10].

48. I also find reliance upon paragraph 85 of *Stellite* to be misplaced, as the use of "an amount due up to the end December 2022, calculated on a substantive basis, in such sum as the Adjudicator shall decide", in my judgment, has not been used by the Adjudicator (nor was it intended by the Claimant) to introduce a random unliquidated element into his decision-making, a different type of mischief disapproved of in *Stellite*, but is simply introducing the alternative route to his decision, namely request for the true value adjudication itself.

Conclusion

49. In that I have rejected both matters argued by the Defendant in opposition to the application, the application succeeds and the Claimant is entitled to summary judgment in the sums claimed.

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[7] see para. 10 above
[8] see para. 11 above
[9] see para. 12 above
[10] see para. 17 above