

ICES SEMINAR

ADJUDICATION – LET’S PLAY BALL!

MOCK ADJUDICATION SCENARIO

Section 1

Castlefield City was a football club that had decided to construct a new football stadium.

On 1 August 2008, Castlefield City entered into a contract with Gorton Generator Limited for the assembly and erection of a power generator at Castlefield City’s new stadium. Gorton Generator Limited was extremely glad of this work, it had been hit by the credit crunch and times had been tough.

The power generator was located off the ground and supported by a structural frame. It was an express term of the contract between Castlefield City and Gorton Generator Limited that the power generator had to be erected by 30 October 2008.

In order to install the frame for the power generator at the site, scaffolding was required. Accordingly, Gorton Generator Limited met with a scaffolding contractor, Salford Scaffolding Limited, to discuss erecting scaffolding at the site in order to install the power generator.

Gorton Generator Limited was keen for Salford Scaffolding Limited to commence work as soon as possible to ensure that the scaffolding was in place and that there would be adequate time for it to fit the generator. A minimum of one week was the standard time taken to fit a power generator of this type at its proposed site.

The minutes of the meeting between Gorton Generator Limited and Salford Scaffolding Limited recorded how much Gorton Generator Limited had agreed to pay for the erection of the scaffolding and that payment was to be made on receipt of an invoice raised by Salford Scaffolding Limited after the scaffolding had been erected.

The deadline that Gorton Generator Limited had to work to was also noted and Salford Scaffolding Limited agreed to have the scaffolding in place in sufficient time, further adding that it *“had done this kind of work before, we are familiar with the timescales”*.

The parties continued to correspond via email in which they further outlined and agreed the works and the process for payment and that, in the event of a dispute, AICA would be the body nominating an appropriate adjudicator. Due to the tight deadline the parties never entered into a formal written contract.

On 23 October 2008, one week before the deadline, Salford Scaffolding Limited still did not have the scaffolding in place. Gorton Generator Limited raised its concerns with Salford Scaffolding Limited that the delay with the scaffolding would render it unable to meet its deadline with regards to fitting the generator.

Salford Scaffolding Limited eventually had the scaffolding in place on 27 October 2008. This delay meant that Gorton Generator Limited was only able to complete the installation of the power generator on 3 November 2008, in breach of its agreement with Castlefield City.

On 10 November 2008 Salford Scaffolding Limited sent an invoice to Gorton Generator Limited requesting payment in respect of the scaffolding works. Gorton Generator Limited responded,

refusing payment and stating that Salford Scaffolding Limited had breached the agreement between them by failing to erect the scaffolding in sufficient time. This had caused Gorton Generator Limited to incur damages under its contract with Castlefield City.

Salford Scaffolding Limited wrote back claiming that, in its previous experience, 4 days (the time between completion of scaffolding and the deadline) was sufficient time to install the power generator. Gorton Generator Limited wrote back disagreeing this and stated that the standard industry practice was to allow 7 days.

Following this second refusal to pay the sums, Salford Scaffolding Limited gave a written notice of adjudication to Gorton Generator Limited on 9 January 2009.

Section 2

Salford Scaffolding Limited was keen to have someone with hands on experience of the matter in dispute and so it contacted John Smith, an AICA adjudicator with practical experience in the installation of plant and machinery, to check on his availability.

When Salford Scaffolding Limited established that John Smith was available it contacted AICA and requested him to act as adjudicator. A referral notice was sent to John Smith on 14 January 2009.

In its response, Gorton Generator Limited stated that payment was not due to Salford Scaffolding Limited as a result of its breach of contract. Gorton Generator Limited requested that the adjudicator order Salford Scaffolding Limited to make a payment to it in respect of the damages incurred under Gorton Generator Limited's contract with Castlefield City.

Salford Scaffolding requested further time to make representations, and consequentially John Smith requested an extension of time to deliver his decision. Gorton Generator Limited agreed to this extension, however, Salford Scaffolding Limited did not.

During the course of the adjudication John Smith obtained a great deal of information from Gorton Generator Limited and Salford Scaffolding Limited advancing its respective arguments as to appropriate timescales for installing the power generator. John Smith failed to make available to Gorton Generator Limited the information received from Salford Scaffolding Limited.

Section 3

On 16 February 2009 John Smith reached his decision. He agreed with Gorton Generator Limited in that the appropriate timescale to install the generator was 7 days. Consequently, he decided that Salford Scaffolding Limited was liable to make payment to Gorton Generator Limited.

At this time John Smith's fees had not been paid and so he decided to delay communicating the decision to Gorton Generator Limited and Salford Scaffolding Limited until such time as the fees had been paid. The decision was eventually given on 27 February 2009.

Salford Scaffolding Limited refused to pay the amount due under the adjudicator's decision. As a result of this refusal to pay, Gorton Generator Limited's financial difficulties became increasingly worse. Accordingly, Gorton Generator Limited commenced proceedings to enforce the adjudicator's award and applied for summary judgment.

Salford Scaffolding Limited sought a stay pending the outcome of a challenge it had made to the adjudication on the basis that Gorton Generator Limited would be unable to repay the sum in question if the Court found in Salford Scaffolding Limited's favour.

Hammonds LLP

5 May 2009