Neutral Citation No. [2013] NIQB 16

Ref: WEA8738

Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

Delivered: 04/02/2013

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEENS BENCH DIVISION (COMMERCIAL)

BETWEEN:

GIBSON (BANBRIDGE) LIMITED

Plaintiff

-v-

FERMANAGH DISTRICT COUNCIL

Defendant

_____

WEATHERUP J

[1] This is an application under Order 14 of the Rules of the Court of Judicature for summary judgment in relation to an Adjudicator's decision of 27 October 2012 whereby the Adjudicator awarded the plaintiff contractor the sum of £3,034,149.85. Mr Simpson QC appeared for the plaintiff and Mr Humphries QC for the defendant.

[2] There are limited grounds on which a defendant can resist an application for summary judgment of an Adjudicator's decision. The statutory scheme was introduced by the Construction Contracts (NI) Order 1997 and was designed to produce a speedy and interim decision on a construction dispute and to facilitate the payment of any amount found due pending a final determination of the dispute, whether by agreement or by arbitration or by litigation. The courts have adopted a robust approach in seeking to give effect to that statutory intention.

[3] In the present case the defendant seeks to resist judgment on two grounds. The first ground is that the Adjudicator did not have jurisdiction as a "dispute" had not crystallised at the date the Notice of Adjudication was issued by the plaintiff.

The second ground is that the procedures adopted by the Adjudicator were in breach of the rules of natural justice in that an unfair procedure was adopted by the Adjudicator who did not afford the defendant a reasonable opportunity to respond to the plaintiff's reference.

[4] The two grounds raised by the defendant are recognised grounds on which, if established, summary judgment may be resisted. However the nature of the task faced by a defendant was outlined by Chadwick LJ in Carillion Construction v Devonport Royal Dockyard [2005] –

> "…. in the overwhelmingly majority of cases the proper course for the party who is unsuccessful in adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct, whether on the facts or in law, he can take legal or arbitration proceedings in order to establish the true position to seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breach the rules of natural justice. Save in the plainest cases this is likely to lead to a substantial waste of time and expense -as we suspect the costs incurred in the present case will demonstrate only too clearly."

Was there a "dispute" to found the jurisdiction of the Adjudicator?

[5] On the first ground based on the jurisdiction of the Adjudicator the legislation and the contract provide that what may be referred to adjudication is "a dispute". There has been much jurisprudence on whether or not a dispute has arisen in a particular case. In Amec Civil Engineering v Secretary of State for Transport [2004] Jackson J set out seven propositions as follows –

> 1. The word "dispute" which occurs in many arbitration clauses and also in [section 108 of the Housing Grants Act, being the equivalent English legislation] should be given its normal meaning. It does not have some special or unusual meaning conferred upon it by lawyers.
>
> 2. Despite the simple meaning of the word "dispute", there has been much litigation over the years as to whether or not disputes existed in particular situations. This litigation has not generated any hard-edged legal rules as to what is or is not a dispute. However, the accumulating judicial decisions have produced helpful guidance.

> 3. The mere fact that one party (whom I shall call "the claimant") notifies the other party (whom I shall call "the respondent") of a claim does not automatically and immediately give rise to a dispute. It is clear, both as a matter of language and from judicial decisions, that *a dispute does not arise unless and until it emerges that the claim is not admitted.*
>
> 4. *The circumstances from which it may emerge that a claim is not admitted are Protean.* For example, there may be an express rejection of the claim. *There may be discussions between the parties from which objectively it is to be inferred that the claim is not admitted.* The respondent may prevaricate, thus giving rise to the inference that he does not admit the claim. The respondent may simply remain silent for a period of time, thus giving rise to the same inference (*italics added*).
>
> 5. The period of time for which a respondent may remain silent before a dispute is to be inferred depends heavily upon the facts of the case and the contractual structure. Where the gist of the claim is well known and it is obviously controversial, a very short period of silence may suffice to give rise to this inference. Where the claim is notified to some agent of the respondent who has a legal duty to consider the claim independently and then give a considered response, a longer period of time may be required before it can be inferred that mere silence gives rise to a dispute.
>
> 6. If the claimant imposes upon the respondent a deadline for responding to the claim, that deadline does not have the automatic effect of curtailing what would otherwise be a reasonable time for responding. On the other hand, a stated deadline and the reasons for its imposition may be relevant factors when the court comes to consider what is a reasonable time for responding.
>
> 7. If the claim as presented by the claimant is so nebulous and ill-defined that the respondent cannot sensibly respond to it, neither silence by the respondent nor even an express non-admission is likely to give rise to a dispute for the purposes of arbitration or adjudication.

[6] In the present case the plaintiff submitted a claim for payment. The defendant required additional information in order to assess the plaintiff's claim and contends that sufficient information was never received. Inspection of the plaintiff's documentation was undertaken and no assessment was completed by the defendant. Exchanges were taking place between the plaintiff and the defendant when the plaintiff made the reference to adjudication. The plaintiff contends that the

defendant had a reasonable opportunity to respond to the plaintiff's claim and to issue an assessment and had not done so by the date of the Notice of Adjudication. On the other hand the defendant contends that they were not afforded a reasonable opportunity to complete the assessment of the Plaintiff's claim and that when the Notice of Adjudication was issued the assessment was still on-going and a dispute had not crystallised.

[7] The third and fourth propositions in Amec Civil Engineering are brought into play. A dispute does not arise unless and until it emerges that the claim is not admitted. The circumstances where it might be said that the claim is not admitted include those where there are discussions between the parties from which objectively it is to be inferred that the claim is not admitted or the defendant may prevaricate, from which it may be inferred that the claim is not admitted. In the present case there was engagement between the parties although that did not produce either an express admission or an express denial of any part of the claim. The issue arises as to whether the point had been reached in the course of the engagement between the contractor and the employer that a dispute had crystallised.

[8] The defendant relied on Fasttrack Contractors Limited v Morrison Construction Limited [2000] where it was stated by His Honour Judge Thornton QC that a dispute can only arise once the subject matter of the claim has been brought to the attention of the opposing party -

> "…. and that party has had an opportunity of considering and admitting, modifying or rejecting the claim or assertion"(para. 27).

[9] Further the defendant relied on Sindall Limited v Soldon and Others [2001] where his Honour Judge Humphrey Lloyd QC stated -

> "For there to be a dispute for the purpose of exercising the statutory right to adjudication it must be clear that a point has emerged from the process of discussion or negotiation has ended and that there is something which needs to be decided.
>
> A person in the position of the contract administrator must be given a sufficient time to make up his mind before one can fairly draw the inference that the absence of a useful reply means that there is a dispute"(para. 15).

[10] To the seven principles in Amec Civil Engineering I would add an eighth for the purposes of the present case –

Where a claim has been submitted and discussions ensue between the contractor and the contract administrator, a reasonable time must be allowed for the contract administrator to prepare a response before it can be concluded that a dispute has arisen.

[11] This is clearly a fact sensitive issue, so the question arises as to whether the defendant's project manager had been afforded a reasonable time to respond to the plaintiff's claim.

[12] Regard must be had to the nature of the contract. This is the Institution of Civil Engineers contract known as The Engineering and Construction Contract Option C which is described on the title page as "A form of contract for a target contract with activity schedule".

Section 5 deals with payment. The project manager assesses the amount due at each assessment date, being every four weeks. The amount due is the price of the work done to date plus other amounts to be paid to the contractor, less amounts to be paid by or retained from the contractor. In assessing the amount due the project manager considers any application for payment the contractor has submitted on or before the assessment date. The project manager gives the contractor details of how the amount due has been assessed (clause 50).

The obligations are imposed on the contractor to keep:

- accounts of his payments of actual costs;
- records which show that the payments have been made;
- records of communications and calculations relating to assessment of compensation events for sub-contractors; and
- other accounts and records as stated in the works information.

The contractor must allow the project manager to inspect at any time within working hours the accounts and records which he is required to keep (clause 52).

Section 6 deals with Compensation Events and refers to notifying compensation events, quotations for compensation events, assessing compensation events and the project manager's assessments.

[13] Regard must also be had to the circumstances in which the claim was made. The contract works were undertaken between March 2005 and February 2008. There were regular applications for payment. Application 12 post-dated the completion of the work, having been issued on 10 April 2008. Application 13 was submitted on 16 December 2009. Quigg Golden were engaged as consultants for the defendant from February 2010. A variation of Application 13 was submitted on 22 April 2011. Application 14, an updated claim that was in effect the subject matter of the adjudication, was issued on 27 October 2011 with a claim in excess of £2M. The

project manager did not complete an assessment of any of the applications made after the completion of the work. Donny MacKinnon was appointed as consultant on behalf of the plaintiff in June 2012. The Notice of Adjudication was issued on 25 September 2012.

[14] The defendant's position is that the defendant was considering the information that had been supplied by the plaintiff from the receipt of Application 12 onwards and considered that information to be inadequate. The plaintiff provided additional information that eventually comprised 63 files, although the plaintiff contended that the information in the files had in large part already been provided to the defendant throughout the course of the exchanges between the parties. In order to determine whether or not there had been afforded to the project manager and his team a reasonable opportunity to consider the plaintiff's claim for payment so that it could be said that a dispute had crystallised it is necessary to look at some of the correspondence that was exchanged between the parties.

[15] I start on a date after the submission of Application 14 in October 2011 and refer to selected exchanges.

A letter from Quigg Golden of 9 November 2011 to the contractor states that "…. until such time as Fermanagh District Council has completed its ascertainment of this new application for interim payment 14 there is no dispute between the parties." Clearly the author had an eye to the prospect of adjudication. The letter continued that "…. as at this date there remains outstanding key information that either has not been supplied by Gibson (Banbridge) Limited or Gibson (Banbridge) limited have not confirmed that such does not exist."

It is not apparent that very much then happened. A further letter from Quigg Golden on 31 May 2012 states that "The many shortcomings in the presentation of your claims have been set out in numerous correspondence and to date your responses have been wholly inadequate…. We would ask that you provide us with a full and complete list of the documentation available to meet your requirements under the contract." Dates of inspection of the documents at the plaintiff's offices were proposed.

By a reply on 8 June 2012 from MacKinnon Consult it was stated that "There had been ample time in which to assess and make further payment but none had been made. This failure is evidence of a dispute with Gibson's claim. Therefore Gibson has prepared a reference for adjudication, details of which will follow."

This drew the response from Quigg Golden of 11 June 2012 that "…. we are seeking to review the records of your client. Without full unfettered access we cannot comply with our contractual duties in the ascertainment of the amounts properly due and there cannot be a crystallised dispute referable to adjudication."

A further response from MacKinnon Consult of 19 June stated that "The present claims have not materially changed since Gibson's submission of Application no. 12 (made on 10 April 2008, two months after it vacated the site) in the amount of £2, 154,538.02 plus VAT. Gibson's Application no. 14 (made of 27 October 2001) was in the amount of £2,136,267.79 plus VAT. The issues that were disputed in April 2008 are the same issues that are disputed now."

On 26 June 2012 MacKinnon Consult referred to agreed dates for a project manager's inspection of all the documents and stated "We record our agreement in our telephone discussion that, following completion of your and Mr Edward's inspection on Tuesday 3 July, we will, jointly, honour a 4 week standstill period in which to permit the project manager to assess and Fermanagh Council to pay the amount due."

The inspections took place in June, July and finally on 10 September. On 20 September 2012 McKinnon Consult wrote to Quigg Golden stating that the project manager had not produced any certificate in relation to his assessment of the amount due following such inspections. The letter concluded "We have a dispute which Gibson will shortly refer to adjudication." The Notice of Adjudication issued five days later on 25 September 2012.

Quigg Golden responded on 26 September 2012 to state that "….there is no dispute crystallised between the parties and this matter has been prematurely referred without the opportunity for our client to conclude their ascertainment of the application for payment."

[16] The jurisdiction point was raised with the Adjudicator in correspondence and the Adjudicator took the view that a dispute arose in November 2011 which was a period of two weeks after the defendant had failed to make an assessment in response to Application 14. The Adjudicator also referred to the matter in his decision where he stated at paragraph 173 - "Fermanagh complain that Gibson have not referred 'a dispute that is wholly crystallised'. If by this they mean that Gibson did not know what parts of their application were not accepted and why, I agree, but this due to the failure of the project manager to assess the application and provide them with details as he is required to do by clause 50.4 of the contract. To say there is not dispute in such circumstances is plainly wrong for the reason I indicated in correspondence: it implies that Fermanagh can avoid liability by the simply expedient of not carrying out their contractual duty to assess the application until the limitation period expires."

[17] The defendant had a concern about the adequacy of the plaintiff's supporting documentation for the claim. It is surprising that there was no inspection of the documentation prior to June 2012. The contractor is obliged to retain the supporting documentation but no arrangement was made to examine that documentation for a considerable period of time. The plaintiff refers to the duty to retain records and the obligation on the project manager to inspect those records, which the plaintiff says

the project manager never did, although Quigg Golden carried out inspections in the summer of 2012. By June 2012 inspections had been agreed and a four week standstill had been applied by the plaintiff from 3 July. The plaintiff cannot impose the time limit in relation to a dispute arising. There were further inspections at the end of July and the beginning of September after the conclusion of the four week period.

[18] I return to the nature of the adjudication scheme. This is a scheme for the interim objective assessment of a dispute and the immediate payment of any sum found due. It is intended to enhance the turnover of contractors where that interim objective assessment finds payments to be due, pending a final determination by agreement or arbitration or litigation. Such an interim scheme must necessarily be based on a more broad brush approach than the detailed scrutiny of a final account. The present exercise concerned the final account. Nevertheless the detailed scrutiny of the final account will be part of the final agreement or arbitration or litigation as may be necessary to conclude the matter. Here we have the defendant objecting to the absence of a reasonable opportunity being afforded to make the assessment and the difficulty being attributed to the plaintiff's inadequate documentation. The defendant points to the nature of the contract and to the fact that payment was to be made for actual outlay, that it was the project manager who determined actual costs, that if the contractor did not provide the evidence of actual costs the assessment could not be carried out, that much of the work was subcontracted to a related company of the plaintiff and the relevant records were not provided, that when documents were made available they comprised 63 lever arch files that had to be considered, that the nature of the claim by the plaintiff and the contractual framework are such that a dispute could not have existed until a reasonable opportunity had been afforded to the project manager to make an assessment.

[19] The plaintiff's claim under application 14 should have been assessed long before it eventually was assessed. If the supporting documentation was not sufficient to support the application for payment then no doubt that would have been reflected in the assessment. What the scheme does not envisage is that a dispute about the adequacy of the documentation should result in there being no assessment or that the assessment should be unduly delayed. The assessment must be made in the circumstances presented to the assessor, difficult as those circumstances might be. The assessment of an application for payment is not the same as the settlement of the final account, even when the application for payment is part of the resolution of that final account.

[20] Initially there was a long delay after the application for payment was made. Then the matter moved to the inspection phase. I am satisfied that reasonable time was afforded to the project manager to make the assessment after the inspections had taken place between June and September 2012. A dispute had crystallised by 20 September 2012 when the plaintiff's consultant notified the defendant's consultant of the dispute and the proposed reference to adjudication. It is sufficient for present purposes that the dispute had arisen by that date and the Notice of Adjudication

having issued on 25 September 2012 the Adjudicator had jurisdiction to hear the dispute.

Was there a breach of the rules of natural justice/procedural fairness?

[21] The second ground of defence is that the Adjudicator acted in breach of the rules of natural justice or, as I prefer, in breach of procedural fairness. This issue too has given rise to much jurisprudence. A number of principles were set out in Cantillon Ltd v Urvasco Ltd [2008] EWHC 282 where Aikenhead J stated -

> (a) It must first be established that the Adjudicator failed to apply the rules of natural justice;
>
> (b) Any breach of the rules must be more than peripheral; they must be material breaches;
>
> (c) Breaches of the rules will be material in cases where the adjudicator has failed to bring to the attention of the parties a point or issue which they ought to be given the opportunity to comment upon if it is one which is either decisive or of considerable potential importance to the outcome of the resolution of the dispute and is not peripheral or irrelevant.
>
> (d) Whether the issue is decisive or of considerable potential importance or is peripheral or irrelevant obviously involves a question of degree which must be assessed by any judge in a case such as this.
>
> (e) It is only if the adjudicator goes off on a frolic of his own, that is wishing to decide a case upon a factual or legal basis which has not been argued or put forward by either side, without giving the parties an opportunity to comment or, where relevant put in further evidence, that the type of breach of the rules of natural justice with which the case of Balfour Beatty Construction Company Ltd – v - The Camden Borough of Lambeth [2002] EWHC 570 (TCC) was concerned comes into play. It follows that, if either party has argued a particular point and the other party does not come back on the point, there is no breach of the rules of natural justice in relation thereto.

[22] For present purposes I add this principle to those set out above –

Breaches of the rules of natural justice or procedural fairness will be material where the Adjudicator has failed to afford to a party a reasonable opportunity to respond to the case being made by the other party.

[23] The Adjudicator required the plaintiff to submit his supporting papers to the Adjudicator in 7 days and the defendant was to respond in a further 7 days. The defendant considered 7 days to be too demanding and sought 21 days to reply. The Adjudicator refused.

[24] The Adjudicator was Anthony Baylis, who by letter dated 26 September 2012 required the plaintiff's referral with 7 days of the Notice and the defendant's response within a further 7 days. Quigg Golden's email of the same date stated that "…. the provision of a 7 day period for response is restrictive and may inhibit our client's ability to properly assess the claim put forward. The Responding Party would ask that they be allowed a 21 day period …the project manager and the Responding Party have not concluded the ascertainment of the application for payment….".

The Adjudicator replied on the same date that "…. on the face of it Fermanagh have had this Application for interim payment No 14 since the 27th October 2011, which is plenty of time for them to have carried out their assessment, so that the response should be little more than a topping and tailing exercise with some legal argument". An extension of time was refused.

Quigg Golden responded the following day, "However should the Responding Party be afforded the opportunity to conclude its assessment during a three week period after receipt of the Referral and the 63 files of supporting documentation, the actual dispute will be crystallised and those items can be properly addressed by you within a subsequent three week period. This will therefore only require a two week extension to the date your decision will be presently due." Thus at this stage not only were Quigg Golden stating that a response would be furnished but that the response would be in the form of the assessment of the claim which the Adjudicator could then consider.

By letter from the Adjudicator dated 1 October 2012 stated that "The difficulty with the timetable proposed by Quigg Golden is that it does not allow time for a reply. The assessment of Application 14 now being carried out by Fermanagh will be entirely new to Gibson who must therefore be allowed a reasonable chance to answer it. Fermanagh have already had some 10 months to prepare their assessment. The information in the 63 files of documents to be submitted with the referral will not be new to Fermanagh who had extensive access to Gibson's accounts and records between 28 June and 10 September."

After a further plea from Quigg Golden for extra time the Adjudicator replied on 2 October 2012 that "…. most of the arguments and assessments Fermanagh will be putting forward have not previously been put to Gibson, as they should have been if Fermanagh's assessment of Application 14 had been previously submitted. Fermanagh have had months within which to make that assessment and ought to be in a position to respond quickly to the referral. The justice of the situation therefore requires that allotting the limited time available for the parties to make their submission and for the decision I must reserve as much time as possible for a reply. I require therefore require Fermanagh to submit their response to the referral [within the 7 days]".

By letter of 3 October 2012 the Adjudicator refused a further request for extra time on the basis that "…. it only allows Gibson 4 days to reply to a response that is apparently to include Fermanagh's assessment of the application for payment…. Fermanagh having had the application since 27 October 2011, to expect Gibson to reply in four days is not reasonable."

On 3 October 2012 MacKinnon Consult wrote to the Adjudicator to state that "…. the matter has been discussed between the parties over a prolonged period. Fermanagh and Quigg Golden have been accommodated by Gibson to undertake extensive inspection of its accounts and records in the months preceding the notice of adjudication" They referred to the minutes of a meeting of Fermanagh District Council Environmental Services Committee on 14 August 2012 which stated under the title 'Drummee Landfill Site' "Quigg Golden had been appointed as the Council's Legal Advisers and had corresponded with the Contractor regarding the claim. In the past two months Quigg Golden had assessed all the Contractor's information and a settlement figure would be offered to Gibson (Banbridge) Limited shortly". However it appears that the information conveyed to the Council on 14 August 2012 was incorrect, because Quigg Golden responded by letter of 4 October 2012 stating that "…. we can categorically deny that there has been any assessment concluded by the Project Manager or Quigg Golden. It was anticipated prior to the commenced of the Adjudication that indeed this process could have been concluded and a settlement reached, however Gibson opted to activate the Adjudication instead of allowing this period."

[25] The defendant's response was sent to the Adjudicator on 8 October 2012, being within the required 7 day period. The Adjudicator issued his decision on 27 October 2012 and produced a detailed decision of over 50 pages of analysis of the claim. He awarded almost all of the plaintiff's claim.

[26] The defendant contends that there was not sufficient time to make a proper response in the 7 days that were allowed. The project manager, subsequent to the Adjudicator's decision, made his assessment of the payment due to the plaintiff in the sum of £312,000 and that amount has been paid. Thus there is a very substantial difference between the assessments of the plaintiff and the Adjudicator and of the project manager on behalf of the defendant and inevitably the matter will proceed to some further determination as to the final amount that is due. For present purposes the defendant says that had the Adjudicator waited for the project manager's assessment then he could have made a determination in the light of the defendant's assessment of £312,000 and this would have been a more effective and efficient manner in which the adjudication process could have been conducted.

[27] In general it can be stated that the courts strive to preserve the integrity of the adjudication process. The approach to enforcement of Adjudicator's decisions has been described as robust. It is robust to the extent that a demonstrably erroneous decision by an Adjudicator has been upheld for the purposes of enforcement. Why has this happened? Well an error, if it occurs, is regarded as an excusable risk of a

speedy process. There is considered to be a greater public interest in an adjudication system designed to achieve a speedy resolution of disputes on a temporary basis to enable a payment to be made and thereby to assist liquidity in the construction industry pending a final determination of matters in dispute. A summary and objective view is to be taken of a dispute by the appointment of an industry professional to act as Adjudicator. That a substantial claim is made does not undermine the need to observe the essential nature of this speedy summary objective process for cashflow management. If the interim award should happen to result in overpayment to a contractor the money will be returned to the employer. If the prospect of repayment were thought to be in jeopardy because of the contractor's financial circumstances then arrangements will be made by the Court to secure the repayment. That is not an issue in the present case.

[28] The defendant sought a 7 day response time and was refused. The 7 day response time cannot be looked at in isolation. The claim had been pending for many months. The defendant had had the opportunity for extensive inspection of the records and had spent many days examining the records. I have held above that the defendant had a reasonable time to make an assessment of the application for payment prior to the issue of the Notice of Adjudication. The basic time for the adjudication process is 28 days from notice to decision, which serves to demonstrate the expedition demanded by the process and consequently that many cases will necessarily have to be dealt with in a summary manner. This time can be extended to 42 days, as happened in this case, although the 42 days were not required. There were occasions in the course of his assessment when the Adjudicator did feel that a full response had not been provided by the defendant because the defendant had been unable to do so in the circumstances presented by the plaintiff. The absence of a full response is in the nature of what is intended as a summary process. Most of the 63 files relied on had been with the defendant for some time, although of course there was new material to be digested, not least by the Adjudicator. It had been declared in August that the claim had been assessed, but clearly that was not so. I am unclear as to the reason why the Council minutes record that there had been an assessment when Quigg Golden clearly disavow such an assessment having been completed. I do not hold against the defendant that an assessment had been made. I am satisfied that an assessment had not been made or the defendant would not have been in the position they were.

[29] It may be that different procedures could have been adopted by the Adjudicator. It is not for the Court to decide what procedures should be adopted. The issue is whether or not the procedures that were adopted were materially unfair. In the circumstances I am satisfied that that was not the case. The defendant was afforded reasonable time to make the response given the opportunity that existed before the Notice of Adjudication for the defendant to address the application for payment. Accordingly I reject both of the defendant's grounds for resisting the application for summary judgment.

[30] The plaintiff has submitted a draft judgment which sets out the breakdown of the decision given by the Adjudicator. There will be judgment for the plaintiff as follows –

1. £2,671,567.92, which encompasses and includes the following:

   (a) £2,126,390.29 ("the Principal Debt")

   (b) £425,278.06 in respect of VAT at a rate of 20 per cent on the Principal Debt

   (c) £442,424.00 in respect of interest due on the Principal Debt to 27 October 2012

   (d) £40,057.50 in respect of adjudicator's fees and expenses

   less

   (e) £302,151.61 paid on account on 5 December 2012 and VAT thereon of £60,430.32.

2. Further interest on the Principal Debt in accordance with clause 51 of the ECC2 Terms, compounded at a rate of 2 per cent above the Ulster Bank base rate, from 27 October 2012 to 4 February 2013 in the sum of £13,301.90.

3. The Plaintiff's costs in this action in addition to its costs in its application for summary judgment, to be taxed in default of agreement.