

Neutral Citation Number: [2006] EWHC 174 (TCC)

Case No: HT-05-354

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

St. Dunstan's House
133-137 Fetter Lane
London, EC4A 1HD

Date: Thursday, 2nd February 2006

Before:

MR. JUSTICE JACKSON

Between:

QUIETFIELD LIMITED	<u>Claimant</u>
- and -	
VASCROFT CONTRACTORS LIMITED	<u>Defendant</u>

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MR. MATTHEW HOLT (instructed by **Messrs. Kennedys**) for the **Claimant**
MR. ABDUL JINADU (instructed by **Messrs. Clarkslegal LLP**) for the **Defendant**

Judgment

MR. JUSTICE JACKSON:

1. This judgment is in six parts, namely: Part 1 Introduction; Part 2 The Facts; Part 3 The Present Proceedings; Part 4 The Relevant Law; Part 5 Application to the Present Case; and Part 6 Conclusion.

Part 1. Introduction

2. This is an application for summary judgment enforcing an adjudicator's decision. The claimant in these proceedings, who was the employer under the relevant construction contract, is a company called Quietfield Limited. I shall refer to this party as "Quietfield". The defendant in these proceedings, who was the contractor under the relevant construction contract, is a company called Vascroft Contractors Limited. I shall refer to this party as "Vascroft". References in this judgment to "the architect" are references to Mr. Reon Van Wijk, who was named as architect in the contract.
3. There have been in total three adjudications between the parties. In those adjudications a firm of quantity surveyors and dispute resolution specialists called RJC Consultants acted for Vascroft. I shall refer to that firm as "RJC". The firm of solicitors who have acted for Quietfield both in the three adjudications and in the present litigation are Kennedys.
4. In this judgment I shall refer to the Housing Grants Construction and Regeneration Act 1996 as "the 1996 Act". I shall refer to the Scheme for Construction Contracts which appears in the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as "the Scheme".
5. After these brief introductory remarks I must now turn to the facts.

Part 2. The Facts

6. Denham Place is a 17th century mansion situated in Buckinghamshire. The trustees of a trust for the Jatania family acquired Denham Place in 1999. In 2002 the trustees of that family trust engaged Quietfield to redevelop the property.
7. By a contract in writing dated 24th April 2003 Quietfield employed Vascroft to carry out renovations, alterations and additions to Denham Place for the sum of £2,609,392 subject to adjustment in accordance with the contract conditions. The contract is in the JCT 1998 Standard form with a number of amendments. The commencement date specified in the contract is 9th August 2002. The completion date specified is 12th February 2004. Clause 24 of the contract, in conjunction with the appendix, provides that the contractor shall pay liquidated and ascertained damages for delay at the rate of £1,000 per day. Clause 25 provides that the architect, upon receiving due notice, shall grant fair and reasonable extensions of time to the contractor in respect of delays caused by relevant events. Clause 26 of the contract entitles the contractor to recover loss and expense in respect of delay or disruption caused to the contractor. The contractor is required to make a written application. The matters which trigger an entitlement to loss and expense are set out in clause 26.2. Clauses 24, 25 and 26 are in the standard form without any amendments and so I need not read those clauses out. Schedule 2 to the contract (which was drafted by the parties and is not in standard form) provides for adjudication in accordance with the 1996 Act. Schedule 2 provides that any reference to adjudication shall proceed in accordance with the provisions of the Scheme.
8. Work duly commenced in 2002. Unfortunately delays and mishaps occurred during the course of the work. Completion has been delayed for a substantial period beyond the specified date of 12th February 2004. The responsibility for the various delays and mishaps is in issue between the parties. It is no part of my function to delve into those matters today.
9. During the course of the works Vascroft sent a number of letters to Quietfield's Project Manager or to the architect, recording delays to the project. Vascroft will contend in due course that these letters constitute notices under clause 25 of the contract. In addition to these letters, Vascroft also made two specific applications for extensions of time. The first application was made in a letter to the architect dated 2nd September 2004. In that letter Vascroft wrote as follows:

"We now enclose the following further documentation to assist in your assessment of our entitlement and to enable you to fix a revised Completion Date.

- Extension of Time Request; Narrative.
- Schedule of Delays on Contract Works: orders.

Our conclusion from the attached is that this document demonstrates that we have an entitlement to an extension of time for a period that we estimate to be 462 day [or 69 weeks] and we accordingly request that you revise the Date for Completion from 12th February 2004 to 9th June 2005.

Please note that above analysis refers to the activities as per the contract programme only and does not take into account other Architects' Instructions and/or variations. This information will be forwarded to you in due course and we will of course keep you up to date with regards any material change in the above estimate."

10. The attachments to this letter took the form of a brief narrative. The narrative identified twelve matters in respect of which Vascroft had been delayed by late information or by the slow progress of other specialist contractors. These matters were as follows:

1. Builder's work in connection with services;
2. Underpinning to link stair;
3. Roof plant base;
4. Gypsum Ceiling;
5. Bathroom Installation and 2nd fix plumbing;
6. Marble to bathroom;
7. General decoration;
8. Carpentry and joinery 2nd fix;
9. Break out concrete to ground floor;
10. AC plantroom and chiller room;
11. Boiler room installations;
12. Final fix bathroom accessories.

11. Ashcroft's second application for extension of time was contained in a letter to the architect dated 22nd April 2005. This letter included the following passage:

"The cause of the delay is the on going work being carried out by others, specifically the Employer's marble and joinery contractors, which is preventing us from completing our works.

The cause of this delay is a Relevant Event (25.4.8.1) and a Relevant Matter (26.2.4.1) under this contract.

We do not currently know how long these contractors will be working on site and preventing us from progressing our works, because the Employer has not issued us with a programme. However, we make an estimation that they will be on site until 1st July 2005.

Once the marble contractor has completed his works, we then have to complete the second fix electrical and sanitaryware installations. The contract programme allows 19 weeks for this activity. However, some of the work has already been done, and we estimate that we will require 9 weeks to complete this activity once the delay to our works ends. The contract programme shows a further 6 weeks of work after completion of this activity, to complete remaining works before Practical Completion.

We therefore expect that the effect of this relevant event to be a delay to the completion of the works until 12 weeks after 1st July 2005.

We therefore herewith apply for an extension of time such that the Date for Completion is revised to 23rd September 2005."

It can be seen from the reference in this letter to clause 26.2.4.1 that Vascroft desired not only an extension of time under clause 25 but also some reimbursement of loss and expense under clause 26.

12. The architect did not accede to the applications made by Vascroft in their letters dated 2nd September 2004 and 22nd April 2005. In those circumstances Vascroft resorted to adjudication.
13. On 1st August 2005 RJC, on behalf of Vascroft, sent a letter to Quietfield in the following terms:

"Notice of Adjudication

We have been engaged by, and act for and on behalf of Vascroft Contractors Limited, in connection with the dispute that has arisen on the above project.

As you are aware, and as is evidenced by records, Vascroft's entitlement to an extension of time, its entitlement to be paid interest on late payments and its entitlement to be paid a mark up on employer supplied items and domestic sub-contractors are a matter of dispute between you and Vascroft. We are therefore instructed to serve upon you this Notice of Application.

We append our Particulars of Notice of Adjudication.

We have today applied to the President/Vice President of the Royal Institution of Chartered Surveyors for the appointment of an Adjudicator."

14. Annexed to this letter was a document headed "Particulars of Notice of Adjudication". Section 1 of these Particulars is an introduction. Section 2 of the Particulars is headed "Outline of the Dispute". This section consists of eleven paragraphs which identify (a) the relevant contract provisions and (b) the matters which are in dispute. Paragraph 2.6 reads as follows:

"The Date for Completion is:- 12th February 2004.

2.6.1 VCL has notified the Architect of various delays during the course of the works.

2.6.2 VCL has applied for two Extensions of Time.

2.6.3 The Architect has failed to grant an Extension of Time in respect of either Application, or make a declaration that none is due, either within the periods stated within The Conditions, or at all.

2.6.4 Accordingly, the Date for Completion remains unaltered at 12th February 2004 and is a matter of dispute between the Parties.

2.6.5 Practical Completion has not yet been achieved."

15. Section 3 of the Particulars is headed "Request for an Adjudicator's Decision". This section consists of nine paragraphs and it sets out nine separate decisions which are sought from the adjudicator. Paragraph 3.1 reads as follows:

"The Adjudicator is requested to Decide that VCL is entitled to an Extension of Time which revises the Due Date for Completion to 23rd September 2005, or any other such date as the Adjudicator shall Decide."
16. When this document is read in context, it is clear that paragraph 2.6.2 is a reference to Vascroft's two letters dated 2nd September 2004 and 22nd April 2005. The "dispute" in respect of extension of time was a dispute about whether and to what extent Vascroft was entitled to an extension of time on the basis of the matters set out in those two letters.
17. On 5th August 2005 Mr J.A. Williams of Wates Group Limited was appointed adjudicator. A referral document was prepared by RJC on behalf of Vascroft and duly submitted to the adjudicator. Statements of case were exchanged between the parties. Witness statements and other evidence were submitted by the parties to the adjudicator. On 6th September 2005 the adjudicator convened a meeting of the parties and their advisers.
18. On 16th September 2005 the adjudicator delivered his decision. In that decision the adjudicator declined to grant a declaration that Vascroft was entitled to an extension of time. However, the adjudicator did award various sums in respect of Vascroft's financial claims. In relation to extension of time the adjudicator's reasoning may be summarised as follows:
 - (i) Vascroft's letters dated 2nd September 2004 and 22nd April 2005 both constituted valid notices under clause 25 of the contract.
 - (ii) Nevertheless Vascroft have not provided either evidence or reasoned analysis to demonstrate that the events upon which Vascroft rely caused delay to the completion of the works.
19. Having gone through this reasoning process in some detail, the adjudicator set out his conclusion at paragraph 8.3.3.14 as follows:

"For the reasons set out above based on the evidence placed before me I find that Vascroft have failed to discharge the burden of proof placed upon them to evidence that they are entitled to an extension of time and I therefore decline to refix the date for completion as 23rd September 2005 or any such other date."
20. The adjudicator's decision of 16th September was not the end of the conflict between the parties. Quietfield then took the initiative. Quietfield began a second adjudication, but this was abandoned for procedural reasons. Then on 19th October 2005 Quietfield began a third adjudication. In this adjudication Quietfield claimed liquidated and ascertained damages of £588,000 in respect of the contractor's delay over the period 12th February 2004 to 23rd September 2005. In its notice of adjudication Quietfield relied upon Mr. Williams' decision in the first adjudication, in order to demonstrate that Vascroft was not entitled to any extension of time in respect of that period.
21. On 25th October Mr. J.A. Williams was appointed adjudicator in respect of the third adjudication. On the same day, Kennedys served a referral notice setting out Quietfield's case in somewhat greater detail. On 14th November 2005 RJC served Vascroft's response in the third adjudication. In this response Vascroft asserted that it was entitled to an extension of time in respect of the entire period of delay. The grounds upon which Vascroft now claimed an extension of time were set out in Appendix C to the response.

22. Appendix C is a bulky document. It spans almost 400 pages. It sets out numerous causes of delay. It also traces the dominant critical path. Appendix C analyses the delay to completion which was caused by each of the relevant events. Appendix C includes a number of bar charts, which (a) set out Vascroft's planned and actual programme and (b) trace the interrelationship between the different activities on site and the various causes of delay.
23. An issue then arose between the parties as to whether the adjudicator could pay any regard to Appendix C or whether the adjudicator was bound by his previous decision to hold that no extension of time was due. The adjudicator dealt with this matter as a preliminary issue, but restated his conclusions on the preliminary issue in his substantive decision.
24. The adjudicator's decision in the third adjudication was dated 7th December 2005. In that decision the adjudicator declined to consider Vascroft's submissions on extension of time holding that this matter had been determined in the first adjudication. The adjudicator then went on to award damages for delay in the sum of £588,000 plus interest in the sum of £6,057.20, making a total award of £594,057.20. The adjudicator also ordered Vascroft to pay his fees for the adjudication.
25. Vascroft took the view that the adjudicator's decision in the third adjudication was unlawful. Accordingly, Vascroft declined to pay the sums which had been awarded. Quietfield was aggrieved by the non-payment and, accordingly, it commenced the present proceeding.

Part 3. The Present Proceedings

26. By a claim form issued in the Technology and Construction Court ("TCC") on 15th December 2005 Quietfield claimed against Vascroft the various sums awarded by the adjudicator in the third adjudication. At the same time Quietfield applied for summary judgment under Part 24 of the Civil Procedure Rules, on the grounds that Vascroft had no proper defence to the claim.
27. Proceedings in the TCC to enforce an adjudicator's decision are conducted in accordance with a streamlined procedure. This is set out in sections 9.2 and 9.3 of the second edition of the TCC Guide (see pages 62 to 66 of the Guide).
28. On 19th December 2005 I gave directions for the service of evidence and skeleton arguments and fixed the date for hearing. The evidence served on behalf of Quietfield comprises two witness statements made by Mr. Nicholas Carnell, who is a partner in Kennedys, and a short witness statement from an assistant solicitor, Ms. Soma Hussain, exhibiting her note of the meeting on 6th September 2005. The evidence served on behalf of Vascroft comprises two witness statements made by Mr. Roger Smith, who is a chartered surveyor employed by RJC. These five witness statements and their exhibits give a clear picture of the course of events during the first and third adjudications. I have gained assistance from all five witness statements.
29. It is clear from the particulars of claim, the defence and the skeleton arguments in this action that there is effectively only one issue to be decided. That issue may be formulated as follows: was the adjudicator correct in treating his own decision in the first adjudication as conclusive in relation to extension of time? If the answer to this question is "Yes", then the adjudicator's decision dated 7th December 2005 must be enforced. If the answer to this question is "No", then it follows that the adjudicator has expressly refused to consider both the written submissions and the evidence which constitute Vascroft's only substantive defence in the adjudication. In that event there has been a breach of the rules of natural justice and the adjudicator's decision cannot be enforced.
30. This matter came on for hearing on Tuesday 31st January, which was the day before yesterday. Mr. Matthew Holt represents Quietfield and Mr. Abdul Jinadu represents Vascroft. Both counsel have directed their submissions to the only live issue between the parties. Mr.

Holt has very fairly conceded that if he is wrong on that issue it would follow that the adjudicator ought to have considered, but did not consider, Vascroft's Appendix C. Mr. Holt concedes that in that event the adjudicator's award could not be enforced by reason of breach of natural justice.

31. In addressing the central issue in this litigation, I shall first summarise the relevant law and then apply it to the facts of the present case.

Part 4. The Relevant Law

32. Section 108(1) of the 1996 Act enables a party to a construction contract to refer a dispute arising under that contract to adjudication. Section 108(3) provides that the adjudicator's decision is binding until the dispute is finally determined by legal proceedings or by arbitration or by agreement. Section 108(5) provides that if the contract does not comply with the requirements of subsections (1) to (4), the Scheme shall apply.

33. The Scheme includes the following provisions:

"1.(1) Any party to a construction contract ('the referring party') may give written notice (the 'notice of adjudication') of his intention to refer any dispute arising under the contract, to adjudication.

(2) The notice of adjudication shall be given to every other party to the contract.

(3) The notice of adjudication shall set out briefly –

(a) the nature and a brief description of the dispute and the parties involved,

(b) details of where and when the dispute has arisen,

(c) the nature of the redress which is sought, and

(d) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).

....

9.(1) An adjudicator may resign at any time on giving notice in writing to the parties to the dispute

(2) An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.

....

23.

....

(2) The decision of the adjudicator shall be binding on the parties, and they shall comply with it until the dispute is finally determined by legal proceedings, by arbitration (if the contract

provides for arbitration or the parties otherwise agree to arbitration) or by agreement between the parties.”

34. The effect of these provisions is that once a dispute has been determined by adjudication, there cannot be another adjudication about that same dispute. The adjudicator’s decision will remain binding upon the parties unless and until that decision is overtaken by a judgment of the court, an arbitral award or a settlement agreement between the parties.
35. The question then arises as to how section 108(3) of the 1996 Act and paragraphs 9 and 23 of the Scheme interrelate with the usual contractual provisions for extension of time. Clause 25 of the contract in this case and the corresponding clause in many other forms of construction contract expressly permit the contractor to make multiple applications for extensions of time. The contractor may apply for an extension of time on one ground and be refused. The contractor may then apply for an extension of time on another ground (possibly in respect of the same period of delay) and be successful.
36. If either the employer or the contractor is dissatisfied with the decision of the architect or the contract administrator concerning extension of time, then that party has a right to refer the matter to adjudication. It therefore follows that multiple adjudications concerning extensions of time must be permissible, provided only that each adjudication arises from a separate dispute.
37. Let me now turn to the previous cases in which this issue has arisen. In **Emcor Drake & Skull Ltd. v. Costain Construction Ltd.** [2004] EWHC 2439 (TCC); 97 Con LR 142 there were two adjudications. In the first adjudication the sub-contractor claimed an extension of time on the basis of “the November claim”. The adjudicator (Mr. Miller) held that no extension was due. In the second adjudication the sub-contractor claimed an extension of time on the basis of “the February claim”. The second adjudicator (Mr. Hough) awarded both an extension of time and loss and expense. His Honour Judge Havery QC, sitting in the TCC, gave summary judgment enforcing the decision of the second adjudicator. In paragraph 11 of his judgment Judge Havery noted that the referral notice in the first adjudication was focused upon matters relating to the bedrooms. In paragraph 12 he noted that all the evidence in the first adjudication related only to the bedrooms. In paragraph 13 Judge Havery summarised the decision in the first adjudication as follows:

“Thus Mr. Miller did not decide that EDS was not entitled to any extension of time; he decided merely that EDS had not discharged the burden of showing that they were entitled to an extension of time on the ground of critical delay to the bedrooms.”
38. Judge Havery then went on to note that the claim for extension of time in the second adjudication was based on wider matters. Judge Havery concluded that Mr. Hough in the second adjudication was not bound to refuse an extension of time by reason of Mr. Miller’s earlier decision. Judge Havery then dealt with an argument concerning lack of jurisdiction. At paragraph 18 he said:

“Miss Randall submitted that in carrying out the review required by clause 11.7 and in reaching his decision Mr. Hough necessarily had to, and did, reconsider the facts and matters that had previously been adjudicated upon. The conclusion reached by Mr. Hough relative to those facts and matters was contrary to that reached in the first adjudication. Mr. Hough, accordingly, exceeded his jurisdiction, said Miss Randall. It may well be true that Mr. Hough did consider the facts and matters considered by Mr. Miller in reaching his conclusion. That in itself in my judgment is not objectionable. In my judgment Mr. Hough was not invited to

trespass on Mr. Miller's decision, nor did he do so. I reject this argument of Miss Randall."

39. Similar issues arose for decision one year later in **David McLean Contractors Limited v. The Albany Building Limited** (Salford District Registry 10th November 2005). In this case there were two adjudications before the same adjudicator (Mr. Hayes). In the first adjudication the adjudicator held that certain withholding notices were valid. Accordingly, the defendant was entitled to deduct liquidated and ascertained damages from payments otherwise due to the claimant. In the second adjudication the adjudicator held that seven non-completion certificates issued under clause 24.1 of the JCT Standard Form contract were invalid; accordingly, the sum of £1.3 million liquidated damages had been wrongly withheld by the defendant and must be paid to the claimant.
40. The claimant brought proceedings in the TCC in Salford. His Honour Judge Gilliland QC gave summary judgment for the claimant enforcing the adjudicator's decision in the second adjudication. Judge Gilliland noted that the two adjudications had proceeded under the CIC Rules rather than the Scheme. In paragraph 16 the judge stated that it was necessary to construe (a) the notice of intention to refer the first dispute to adjudication and (b) the CIC rules, in order to determine whether Mr. Hayes had jurisdiction in the second adjudication. The result of this exercise was that Mr. Hayes did indeed have jurisdiction.
41. I respectfully agree with the decisions in both those cases and the general approach adopted. Reference should also be made at this point to the decision of His Honour Judge Coulson QC in **William Verry (Glazing Systems) Ltd. v. Furlong Homes Ltd.** [2005] EWHC 138 (TCC). Judge Coulson held that where a claim is made in adjudication proceedings, the responding party can deploy all available defences. The responding party is not restricted to defences of which it has previously given notice and which have thereby generated the "dispute" referable to adjudication. The Court of Appeal refused permission to appeal from that decision.
42. From this review of the 1996 Act, the Scheme and previous decisions I conclude that the following four principles apply when there are successive adjudications about extension of time and/or the deduction of damages for delay:
 - (i) Where the contract permits the contractor to make successive applications for extension of time on different grounds, either party, if dissatisfied with the decisions made, can refer those matters to successive adjudications. In each case the difference between the contentions of the aggrieved party and the decision of the architect or contract administrator will constitute the "dispute" within the meaning of section 108 of the 1996 Act.
 - (ii) If the contractor makes successive applications for extension of time on the same grounds, the architect or contract administrator will, no doubt, reiterate his original decision. The aggrieved party cannot refer this matter to successive adjudications. He is debarred from doing so by paragraphs 9 and 23 of the Scheme and section 108(3) of the 1996 Act.
 - (iii) Subject to paragraph (iv) below, where the contractor is resisting a claim for liquidated and ascertained damages in respect of delay, pursued in adjudication proceedings, the contractor may rely by way of defence upon his entitlement to an extension of time.
 - (iv) However, the contractor cannot rely by way of defence in adjudication proceedings upon an alleged entitlement to extension of time which has been considered and rejected in a previous adjudication.
43. After this review of the relevant law, I must now apply those principles to the present case.

Part 5. Application to the Present Case

44. The notice of adjudication in the first adjudication, insofar as it focussed upon extension of time, identified as the "dispute" the architect's failure to grant an extension of time in response to Vascroft's two application letters dated 2nd September 2004 and 22nd April 2005.
45. The referral notice concentrated mainly on the two application letters and indeed copies of those two letters were annexed to the notice. The referral notice also referred to earlier letters which had been sent giving notice of delays. Quietfield, in its response, disputed that Vascroft had demonstrated any entitlement to an extension of time. On pages 12 to 19 of that response Quietfield addressed the specific grounds set out in Vascroft's letter dated 2nd September 2004. On page 20 Quietfield addressed the specific grounds set out in Vascroft's letter dated 22nd April 2005.
46. On 19th August 2005 Vascroft served a rejoinder. This document followed the sequence of Quietfield's response. It also annexed a clip of letters giving notice of delay sent by Vascroft between March 2003 and June 2004. These letters are much less specific than the two application letters dated 2nd September 2004 and 22nd April 2005. The earlier letters do not contain any reasoned application for extensions of time on the basis of which the adjudicator might be expected to reach a decision. The bare list of items in Vascroft's letter dated 9th April 2003 (on which Mr. Holt placed some reliance in his reply) does not enable any conclusion to be drawn by the reader.
47. After the exchanges of written submissions all parties attended a meeting at the adjudicator's office on 6th September. Ms. Hussain's attendance note provides a helpful record of what passed at that meeting. During the meeting Mr. Carnell pointed out in blunt terms the shortcomings of Vascroft's application dated 2nd September 2004. Indeed, Mr. Holt has commented in argument that on 6th September Mr. Carnell was actually telling Vascroft that they had a better case than the one they were putting forward.
48. Finally, one comes to the adjudicator's decision in the first adjudication. In relation to extension of time, this decision is focussed principally (and understandably) upon the two application letters dated 2nd September 2004 and 22nd April 2005. As previously mentioned, the adjudicator held that these were valid notices under clause 25, but that on the basis of those letters Vascroft had not established any entitlement to extension of time.
49. Let me now move on to the third adjudication. Quietfield was the claimant and Vascroft was the responding party in that adjudication. The dispute upon which the third adjudication was based concerned Vascroft's refusal to pay, upon request, the sum of £588,000 as liquidated damages for delay up to 23rd September 2005. Vascroft was entitled in this adjudication to advance any available defence, irrespective of whether that defence had been notified when the relevant dispute arose: see **William Verry**. Vascroft chose to advance the defence that it was entitled to an extension of time in respect of the entire period.
50. Vascroft's claim for an extension of time in the third adjudication is contained in Appendix C to its response, as previously mentioned. Appendix C is a far cry from the two application letters dated 2nd September 2004 and 22nd April 2005. It is perhaps regrettable that Appendix C was not advanced in the first adjudication. Appendix C identifies a number of causes of delay which do not feature in the two application letters. Further, Appendix C appears to be a structured and logical document, which sets out to demonstrate what the critical path was and how individual events did or did not impact upon the final date for completion. Whether, at the end of the day, the submissions in Appendix C will prevail, I do not know. This will be a matter for the adjudicator or, possibly, for the arbitrator to decide. I am, however, quite satisfied that Vascroft's alleged entitlement to an extension of time as set out in Appendix C is substantially different from the claims for extension of time which were advanced, considered and rejected in the first adjudication.

51. For these reasons I come to the conclusion that in the third adjudication the adjudicator ought to have considered Vascroft's substantive defence, but he failed to do so. In those circumstances, as Quietfield have very fairly conceded, the adjudicator's decision cannot be enforced because he failed to abide by the rules of natural justice. Indeed, in my view, if the adjudicator's decision is enforced, Quietfield may receive a substantial sum of money to which it is not entitled, even on an interim basis.

Part 6. Conclusion

52. I am grateful to both counsel for their helpful skeleton arguments and oral submissions. For the reasons set out in Parts 4 and 5 above, Quietfield's application for summary judgment is dismissed. It also seems to me, subject to any submissions which counsel may make, that I should enter judgment for Vascroft in the action.