

Why you should seek advice early for construction contracts in Jersey

With construction disputes on the rise in Jersey, managing associate Rebecca McNulty discusses the importance of seeking early guidance on construction contracts in Jersey.

Construction disputes seem to be on the rise in Jersey which isn't surprising given the general rise in construction being undertaken on island. With that in mind, the recent case of ROK Construction Limited v Angel Fish Limited, highlights the importance of parties ensuring that they are careful when trying to make amendments to the standard form JCT contract (a standard document originating from the UK), and make sure that they clearly elect the dispute mechanism through which they want any dispute arising under the contract to be referred.

In this case, the crux of the issue was that ROK Construction wanted to refer a dispute under the contract to arbitration, whilst Angel Fish maintained that the JCT contract did not allow ROK to do so without Angel Fish's express agreement, which had not been provided.

The standard form JCT contract makes provision that if it is intended that disputes should be determined by arbitration and not legal proceedings then the contract particulars will state that the corresponding articles of the contract do not apply and the words "do not apply" must be deleted. In this case the arbitration provisions in the contract particulars were left untouched and neither of the alternatives of "apply/do not apply" were deleted.

It is common practice in Jersey to use a standard form addendum to convert certain parts of the JCT contract (which originates from England) into a form more amenable to Jersey law. The problem in this case was that there was some ambiguity in the amendments that the parties had tried to make using the addendum in relation to what dispute mechanism should be used. The Court thought that was because it seemed little consideration appeared to have been given to how the addendum was to be interpreted in amending the body of the JCT contract.

The Court took the view that on one level all the addendum did was determine how expressions within the JCT contract should be interpreted to make them amenable to Jersey law, but did not necessarily extend to an express disapplication of the election provisions within the JCT contract and could not be interpreted in that way. It was not a matter the Court found it could resolve on the basis of 'commercial sense' or purpose as the JCT contract itself clearly anticipates that parties may elect to arbitrate or chose to leave the matter to the courts and either of those outcomes are possible and reasonable.

In considering the JCT contract and the addendum as a whole, the Royal Court considered that it was far from clear from the wording of the addendum that it was intended to supersede the requirements that the parties elect for arbitration and no amendment had been made in the addendum to those words. Under the terms of the contractual documentation, it is necessary that parties clearly elect to refer the matter to arbitration. In this case, the Royal Court considered that the parties had not done so. Consequently, ROK's request for a declaration that the dispute be referred to arbitration was refused, leaving the dispute between the parties to be resolved by the Court.

As with many cases of this nature, seeking legal advice at the start of the process saves a lot of time and costs further down the line.

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